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PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

Attempt any five questions from the remaining six questions.

Question 1

(a) *X sent a consignment of goods worth ₹ 2,90,000 by railway and got railway receipt for the same. He obtained an advance of ₹ 2,60,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security for the advance. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for ₹ 2,90,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit? (5 Marks)*

(b) *The XYZ Traders Association was constituted by four joint Hindu families consisting of 25 major and 2 minors members. The Association was carrying on the business of trading as retailers with the object for acquisition of gains. The Association was not registered as a company under the Companies Act, 1956 or any other law.*

State whether the XYZ Traders Association is having any legal status? Will there be any change in the status of this Association if the members of the XYZ Traders Association subsequently were reduced to 18? (5 Marks)

(c) *State with reasons whether the following statements are correct or incorrect:*

(i) *Economic growth can not be possible without ecological costs. (3 Marks)*

(ii) *Ethics programs are not helping to manage values associated with quality management, strategic planning and diversity management. (2 Marks)*

(d) *Prepare the detailed checklist for composing business message in an organization.*

(5 Marks)

Answer

(a) *As per Sections 178 and 178A of the Indian Contract Act, 1872, the deposit of title deeds with the bank as security against an advance constitutes a pledge. As a pledgee, a banker's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them. In Morvi Mercantile Bank Ltd., vs. Union of India, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. However, the amount over and above his interest is to be held by him in trust for the pledger. Thus, the bank will succeed in this claim of ₹ 2,90,000 against Railway*

- (b) Section 11 of the Companies Act, 1956 provides that no company, association or partnership consisting of more than 10 persons for the purpose of carrying on the business of Banking and more than 20 persons for the purpose of carrying on any other business can be formed unless it is registered under the Companies Act or is formed in pursuance of some other Indian Law. Thus, if such an association violates the provision of section 11, it is an “Illegal Association” although none of the objects for which it may have been formed is illegal.

This section does not apply to a Joint Hindu Family but where the business is being carried on by two or more Joint Hindu Families, the provisions of section 11 shall be applicable. For computing the number of members for this purpose, minor members of such families shall be excluded. Hence, the XYZ Traders Association constituted by four Joint Hindu Families is an Illegal Association according to the provisions of section 11 as stated above.

Further, such Association of more than 20 persons, if unregistered, is invalid at its inception and cannot be validated by subsequent reduction in the number of members to below 20. (*Madan Lal Vs Janki Prasad 4 All 319*)

- (c) (i) **Correct:** Economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. Industrialization and rapid development have affected the environment. Everybody should realize that such development is related to environmental damage and resource depletion.

Therefore, an element of resource regeneration and positive approach to environment has to be incorporated in development programs. Sustainable development refers to maintaining development over time. Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. A nation or society should satisfy its social, economic and other requirements without jeopardizing the interest of future generations.

High economic growth means high rate of extraction, transformation and utilization of non-renewable resources. Therefore, it is suggested that economic growth has to be environmentally sustainable because it is sure that there is no economic growth without ecological cost.

- (ii) **Incorrect:** Ethics programs help identifying the preferred values and ensuring that organizational behaviors are aligned with those values. This includes recording the values, developing policies and procedures to align behaviors with preferred values and then training all personnel about the policies and procedures. This overall effort is very useful for several other programs in the workplace that require behaviors to be aligned with values, including quality management strategic planning and diversity management. For example, total quality management initiatives include high priority on certain operating values, e.g. trust among stakeholders, performance, reliability, measurement and feedback.

