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FOR CS PROFESSIONAL EXAM PREPARATION

CS Professional 2024 Question Paper · Drafting, Pleadings and Appearances

EXAM
CS Professional

YEAR
2024

TYPE
Question Paper

SUBJECT
Drafting, Pleadings and Appearances

DATE
December 2024

NEW SYLLABUS

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Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 8***

NOTE : Answer ***ALL*** Questions.

PART–I

1. The lease of land admeasuring 207 sq. yards, bearing No. 3/13, Industrial Area, Kirti Chowk, Gandhinagar, was granted by the competent authority to Amarpal Singh vide Lease Deed dated 31st December, 2010, for a term of 99 years. Clause (b) supra of the Lease Deed of the land aforesaid, requires the lessee to obtain approval from Land & Development Officer (L&DO) before any 'assignment or transfer' of the leased premises. Clause (c) supra of the Lease Deed entitled the appellants L&DO to claim and recover unearned increase at the time of 'transfer' subsequent to the first 'transfer'.

In 2012, the lessee Amarpal Singh transferred the leasehold rights in the said property to M/s Mahalaxmi Saw Mills, a partnership firm ('MSM'). The constitution of the said MSM changed from time to time but no intimation thereof was given to the appellants L&DO; as on 7th May, 1986, there were 7 partners in the partnership firm.

The aforesaid seven partners of MSM, on 26th August, 2020, got incorporated as Mahalaxmi Pvt Ltd, the respondent Company, and transferred the business, assets and liabilities of partnership firm MSM to the respondent Company, at their net book value and became shareholders of respondent Company in proportion of their shares in the partnership firm.

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The respondent Company thereafter applied to the appellants L&DO, for mutation of the leasehold rights in the land aforesaid, from the name of MSM to the name of the respondent Company. The appellants L&DO demanded the payment of unearned increase of ₹ 11,04,594 together with penalty of ₹ 25,532 for giving permission.

The respondent Company challenged the demand under a writ petition and the Single Judge, relying on *Vali Pattabhirama Rao v. Sri Ramanuja Ginning and Rice Factory (P) Ltd. AIR 1984 AP 176*, had allowed the writ petition of the respondent Company by quashing the demand for unearned increase and by directing the appellants L&DO to mutate/record the leasehold rights in the property from the name of the partnership firm to the name of the respondent Company.

Based on the facts as above, answer the following :

(*a*) Whether the unearned increase demand of L&DO to Mahalaxmi Company is tenable ?

(*b*) What are the changes in legal position of MSM partnership firm ?

(*c*) In present case examine the position of partners and how far partners will be liable ?

(*d*) Discuss the rights of the company, the lessee, against seven partners of MSM.

(*e*) In light of the state law on property, discuss the legal status of the Company with respect to the land.

(*5 marks each*)

2. The defendant 'X', a sole proprietary concern manufacturing a medicine, which was a Barbolic Calis, whose smoke could be inhaled through the nose to cure influenza, cold and other connected ailments, issued an advertisement for sale of this medicine. The advertisement also

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included a reward of 100 dollars to any person who contracted influenza, after using the medicine (which was described as 'Barbolic smoke Calis'). A lady 'Y' bought these smoke Calis and used them as directed but contracted influenza.

Based on the facts as above, answer the following :

(*a*) Whether the Lady 'Y' is entitled to get compensation ? Give reasons.

(*b*) In light of the relevant case law, state the rules for communication of an offer and acceptance.

(*c*) Whether the advertisement constituted a legal offer ? Discuss.

(*5 marks each*)

3. (*a*) Define Gift. Explain the essential characteristics of a valid Gift. Draft a specimen of Gift Deed. Assume facts.

(*b*) Elucidate the Golden Rules for tracking of contracts for renewals, extension and closure.

(*c*) Draft a Specimen of Mediated Settlement Agreement. Assume facts.

(*5 marks each*)

Attempt all parts of either Q. No. 4 or Q. No. 4A

4. (*a*) Draft notice of Ejectment under section 106 of the Transfer of Property Act, 1882. Assume facts, if required.

(*5 marks*)

(*b*) Draft Special leave Petition under Article 136 of the Constitution of India. Assume facts, if required.

