FINAL EXAMINATION | SET - 1

MODEL ANSWERS | TERM – JUNE 2024

PAPER – 13 | SYLLABUS 2022

CORPORATE AND ECONOMIC LAWS

Time Allowed: 3 Hours **Full Marks: 100**

The figures in the margin on the right side indicate full marks.

SECTION – A (Compulsory)

1. Choose the correct option: [15 x 2 = 30]

(I) (i) Majority of audit committee members of a company shall be____________________.

a. Executive director
b. Non-executive
c. Independent
d. None of the above

(ii) CFO is compulsorily to be appointed as one of the KMPs if the paid up capital is minimum ₹ ______.

a. 5 crore
b. 10 crore
c. 15 crore
d. 20 crore

(iii) Change of registered office within a city, town or village requires_______________.

a. Special Resolution
b. Board Resolution
c. Approval of Central Govt.
d. None of the above

(iv) The main authority under Competition Act is______________.

a. Ministry of finance
b. Competitions Commission of India
c. RBI
d. NCLT

(v) In case of private company, internal auditor has to be appointed if the turnover is______________.

a. 100 cr or more
b. 150 cr or more
c. 200 cr or more
d. 300 cr or more

(vi) If a unit has investment in plant and equipment of ₹55 crore and turnover of ₹ 300 crore. It will be classified as ________________unit.

a. micro
b. small

c. medium
d. none of the above

(vii) FIU stands for:
a. Financial Intelligence unit
b. Financial Issue unit
c. Featured Intelligence Unit
d. None of the above

(viii) In case of triple bottom line approach, three Ps are:
a. people, profit and progress
b. people profit and planet
c. person, profit and planet
d. people, price and planet

(ix) A foreign entity cannot be:
a. implementing agency of CSR project in India
b. advisor
c. trainer
d. consultant

(x) SLR stands for:
a. Special Liquidity Ratio
b. Statutory Liquidity Reserve
c. Special Liquidity Reserve
d. None of the above

(xi) Automatic route in FDI means.
a. Prior permission of RBI not required
b. Prior permission of Central Govt. not required
c. Prior permission of neither RBI nor Central Govt.is required
d. None of the above

(II) CSR Ltd. is a Public Limited Company with the following details. Mr. Rajesh Kumar is the Managing Director, with Sunil Arora and Rajiv Verma as full-time directors. Ms. Khurana is a nominee director of the State Bank of India. Mr. Sabir Ali is an independent director. During the year 2023-2024, an amount of ₹3.5 Crore could not be spent out of the budget for CSR, leading to shortfall to that extent.

(₹ in Cr.)

Year	Turnover	Net Worth	Profit
2021-2022	280	188	5
2022-2023	300	192	12
2023-2024	360	212	34
2024-2025 (Projected)	390	2220	42

Based on the above case study, you are required to answer the questions no. from (xii) to (xv).

(xii) Company is CSR complaint company because of _____________.
a. Turnover

b. Net Worth
c. Profit
d. All of the above

(xiii) The minimum Budget for CSR for the year 2024-2025 will be ________________.

a. ₹8.2 cr.
b. ₹4.2 cr.
c. ₹10.2 cr.
d. ₹11 cr.

(xiv) CSR Committee shall constitute of –

a. MD and Full-Time Directors
b. MD and Ms. Khurana
c. MD, any of the Directors or Ms. Khurana and Mr. Sabir Ali
d. Both Full-Time Directors (or one full time director, Ms. Khurana) and Mr. Sabir Ali

(xv) Unspent Amount of CSR budget, during last year, is to be _____________.

a. kept aside
b. added to Next Years' Budget
c. deposited with Income Tax Authorities
d. deposited in a Special Account under Schedule VII

Answer: 1.

i	ii	iii	iv	v	vi	vii	viii	ix	x
c	b	b	b	c	d	a	b	a	d
xi	xii	xiii	xiv	xv					
c	d	d	d	d					

SECTION – B

(Answer any five questions out of seven questions given. Each question carries 14 Marks)

[5 x 14 = 70]

2. (a) Discuss the disqualifications of an Auditor of a public limited company.

