PAPER 13 – Corporate Laws & Compliance

SECTION A
[Answer to Q.No.1 is compulsory and attempt any 4 from the rest]

1. (a) At an annual general meeting held on 25th September, 2011, the auditor was appointed to hold office up to the conclusion of next annual general meeting. The next AGM was convened on 20th September 2012 but it stood adjourned without transacting any business. Does the retiring auditor continue in the office? [3]

(b) Mr. A is managing director of APACHE Ltd. He gave his resignation letter to the Chairman of the Board of directors on 31st December, 2012 and requested that he should be relieved immediately. When does the resignation of Mr. A take effect? [4]

(c) A meeting of members of a company was convened under the orders of the court to consider a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares in aggregate 70 members holding 4,00,000 shares voted for the scheme. The remaining members voted against the scheme. Examine with reference to the relevant provision of the companies Act, 1956 whether the scheme is approved by the required majority. [3]

(d) To which Company the Restriction as to Reduction of Share Capital applies? State the Procedure for Reduction of Capital as per the Companies Act. [2+3=5]

Answer 1(a):

According to section 224(1), the statutory auditor holds office since the conclusion of annual general meeting in which he is appointed till the conclusion of next annual general meeting. The statutory auditor is not appointed for any particular financial year. Therefore, he will continue in the office until annual general meeting is actually held and concluded. The auditor will continue to audit the accounts even if such accounts relate to more than one financial year. Further, section 227(2) requires an auditor to report on every balance sheet and the profit & loss account which are laid before the company in general meeting during the tenure of his office.

In the given case, the statutory auditor appointed on 25th September 2011 will continue to act as statutory auditor of the company until conclusion of the annual general meeting in the calendar year 2012. The facts given in the cases state the annual general meeting held on 20th September 2012 has been adjourned. Therefore, the office of the existing statutory auditor appointed on 25th September 2011 i.e., the retiring auditor, will continue until the annual general meeting commenced on 20th September 2012 is concluded.

Answer 1(b):

The legal position
The Companies Act, 1956 does not contain any provision regarding resignation of directors. The legal position relating to resignation of directors, as explained in various judicial decisions, is explained below:

1. The resignation of a director, who is not a managing director or whole time director, takes

effect immediately without any need for its acceptance where the articles do not contain any provision relating to resignation of directors or where the articles allow the director to resign at any time.

2. However, a managing director cannot resign by merely sending a resignation. His resignation becomes effective only when the company accepts the resignation and relieves him from the office. This is because he occupies two positions, viz., one that of a director and other that of an employee of the company. An employee cannot resign at his pleasure by giving notice. Instead, his resignation is required to be approved and accepted by the company to relieve him from his duties and responsibilities [Achutha Pai v ROC(l966) 36 Comp Cas 598].

3. Any form of resignation, whether oral or written, is sufficient, provided the intention to resign is clear.

4. A resignation once made cannot be withdrawn except with the consent of the shareholders or the Board of directors even if such withdrawal is sought before the general meeting or the Board considers the resignation [Glossop v Glossop (1907) 2 Ch 370]. The resignation must be submitted either to the company or the Board of directors. A resignation sent to a third company is not effective [Registrar v Orissa Paper Products Ltd. (1988) 63 Comp Cos 460].

The given case
In the given problem, the managing director, Mr. A has submitted his resignation to the Chairman of the Board. The Chairman of the Board has the ostensible authority to act on behalf of the company. Thus, it can be said that Mr. A has submitted his resignation to the company. The words 'resignation letter' implies that his resignation is in writing, and so his intention to resign is clear.

Conclusion
As per the decision in Achutha Pai v ROC, the resignation of Mr. A does not take effect immediately on submission of resignation. Thus, Mr. A shall continue as managing director until his resignation is accepted. Accordingly, Mr. A can be compelled to continue as managing director until his resignation is accepted. But, he must be relieved within a reasonable time.

After submission of resignation letter, Mr. A cannot withdraw his resignation except with the consent of the shareholders or the Board.

Answer 1(c):

The given problem is based on the section 391 of the Companies Act, 1956. Accordingly where the scheme of the compromise of arrangement is required to be approved by the members, it must be approved by majority of members who are present and voting. Such majority of members must also be the members representing 3/4th in the value of the members present and voting at the meeting. In other words, a scheme of arrangement between the company and members must be approved by more than 50% of the members who hold atleast 75% of the value of shares. It is to be noted that members or creditors not present in the meeting or present in the meeting but remaining neutral are not to be counted. Members or creditors may vote in person or by proxy, where the proxies are allowed.
In the given case –

Members who attended the meeting	200 members
Shares held by the members who attended the meeting	5,00,000 shares
Members who voted in favour of the scheme	70 members
Shares held by the members who voted in favour of the scheme	4,00,000
Members who voted against the scheme	130 members
Shares held by the members who voted against the scheme	1,00,000

Thus from the above it is clear that the scheme has not been approved by the majority of members, present and voting, through it has been approved by the members holding 3/4th of the shares. It is evident that the requirements of approval by members in terms of majority in number of members and three fourths in value of shares are cumulative, i.e., these are two separate compliances. Accordingly, the scheme has not been approved by the requisite majority, and therefore, this scheme shall not be sanctioned by the court.

Answer 1(d):

Meaning of Reduction of Share Capital:

Reduction of share capital may involve reduction in respect of that portion of:

(a) issued capital which has been subscribed, called up and paid up, or

(b) issued capital which has been subscribed but not called up.

The restriction as to reduction of Share Capital apply to the following two companies:

(a) A company limited by shares

(b) A company limited by guarantee having share capital.

Thus, such restrictions do not apply to unlimited companies whether having share capital or not and companies limited by guarantee not having share capital.

A company may reduce its share capital in any way and in particular:

(a) by extinguishing or reducing the liability of members in respect of capital not paid up. e.g. where the shares of ₹ 100 each with ₹ 75 paid up are reduced to ₹ 75 fully paid up shares, the shareholders are relieved from liability on the uncalled capital of ₹ 25 per share.

(b) by cancelling any paid up share capital which is lost or is unrepresentated by available assets, with or without extinguishing or reducing liability of members.

(c) by paying off any paid up share capital which is in excess of the wants of the company with or without extinguishing or reducing liability.

Example I: Where the fully paid shares of ₹ 100 each are reduced to ₹ 75 fully paid up shares and ₹ 25 are returned to the members. Thus, in this case nominal value of the share is reduced and not merely the paid up value.

Example II: Where the fully paid shares of ₹ 100 each are reduced to ₹ 75 paid up and ₹ 25 are returned to the members on the condition that when required, the company may call it up again. Thus, in this case the paid up value of share is reduced and not the nominal value.

Note: Interest of creditors is really involved only in the circumstances referred to in (a) and (c).

