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FINAL M'19 EXAM

SUBJECT- ALLIED LAWS

Test Code – FNJ 7045

(Date :)

Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

ANSWER-1

ANSWER-A

The question can be answered with reference to Section 6 of the Securities Contract (Regulations) Act, 1956 which empowers the Central Government to call for information. Accordingly :

- (a) **Duty of HEM Stock Exchange Limited to furnish periodic returns to SEBI** : Every recognized stock exchange should furnish periodical returns to SEBI in the prescribed format. These Returns contain information on current affairs of the Exchange including volume and value of transactions, short deliveries, important decisions taken by Board etc. [Section 6(1) of the Securities Contracts (Regulation) Act, 1956].
- (b) **Power of SEBI to ask for the information asked as stated above, over and above the periodic returns** : SEBI may by order in writing call for information or explanation relating to affairs of an Exchange or its member. [Section 6(3)(a) of the Act]
- (c) **Period for which the stock Exchange is required to maintain the books of accounts which may be inspected by SEBI** : Every Stock Exchange has to maintain books of accounts for a period of 5 years and these books may be inspected by SEBI at any point of time. [Section 6(2) of the Act]
- (d) **Duty of the Stock Exchange and the persons dealing with the stock exchange with regard to the information sought for by SEBI** : Every Director, Manager, Secretary or officer of the Exchange; every member of such stock exchange; if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm and every other person or body of persons who has had dealings in the course of business with any of the persons mentioned above whether directly or indirectly, is bound to provide information to Equity officer or SEBI representative who are looking into the affairs of the Exchange. [Section 6(4) of the Act]

ANSWER-B

Under provisions of section 5 of the Foreign Exchange Management Act, 1999 certain Rules have been made for drawal of Foreign Exchange for Current Account transactions. As per these Rules, Foreign Exchange for some of the Current Account transactions is prohibited. As regards some other Current Account transactions, Foreign Exchange can be drawn with prior permission of the Central Government while in case of some Current Account transactions, prior permission of Reserve Bank of India is required.

- (i) In respect of item No. (i). i.e., remittance out of lottery winnings, such remittance is prohibited and the same is included in First Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, Mr. Sane can not withdraw Foreign Exchange for this purpose
- (ii) Foreign Exchange for meeting expenses of cultural tour can be withdrawn by any person after obtaining permission from Government of India Ministry of Human

Resources Development, (Department of Education and Culture) as prescribed in Second Schedule to the Foreign Exchange Management (Current Account Transactions) Rules, 2000. Hence, in respect of item(ii), Mr. Sane can withdraw the Foreign Exchange after obtaining such permission.

In all the cases, where remittance of Foreign Exchange is allowed, either by general or specific permission, the remitter has to obtain the Foreign Exchange from an Authorized Person as defined in Section 2(c) read with section 10 of the Foreign Exchange Management Act, 1999.

ANSWER-2

ANSWER-A

Appointment of Chairman : As per Section 5 of the SEBI Act, 1992 and the rules prescribed under the SEBI Act, 1992, the Chairman may hold office for a period of three years subject to the maximum age limit of 65 years and can be re – appointed by the Central Government.

Also, as **per Section 4(5)** of the Act, the Chairman shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law ; finance; economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

In the instant case, Mr. Jain retired as professor from a university on completion of 60 years of age as on 31st March, 2014 appointed as Chairman of SEBI from 1st April, 2014 for a period of 3 years.

This appointment is valid as on the date of appointment, he is of 60 years of age and he, as a retired professor, is a person of ability, integrity and standing and have special knowledge or experience of law; finance; economics, accountancy administration or in any other discipline.

If Mr. Jain is reappointed as a chairman after expiry of the original tenure of 3 years, he can be re – appointed but only upto 65 years of age i.e. upto 31st March, 2019, (i.e. only for two years).

Right to Relinquish the office : The Chairman shall equally have the right to relinquish office at any time before the expiry of their tenure by giving a notice of three months in writing.

ANSWER-B

As per the facts of the case given in the question above, the aggrieved company, i.e. Blue Rock Limited may appeal to the Securities Appellate Tribunal ('SAT') against the decision of SEBI within 45 days of date from which the order has been passed, unless further extension has been granted by SAT on reasonable grounds.

As per Section 23L, the Tribunal shall give an opportunity of being heard to the respondent and may pass the order confirming, modifying or setting aside the decision of SEBI.

SAT shall also send a copy of its order to every party to appeal and to the concerned adjudicating officer. Also, the company, Blue Rock Limited should be assured that a speedy decision shall be taken, since the Tribunal is required to dispose of every 6 months from the date of receipt of appeal.