(b) 'There was persistent demand from the small shareholders to have a director nominated by them to look after the interest of small shareholders.' – discuss procedure of appointment of such director. [7 + 7 =14]

Answer:

(a) The following persons shall not be qualified for appointment as auditor of a public limited company under section 141 of the Companies Act.:

(1) A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008.

(2) an officer or employee of the company.

(3) a person who is a partner, or who is in the employment, of an officer or employee of the company.

(4) a person who, or his relative or partner

   (1) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

   (2) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹5Lakhs, or

   (3) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 Lakh.

(5) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company. According to the Companies (Audit and Auditors) Rules, 2014, the term business relationship shall be construed as any transaction entered into for a commercial purpose, except:

   (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts.

(ii) commercial transactions which are in the ordinary course of business of the company at arm 's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

(6) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel.

(7) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies, dormant companies and private companies having paid-up share capital less than one hundred crore rupees. It may be clarified that now the Limit of 20 Companies includes only:

- Public Companies and
- Private Companies having paid up capital of ₹100 crores or more.

(8) a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction.

(9) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in Section 144.

(b) 'There was persistent demand from the small shareholders to have a director nominated by them to look after the interest of small shareholders'- This has been considered in the new Act. According to section 151 of the Companies Act, 2013: A listed company may have one director elected by such small shareholders in such manner and on such terms and conditions as may be prescribed.

Here, "Small Shareholders" means a shareholder holding shares of nominal value of not more than ₹20,000 or such other sum as may be prescribed.

The Companies (Appointment and Qualification of Directors) Rules, 2014 provides for the procedure for appointment of small shareholders' director according to which:

(1) A listed company, may upon notice of not less than

i) one thousand small shareholders, or

ii) one tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders.

(2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director.

(3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating:

i) his Director Identification Number;

ii) that he is not disqualified to become a director under the Act; and

iii) his consent to act as a director of the company.

(4) Such director shall be considered as an independent director subject to, his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.

(5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that:

i) such director shall not be liable to retire by rotation;

ii) such director's tenure as small shareholders 'director shall not exceed a period of three consecutive years; and

iii) on the expiry of the tenure, such director shall not be eligible for re-appointment.

(6) A person shall not be appointed as small shareholders' director of a company, if he is not eligible for appointment in terms of section 164 which specifies the disqualifications for appointment of a director.

(7) A person appointed as small shareholders' director shall vacate the office if:

i) the director incurs any of the disqualifications specified in section 164;

ii) the office of the director becomes vacant in pursuance of section 167;

iii) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.

(8) No person shall hold the position of small shareholders' director in more than two companies at the same time.

(9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a

company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

3. (a) Describe the procedure of inspection of minute books of a general meeting.

(b) Merger and Amalgamation of Companies as per Section 232 of the Companies Act, 2013 – discuss. [7 + 7 =14]

Answer:

(a)

(i) The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall:

(1) be kept at the registered office of the company in electronic form, and

(2) be open, during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than two hours in each business day are allowed for inspection. Any member shall be furnished within 7days of request, with fees, a copy of the minutes of general meeting.

(ii) The other statutory requirements relating to keeping of the minutes of meeting is:

(1) The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.

(2) All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

(3) In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain:

- the names of the directors present at the meeting, and
- in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

(4) There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting:

- is or could reasonably be regarded as defamatory of any person, or
- is irrelevant or immaterial to the proceedings; or
- is detrimental to the interests of the company.

(5) Therefore, Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

(6) The draft minutes of the meeting shall be circulated among all the directors within 15 days of the meeting either in writing or in electronic mode as may be decided by the Board. The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.

(7) The recording of the minutes until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.

(8) If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of ₹25,000 and every officer of the company who is in default shall be liable to a penalty of ₹5,000.

