MOCK TEST PAPER – 2

INTERMEDIATE (IPC): GROUP – I

PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

SUGGESTED ANSWERS/HINTS

1. (a) As per section 2(84) of the Companies Act, 2013, X Ltd. is a subsidiary company of ABZ Ltd. as ABZ Ltd. controls the composition of the Board of Directors of X Ltd.

Further, section 19 of the Companies Act provides that no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that this sub-section shall not apply-

(a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

On the basis of the above provisions, following are the answers:

(i) In the given case, X Ltd. already holds shares in ABZ Ltd. before becoming its subsidiary. The given situations falls within the purview of the exceptions when such transfer of shares by holding company to its subsidiary is permissible. So this transfer of shares by ABZ Ltd. to X Ltd. is valid.

(ii) This situation falls within the purview of exemption stating that such subsidiary company who holds such shares as the legal representative of a deceased member of the holding company, are entitled to hold the shares of the holding company. So Mr. N being the legal representative of the deceased member of the Holding company, was entitled for the holding of shares of ABZ Ltd.

(b) Section 133 of the Indian Contract Act, 1872 deals with the provision related to the discharge of the surety. Provisions states that where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent it would discharge the surety in respect of all transactions taking place subsequent to such variance.

Following is the answer in the light of the above provision:

(i) In case where, Mr. Ram has manipulated the funds of the company since the time of his appointment. Here Mr. Janak is liable as a surety for the loss suffered by the Swaraj Company due to manipulation of the funds by Mr. Ram during the three years of his service.

(ii) In case where, Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary. In this case, variance in the terms of the contract (i.e., to work on lower salary) was made without surety's consent. For all the transactions taking place subsequent to such variance, shall discharge the surety for the loss suffered by the Swaraj company.

(c) The Rights Approach (The Deontological Approach): Some philosophers and ethicists suggest that the ethical action is the one that best protects and respects the moral rights of those affected. This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. On the basis of such dignity, they have a right to be treated as ends and not merely as means to other ends. The list of moral

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rights - including the rights to make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, and so on-is widely debated; some now argue that non-humans have rights, too. Also, it is often said that rights imply duties-in particular, the duty to respect others' rights.

(d) The importance of communication in the industrial organization has increased immensely in these days. The following factors are responsible for the growing importance of communication:

(i) **Growth in the size and multiple locations of organizations:** Most of the organizations are growing larger and larger in size. The people are working in the country and abroad, of these organizations. Keeping in touch, sending directions across and getting feedback is possible only when communication lines are kept working effectively.

(ii) **Growth of trade unions:** Over the last so many decades, trade unions have been growing strong. No management can be successful without taking the trade unions into confidence. Effective communication will create relationship between the management and the workers.

(iii) **Growing importance of human relations:** Workers in an organization are not like machines. They have their own hopes and aspirations. Management has to recognize them and should work with the spirit of integration so that human relations may be maintained. This may only be achieved though effective communication.

(iv) **Public relations:** Every organization has a social responsibility towards customers, government, suppliers and the public at large. Communication is the only way an organization can project a positive image of itself.

(v) **Advances in behavioral sciences:** Modern management is deeply influenced by exciting discoveries made in behavioral sciences like psychology, sociology, transactional analysis etc. All of them throw light on suitable aspects of human nature and help in developing a positive attitude towards life and building up meaningful relationship. This is possible only through communication.

(vi) **Technological advancement:** The world is changing very fast, owing to scientific and technological advancements. These advancements deeply affect not only the methods of work but also the compositions of groups. In such a situation, proper communication between superiors and subordinates becomes very necessary.

2. (a) In terms of section 20(2), the provisions of the Payment of Bonus Act, 1965 do not apply to an establishment in public sectors, except as provided under sub section 1 of section 20.

Section 20 of the Payment of Bonus Act, 1965 provides that, if in any accounting year, an establishment in public sector sells any goods produced or manufactured by it or if it renders any services in competition with an establishment in private sector and if the income from such sale or service or both is not less than 20% of the gross income of such establishment, then the provisions of the Payment of Bonus Act, 1956 shall apply in relation to establishment in private Sector.