(d) Checklist for composing business message-

- A. Recognize good organization
 - (a) Subject and purpose are clear
 - (b) Information is directly related to subject and purpose
 - (c) Ideas are grouped and presented logically
 - (d) All necessary information is included
- B. Achieve good organization through outlining.
 - (a) Decide what to say
 - i. Main idea
 - ii. Major points
 - iii. Evidence
 - (b) Organize the message to respond to the audience's probable reaction
 - i. Use the direct approach when your audience will be neutral, pleased, interested, or eager.
 - ii. Use the indirect approach when your audience will be displeased, uninterested or unwilling.
- C. Choose the appropriate organization plan
 - (a) Short messages
 - i. Direct request
 - ii. Routine, good news and goodwill message
 - iii. Bad news message
 - iv. Persuasive message
 - (b) Longer Message
 - i. Information pattern
 - ii. Analytical pattern

Question 2

- (a) (I) *Under the provisions of the Payment of Bonus Act, 1965 decide whether the following employees are entitled for bonus:*
 - (i) *Employee employed by educational institutions;*
 - (ii) *A reinstated employee without wages for the period of dismissal. (4 Marks)*

- (II) *Wazir Chand happens to be a retired Railway servant who occupies the Government quarter, and even after superannuation continued to occupy the Government quarter. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Wazir Chand and after adjusting the dues of the Government, the balance amount of the gratuity, which was payable, has been offered to be paid.*

Examine the contention of the Government and the decision taken by Government to adjust the amount of gratuity in the lights of the provision of the Payment of Gratuity Act, 1972. (4 Marks)

- (b) *Examine the concept of Corporate Social Responsibility (CSR) and also explain in brief some of the key strategies which can be used by companies while implementing CSR policies and practices.* (4 Marks)
- (c) *Explain the term "Semantic Problems" as the source contributing towards noise factor.* (4 Marks)

Answer

- (a) (I) **The Payment of Bonus Act, 1965-** According to Section 2 (13) and Section 8, every employee of an establishment covered under the Payment of Bonus Act, 1965 is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year and on a salary less than ₹ . 10,000 per month.
- i. Employee employed by Universities and other Educational Institutions are not entitled for bonus because the employees of such institutions are excluded from the operation of the Act as per section 32 of the Payment of Bonus Act, 1965.
 - ii. According to section 14 of the Payment of Bonus Act, 1965, an employee shall be deemed to have worked in an establishment in any accounting year in the following cases:
 - being laid off under an agreement or under the Industrial Disputes Act, 1947, or any other applicable law
 - on leave with salary / wages
 - absent due to temporary disablement caused by an accident in the course of employment
 - on maternity leave with salary / wages

Since an employee reinstated without wages for the period of dismissal does not fall in any of the aforementioned cases, infact, use of word dismissal here presumes that he was not laid off but terminated and so he is not entitled to bonus for the period of dismissal.

(II) **Payment of Gratuity-** According to Section 4(6) of the Payment of Gratuity Act, 1972, if the services of an employee have been terminated for;

- i. any act
- ii. willful omission or
- iii. negligence

causing any damage or loss to, destruction of property belonging to the employer, then the gratuity shall be forfeited to the extent of damage or loss so caused.

Wazir Chand even after superannuation continued to occupy the quarter and the Government in accordance with the rules, charged the penal rent from him and after adjusting other dues, the balance gratuity amount was offered to be paid to him.

In the case of *Wazir Chand Vs Union of India*, the Court has decided that Wazir Chand having un-authorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with rules and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the ex-employee.

(b) **CSR Concept-** Some companies have established committees that are specifically responsible for identifying and addressing social or environmental issues, or have broadened the scope of more traditional standing committees to include responsibility for CSR; while others have strategically appointed directors on the board based on the unique expertise and experience they bring on specific issues, who then serve as advisors to others on the board. Moreover, companies are finding that a board that is diverse in terms of gender, ethnicity and professional experience is better equipped to grapple with emerging and complex challenges.

Companies implement CSR by putting in place internal management systems that generally promote:

- i. Adherence to labour standards by them as well their business patterns;
- ii. Respect for human rights;
- iii. Protection of the local and global environment;
- iv. Reducing the negative impacts of operating in conflict zones;
- v. Avoiding bribery and corruption and;
- vi. Consumer protection.

key strategies which can be used by companies while implementing CSR policies and practice-Some of the key strategies which can be used by companies when implementing CSR policies and practices are as follows:

- (a) Mission, vision and values statements
- (b) Cultural values

- (c) Management structures
 - (d) Strategic planning
 - (e) General accountability
 - (f) Employee recognition and rewards
 - (g) Communication, education and training
 - (h) CSR reporting
- (c) **Semantic Problems-** Semantics is the systematic study of meaning. That is why the problems arising from expression or transmission of meaning in communication are called semantic problems. Oral or written communication is based on words. And words, limited in number, may be used in unlimited ways. The meaning is in the mind of the sender and also in that of the receiver. But it is not always necessary for the meaning in the mind of the sender to be the same as in the mind of receiver. Much, therefore, depends on how the sender encodes his message.