The procedure for reducing the capital is given below:

1. **Authorised by Articles**: The articles must authorise the company to reduce the share capital. If the articles do not so authorise, then these must be altered by a special resolution first.
   Note: It is not enough to provide this authority in the Memorandum.
2. **Special Resolution**: A special resolution must be passed at a general meeting.
3. **Court's* Confirmation**: After passing the special resolution, the company has to apply to the court for an order confirming the reduction.

   [*Tribunal as per Companies (Second Amendment) Act, 2002.]

2. (a) On 31st March, 2012, D holds certain securities issued under 'Collective Investment Scheme'. His name appears in the books of the scheme. He has transferred these securities to another person for a consideration. The transferee lodged the instrument of transfer with the authorities one month after the date on which the income on these securities became due. Examining the provisions of the Securities Contracts (Regulation) Act, 1956 state:

(i) Whether D is entitled to receive and retain the income on these securities for the financial year ended 31st March 2012 in the given case?

(ii) Would your answer be still the same in case the transferee lodged the instrument of transfer with the authorities 14 days after the date on which the income on these securities became due? [4]

(b) Mia Ltd. entered into a contract with M and Co. Ltd. for purchase of raw materials of ₹2,50,000 at the prevailing market rate. The director of Mia Ltd., Mr. B, was holding shares of the value of 1% of the paid up capital of M and Co. Ltd. Another Director of Mia Ltd., Mr. C was holding shares of the value of 1.5% of the paid up capital of M and Co. Ltd. Mr. B at the beginning of the year, gave a general notice to Mia Ltd. that he was interested in M and Co. Ltd. but did not disclose the nature of interest.
Mr. B claims that he had given notice to Mia Ltd. as required under the Companies Act and that his holding being only 1% is within the limit under the Companies Act. [6]

(c) Ananya is an air-hostess with the British Airways. She flies for 12 days in month and thereafter a break for 18 days. During the break, she is accommodated at 'base' which is normally the city where the Airways is headquartered. In India, the base city for British Airways in Mumbai. During the Financial Year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA? [2]

(d) Mr. MKP was member of the CCI. He ceased to be such a member on 31st March 2011. Thereafter, he was offered the post of Executive Director with appropriate remuneration and other perquisites, in the following organization to join his duties on and from 1st July 2011 –

- **HLL Ltd a Private Sector Public Limited Company, whose case was disposed off by CCI under the provisions of the Competition Act, in February 2011.**
- **Life Insurance Corporation of India.**

State the option available to Mr. KMP in respect of accepting the above offers. [3]

Answer 2(a):

The present problem relates to section 27A of the Securities Contracts (Regulation) Act, 1956.

The legal position

- It shall be lawful for the holder of any security to receive and retain any income in respect of the units or other instruments issued by the collective investment scheme. The holder shall have such a right notwithstanding that the said security has already been transferred by him for consideration.
- However, if the transferee has lodged the security and all other documents required for making the transfer of security within 15 days of the date on which the income became due, the holder shall have no right to receive such income.
- The period of 15 days shall be extended -
  (a) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;
  (b) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and
  (c) in case of delay in the lodging of any Security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.
- Nothing contained in the aforesaid provisions shall affect -
  (a) the right of a collective investment scheme to pay any income to the holder of the security; or
  (b) the right of the transferee of any security to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee.

Conclusion

(i) Yes, D is entitled to receive and retain the income in respect of the units or other instruments issued by the collective investment scheme, even though he has already transferred such units or other instruments.
(ii) However, if the transferee has lodged the security and all other documents required for making the transfer of security within 15 days of the date on which the income became due, D shall have no right to receive such income.

Answer 2(b):

As per section 297, a contract between the company and any of the specified persons requires the consent of the Board, if the contract relates to:

(a) sale, purchase or supply of any goods, material or services; or
(b) underwriting the subscription of shares or debentures.

However, a public company is not covered in the 'specified persons' listed under section 297.

Every director who is any way, directly or indirectly, interested in a contract or arrangement shall disclose the nature of his interest (Section 299). However, section 299 shall not apply to a contract or arrangement entered into between two companies, where any of the director(s)

of one company holds not more than 2% of the paid up share capital of the other company.

In the present case, the contract for purchase of raw materials is between Mia Ltd. and M and Co. Ltd. Since both of these companies are public limited companies, section 297 is not applicable. Since Mr. B and Mr. C together hold more than 2% of the paid capital of M and Co., section 299 becomes applicable.

The Department of Company Affairs (Now Ministry of Corporate Affairs) has accepted the view that, unless the disclosure of interest is made by all the directors, it is not possible for any director to know whether the aggregate of his shareholding and of other directors is more than the limit of 2%. For this reason, it has been suggested that each director should declare the extent of his interest even if his shareholding is less than 2%. Such disclosure may be made either by way of a specific disclosure or by giving a general notice of his interest [Minutes of meeting of Company Law Sub-Committee held on 2.6.1961].

Though Mr. B has given notice under section 299, he has not disclosed the nature of his interest and so the notice given by him does not comply with the requirements of section 299. Therefore, Mr. B's argument is not correct. However, the Department of Company Affairs (Now Ministry of Corporate Affairs) has opined that a director shall not be liable for prosecution where he has given a general notice of his interest even if he fails to disclose the nature of his interest, provided that the general notice covers the relevant contract in question [Company News and Notes, July 1, 1963 issue].

Mr. C has not given any notice under section 299 and so he has contravened the provisions of section 299. Therefore, following consequences shall follow:

(a) He shall be liable to a fine which may extend to ₹50,000 (Section 299).
(b) If he functions as a director after he knows that the office of the director held by him has become vacant, he shall be punishable with fine which may extend to ₹5,000 per day for everyday he so functions as a director [Section 283(2A)].
(c) He shall vacate the office of director held by him [Section 283(1)(i)].

Notes:
1. Section 297 does not apply to a company (whether public or private) if the other party to the contract is a public company.
2. If the aggregate of shareholding of two or more directors in the other company exceeds 2% of the paid up capital of the other company, all such directors shall make a disclosure as required under section 299, irrespective of the fact that individual shareholding of each of the directors is not more than 2% of the paid up capital.

Answer 2(c):
Ananya "stayed" in India at Mumbai "base" for more than 182 days, as part of her employment duties, in the preceding Financial Year. "Staying" cannot be equated to "residing". "Stay" is a physical attribute, while "residing" denotes permanency. Hence, though Ananya may have "Stayed" in India for more than 182 days, it is doubtful whether she can be said to have "resided" in India for more than 182 days. Ananya would become a person resident in India only if she has come to or stayed in India for employment. Staying at Mumbai 'base' during the break, may not be fully considered as "residing in India for or on taking up employment". Hence Ananya would continue to be a "person resident outside India".