In the given problem therefore, the demand of the employees is tenable in first case but it is not tenable in second case.

(b) (i) According to Section 27 of the Indian Contract Act, 1872, any agreement through which a person is restrained from exercising a lawful profession, trade or business of any kind is to that extent void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.

Thus, in the given situation the agreement is void.

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(ii) According to section 28 of the Indian Contract Act, 1872, an agreement in restraint of legal proceedings resulting in restriction of one's right to enforce legal rights is void. Similarly, any agreement which abridges the usual period for commencing the legal proceedings is also void. Further, these agreement are also void in view of section 23 of the Indian Contract Act,1872 as the object of the agreements are to defeat the provision of law.

Hence, such an agreement is void.

(c) (i) Increased Sales and Customer Loyalty

A number of studies have suggested a large and growing market for the products and services of companies perceived to be socially responsible. While businesses must satisfy customers' key buying criteria, such as price, quality, availability, safety and convenience.

(ii) Increased Ability to Attract and Retain Employees

Companies perceived to have strong CSR commitments often find it easier to recruit and retain employees, resulting in a reduction in turnover and associated recruitment and training costs. Even in difficult labour markets, potential employees evaluate a company's CSR performance to determine whether it is the right "fit".

(d) The grapevine becomes active when the following factors are present:

(a) Feeling of uncertainty or lack of sense of direction when the organisation is passing through a difficult period.

(b) Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.

(c) Formation of a coterie or favoured group by the manager, giving other employees a feeling of insecurity or isolation. People operating in such circumstances will be filled with all sorts of ideas and will share them with like-minded companions, at whatever level they may be. Mostly they find them at their own level, but other levels are not barred. This type of communication is being seriously studied by psychologists and management experts.

3. (a) (i) According to Section 42 of the Negotiable Instruments Act, 1881 an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature, and purporting to be made by the drawer.

The word "fictitious payee' means a person who is not in existence or being in existence, was never intended by the drawer to have the payment. Where drawer intends the payee to have the payment, then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.

On applying the above, in this case Mr. Bonafide (drawer), can recover the amount of the cheque from Payee's bankers because Payee's title was derived through forged endorsement.

(ii) According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

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But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

(b) 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.

(c) Tips for improving interpersonal skills: Lines of communication must be open between people who rely on one another to get work done. Poor interpersonal communication skills, which include active listening, result in low productivity simply because one does not have the tools needed to influence, persuade and negotiate which are necessary for workplace success. To get this success the following tips are suggested:

(i) **Congruency in communication elements:** If the words used are incongruent with the other interpersonal communication dynamics interpersonal communication is adversely affected. Since communication is shared meaning, words must send the same message as the other interpersonal communication dynamics – body language, facial expression, posture, movement, tone of voice to help emphasize the truth, sincerity and reliability of the communication. A consistent message ensures effective communication.

(ii) **Listening effectively:** Effective or active listening is very important skill to enhance interpersonal communication. Listening helps to build strong personal relationships. The process of communication completes when the message as intended by the sender is understood by the receiver. Most of the persons assume that listening is natural trait, but practically very few of us listen properly. One needs to give the communicator of the message sufficient attention and make an effort to understand his view point.

4. (a) As per Section 8 of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest.

Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section.

Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

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According to the given situation, on revocation of licence, the Central Government ordered for the amalgamation of the company with the separate entity registered under the section 8 of the Companies Act, 2013 . However, an object for which both the Companies formed were promoting different objects. Accordingly, the order passed by the Central Government after the revocation of license, is not in compliance of the Section 8 of the Companies Act.

(b) Water pollution is also a kind of resource depletion because contamination of air, water or land diminishes their beneficial qualities. Oceanographers have found traces of plutonium, cesium and other radioactive materials in seawater that have apparently leaked from the sealed drums in which radioactive wastes are disposed. An increase in population and economic activity in urban area has also resulted in increased demands of water. The ground water is also shrinking because of the decreasing rainfall and wastage of water.