(b)

(i) U/s 232(1), when an application is made to the Tribunal under Section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that Section, and it is shown to the Tribunal:

(1) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies, and

(2) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company is required to be transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of Section 230 shall apply mutatis mutandis.

(ii) Such order shall also require to circulate the following for the meeting so ordered by the Tribunal, namely:

(1) the draft of the proposed terms of the scheme drawn up and adopted by the directors of the merging company.

(2) a report adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel,

promoters and non-promoter shareholders specifying out in particular the share exchange ratio, specifying any special valuation difficulties.

(3) the report of the expert with regard to valuation, if any.

(4) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than 6 months before the first meeting of the company summoned for the purposes of approving the scheme.

The Tribunal, after satisfying itself that the procedure of holding meeting has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:

(1) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties.

(2) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

(3) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer.

(4) dissolution, without winding-up, of any transferor company.

(5) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement.

(6) The allotment of shares of the transferee company to non-residents.

(7) the transfer of the employees of the transferor company to the transferee company.

(8) when the transferor company is a listed company and the transferee company is an unlisted company:

A) the transferee company shall remain an unlisted company until it becomes a listed company.

B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a predetermined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

(9) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

(10) A certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards.

(11) Any property or liabilities, shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(12) Certified copy of the order to be filed with the registrar Section 232(5) within thirty days of the receipt of certified copy of the order.

(13) Effective date of the scheme: Section 232 (6) states that the scheme under this Section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

4. (a) Fair Tech Ltd is a public limited company formed 15 days before, to manufacture computer parts, having a small factory at Durgapur, West Bengal and registered office at Kolkata. There 4 directors, two from promoter and balance 2 as professionals, one being full time and the other as non-functional. One of the promoter director is named as MD. Advise the company by interpreting the provisions of Company law, and help the by clarifying the following.

(1) Is there any necessary to call a Board meeting?

(2) If so, within what time?

(3) Suggest at least two important agenda item for the meeting.

(4) 3 directors want the meeting to be held in Delhi. Examine the legal provision.

(5) Is necessary to appoint a CFO?

(6) Is written notice necessary?

(7) If so, how many days' notice?

(b) United Social Services Ltd is company formed by 10 professionals with one lakh paid capital by each promoter. The company intends to give various

services to NGOs and social sector organisations with marginal profit. Though the registered office is Delhi, the company wants to work pan India. Interpret the following perception of the company, in line with provisions of law.

(i) The company claims that it's a non-profit company.

(ii) If not, can it be converted as NPO?

(iii) What is to be done for conversation?

(iv) Once converted, would the promoters get dividend out of profit?

[7+7=14]

Answer:

(a) Based on the situation as mentioned in the case the following clarification is as noted below:

(i) The first Board meeting to be held within 30 days from the day of incorporation. As the company is incorporated 15 days before, that's the first meeting to be held within 15 days.

(ii) The appointment of first auditor and disclosure of interest of that director may be important agenda.

(iii) Board meeting can be held anytime in India as per the section 203 of the Companies Act.

(iv) If the paid capital is ₹10 crore or more, appointment of CFO is mandatory being important KMP minimum qualification as required.

(v) As per the section 173, written notice of board meeting in necessary.

(vi) Minimum 7 days' notice to be given provided there is exemption under certain condition.

(b)

(i) The perception of the management of United social service is being classified as follows the company is not a non-profit company as it is for gain that is marginal cost to gain to qualify as NPO the company needs to be registered under section 8 and obtain separate license from MCA.

(ii) Yes, it can be converted into NPO. In order to convert itself into NPO

(iii) It has to take following steps for conversion:

1. Alter the memorandum by incorporating objects for promotion of art, science, education etc. or any charitable purpose:
2. Application to MCA GOI has to be made in the form Inc 12 along with memorandum of articles and association financial statement of last 2 years;

3. Statement of asset and liabilities which are estimated income plans by practicing advocate of the resolution of board meeting;
4. Make a public notice of Such proposed consortium with also need to be filled with ROC.
5. Registrar may require for the information like minutes of the meeting, consider objection of others and after being satisfied, shall issue license to operate as sec 8 company.