Answer 2(d):

Restriction on Employment [Sec. 12]:
The Chairperson / Member shall not accept any employment connected with the management or administration of any enterprise which has been a party to any proceeding before the CCI, for a period of 2 years from the date on which they cases to hold office. This restriction on employment of the Chairperson / Member shall not apply to any employment under –
(a) The Central Government,
(b) A State Government,
(c) A Local Authority,
(d) A Statutory Authority,
(e) A Corporation established by or under any Central, State or Provincial Act,
(f) A Government Company as defined u/s 617 of the Companies Act, 1956.

Since HLL was a party to the proceedings disposed off in February 2011, the offer from HLL Ltd cannot be accepted for a period of 2 years from the date of leaving office i.e., up to 31st March 2013.
Life Insurance Corporation of India is a Corporation established under a Central Act (i.e., Statutory Authority) and the restriction does not apply. Hence, Mr. MKP can accept the offer in this case.

3. (a) When does Transmission of Shares take place? What are the effects of Transmission? [2+2=4]

(b) An investor has complained to SEBI that he has not received the payment due to him from the stock broker registered with Calcutta Stock Exchange Association Ltd. The complainant has requested SEBI to take appropriate action against the stock broker. You are required to state with reference to the provisions of Securities and Exchange Board of India Act, 1992 the answer to the following:

(i) What action SEBI can take against the stock broker on the complaint as stated above?

(ii) What is the procedure to be adopted and what are the factors that will be taken into account while taking such action? [3]

(c) Ranbir was appointed as sole selling agent of S Ltd. for a period of five years in a general meeting of the company. Exactly after one and half years, S Ltd was amalgamated with another company A Limited. Ranbir was not appointed as the sole selling agent of A Ltd. S Ltd paid Ranbir ₹6.00 lacs as selling commission during the said one and half years. Is Ranbir entitled to any compensation and if yes, what is the quantum? [4]

(d) The Board of Director of VDV Ltd., a banking Company incorporated in India, for the accounting year ended 31-3-2010 transferred 15% of its net profit to its Reserve Fund. Certain Shareholder of the Company objects to the above act of the Board of Directors on the ground that it is violative. Examine the provision of Banking Regulation Act, 1949 and decide -

- **Whether contention of the Shareholder is tenable?**
- **Would your answer be still the same in case the Board transfers 30% of the Company's Net Profits to Reserve Fund? [4]**

Answer 3(a):

Transmission of Shares takes place under the following situations:

1. If a registered member dies, or
2. If a registered member is adjudged as insolvent, or
3. If a registered member being a company goes into liquidation.
4. If all the joint holders die where the shares are held jointly by two or more persons.

Effects of Transmission:

1. Upon death, the shares of the deceased vest in his executors or administrators and the executors become liable for calls if shares are partly paid up.
2. Upon insolvency, the shares of the insolvent vest in the Official Assignee or the Re-ceiver.
3. Upon liquidation of company, the shares vest in the Liquidator.
4. A person entitled to the shares on transmission becomes a member only when he makes an application in writing to the company and the company registers him as a member by entering his name in the Register of Members.

Answer 3(b):

1. Penalty for non-payment by a stock broker

A registered stock broker is liable to penalty under section 15F in respect of certain defaults. Accordingly, if a stock broker fails to make payment of the amount due to the investor in the manner and within the period specified in the regulations, he shall be liable to a penalty of ₹1 lakh for each day during which such failure continues or ₹1 crore, whichever is less (Section 15F).

2. Procedure for adjudication

As per section 15I, SEBI shall appoint any of its officers (not below the rank of Division Chief) to be an adjudicating officer for holding an enquiry in the prescribed manner. The adjudicating officer shall give an opportunity of being heard before imposing any penalty.

3. Factors to be taken into consideration while imposing penalty

As per section 15J, while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors:

(a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default.
(b) The amount of loss caused to an investor or group of investors as a result of the default.
(c) The repetitive nature of the default.

Answer 3(c):

According to section 294A, the company shall not be liable to pay any compensation for the loss of office to the sole selling agent –

(i) Where the appointment of the sole selling agent ceases to be valid by virtue of section 294(A);
(ii) Where he resigns his office as a result of reconstruction or amalgamation of the company and is appointed as the sole selling agent of the reconstructed company or the body corporate resulting from the amalgamation;

(iii) Where he resigns his office otherwise than in the circumstances envisaged in the foregoing clause;
(iv) Where he has been guilty of fraud or breach of trust in relation to, or of gross negligence in the conduct of his duty as the sole selling agent; and
(v) Where he has instigated or taken part directly or indirectly in bringing about the termination of the sold selling agency.

In the given case, Ranbir did not resign from S Ltd., and after amalgamation he has not been appointed as sole selling agent. Therefore, Ranbir is entitled for compensation for loss of office.

The amount of compensation shall be payable on the basis of average remuneration earned during three years preceding the date of cessation of office or expired term of appointment whichever is less and it is payable for unexpired term of three years, whichever is less. In the given case, Ranbir was paid ₹6.00 lacs by way of commission for one and half year. It means annual average is ₹4.00 lacs.

Out of total term of five years, three and half years are remaining. But compensation cannot be paid for more than three years. Therefore, compensation payable for three years on the basis of ₹4.00 lacs per year i.e., ₹12.00 lacs.

Answer 3(d):

As per section 17 of the Act, the provisions relating to reserve fund are:

1. **Creation:** Every Banking Company incorporated in India shall create a **Reserve Fund.**
2. **Transfer:** Not less than 20% of profits as disclosed in the Profit & Loss A/c before any dividend is declared, shall be transferred to Reserve Fund every year.
3. **Exemption:**
   (a) Based on RBI's recommendation, the Central Government may grant exemption to a Banking Company from the requirement of Sec.17 for a specified period.
   (b) The exemption will be granted only if -
      - Having regard to the adequacy of the Paid up Capital and Reserves of Banking Company in relation to its Deposit Liabilities, the Central Govt. is satisfied that the exemption can be granted, and
      - Aggregate of amount of Reserve Fund and Share Premium Account is not less than Paid up Capital of the Banking Company.
4. **Appropriation:**
   (a) Where a Banking Company appropriates any sum from the Reserve Fund or Share Premium A/c, it shall report the fact to RBI explaining the circumstances relating to appropriation within 21 days from the date of appropriation.
   (b) RBI may, at its discretion, extend the period beyond 21 days or condone the delay.

Therefore,
CASE A: The objection made by the shareholders is valid since the minimum amount to be transferred to the reserve fund is 20% of profits. However, the action of the Board shall be valid if the banking company has obtained in writing, an order of the Central Government, waiving compliance with the requirements of transfer to the reserve fund.

CASE B: In case the Board has transferred to the reserves 30% of net profits, such decision shall

be valid since the requirement of 20% of profits to be transferred to reserves is the minimum requirement given under the Act. The Board is free to transfer to reserve anything over and above 20% of net profits.