(c) When two or more persons meet together and talk/ discuss on any business or non business matter, it is known as negotiation. When same persons discuss specific proposals in order to come to a mutually accepted solutions; whether it is with an employer, family member or business partner. It can be said that negotiation is a common way of settling things in business.

Steps in the negotiation process -

1. Preparing
2. Arguing
3. Signaling
4. Packaging
5. Bargaining
6. Closing and arguing.

5. (a) (i) According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of Infotech should have been held on or before 31st December, 2017. Further, the Registrar does not have the power to extend the time period for holding of first AGM.

(ii) Repudiation of the transaction by principal [Section 215] : If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Accordingly, as per the above provision, A, may repudiate the sale if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) The objectives of the Central Consumer Protection Council in India are to promote and protect the rights of the consumers such as:-

(i) the right to be protected against the marketing of goods and services which are hazardous to life and property;

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(ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods/services so as to protect the consumer against unfair trade practices;

(iii) the right to be assured, whichever possible, access to a variety of goods and services at competitive prices;

(iv) the right to be heard and to be assured that consumers interest will receive due consideration at appropriate terms;

(v) the right to seek redressal against unfair trade practices;

(vi) the right to consumer education.

(c) According to the National Communication Association, ethical communication is fundamental to responsible thinking, decision making and the development of relationship and communities within and across contexts, cultures, channels and media. Ethical communication enhances human worth and dignity by fostering, truthfulness, fairness, responsibility, personal integrity and respect for self and others'. While unethical communication threatens the quality of all communication and consequently the well-being of individuals and the society in which we live. In nutshell ethical communicators have a 'well developed sense of social responsibility'.

An ethical communication is one which:

- includes all relevant information
- is true in every sense and is not deceptive in any way.
- is accurate and sincere. Avoids language that manipulates, discriminates or exaggerates.
- does not hide negative information behind an optimistic attitude.
- does not state opinions as facts.
- portrays graphic data fairly.

6. (a) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly, law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

(a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

(b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

Withdrawal of the demand: The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

(i) The chairman cannot reject the demand for poll subject to provision in the articles of company.

(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

(b) 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

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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.

(c) **EAC Electronics Ltd.**

Civil Lines, Panipat.

Circular No: Date……

To all employees

Recent surprise checks have revealed that there is considerable late coming and in some cases, even the standard instructions for ensuring punctual attendance are not followed. All employees are requested to strictly adhere to the arrival, departure and lunch timing of the office. Tendency to move around in the corridors and canteen would also be viewed seriously.

Cooperation of all employees is solicited.

Sd/-

Arav Sachdeva

Manager – H.R

7. **(a)** According Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

As per above provision, Mr. Sukhi, can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate he (Mr. Sukhi) can claim only 12 percent per annum interest on the due amount.

Hence claim of Mr. Sukhi for interest rate of 18% is not as per the laws, so it is not valid.

(b) **Allotment of Shares**: The company has received 80% of the minimum subscription as stated in the prospectus. Hence, the allotment is in contravention of section 39(1) of the Companies Act, 2013 which prohibits a company from making any allotment of securities until it has received the amount of minimum subscription stated in the prospectus. Under section 39 (3), it is required to refund the money received (i.e. 80% of the minimum subscription) to the applicants. It has no other option available.

Therefore, in the present case Akash is within his rights refuses to accept the allotment of shares which has been illegally made by the company.

(c) Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

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Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

(d) Concept of Sexual harassment: Sexual harassment is a situation in which an employee is coerced into giving into another employee's sexual demands by the threat of losing some significant job benefit, such as a promotion, raise, or even the job. This kind of degrading coercion exerted on employees who are vulnerable and defenseless inflicts great psychological harm on the employee, violates the employee's most basic right to freedom and dignity and is an unjust misuse of the unequal power that an employer can exercise over the employee. Sexual harassment is prohibited, and an employer is held responsible for all sexual harassment engaged in by employees.

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

I, T 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……

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