The sender has to take care that the receiver does not misconstrue his message, and gets the intended meaning. Quite often it does not happen in this way. This leads to semantic problems. It can be ensured only if when made with clarity, simplicity and brevity so that the receiver gets the intended meaning.

Question 3

- (a) *Explain what is meant by "Supervening Impossibility" as per the Indian Contract Act, 1872 and also state the situations which would not constitute grounds of impossibility.*
(8 Marks)
- (b) *The industries that are based on natural resources, like minerals, timber, fibre and foodstuffs, have some special responsibility for making "environment-friendly products". Examine this statement and also explain in brief the concept of Green Accounting System.*
(4 Marks)
- (c) *"Once the process of consensus building has begun, mediators try to assist the parties in their efforts to generate a creative resolution of differences". Examine this statement and also state in brief the process which should be followed by mediators to resolve the differences between the parties.*
(4 Marks)

Answer

- (a) **Supervening Impossibility** -The idea of "supervening impossibility" is referred to as 'Doctrine of Frustration' in U.K. In order to decide whether a contract has been frustrated, it is necessary to consider the "intention of parties as are implied from the terms of contract".

However, in India the 'doctrine of frustration' is not applicable. Impossibility of performance must be considered only in terms of section 56 of the Act. Section 56

covers only 'supervening impossibility and not implied terms'. This view was upheld by Supreme Court in *Satyabrata Ghose Vs Mugneeram Bangur A.I.R. (1954) S.C. 44*.

Doctrine of frustration applies in the case of supervening impossibility, where the performance of the contract has become impossible and where the object of the contract has failed. This doctrine does not apply – where the performance simply becomes difficult / commercially impossible / impossibility induced by the act or the conduct of any person etc.

Various situations as not constituting grounds of impossibility-

- i. A Promised to B that he would arrange for B's marriage with his daughter. A could not persuade his daughter to marry B. B sued A who pleaded on the ground of impossibility that he is not liable to any damages. But it was held that there was no ground of impossibility. It was held that A should not have promised what he could not have accomplished. Further A had chosen to answer for voluntary act of his daughter and he was liable.
- ii. The defendant agreed to supply specified quantity of 'cotton' manufactured by a mill within a specified time to plaintiff. The defendant could not supply the material as the mill failed to make any production at that time. The defendant pleaded on the ground of impossibility which was not approved by the Privy Council and held that contract was not performed by defendant and he was responsible for the failure (*Hamandrai Vs Pragdas 501A*).
- iii. The defendant agreed to procure cotton goods manufactured by Victoria Mills to plaintiff as soon as they were supplied to him by the mills. It was held by Supreme Court that the contract between defendant and plaintiff was not frustrated because of failure on the part of Victoria Mills to supply goods (*Ganga Saran Vs Finn Rama Charan, A.I.R. 1952 S.C.9*).
- iv. A dock strike would not necessarily relieve a labourer from his obligation of unloading the ship within specified time.
- v. Impossibility of performance that "having regard to the actual existence of war condition, the extent of the work involved and total absence of any definite period of time agreed to the parties, the contract could not be treated as falling under impossibility of performance (*Satyabrata Ghose Vs Mugneeram Bangur A.I.R, 1954*) S.C. 44). In the given case the plaintiff had agreed to purchase immediately after outbreak of war a plot of land. This plot of land was part of a scheme undertaken by the defendant who had agreed to sell after completing construction of drains, roads etc. However, the said plot of land was requisitioned for war purpose. The defendant thereupon wrote to plaintiff asking him to take back the earnest money deposit, thinking that the contract cannot be performed as it has become impossible of being performed. The plaintiff brought a suit against the defendant that he was entitled for conveyance of the plot of land under condition specified in the contract.