4. (a) In a public company the total number of Directors are 9 and 2 office of the Directors have fallen vacant. Referring to the relevant provisions of the Companies Act, 1956:

(i) What would be the quorum for the Board Meeting?
(ii) Can the articles of a company fix the quorum (higher or lower) for the Board Meeting?
(iii) Assuming if there are 15 Directors in the company and of which 13 happen to be interested Directors, what would be the quorum?
(iv) How do you resolve the situation if all the Directors are interested in a particular transaction? [4]

(b) A person, who was sentenced to imprisonment for a period of 2 months under the Income-tax Act, 1961, wants to be appointed as a whole-time director of the company. Whether he can be appointed as a whole time director? [2]

(c) Discuss the Constitution and functions of Regional Load Despatch Centre as per the Electricity Act, 2003. [2+4=6]

(d) An arrangement has been made among the Cotton Producers that the Cotton produced by them will not be sold to mills below a Certain Price. The arrangement is in writing but it not intended to be enforced by legal proceedings. Examine whether the said arrangement can be considered as an arrangement within the meaning of Sec. 2(b) of the Competition Act, 2002. [3]

Answer 4(a):

Where total number of Directors are 9 and 2 offices of the Directors have fallen vacant, the number of directors remaining is 7. Therefore, quorum is to be calculated with reference to 7.

(a) As per section 287, quorum shall be 1/3rd of total strength of the directors and any fraction shall be rounded off to next full figure. In the given case 1/3rd is 2.33. Therefore, where the total strength is 7, the quorum shall be 3.
(b) The articles of the company may fix a quorum higher than 1/3rd of total strength but not lower than that. If it is fixed on lower side, it will be void.
(c) According to section 287(2) that where at any time the number of interested directors exceeds or is equal to 2/3rd of the total strength, the number of the remaining directors, that is to say, the number of the directors who are not interested present at the meeting being not less than two, shall be the quorum during such time. Therefore, where out of 15, if 13 directors are interested, both the remaining disinterested directors are required to be present to constitute the quorum.
(d) Where all the directors are interested in the subject matter, the subject matter can be transacted in following ways:
    (i) Appoint disinterested additional directors to constitute quorum; or
    (ii) Transact the subject matter in the general meeting. In the general meeting, even interested directors can also vote in the capacity of members. Section 300 does not apply in relation to voting in the general meeting.

Answer 4(b):

Section 269 requires that every appointment of a whole time director of a public company shall be made only with the approval of the Central Government unless such appointment is in accordance with Schedule XIII. As per Schedule XIII, a person shall not be appointed as a whole time director if he has been sentenced to imprisonment for any period for conviction of an offence under any of the 15 Act specified in Part I.

In the present case, the proposed appointee has been convicted of an offence under Income-tax Act which has been specified under Schedule XIII. Therefore, the appointment cannot be made in accordance with the provisions of Schedule XIII. As such, the appointment would require the approval of the Central Government. The application for approval of the Central Government shall be made within 90 days of the appointment of the person as a whole time director.

Answer 4(c):

Constitution of Regional Load Despatch Centre [Section 27]:

1) The Central Government shall establish a centre for each region to be known as the Regional Load Despatch Centre having territorial jurisdiction as determined by the Central Government in accordance with section 25 for the purposes of exercising the powers and discharging the power and discharging the functions under this Part.
2) The Regional Load Despatch Centre shall be operated by a Government Company or any authority or corporation established or constituted by or under any Central Act, as may be notified by the Central Government:
   Provided that until a Government company or authority or corporation referred to in this sub-section is notified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centre: Provided further that no Regional Load Despatch Centre shall engage in the business of generation of electricity or trading in electricity.

Functions of Regional Load Despatch Centre [Section 28]:

1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.
2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.
3) The Regional Load Despatch Centre shall -
   (a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;
   (b) monitor grid operations;
   (c) keep accounts of the quantity of electricity transmitted through the regional grid;
   (d) exercise supervision and control over the inter-State transmission system; and
   (e) be responsible for carrying out real time operations for grid control and despatch of electricity within the region through secure and economic operation of the regional grid in accordance with the Grid Standards and the Grid Code.
4) The Regional Load Despatch Centre may levy and collect such fee and charges from the generating companies or licensees engaged in inter-State transmission of electricity as may be specified by the Central Commission.

Answer 4(d):

As per Sec. 3(4),
Vertical Agreements are amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage sale or price of, or trade in goods (or) provision of services. They include the following arrangements / agreements –

(a) Tie-in Arrangement	Includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.
(b) Exclusive Supply Agreement	Includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the Seller or any other person.
(c) Exclusive Distribution Agreement	Includes any agreement to limit, restrict or withhold the output or supply of any goods, or allocate any area or market for the disposal or sale of goods.
(d) Refusal to Deal	Includes any agreement which restricts, or is likely to restrict, by any method, the persons or classes of persons to whom goods are sold or from whom goods are bought.
(e) Resale Price Maintenance	Includes any agreement to sell goods on condition that the prices to be charged on the resale by the Purchaser shall be the prices stipulate by the Seller, unless it is clearly stated that prices lower than those prices may be charged.

Such Vertical Agreements shall be considered anti-competitive (and hence void), if it causes or is likely to cause an appreciable adverse effect on competition in India.

Note: Horizontal Agreements are presumed anti-competitive u/s 3(3) and hence void. However, Vertical Agreements are anti-competitive and void u/s 3(4) only when they cause appreciable adverse effect on competition in India.

In the given case, agreement stipulates the Resale Price and does not allow the Purchaser to sell the goods at prices lower than the stipulated prices, hence invalid. It is a Vertical Anti-Competitive Agreement.

5. (a) Write short notes on Clause 49 of the Listing Agreement of SEBI in connection with Corporate Governance and Audit /Committee. [5]

(b) How are the disputes relating to formation, management or business of a Producer Company resolved? [4]

(c) Explain the objective of the Prevention of Money Laundering Act (PMLA), 2002. [3]

(d) Mr. X is already working as Chief Accounts Officer in the company and his father is appointed as a whole time director in the subsidiary company. Examine applicability of the section 314.
Will your answer be different if Mr. X's father is appointed in the same company as whole time director? [3]

Answer 5(a):

Clause 49 of the Listing Agreement with SEBI lays down the following in respect of Audit Committee -

1. **Applicability:** An Audit Committee shall be set up - (a) All Companies seeking listing for the first time, at the time of seeking in-principle approval for such listing, and (b) all existing listed Companies with a Paid-Up Capital of ₹ 3 Crores or more, or Net Worth of ₹25 Crores or more, at any time in the history of the Company.