ANSWER-3

ANSWER-A

Section 2(e) of Foreign Exchange Management Act, 1999 states that 'capital account transactions' means :

- (a) a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person's resident in India.
- (b) a transaction which alters assets or liabilities in India of persons resident outside India and includes transactions referred to in section 6(3).

According to the said definition, a transaction which alters the contingent liability will be considered as capital account transaction in the case of person resident in India, but it is not so in the case of person resident outside India.

Purchase of immovable property by Mr. Hillary Benjamin in India is a capital account transaction. It has also been specifically provided in section 6(3)(i) as a capital account transaction.

Guarantee will be considered as a capital account transaction in the following cases :

- (1) Guarantee in respect of any debt, obligation or other liability incurred by a person resident in India and owed to a person resident outside India.
- (2) Guarantee in respect of any liability, debt or other obligation incurred by a person resident outside India.

In this case, Mr. Hillary Benjamin, a resident outside India gives a guarantee in respect of a debt incurred by a person resident in India and owned to a person resident in India. Hence, it would appear that guarantee by Mr. Hillary Benjamin cannot be considered as a capital account transaction within the meaning of Section 2(e), particularly because it is a contingent liability.

All capital account transactions are prohibited unless specifically permitted. RBI is empowered to issue regulations in this regard [Section 6(3)]. Permissible capital account transactions by persons resident outside India are given in Schedule II to the Foreign Exchange Management (Permissible Capital Account Transactions) Regulation, 2000. According to the said regulations both the purchase of immovable property by Mr. Hillary Benjamin and guarantee by Mr. Hillary Benjamin are permissible.

ANSWER-B

Section 15G of the Securities and Exchange Board of India (SEBI), Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information ; or
- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law, or
- (iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of more than ten lakh rupees extending upto twenty – five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P Mehra. The maximum penalty that SEBI can impose is Rupees twenty – five crores or three times the amount of profits mode out of insider trading, whichever is higher.

ANSWER-4

ANSWER-A

According to Section 28A of the Securities and Exchange Board of India Act, 1992, if a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement/ certificate in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely;

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties.

The expression 'Recovery Officer' means any officer of the Board who may be authorized by general or special order in writing, to exercise the powers of a Recovery Officer. The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers.

ANSWER-B

In this case, Mr. Vivaan may opt for 'Option' derivative contract, which is an agreement to buy or sell a set of assets at a specified time in the future for a specified amount. However, it is not obligatory for him to hold the terms of the agreement, since he has an 'option' to exercise the contract. For example, if the current market price of the share is Rs. 100 and he buy an

option to sell the shares to Mr. X at Rs. 200 after three – month, so Vivaan bought a put option.

Now, if after three months, the current price of the shares is Rs. 210, Mr. Vivaan may opt not to sell the shares to Mr. X and instead sell them in the market, thus making a profit of Rs. 110. Had the market price of the shares after three months would have been Rs. 90, Mr. Vivaan would have obliged the option contract and sold those shares to Mr. X, thus making a profit, even though the current market price was below the contracted price. Thus, here, the shares of Travel Everywhere Limited is the underlying asset and the option contract is a form of derivative.

ANSWER-5

ANSWER-A

Under, the SEBI (ICDR) Regulations 2009, there are conditions for Bonus Issue that has to be fulfilled before issuing the bonus shares.

- **The Company is authorized by its articles of Associations for issue of bonus shares, Provided that if there is no such provision in the articles of associations , the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalization of reserve;**
- **The Board has to recommend the issue of Bonus shares;**
- **The company in general meeting should authorize the issue of bonus shares,**

Further, it should be checked that it has not been defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it and further, it has sufficient reason to believe that it, has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus further, the partly paid shares, if any outstanding on the date of allotment, are made fully paid up.

Restrictions:-

Issuer shall not make any bonus issue of equity shares if it has outstanding fully or partly convertible debt instruments at the time of making bonus issue, unless it has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof.

The equity shares reserved for the holders of fully or partially convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms on which the equity shares offered in the bonus issue were issued.

The bonus share shall not be issued in lieu of dividend. An issuer, announcing a bonus issue after the approval of its board of directors, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors, however, where the issuer is required to seek shareholders' approval for capitalization of profits or reserves for making the bonus issue, the bonus issue shall be

implemented within two months from the date of the meeting of its board of directors. Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

ANSWER-B

Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)] Section 2(u) defines 'person' under clause (viii) thereof, as person would include any agency, officer or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vi). Accordingly, Printex unit in Pune, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned is controlled by Print unit in Pune which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Dubai Branch is a person resident in India.