It was held that the requisition order did not make the performance impossible. While judging the impossibility of performance issue, the Courts would be very cautious since contracting parties often bind themselves to perform at any cost of events without regard to price prevailing and market conditions.

(b) **Special responsibilities-** The above statement is correct. Industries that are based on natural resources like minerals, timber, fibre and foodstuffs etc., have some special responsibility for:

- i. Adopting practices that have built-in environmental consideration
- ii. Introducing processes that minimize the use of natural resources and energy, reduce waste and prevent pollution;
- iii. Making products that are "environment-friendly" with minimum impact on people and eco system.

Green accounting systems: Conventional accounts may result in policy decisions which are non-sustainable for the country. Green accounting on the other hand is, focused on addressing such deficiencies in conventional accounts with respect to environment. If the environment costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behavior in a way that would reduce damage to environment, pollution and waste production. Price signal will also influence behavior to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of "Polluter Pay Principle". Removing subsidies that encourage the environmental damage is another measure.

There is no doubt, that with the public opinion moving towards accountable socio-economic structures, ethical and eco-friendly business practices would be standard corporate norms.

(c) **Process which should be followed by mediators to resolve the differences between the parties-** Efforts which help to generate a creative resolution are:

- (i) Problem – solving orientation – it is important to be constructive and maintain a problem solving orientation, even in the face of strong differences and personal antagonism. It is in every participant's best interest to behave in a fashion, they would like others to follow. Concerns or disagreement should be expressed in an unconditionally constructive manner.
- (ii) Engage in active listening – Participants in every consensus building process should be encouraged (indeed, instructed, if necessary) to engage in what is known as active listening.
- (iii) Disagree without being disagreeable – Participants in every consensus building process should be instructed to 'disagree without being disagreeable'.
- (iv) Strive for the greatest degree of transparency possible – To the greatest extent possible, consensus building process should be transparent. That is, the group's

mandate, its agenda and ground rules, the list of participants and the groups or interests they are representing, the proposals they are considering, the decision rules they have adopted, their finances and their final report should, at an appropriate time, be open to scrutiny by anyone affected by the group's recommendations.

- (v) Strive to invent options for mutual gain – The goals of a consensus building process ought to be to create as much value as possible and to ensure that whatever value is created be divided in ways that take account of all relevant considerations. The key to creating value is to invent options for mutual gain.

Question 4

- (a) (i) Define the term "Free Reserves" as contained in the Companies Act, 2013. (4 Marks)
- (ii) Elucidate the circumstances in which a company cannot buy back its own shares as per the provisions of the Companies Act, 2013. M/s Growmore Pharma Limited is planning to buyback of its shares during the current year but the company has defaulted in the payment of term loan & interest thereon to its bankers. The company seeks your advice as to how and when the company can buy back its shares under these circumstances as per the provisions of the Companies Act, 2013. (4 Marks)
- (b) What corporate governance measures are required to be implemented by the Indian Companies as per clause 49 of the listing agreement? Explain in brief. (4 Marks)
- (c) Explain the key elements involved in the innovation frame work of an organisation. (4 Marks)

Answer

- (a) (i) **Free reserve-** As per section 2(43) of the Companies act, 2013, "Free Reserves" means such reserves which as per the latest audited balance sheet of a company are available for distribution as dividend provided that :
- i. Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise or
 - ii. Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value shall not be treated as free reserves.
- (ii) **Circumstances in which a company cannot buy back its own shares-** As per section 70 of the Companies Act, 2013, a company cannot buy back shares or other specified securities directly or indirectly:
- (a) Through any subsidiary company including its own subsidiaries; or
 - (b) Through investment or group of investment companies; or
 - (c) When the company has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial

institution or bank. The prohibition does not apply if the default has been remedied and a period of three years has elapsed after such default ceased to subsist.

- (d) Company has defaulted in filing of Annual Return (section 92), declaration of dividend (section 123) or punishment for failure to distribute dividend (section 127) and financial statement (section 129).