(iv) Once converted, promoters shall not be entitled to receive dividend.

5. (a) Discuss the provisions of Companies Act, 2013 on right of member to copies of Audited Financial Statement.

(b) Gainwel Finance Ltd. (GFL) is registered as NBFC for last 10 years. The company extended a loan of 10 crores to Hindustan Wires Ltd.(HWL) as normal course of business. The loan was long term for equipment financing and equipment were actually purchased. HWL repaid only one crore and stopped paying further instalments. The company had to operation for various reasons. Examine the situation in context of IBC code to get the following queries.

(i) Which type of creditor GFL shall be classified?
(ii) Where the application can be made?
(iii) Is IP necessary?
(iv) Can GFL make a petition on its own?
(v) What CIRP in this context?
(vi) What time is expected to resolve?
(vii) Can HWL itself apply for taking over the company? **[7+7 =14]**

Answer:

(a) Section 129 of the Companies Act, 2013 mandates every company to prepare its financial statements, including the balance sheet, profit and loss account, and cash flow statement, at the end of each financial year. These financial statements must be audited by a statutory auditor appointed by the company.

According Section 136 of the Companies Act, 2013:

(i) A copy of the financial statements, which are to be laid before a company in its general meeting, shall be sent to the following:

(1) every member of the company,

   (2) to every trustee for the debenture holder of any debentures issued by the company, and
   (3) to all persons other than such member or trustee, being the person so entitled.

(ii) Consolidated financial statements, if any, auditors' report and every other document required by law to be annexed or attached to the financial statements shall be annexed with financial statements.

(iii) These financial statements shall be sent in not less than 21 days before the date of the meeting. May be sent less than 21 days before if shareholders with 95% voting agree.

(iv) In the case of a listed company:
   (1) The above provisions shall be deemed to be complied with, if the copies of the documents are made available for inspection at its registered office during working hours for a period of 21 days before the date of the meeting.
   (2) Along with it a statement containing the salient features of such documents in the Form AOC-3 or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company.
   (3) The statement is to be sent not less than 21 days before the date of the meeting unless the shareholders ask for full financial statements.

(v) A company shall also allow every member or trustee of the debenture holder to inspect the audited financial statement at its registered office during business hours.

(vi) In case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent:
   (1) by electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes.
   (2) where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode, and
   (3) by dispatch of physical copies through any recognised mode of delivery as specified under Section 20 of the Act, in all other cases.

(vii) A listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

(viii) Every company having a subsidiary or subsidiaries shall:

(1) place separate audited accounts in respect of each of its subsidiary on its website, if any.

(2) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

(ix) listed company having subsidiary which is required to be consolidated under the law of the country shall place such account on its website (Indian holding company). Further if such subsidiary is not supposed to get audited, such unaudited accounts shall be placed in website of Indian holding company. If the accounts are prepared in one language, other than English, the English translated version is to be placed in holding company website.

(b)

The queries asked are being replied as follows.

i. In the present case, Gainwell Finance Limited (GFL) shall be classified as Financial creditor, as GGFL has extended financial loan to HWL
ii. Application for Resolution process has to be made to NLCT, which is designated “adjudicating authority”.
iii. Yes, IP is necessary in resolution process. Once resolution process commences, the main person shall be the IP, who is authorized to conduct the resolution process.
iv. Yes, GFL can also make petition for resolution by itself.
v. CIRP means Corporate Insolvency Resolution Plan.
vi. Time expected to complete the resolution processes 180 days, which may be extended up to 360 days
vii. HWL can also apply to retain control of the company by giving a resolution plan.

6. (a) Describe what do you understand by three Ps. List the benefits of Sustainability Management.