2. **Composition:** A qualified and independent Audit Committee shall be set up giving the terms of reference, and subject to the following -
   (a) The Audit Committee shall have minimum 3 members. 2/3rd of the members of the Audit Committee shall be Independent Directors.
   (b) All members of the Audit Committee shall be **financially literate** (i.e. the ability to read and understand the basic Financial Statements i.e. Balance Sheet, P&L Account and Statement of Cash Flows). Atleast one member shall have accounting or related financial management expertise.
   (c) The Chairman of the Committee shall be an **Independent Director.**
   (d) The Chairman shall be present at the AGM to answer Shareholder queries.
   (e) The Audit Committee should invite such of the executives, as it considers appropriate (and particularly the head of the Finance Function) to be present at the meetings of the Committee, but on occasions it may also meet without the presence of any executives of the Company. The Finance Director, Head of Internal Audit and when required, a representative of the External Auditor shall be present as invitees for the meetings of the Audit Committee.
   (f) The Company Secretary shall act as the Secretary to the Committee.

3. **Meetings and Quorum:** The Audit Committee shall meet at least 4 times a year and not more than 4 months shall elapse between two meetings. The quorum shall be either 2 members or 1/3rd of the members of the Audit Committee whichever is higher, and minimum of 2 Independent Directors.

4. **Powers of Committee:** The Audit Committee shall have powers, which should include the following -
   (a) To investigate any activity within its terms of reference,
   (b) To seek information from any employee,
   (c) To obtain outside legal or other professional advice,
   (d) To secure attendance of outsiders with relevant expertise, if it considers necessary.
   Clause D deals extensively with the Role of Audit Committee.

5. **Review of Information:** The Audit Committee shall mandatorily review the following -
   (a) Management discussion and analysis of financial condition and results of operations,
   (b) Statement of significant Related Party transactions (as defined by the Audit Committee), submitted by management,
   (c) Management Letters / Letters of Internal Control Weaknesses issued by the Statutory Auditors,
   (d) Internal Audit Reports relating to Internal Control Weaknesses, and
   (e) Appointment, removal and terms of remuneration of the Chief Internal Auditor.

Answer 5(b):

As per section 581ZO,

1. **Meaning of "Dispute":** Dispute **includes** -
   (a) a claim for any debt or other amount due,
   (b) a claim by a Surety against the Principal Debtor, where the Producer Company has recovered from the Surety amount in respect of any Debtor or other amount due to it from the Principal Debtor as a result of the default of the Principal Debtor whether such debt or amount due be admitted or not,
   (c) a claim by Producer Company against a Member for failure to supply produce as required of him,
   (d) a claim by a Member against the Producer Company for not taking goods supplied by him.

2. **Parties to the dispute:** Dispute relating to the formation, management or business of a Producer Company may arise in any of the following cases -
   (a) amongst Members, former Members or persons claiming to be Members or nominees of deceased Members, or
   (b) between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member **and** the Producer Company, its Board of Directors, Office-Bearers, or Liquidator, past or present, or
   (c) between the Producer Company or its Board, **and** any Director, Office-Bearer or any Former Director, or the Nominee, Heir or Legal Representative of any deceased Director of the Producer Company,

3. **Manner of Settlement:** Such dispute shall be settled by conciliation or by arbitration as per the Arbitration and Conciliation Act 1996, as if the parties to the dispute have consented in writing for determination of disputes by conciliation or by arbitration.

4. **Finality of Issue:** If any question arises whether the dispute relates to formation, management or business, of the Producer Company, the question shall be referred to the Arbitrator, whose decision thereon shall be final.

Answer 5(c):

1. **Money Laundering** actually refers to a process or system by which money is actually generated from serious crimes, but they are given such shape (by disguising its origin into a series of transactions) that it looks like it has originated from legitimate sources. PMLA has been enacted as part of India's commitment to fight all forms of economic crimes.
2. **Date and extent:** PMLA, 2002 came into force w.e.f 1st July 2005. It extends to the whole of India.
3. **Objectives of PMLA:**
   (a) To prevent money laundering, and to provide for confiscation of property derived from or involved in money laundering and for matters connected therewith or incidental thereto.
   (b) To avoid channelising of money into illegal activities and providing for attachment and seizure of property and records, stringent punishment, including rigorous imprisonment of upto 10 years and fine of upto ₹ 5 Lakhs.

Answer 5(d):

According to Section 314(1)(b), any relative of a director holding office or place of profit in the company, shall not be appointed in the company or in the subsidiary at a monthly remuneration not below the prescribed amount unless the appointment is approved by members by way of special resolution in the first general meeting of the members held thereafter. It is to be noted that essentials for applicability of sub-section (1) are –

(a) Director holds office or place of profit before his relative is appointed.
(b) Appointment of the relative is in the company or in the subsidiary.
(c) Appointment of relative takes place after the director holds office or place of profit.

In first part of the question, Mr. X is an employee of the company and then his father is appointed in the subsidiary. Therefore, section 314 is not attracted.

In the second part of question also section 314 is not attracted because Mr. X is already appointed in the company and then his father is appointed as whole-time director.

6. (a) What are the transactions for which SARFAESI Act, 2002 does not apply? [4]

(b) Write a short note on:
(i) Surrender of Shares.
(ii) Debenture Redemption Reserve. [3+3=6]

(c) What are the provisions in the Insurance Act, 1938 regarding nomination by a life Insurance Policy Holder? Whether a minor can be a nominee in a Life Insurance Policy? [4+1=5]

Answer 6(a):

The provisions of the SARFAESI Act shall not apply to -

1. A lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force,
2. A pledge of movables within the meaning of Sec. 172 of the Indian Contract Act, 1872,
3. Creation of any security in any aircraft as defined u/s 2(1) of the Aircraft Act, 1934,
4. Creation of security interest in any vessel as defined u/s 3(55) of the Merchant Shipping Act, 1958,
5. Any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created,
6. Any rights of Unpaid Seller u/s 47 of the Sale of Goods Act, 1930,
7. Any properties not liable to attachment or sale u/s 60(1) First Proviso of Code of Civil Procedure, 1908.
8. Any security interest for securing repayment of any financial asset not exceeding ₹1,00,000,
9. Any security interest created in agricultural land,
10. Any case in which the amount due is less than 20% of the principal amount and interest thereon.

Answer 6(b):

(i) Surrender of Shares:

1. **Meaning:** Surrender of Shares means voluntary return of Shares by a Shareholder to the Company for cancellation.
2. **Legality:** There is no provision for surrender of Shares either in the Companies Act or in Table A.
3. **When made?** Shares can be surrendered only where their forfeiture is justified. In any circumstance, surrender of Shares cannot be accepted without sanction of the Court, as this would amount to a reduction of Capital.
4. **Circumstances for accepting Surrender of Shares:**
   Partly paid Shares: Surrender is possible only when Forfeiture is justified. Since, Partly-paid Shares can be forfeited, there is no bar on accepting surrender of partly-Paid Shares.
   Fully paid Shares: Generally, Company cannot accept such surrender. However, surrender is permissible if it is in exchange for new Shares of same nominal value with different rights, i.e., there is a replacement of Capital and no reduction.
5. **Reissue of surrendered Shares:**
   (a) Surrendered Shares can be re-issued in the same way as Forfeited Shares. When re-issued, there is no reduction in capital.
   (b) No consideration can be paid by Company in exchange of surrendered Shares as it would amount to purchase of its own Shares, which is specifically prohibited u/s 77.