Under the Companies Act, 2013, now the company can buy-back even if it has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank, provided the default has been remedied and period of 3 years has elapsed after such default ceased to subsist. Therefore, M/s. Growmore Pharma Limited needs to follow the procedure as highlighted above for buy-back of shares.

- (b) **Corporate Governance measures-** In general, corporate governance measures include appointing non- executive directors, placing constraints on management power and ownership concentration as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethics and/or social responsibility committees on their boards to review strategic plans, assess progress and offer guidance on social responsibilities of their business. In addition to having committees and boards, some companies have adopted guidelines governing their own policies and practices around such issues like board diversity, independence and compensation.

Indian companies are required to comply with clause 49 of the listing agreement primarily focusing on following areas:

- i. Board composition and procedure
- ii. Audit committee responsibilities
- iii. Subsidiary companies
- iv. Risk management
- v. CEO/CFO certification of financial statements and internal controls
- vi. Legal compliance
- vii. Other disclosures

- (c) **The key elements in the innovation framework** are:

- (i) **Accessibility:** The major organizational challenge is to make everyone, particularly the workers as active participants in the work process. The innovative enterprise ensures everyone is accessible to each other at all levels within the organization.
- (ii) **Recognize and reward innovation:** One of the more radical steps an organization or manager can take is to make innovation a requirement of the job.

- (iii) Develop company programs that encourage innovation: Some companies allow their employees to take sabbaticals to work in a new environment or teach in a college. By placing employees in different environments, they can meet new people, come across new ideas and hopefully generate their own novel approaches.
- (iv) Foster informal communication: The paperwork involved in proposing or even pursuing a project can be a major roadblock to innovation. Employees often feel stifled when asked to fully justify ideas; they may be working on a hunch.
- (v) Information: The right kind of information is called innoinformation. This type of information is critical to the vitality of the enterprises. Innoinformation consists of the plans, vision, goals and all the new ideas affecting the enterprises. The innovative enterprise is looking forward continuously changing and adapting to the needs of the customer.
- (vi) Framework: The innovative enterprise must constantly adapt, create and innovate. Information and communication are the wind that sails the innovative enterprise towards its destination. Information and communication pose difficult challenges for most businesses. The difficulty lies in balancing the flow of information between providing too much or too little information.

Question 5

- (a) (i) *Explain the terms 'Acceptance for Honour' and 'Drawee in case of need' as used in the Negotiable Instruments Act, 1881. (4 Marks)*
- (ii) *S by inducing T obtains a Bill of Exchange from him fraudulently in his (S) favour. Later, he enters into a commercial deal and endorses the bill to U towards consideration to him (U) for the deal. U takes the bill as a Holder-in-due-course. U subsequently endorses the bill to S for value, as consideration to S for some other deal. On maturity the bill is dishonoured. S sues T for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, 1881 decide whether S will succeed in the case or not. (4 Marks)*
- (b) *Explain what is meant by "Financial statement" as per the Companies Act, 2013. (4 Marks)*
- (c) *Describe the factors which influence the ethical behaviour at work in an organization. (4 Marks)*

Answer

- (a) (i) **Acceptance for Honour (Section 108)** : It is an unusual kind of acceptance done by any person not being a party already liable thereon bill, to accept the bill for the honour of any party thereto. This acceptance by such party is allowed when the original drawee refuses to accept or refuses to give better security when demanded by the notary. Such a bill is kept until its maturity and the holder is given an

additional person whom the holder may fall back upon if the bill is not paid when due.

Drawee in case of need : As per section 7, when in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need”. Such a person is resorted to in the event of the bill being dishonoured by non-acceptance or non-payment. According to section 115, the bill will not consider to be dishonoured until it has been dishonoured by such drawee in case of need. Thus, it is obligatory on the holder to present the bill to such drawee and non-presentation of the bill to such drawee absolves the drawer from liability.

- (ii) The problem stated in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 53. The section provides that ‘Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey’. Thus, any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud (Section 53).