(b) Summarize the work process of business intelligence and list the benefits of business intelligence. [7+7=14]

Answer:

(a) There are three approaches to sustainable development, commonly known as triple bottom-line approach.

1. Economic approach: The current decision should not impair the prospects of maintaining or improving future living standards. This also called “Profit” approach.
2. Ecological/Environment Approach: Scarce natural resources should be preserved for the future, which would include preservation of genetic diversity, water, mines, forests etc. Industries should use minimum natural resources. Any industry damaging the environment through affluent discharge should be avoided or minimised. This also called “Planet” approach
3. Social approach: The industry is for the society and shall not damage social security, values and welfare of the people. This also called “People” approach. The above approach is called 3 P approach also.

Benefits of Sustainable Management:

- Sustainable management takes the concepts from sustainability and synthesizes them with the concepts of management. Sustainability has three branches: the environment, the needs of present and future generations, and the economy. Using these branches, it creates the ability of a system to thrive by maintaining economic viability and also nourishing the needs of the present and future generations by limiting resource depletion.

- Sustainable management is needed because it is an important part of the ability to successfully maintain the quality of life on our planet. Sustainable management can be applied to all aspects of our lives. For example, the practices of a business should be sustainable if they wish to stay in businesses, because if the business is unsustainable, then by the definition of sustainability they will cease to be able to be in competition.

- A manager is a person that is held responsible for the planning of things that will benefit the situation that they are controlling. To be a manager of sustainability, one needs to be a manager that can control issues and plan solutions that will be sustainable, so that what they put into place will be able to continue for future generations.

- The job of a sustainable manager is like other management positions, but additionally they have to manage systems so that they are able to support and sustain themselves.

- The trend towards sustainable management means that organizations are beginning to implement a systems wide approach that links in the various parts of the business with the greater environment at large.

- As sustainable management institutions adapt, it becomes imperative that they include an image of sustainable responsibility that is projected for the public to see.

- Additionally, companies must make the connection between sustainability as a vision and sustainability as a practice. Managers need to think systematically and realistically about the application of traditional business principles to environmental problems.

- By focusing on the big picture, a company can generate more savings and better performance by using planning, design, and construction based on sustainable values, etc.

- Managers need to understand that their values are critical factors in their decisions.

- The strategic vision that is based on core values of the firm guides the firm's decision-making processes at all levels. Thus, the sustainable management requires finding out what business activities fit into the Earth's carrying capacity and also defining the optimal levels of those activities.

- Sustainability values form the basis of the strategic management, process the costs and benefits of the firm's operations, and are measured against the survival needs of the planets stakeholders.

7. (a) Describe the restrictions on communication and trading by insiders.

(b) Discuss Anti-Competitive Agreement and its types. [7+7=14]

Answer:

(a)

(i) No insider shall communicate, procure, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed,

(ii) Due notice shall be given to "insiders" to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.

(iii) An unpublished price sensitive information may be communicated, procured provided, allowed access to or procured, in connection with a transaction that would: –

(A) entail an obligation to make an open offer;

(B) The board of directors of the that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least 2 trading days' prior to the proposed transaction being effected in such form as the board of directors may determine. The parties may be to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

(iv) The organization shall ensure that a structured digital database containing the nature of unpublished price sensitive information to be maintained internally with adequate internal controls and preserved for a period of not less than eight years (more in case of nay investigation)

(v) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information. The insider may prove his innocence by few defenses.

(vi) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other aces, the onus would be on the Board. The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

(b) Anti-competitive agreement shall be presumed to have appreciable adverse effect on competition and thereby deemed to be restrictive. Some type of agreements is discussed below.

(i) Any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. Any such agreement shall be void.

(ii) Any agreement entered into between enterprises or associations of enterprises including cartels, engaged in identical or similar trade of goods or provision of services, which—

1. directly or indirectly determines purchase or sale prices;
2. limits or controls production, supply, markets, technical development, investment;
3. shares the market or source of production by way of allocation of geographical area of market;
4. directly or indirectly go for bid rigging or collusive bidding; "bid rigging" means any agreement, eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding, other than joint ventures business agreements are excepted.