(ii) Debenture Redemption Reserve:

1. The Company shall create a Reserve from out of its profits every year for redemption of Debentures called as Debenture Redemption Reserve (DRR). The amount credited to the reserve shall not be used for any other purpose.
2. The Company shall pay the interest and redeem the Debentures according to the terms and conditions of issue.
3. If the Company fails to redeem the Debentures on the date of maturity, the Tribunal, on an application made by the Debenture Holders, may by order, direct the Company to redeem the debentures.
4. If any default is made in complying with the Tribunal's order, every Officer who is in default shall be liable for imprisonment upto 3 years and fine of not less than ₹500 per day of default.

Answer 6(c):

The provisions regarding nomination by a Life Insurance Policy Holder are as under:

1. **Nomination:** The holder of a policy of life insurance on his own life, may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.
2. **Endorsement on the policy:** Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an **endorsement on the policy** communicated to the insurer and registered by him in the records relating to the policy and any such nomination may at any time before the policy matures for payment be cancelled or changed by an endorsement or a further endorsement or a will, as the case may be, but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in records of the insurer.

3. **Acknowledgement:** The Insurer shall furnish to the Policy-Holder a written acknowledgement of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding ₹ 1 for registering such cancellation or change.
4. **Assignment u/s 38:** A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination. The assignment, of a policy to the Insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the Policy within its surrender value, or its reassignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.
5. **Minor Nominee:** Where any nominee is a minor, it shall be lawful for the Policy Holder to appoint in the prescribed manner any person to receive the money secured by the policy in the event of his death during the minority of the nominee. Hence, a Minor can be a nominee in a Life Insurance policy.

SECTION B

[Answer any five questions from Q.No.7 (a) to (f)]

7. (a) Why should Corporate Social Responsibility (CSR) look beyond the concept of philanthropy? [5]

(b) Discuss the steps involved in the whole life-cycle risk process for each stage of the project. [5]

(c) "Companies are not entirely free to decide on how they shall handle their risks." Discuss this statement in the light of clause 49 of the listing agreement. [5]

(d) Explain briefly the key strategies which can be used at the time of implementation of Corporate Social Responsibility policies and practices in a company. [5]

(e) State with reasons - whether the following statements are correct or incorrect:

"Corporate Social Responsibility is closely linked with the principles of sustainable development." [5]

(f) "Family ownership of firms is the prevalent form of ownership in many countries around the globe."
In view of the above statement, explain the concept and need of Ownership structures. [5]

Answer 7(a):

Corporate Social Responsibility (CSR) is a management concept where good business is not only seen as maximization of shareholder value but also of stakeholder value. It is about the management of a company's impact on its stakeholders, the environment, and the community in which it operates. It is more than just a philanthropic activity for some charitable causes. It is about the integrity with which a company governs itself, how it fulfils its mission, the values it has, what it wants to stand for, and how it engages with transparency. Here, the corporations have to move beyond the financial bottom-line to the social and environmental bottom line.

Corporate philanthropy is certainly a piece of the CSR puzzle. The thing to understand here is that it is just that: a piece. CSR and corporate philanthropy are often viewed as

interchangeable terms because many of the most basic CSR efforts are philanthropic in nature. However, CSR encompasses more than corporate giving. CSR programs take a proactive approach to reduce negative impacts and increase positive impacts on the people and environment the corporation touches. For eg., a partnership with a non-profit organization can mean more than giving a hefty annual donation, joining as a corporate member, or sponsoring events. In a CSR program, a true partnership might mean encouraging employees to volunteer their time, hosting public awareness and educational events, or contributing services that are useful to the organization.

Corporate Social Responsibility looks beyond the interests of traditional stakeholders and considers impacts on employees, customers, vendors, suppliers, communities, and the natural environment. This approach to business strategy takes the minimum expected efforts, such as compliance with regulations and managing obvious risks, and goes a step further all within a thoughtfully developed and well organized program that aligns with the company's strategic plan.

CSR goes beyond philanthropy. It has to take into account integrity and accountability in the long-run process of sustainability. For a better understanding of this concept, it has been divided into four broad aspects of CSR:

- Responsibility
- Accountability
- Sustainability
- Social contact

Responsibility: William Frederick (1994) has taken the concept of CSR to a higher level by discussing about corporate responsiveness. According to him, corporate social responsiveness refers to the capacity of a corporation to respond to social pressures. Ethically accepted corporate activity and profit-making are not mutually exclusive. Sustainable growth and success demands ethicality in the process of dealing with stakeholders. Often, CSR has been challenged on the grounds of relativity, which means that what may be considered right by one may be considered wrong by another. Arriving at a consensus for CSR checklists may not be easy.

Accountability: The easiest way to understand the different levels of accountability is to adhere to the report on Social Responsibilities of Business Corporations issued by the Committee for Economic Development (CED) in 1971. The report consists of the three concentric circles: Inner Circle, Intermediate Circle and Outer Circle. CSR includes integrity and accountability because it demands knowledge that goes beyond the traditional framework of business understanding, i.e., profit-making and bottom line.

Sustainability: Sustainability places an extended set of expectations on business. Such issues as layoffs, plant closures, product quality, financial frauds, or industrial pollution demand the consideration of a diverse and complex range of systematic solutions. The reason CSR has to promote beyond philanthropy is because familiarity with unethical practices often makes society extremely tolerant and insensitive. The objectives of a company's CSR governance must be clearly defined with respect to its different stakeholders. The business environment will always be in a continuous state of flux due to the influence of socio-economic and political changes in the micro and the macro level. Therefore, CSR needs a strategy that needs to uphold the ethical standards.

Social Contract: CSR is related to the social contract between the business and the society in which it operates. At any one time in any one society, there is a set of generally accepted

relationships, obligations, and duties between the major institutions and the people.
Though business has the bigger responsibility of going beyond philanthropy, one must also keep in mind that each stakeholder also has reciprocal duties with others and the consuming community also has the obligation to make the tradeoff between cost and sustainability and integrity. Different stakeholders also cannot be driven by their selfish interests alone because each stakeholder has an important role to play and one cannot be destroyed for the benefit of the other.

Answer 7(b):

The framework, integrating the five iterative steps, is explained in the following sections:

Whole life risk identification

The process starts with a qualitative stage that focuses on identification of risks related to each of the whole life-cycle processes. Risks that are unidentified and not quantified are unmanaged risks that can have a significant negative outcome on projects and organisations. If any of the unidentified risks occur at any stage of the project life-cycle, this may have serious consequences on stakeholders' financial status. Hence, perhaps the most important step in the whole life-cycle risk process is the process of risk identification. The quality of this process has a direct effect on the quality and accuracy of risk analysis, quantification, and development of risk strategy responses, and on the management of risk throughout the life span of projects. The output of risk identification will inform the second quantitative analysis process that focuses on evaluation and assessment of risks associated with each aspect of the life-cycle span of projects.