Thus applying the above provisions, it is quite clear that S who originally induced T in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as S himself was a party to the fraud.

- (b) **Financial statement-** As per section 2(40) of the Companies Act, 2013, Financial Statement in relation to a company includes:
- i. A balance sheet as at the end of the financial year
 - ii. A profit and loss account or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
 - iii. Cash flow statement for the financial year;
 - iv. A statement of changes in equity, if applicable; and
 - v. Any explanatory note annexed to or forming part of any document referred to in sub-clause (i) to sub clause (iv) provided that the financial statement with respect to one person company, small company and dormant company, may not include the cash flow statement.
- (c) **Factors which influence the ethical behaviour at work-** Ethical decisions in an organization are influenced by three key factors:
1. Individual moral standards: One may have great control over personal ethics outside workplace.

2. The influence of managers and co-workers: The activities and examples set by co-workers along with rules and policies established by the firm are critical in gaining consistent ethical compliance in an organization.
3. The opportunity to engage in misconduct: If a company fails to provide good examples and direction for appropriate conduct; confusion and conflict will develop and result in the opportunity for unethical behavior.

Question 6

- (a) *Define the term underwriting and state the circumstances in which underwriting commission can be paid as per provisions of Section 76 of the Companies Act, 1956.*
(8 Marks)
- (b) *Draft a 'Power of Attorney' by an assessee authorizing a professional to appear before the Income Tax Authorities in respect of the pending taxation matter.* (4 Marks)
- (c) *State whether the following statements are correct or incorrect:*
- (i) *Under the Companies Act, 2013, if the General Meeting is adjourned for want of Quorum, then in case of change in the day, title, place of the adjourned meeting, the company is required to give not less than 7 days notice to the members individually or by press announcement.*
 - (ii) *As per Section 51 of the Companies Act, 2013, a company may, if so authorized by its Articles, pay dividends in proportion to the amount paid up on each shares.*
 - (iii) *The agreement towards compounding of an, offence to avoid prosecution is void.*
 - (iv) *Bailee has no right to mix the goods bailed with his own goods without the consent of the bailor.* (4 Marks)

Answer

- (a) **Meaning of underwriting-** The expression 'underwriting' presupposes a contract. According to SEBI Regulations, 2009, underwriting means an agreement with or without conditions to subscribe to the securities of a body corporate when the existing shareholders of such body corporate or the public do not subscribe to the securities offered to them.

Under Section 76, the **circumstances in which underwriting commission can be paid** are as follows:

1. The payment of commission should be authorized by the articles.
2. The name and addresses of the underwriters and the number of shares or debentures underwritten by each of them should be disclosed in prospectus.

3. The amount of commission should not exceed, in the case of shares, 5% of the price at which the shares have been issued or the amount or rate authorized by the articles whichever is less; and in the case of debentures, it should not exceed 2.5%.
4. The rate should be disclosed in prospectus or in the statement in lieu of prospectus (or in a statement in prescribed form signed in the like manner as the statement in lieu of prospectus) and should be filed with the Registrar along with a copy of the underwriting contract before the payment of the commission.
5. The number of shares or debentures which persons have agreed to subscribe absolutely or conditionally for commission, should be disclosed in the manner aforesaid; and
6. A copy of the contract for the payment of the commission should be delivered to the Registrar along with the prospectus or the statement in lieu of prospects for registration.

Section 76(4A) clarifies that commission to the underwriters is payable only in respect of those shares or debentures which are offered to the public for subscription. However, where (i) a person, who for a commission has subscribed (or agreed to subscribe) for shares or debentures of a company and before the issue of the prospectus (or statement in lieu of prospectus) for such shares or debentures, some other person (or persons) has subscribed for any or all of them and (ii) such a fact together with the aggregate amount of commission payable to the underwriter is disclosed in such prospectus (or statement in lieu of prospectus), then the company may pay commission to the underwriter in respect of his subscription irrespective of the fact that the shares or debentures have already been subscribed.

