



*Note: All questions are compulsory.*

Question 1 (5 marks)

Power to issue directions [Section 12A of the Securities Contract (Regulation) Act, 1956]: Where the Securities and Exchange Board of India is satisfied after an inquiry, that it is necessary –

- (a) in the interest of investors, or orderly development of securities market; or
- (b) to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or
- (c) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

(2 Marks)

It may issue such directions, -

1. to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or
2. to any company whose securities are listed or proposed to be listed in a recognised stock exchange, as may be appropriate in the interests of investors in securities and the securities market. Hence, accordingly SEBI may issue such direction to RSE Stock Exchange Ltd. (1 Mark)

As per the Explanation given in the section, it is hereby declared that power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made there under, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

So, accordingly the directions can be given to an individual who had made some profit in any transaction in contravention of any provision of the Securities Contracts (Regulation) Act, 1956.

(2 marks)

Question 2 (8 marks)

Bonus Issue [Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009]

Chapter IX of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 contains the regulations (Regulations 92 to 95) for issue of bonus shares. Loyal Ltd. can issue bonus shares in the ratio of 1:1 as follows:

- (i) Authorization to issue the Bonus shares: The Articles of Loyal Ltd. must authorize it to issue the bonus shares and capitalization of reserve. If there is no provision in the Articles authorizing the company, firstly, the Articles shall be amended by passing a special resolution. (2 marks)
- (ii) Revision of paid up share capital: Steps for determining whether any increase in authorised share capital is required:

Paid up share capital as on 31st March, 2016: ` 150 crores.

Paid up capital (after conversion of ₹ 100 crores fully convertible debentures, assuming that these debentures shall be converted into share capital of ₹ 100 crores) ₹ 250 crores (150+100).

Proposed bonus issue - 1 share for every 1 share held.

Post bonus issue capital: ₹ 500 crores (250+250).

Since the Authorised share capital of the company is only ₹ 400 crores, it has to take steps to increase the amount to ₹ 500 crores or beyond by complying with the provisions laid down in the Companies Act. (2 marks)

3. Sources of funds: Reserves and surplus (free reserves built out of the genuine profits can be used for issue of bonus issue): ₹ 750 Crores. Since the source of issue of bonus shares (₹ 750 crores) is sufficient to issue bonus shares (₹ 250 crores), the proposed issue can be made. (2 marks)
4. Other Restriction: Other restrictions for issue of Bonus shares are as under:
  - (a) A resolution shall be passed by the Board in a duly convened Board meeting.
  - (b) The bonus issue shall be made within 15 days of passing the Board resolution.
  - (c) The bonus issue can be made if there is no default in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof; and payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus, etc.(2 marks)

#### Question 3 (6 marks)

Sections 43 to 47 deal with provisions relating to Special Courts. Section 43 empowers the Central Government (in consultation with the Chief Justice of the High Court) for trial of offence of money laundering, to notify one or more Courts of Sessions as Special Court or Special Courts for such area or areas or for such cases or class or group of cases as may be specified in the notification to this effect. (2 Marks)

Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that–

- (1) the scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed; (2 Marks)
- (2) a Special Court may, upon a complaint made by an authority authorized in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial. The requirement of police report of the facts which constitute an offence under this Act is no more applicable. (2 Marks)

#### Question 4 (4 marks)

Enterprise: The term 'enterprise' is defined in section 2(h) of Competition Act, 2002. Accordingly, 'enterprise' means a person or a department of the Government, who or which is engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services of any kind. But the term does not include any activity of the Government relating to sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. (1 mark)

Certain specific activities of Government departments like dealing with atomic energy, etc. and sovereign functions of the Government (like police, defence, etc.) are excluded from the purview of the said terms. Hence, a Government department engaged in the activity of providing service in the form of supply of water for irrigation to the agriculturists after levying charges can be considered as an 'enterprise' within the meaning of section 2(h) of the Competition Act, 2002. (1 mark)

Consumer: The term 'consumer' is defined in section 2(f) of Competition Act, 2002. Accordingly, 'consumer' means any person who buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, whether such purchase of goods is for resale or for any commercial purpose or for personal use. (1 mark)

Hence, it is not necessary that a person must purchase the goods for personal use in order to be considered as a 'consumer' under Competition Act, 2002. Even a person purchasing goods for resale or for any commercial purpose will also be considered as a 'consumer' within the meaning of Section 2(f) of Competition Act, 2002. (1 mark)

Question 5 (4 marks)

Heading and Marginal Notes: A number of sections in an Act applicable to any particular object are grouped together, sometimes in the form of chapters, pre-fixed by Heading and/or Titles. Marginal notes means titles to the section. (1 ½ marks)

In *Uttam Das Chela Sunder Das v. SGPC AIR 1996 SC 2133*, it was observed that 'Marginal notes or captions undoubtedly, part and parcel of legislative exercise and the language employed therein provides the key to the legislative intent. The words employed are not mere surplusage'. Marginal note is legislative and not editorial exercise *C Bhagirath v. Delhi Admn. AIR, 1985 SC 1050*. It gives an indication as to what was exactly the mischief that was intended to be remembered and throws light on the intention of legislature. It is relevant factor to be taken into consideration in construing the ambit of the section. *Shree Sajjan Mills Ltd. (v) CIT (1985) 156 ITR 585(SC)*. Heading, title and marginal notes can be referred to if the words are ambiguous. If there is any doubt in the interpretation of words in a section, the headings help to resolve the doubt. But they cannot control the plain words of a statute. (1 ½ mark)