Whole life risk analysis

Several methodologies are available to deal with WLCC risk analysis. The techniques that can be used in WLCC risk assessment decision making might be summarised as deterministic, probabilistic and AI. Deterministic methods measure the impact on project outcomes of changing one uncertain key value or a combination of values at a time. In contrast, probabilistic methods are based on the assumption that no single figure can adequately represent the full range of possible outcomes of a risky investment (Fuller & Petersen 1996). Rather, a large number of alternative outcomes must be considered and each possibility must be accompanied by an associated probability from a probability distribution, followed by a statistical analysis to measure the degree of risk. Using a deterministic approach, the analyst determines the degree of risk on a subjective basis. All methods differ from the above approaches and use historical data to model cost and uncertainty in WLCC analysis. None of these techniques can be applied to every situation. The best method depends on the relative size of the project, availability of data and resources, computational aids and skills, and user understanding of the technique being applied.

Whole life risk responses

Developing responses to reduce WLCC risks is the third step in the integrated WLCC risk management framework. Once the building assets and the many different risks and threats to which they are exposed are identified and quantified and the related life-cycle vulnerabilities assessed, necessary steps should be taken to ensure that the entire investment is protected from all sources of external and internal threats. Thus, the third stage is concerned with the identification of strategies that mitigate the effect of anticipated threats to the greatest

extent possible. This should be based on the following universal rules: risk avoidance, risk reduction, risk absorption and risk transfer.

Whole life risk management plan

Following the identification, quantification and development of risk responses, the related vulnerabilities of building assets need to be determined and planned for. This provides the basis on which risk management plans and decisions are made. The risk management planning process is concerned with putting in place the procedure for:

- What response actions are needed?
- When these response actions are needed?
- How these actions are implemented?
- Who is responsible for the implementation, control and monitoring of the actual progress of risk responses and management strategies that have been developed to deal with the identified risk?

Whole life risk monitoring and feedback

The issue of risk monitoring is essential for ensuring effective implementation of risk control measures. Active risk monitoring ensures that effective response measures to manage the risks are appropriately implemented. Since we are dealing with the life-cycle of projects, the initial decision conditions may change over time, which could lead to the change of risks. Hence, a feedback and continuous assessment of risk through the entire life span of the project is very important in the process of whole life-cycle costing. This process should include tracking the effectiveness of the planned risk responses, reviewing any changes in priority of response management, monitoring the state of the risks, updating the whole life-cycle analysis accordingly and reviewing the economic performance indicators to check whether the investment decision is still valid or otherwise. In this way risk monitoring not only evaluates the performance of risk response strategies but also serves as a continuing feedback or audit mechanism.

The application of the above framework should take place during the early stages of asset development as well as at every project milestone, and should continue throughout the whole life of the asset. The information generated from the WLCC risk management framework should inform decision makers on which input data has the most impact on the WLCC result and how robust the final decisions are.

Answer 7(c):

Firms are not entirely free to decide on how they shall handle their risks. In every country there are governmental and official regulations governing health and safety at work like fire precautions, hygiene, environmental pollution, food, handling of dangerous substances and many other matters relating to properties, personal injuries and other risks. The Central Government and State Governments have enacted compulsory insurance regulations (for vehicles and individuals). And in addition a firm may be obliged to insure certain risks under provisions of leases, construction and other contracts.

Failure to comply with both safety and compulsory insurance regulations may constitute a criminal offence and may lead to the closure of a plant or other establishments. Thus, if a firm wishes to carry on certain activities it must comply with the relevant official risk handling regulations. There will remain, however, broad areas where it can exercise its own discretion to control physical or financial loss.

Risks can be handled broadly in four ways:

Risk Avoidance
It is a rare possibility to avoid a risk completely. A riskless situation is rare. Generally risk avoidance is only feasible at the planning stage of an operation.

Risk Reduction
In many ways physical risk reduction (or loss prevention, as it is often called) is the best way of dealing with any risk situation and usually, it is possible to take steps to reduce the probability of loss. Again, the ideal time to think of risk reduction measures is at the planning stage of any new project when considerable improvement can be achieved at little or no extra cost. The only cautionary note regarding risk reduction is that, as far as possible expenditure should be related to potential future saving in losses and other risk costs; in other words, risk prevention generally should be evaluated in the same way as other investment projects.

Risk Retention
It is also known as risk assumption or risk absorption. It is the most common risk management technique. This technique is used to take care of losses ranging from minor to major break-down of operation. There are two types of retention methods for containing losses as under:
(i) Risk retained as part of deliberate management strategy after conscious evaluation of possible losses and causes. This is known as active form of risk retention.
(ii) Risk retention occurred through negligence. This is known as passive form of risk retention.

Risk Transfer
This refers to legal assignment of cost of certain potential losses to another. The insurance of 'risks' is to occupy an important place, as it deals with those risks that could be transferred to an organization that specializes in accepting them, at a price. Usually, there are 3 major means of loss transfer viz.,
(i) By Tort
(ii) By contract other than insurance
(iii) By contract of insurance
The main method of risk transfer is insurance. The value of the insurance lies in the financial security that a firm can obtain by transferring to an insurer, in return for a premium for the risk of losses arising from the occurrence of a specified peril. Thus, insurance substitutes certainty for uncertainty. Insurance does not protect a firm against all perils but it offers restoration, atleast in part of any resultant economic loss.

Answer 7(d):

The various strategies which may be used at the time of implementation of CSR policies and practices in a company are:

1. **Top management initiative:**
   - The attitude of top management towards CSR can determine whether or not an entity would actually carry out CSR measures. The top management can provide strong and visible support for the entity's commitment towards CSR by incorporating CSR measures in entity's Mission, Vision and Values statements.
   - The Mission, Vision and Values statement of a socially responsible business should go

beyond 'making profit' and specify that the entity will-
(a) engage in ethical and responsible business practices; and
(b) promote the interests of all the stakeholders.

2. Integration of CSR in decision making:

- CSR is viewed as a comprehensive set of policies, practices and programs that are integrated into decision-making processes throughout the organisation. Therefore, an entity should incorporate CSR initiatives in its core business operations and strategies.
- The organisation should set specific goals for CSR.
- At the stage of planning, the organisation should lay down the measures for evaluating the progress from time to time.
- As far as possible, the goals should be laid down in quantifiable terms.