(b) Power of Attorney to appear before Income Tax Authorities

I,S/o....., R/o.....and partner of the firm M/s.....with registered office at....., do hereby appoint Mr....., S/o....., R/o.....as attorney of the firm above named and authorize him for the purpose hereinafter mentioned :

1. That the said attorney shall appoint an advocate of his choice and hand him over the judgement of the tribunal of Income Tax and instruct him to file the appeal against the order, for the Assessment Year
2. That the said attorney shall execute Vakalatnama to the Advocate appointed by him and shall sign all the related papers under the supervision of the advocate.
3. That specimen signature of the said attorney is given below of this deed.
4. The said attorney shall generally do all other lawful acts necessary for the conduct of the said case.

I hereby declare that the acts done by the said attorney in connection with the work given to him shall be deemed to have been done by me and shall be binding on the firm and its partners.

IN WITNESS WHEREOF I have signed this power of attorney in the presence of the following witnesses:

Signature
(Holder of Power of Attorney)

WITNESSES:

1.....

2.....

- (c) (i) Incorrect
(ii) Correct
(iii) Incorrect
(iv) Correct

Question 7

Attempt any **four** of the following:

- (a) *Examine the provisions in respect of review of orders passed under Section 7 A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. (4 Marks)*
- (b) *Who shall be considered as promoter according to the definition given in the Companies Act, 2013? Explain. (4 Marks)*
- (c) *Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013. (4 Marks)*
- (d) *What are "Socio-psychological Barriers" to effective communication? Explain. (4 Marks)*
- (e) *Describe the safeguards which may be created by finance and accounting profession and legislation to eliminate or reduce the threats to an acceptable level to ensure an ethical environment in an organization. (4 Marks)*

Answer

- (a) **Review of orders** – According to section 7B of the EPF & Miscellaneous Provisions Act, 1952, an order passed under section 7A can be reviewed as follows:
- Any person aggrieved by an order made under sub-section (1) of section 7(A) but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time

when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order, may apply for a review of that order to the officer who passed the order.

2. Such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.
 3. Every application for the aforesaid review shall be filed in such form and manner and within such time as may be specified in the Scheme; and
 4. Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.
 5. Where the officer is of opinion that the application for review should be granted, he shall grant the same.
 6. No appeal shall lie against the order of the officer rejecting an application for review but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.
- (b) **Promoter-** According to section 2 (69) of the Companies Act, 2013, Promoter means a person –
- (a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
 - (b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
 - (c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub clause (c) shall apply to a person who is acting merely in a professional capacity.

- (c) **Charge-** When parties agree that property shall be made available as security for the payment of debt in a transaction for value, this is termed as that charge is created.

The term charge has been defined in section 2 (16) of the Companies Act, 2013 as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under chapter VI, a penalty shall be levied, ranging from ₹ 1 lakh to 10 lakhs.

Every defaulting officer is punishable with imprisonment for a term not exceeding 6 months or fine which shall not be less than 25,000 rupees, but not exceeding 1 lakh rupees or both.

- (d) **Socio-psychological barriers-** The attitudes and opinions, place in society and status consciousness arising from one's position in the hierarchical structure of the organization, one's relations with peers, seniors, juniors and family background – all these deeply affect one's ability to communicate both as a sender and receiver. Status consciousness is widely known to be a serious communication barrier in organizations. It leads to psychological distancing which further leads to breakdown of communication or miscommunication. Often it is seen that a man high up in an organization builds up a wall around himself. This restricts participation of the less powerful in decision making. In the same way one's family background formulates one's attitude and communication skills.

Frame of reference is another barrier to clear communication. Every individual has a unique frame of reference formed by a combination of his experiences, education, culture, attitude and many other elements, resulting in biases and different experiences in a communication situation.

- (e) **Safeguards created by the profession, legislation or regulation** are as follows:
- i. Educational, training and experience requirements for entry into the profession.
 - ii. Continuing professional development requirements
 - iii. Corporate governance regulations
 - iv. Professional standards
 - v. Professional or regulatory monitoring and disciplinary procedures.
 - vi. External review by a legally empowered third party of the reports, returns, communications or information produced by concerned professionals.