(iii) Any agreement amongst enterprises or persons in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including, tie-in arrangement: includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(iv) 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.

Example: ABC Ltd. has appointed Soni Brothers as a supplier of raw materials with a restriction that they cannot do business with other parties.

(v) 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 the goods.

(vi) 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.

Example: ABC Ltd. appoints a dealer for domestic fans and restricts him to take dealership of other product.

(vii) 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 stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged. In other words, the "maximum retail price" shall have to de disclosed and nobody can take more than that. Therefore, we find the MRP in most of the product on the package.

8. (a) Discuss the procedure of Investigation under the Prevention of Money Laundering Act.

(b) Discuss the procedure for registration of an Asset Reconstruction Company.

[7+7=14]

Answer:

(a) PMLA empowers certain officers of the Directorate of Enforcement to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering.

PMLA envisages setting up of an Adjudicating Authority to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attaché properties. It also envisages setting up of an Appellate Tribunal to hear appeals against the order of the Adjudicating Authority and the authorities like Director FIU-IND.

PMLA envisages designation of one or more courts of sessions as Special Court or Special Courts to try the offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial.

The Act provides for reciprocal arrangements for processes/assistance with regard to accused persons. In order to enlarge the scope of this Act. The Act provides for bilateral agreements between countries to cooperate with each other and curb the menace of money laundering. These agreements shall be for the purpose of either enforcing the provisions of this Act or for the exchange of information which shall help in the prevention in the commission of an offence under this Act or the corresponding laws in that foreign State.

Special Courts have been set-up in a number of States / UTs by the Central Government to conduct the trial of the offences of money laundering.

The authorities under the Act like the Director, Adjudicating Authority and the Appellate Tribunal have been constituted to carry out the proceedings related to attachment and confiscation of any property derived from money laundering.

The Government has constituted the Financial Intelligence Unit, India, in November, 2004, headed by Director in the rank of a Joint Secretary to the Government of India.

The organization has become functional and has started receiving Cash Transaction Reports and Suspicious Transactions Reports from the banking companies etc. in terms of Section 12 of the PMLA.

Powers of investigation and prosecution for offences under the Act have been conferred on the Director, Enforcement Directorate.

In addition, the Adjudicating Authority in terms of section 6 of the Act and the Appellate Tribunal under section 25 of the Act have also been constituted and have become functional.

(b) A company can commence or carry on the business of securitisation or asset reconstruction only after obtaining a certificate of registration and having the owned fund of not less than two crore rupees or such other higher amount as the Reserve Bank, may be notification specify. The Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of asset reconstruction companies.

(i) The requirement for registration of AMC is as under-

(1) that the asset reconstruction company has not incurred losses in any of the three preceding financial years.

(2) that such asset reconstruction company has made adequate arrangements for realisation of the financial assets acquired for the purpose of securitisation or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified institutional buyers or other persons.

(3) that the directors of asset reconstruction company have adequate professional experience in matters related to finance, securitisation and reconstruction.

(4) that any of its directors has not been convicted of any offence involving moral turpitude.

(5) that a sponsor of an asset reconstruction company is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such person.

(6) that the asset reconstruction company has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.

(7) that the asset reconstruction company has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.

(ii) RBI may impose restrictions/conditions as deemed fit. Reserve Bank approval is further required for-

(1) any substantial change in its management including appointment of any direction on the Board of Directors of the asset reconstruction company or managing director or Chief Executive Officer thereof.

(2) change of location of its registered office.

(3) change in its name.

The decision of the Reserve Bank, whether the change in management of an asset reconstruction company is a substantial change in its management or not, shall be final and binding. The expression "substantial change in management" means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer of shares or amalgamation or transfer of the business of the company.