3. Management Structure:

- To promote the achievement of its CSR objectives in a more effective manner, an entity should integrate CSR measures in all its operations and business decisions.
- An entity may establish a CSR Committee and other related or sub-committees for promotion and enforcement of CSR. The functions of the CSR Committee should be to identify and evaluate the key CSR issues, and to integrate the key CSR issues in all the functions of management.
- The issues that represent a company's CSR focus vary by nature of business, by size, by sector and even by geographic region. Therefore, there cannot be a universally accepted management structure for promotion of CSR Thus, it has been rightly said, "Creating a CSR structure is not a 'one size fits all' exercise".

4. Accountability for CSR in job profiles:

- An entity should clearly fix the responsibilities of its managers and employees for promotion and achievement of CSR objectives.
- The job profiles and job descriptions of each manager and employee should be customised to include the guidelines, examples and tools that fit his level of commitment and involvement in CSR.

5. Employee recognition and rewards:

- Employees tend to engage in behaviour that is recognized and rewarded and avoid behaviour that is penalised.
- An entity should implement a 'Reward Program' for recognising and rewarding those managers and employees who have contributed towards successful implementation of CSR measures or activities. This would act as a strong motivating force for the workforce to contribute towards entity's CSR objectives.
- The Reward Program may be in the nature of publication of a magazine periodically, including therein the highlights of CSR measures undertaken by the employees, or awarding the employees with letters of appreciation, certificates for excellent performance or small gifts like T-Shirts, mugs, pens, or giving them direct or indirect financial assistance.
- Also, the entity should participate in the award ceremonies organised at State and National level for recognising and rewarding those entities and individuals who have contributed towards CSR.

6. Recruitment and promotion policies:

- The recruitment and promotion policies of the entity should clearly highlight the entity's commitment towards CSR.
- The CSR activities undertaken by the managers and employees should carry appropriate weightage at the time of recruitment, selection and promotion.

7. Training programs:

- The entity should regularly conduct comprehensive training and development programs emphasising the importance of CSR.
- The employees should be trained about their roles in implementation of CSR measures and attainment of CSR objectives.
- The training program should serve as a vehicle for sharing experiences and a source for learning and developing best practices throughout the entity. It should serve as an inspiration for continuous improvement.
- Proposals and initiatives by the employees should be welcome and the entity should provide necessary facilities for implementation of all such CSR measures or activities that are in line with entity's CSR objectives.

8. Implementation of CSR:

- CSR requires an entity to integrate social, environmental and ethical concerns into its business process. Therefore, just like any other business function, CSR performance and compliance should also be subject to review and control.
- If CSR performance is neither measured nor rewarded, the employees commitment towards CSR would come down, and the stakeholders would conclude that CSR is of secondary importance.

9. Influencing others to be socially responsible:

- An entity which is, and is recognised by others as, socially responsible, is in a position to influence the behaviour of others, from business partners to industry colleagues to neighbouring businesses. Such entity should play a leadership or pioneer role by sharing its experiences with others and, encouraging others, to be socially responsible.
- An entity, by influencing others to be socially responsible, performs CSR as it is in everyone's best interest to have as many persons as possible honouring the requirements and expectations of CSR.

10. CSR reporting and audit:

- An entity should regularly publish CSR Reports. It would help the entity to build and reinforce trust with all the stakeholders. The CSR Reports should be aimed at increasing the awareness and importance of CSR.
- CSR reports should highlight the CSR activities undertaken by the entity, the employees who played a key role in achievement of CSR initiatives.
- CSR reporting reflects that the top management is serious about its commitment towards CSR, and that CSR is not used just for name sake, or for building image.
- An entity may also decide to obtain an independent third party verification of the CSR report. Alternatively, it may get CSR Audit done by external auditors and publish the results of such audit.

Answer 7(e):

World Business Council for Sustainable Development defines Corporate Social Responsibility as follows:
"Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large."

CSR advocates moving away from a 'shareholder alone' focus to a 'multi-stakeholder' focus. Sustainable Development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.

A business organisation which employs eco-friendly business practices is, no doubt, socially responsible as it takes into account the interest of its stakeholders, viz. the environment and the society at large. As a corollary, a business organisation which is socially responsible would, no doubt, employ eco-friendly business practices.

Only a business organisation which is conscious of its duty towards the environment, would employ eco-friendly business practices and adopt the principles of sustainable development.

Thus, it is correct to say that "Corporate Social Responsibility is closely linked with the principles of sustainable development".

Answer 7(f):

In many countries, family-owned firms are prevalent. Corporate governance is of relevance to family-owned firms, which can encompass a number of business forms including private and publicly quoted companies, for a number of reasons. Family-owned firms may face difficulties in initially finding appropriate independent non-executive directors but the benefits that such directors can bring is worth the time and financial investment that the family-owned firm will need to make.

One advantage of a family-owned firm is that there should be less chance of the type of agency problems. This is because ownership and control rather than being split are still one and the same, and so the problems of information asymmetry and opportunistic behaviour should (in theory, at least) be lessened. As a result of this overlap of ownership and control, one would hope for higher levels of trust and hence less monitoring of management activity should be necessary. However, problems may still occur and especially in terms of potential for minority shareholder oppression, which may be more acute in family-owned firms.
In family business group firms, the concern is that managers may act for the controlling family, but not for shareholders in general. These agency issues are: the use of pyramidal groups to separate ownership from control, the entrenchment of controlling families, and non-arm's-length transactions (aka 'tunneling') between related companies that are detrimental to public investors.

Possible stages in a family firm's governance

The advantages of a formal governance structure are several. First of all, there is a defined structure with defined channels for decision-making and clear lines of responsibility. Secondly, the board can tackle areas that may be sensitive from a family viewpoint but which nonetheless need to be dealt with - succession planning is a case in point (deciding who would be best to fill key roles in the business should the existing incumbents move on, retire, or die). Succession planning is important too in the context of raising external equity because, once a family business starts to seek external equity investment, then shareholders will usually want to know that succession planning is in place. The third advantage of a formal governance structure is also one in which external shareholders would take a keen interest: the appointment of non-executive directors. It may be that the family firm, depending on its size, appoints just one, or maybe two, non-executive directors. The key point about the non-executive director appointments is that the persons appointed should be indepen-dent; it is this trait that will make their contribution to the family firm a significant one. Of course, the independent non-executive directors should be appointed on the basis of the knowledge and experience that they can bring to the family firm: their business experience, or a particular knowledge or functional specialism of relevance to the firm, which will enable them to 'add value' and contribute to the strategic development of the family firm. Another advantage of family-owned firms may be their ability to be less driven by the short-term demands of the market. Of course, they still ultimately need to be able to make a profit but they may have more flexibility as to when and how they do so.

Cadbury (2000) sums up the three requisites for family firms to manage successfully the impacts of growth: 'They need to be able to recruit and retain the very best people for the business, they need to be able to develop a culture of trust and transparency, and they need to define logical and efficient organisational structures'. A good governance system will help family firms to achieve these requisites.