To sum up, heading, title and marginal notes can be used to understand the legislative intent, but cannot limit or restrict the clear word used in a section. (1 mark)

Question 6 (4 marks)

ABC Bank of India, being a nationalized bank is a banking company within the meaning of the Banking Regulation Act, 1949. As per the provisions of Section 9, notwithstanding anything contained in Section 6, no banking company shall hold any immovable property, howsoever acquired, for a period exceeding seven years except:

- a. If such property is required for banking company's own use.
- b. If the Reserve Bank of India extends the said period of seven years by up to another five years on the ground that such extension would be in the interest of the depositors of the banking company. (2 marks)

Accordingly, ABC Bank of India in this case, would normally be required to dispose off the building acquired from Mr. Y before 1st January, 2014. However, if the Reserve Bank of India on above stated ground grants the extension, then also the said Bank will have to dispose off the same before 1st January, 2019. But in no case, ABC Bank of India can hold it permanently because the building is not for bank's own use. (2 marks)

Question 7 (4 marks)

- a. As per the definition given the SARFAESI Act, 2002, "financial asset" means debt or receivables and includes-
  - a. a claim to any debt or receivables or part thereof, whether secured or unsecured; or
  - b. any debt or receivables secured by, mortgage of, or charge on, immovable property; or
  - c. a mortgage, charge, hypothecation or pledge of movable property; or

- d. any right or interest in the security, whether full or part underlying such debt or receivables; or
- e. any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or
- f. any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
- g. any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or;
- h. any financial assistance [Section 2(l)]

The use of the word 'future' in clause (v) of section 2(l) means that the term financial asset includes a future debt also. In case of a future debt, what exists today is an agreement to transfer and it will be possible to transfer the future debt when it actually arises, for example sales that will occur in future. In case of conditional receivable, the receivable is transformed into a financial asset after the fulfillment of the relevant conditions.

(3 marks)

In view of above, all are debts as per the SARFAESI Act, 2002 except given under (iv). (1 mark)

[\*Note: Incorporated vide Amendment made by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 notified on 16th August 2016.]

Question 8 (5 marks)

Power of RBI to remove director:

Under section 36AA of the Banking Regulation Act, 1949, RBI can terminate any Chairman, Director, Chief Executive, other officials or any employee of the bank where it considers desirable to do so particularly when RBI is of the opinion that conduct of such persons is detrimental to the interest of the depositors or for securing proper management of the banking company. (1 Mark)

Before such termination concerned person should be given opportunity to be heard of. Such terminated officials can make appeal to the Central Government within 30 days from the date of communication of such termination order. (1 Mark)

The decision of the Central Government cannot be called into question. In case an order is issued pursuant to this section the concerned person shall cease to hold his office for a period of not exceeding 5 years as may be specified in the order. (1 Mark)

Contravention of the above provision shall be punishable with a fine, which may extent to ` 250 per day. (1 Mark)

Any such order shall be valid for a period not exceeding three years or such further periods of not exceeding three years at a time as RBI may specify. (1 Mark)

Question 9 (5 marks)

Residential Status

According to section 2(v) of the Foreign Exchange Management Act, 1999, 'Person resident in India' means a person residing in India for more than 182 days during the course of preceding financial year [Section 2(v)(i)].(1 Mark)

However, it does not include a person who has gone out of India or who stays outside India for employment outside India or for any other purpose in such circumstances as would indicate his intention to stay outside India for an uncertain period. (1 Mark)

Generally, a student goes out of India for a certain period. In this case, Mr. Suri who resided in India during the financial year 2014-15 left on 15.7.2015 for Switzerland for pursuing higher studies for 2 years, he will be resident for 2015-16, as he has gone to stay outside India for a 'certain period' (If he goes abroad with intention to stay outside India for an 'uncertain period' he will not be resident with effect from 15-7-2015) (2 Marks)

Mr. Suri will not be resident during the Financial Year 2016-2017 as he did not stay in India during the relevant financial year i.e. 2015-16. (1 Mark)

#### Question 10 (5 marks)

As per Section 8 of the Foreign Exchange Management Act, 1999 where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by Reserve Bank of India. (1 mark)

But as per section 9(e) of the said Act, this provision shall not apply to foreign exchange acquired from employment, business trade, vocation, service honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank of India may specify. (1 mark)

The Reserve Bank of India has specified the following persons with the limits for possession and retention of foreign currency by a person resident in India: (2 marks)

- i) Any person may possess foreign coins without any restriction to the amount.
- ii) Any person resident in India is permitted to retain in aggregate foreign currency not exceeding USD 2,000 or its equivalent in the form of currency notes/bank notes or travelers cheques acquired by him;
- iii) Any person resident in India but not permanently resident therein is permitted to hold the foreign currency without limit, if the foreign currency was acquired when he was resident outside India and was brought into India and declared to the custom authorities.

In the given case as Mr. Rajat earned a sum of USD 3000 as a honorarium when he was in employment in China. But in view of the restrictions under FEMA and the aforesaid regulation he can retain foreign exchange up to USD 2000 only and not more than that. (1 mark)

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