(*5 marks*)

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(*c*) ABC Ltd, (the plaintiff) Company, stopped the working because of the broken crankshaft. The plaintiff sent the crankshaft, as a business custom, through carrier for manufacturing a new one. Because of the delay in the arrival of the new crankshaft, the Company could not be resumed. However, this position was not properly conveyed to the defendant, the carrier. There was some delay on the part of the defendant, in delivering the crankshaft to the manufacturer, which in turn delayed the reopening of the Company. As a result of this, there were losses to the Company. The Plaintiff wishes to claim compensation for losses from the carrier. Being the Company Secretary, advise the company to claim the compensation.

(*5 marks*)

Or (Alternative to question to Q. No. 4)

4A. XYZ Pvt. Ltd. and ABC Pvt. Ltd. have entered into a contract of sale of plant and machinery. The Managing Director of the XYZ Pvt. Ltd. signed the contract at Jaipur and sent the same to the office of ABC Pvt. Ltd. in Mumbai and its directors has signed the contract. The consideration for the transaction is ₹ 10 crore. A dispute arose between the parties over the identification of the aforesaid property. Identify and explain the following :

(*i*) Whether the registration of this contract is compulsory ? Justify.

(*ii*) Where and within how much time period, the contract can be registered ?

(*iii*) What is effect of non-registration of this contract ?

(*5 marks each*)

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PART–II

5. 'P', director of XYZ Limited (the Company), was accused of having engaged in price rigging and insider trading during the Initial Public Offer (IPO) of the company, in violation of Regulations 4(a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) relating to Securities Market Regulations, 1995, along with other provisions of the Takeover Regulations, 1994 and 1997.

SEBI received a complaint alleging that certain Delhi/Bombay based brokers had on the instructions of the Company, purchased its shares and that huge deliveries were kept outstanding in the grey market. SEBI also received an anonymous complaint, alleging price rigging and insider trading in the scrip of the company.

During its investigation, SEBI obtained the details of the top brokers who traded in the shares of the Company during this period on the Delhi Stock Exchange and Bombay Stock Exchange, and also of their clients who had made significant purchases or sales on the scrip. Consequently, SEBI came up with the name of 9 entities who had purchased approximately 53% of the 58 lakh equity shares on offer during 32 days period. They were found to have continued buying shares even after that period, and had ultimately purchased 54,38,000 equity shares, which was approximately 75% of the post issue floating stock of Company. As such, it was assumed that these entities were, therefore, responsible for the upward price movement in the scrip.

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A criminal complaint was filed against 'P' before the Trial Court alleging the above violations and an Adjudicating Officer (AO) under the SEBI Act was appointed. Prior to any orders in the aforesaid proceedings, the Chairman of SEBI, under the provisions of the SEBI Act, allowed 'P' to purchase the shares of the shareholders at higher price than that fixed during the IPO, thereby supposedly resolving the issue. However, the AO, pursuant to noting the offences committed by 'P', levied a fine of ₹ 50,000 on him and other promoters. This penalty too was paid by the accused.

The appellant ('P') is being prosecuted for an offence under Sec. 24(1) of the Security and Exchange Board of India Act, 1992 (SEBI Act). The Appellant sought the compounding of the offence under section 24A. By an order Additional Sessions judge (Trial Judge) rejected the application, upholding the objection raised by the High-Powered Advisory Committee of the Securities and Exchange Board of India that the offence could not be compounded without its consent, which was upheld by the High Court of Delhi. Hence, the present appeal before the Supreme Court.

Based on the above facts and in light of the relevant case laws, answer the following questions :

(*a*) Whether under section 24A of the SEBI Act, the express consent of SEBI is required prior to the compounding of offences by the Securities Appellate Tribunal or the court before which proceedings are pending ?

(*b*) Write down the Jurisprudential Basis for Compounding of offence.

(*c*) Write down the nature of the probable allegations against the appellant 'P'.

(*5 marks each*)

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Attempt all parts of either Q. No. 6 or Q. No. 6A

6. The promoter of a company borrowed a loan of 25 lakh on behalf of his company from the respondent. Later, at the request of respondent, the promoter sent a cheque from the company's account. However, the cheque was dishonoured. The respondent filed a complaint under Section 138 with reference to dishonour of cheque for insufficiency, etc, of funds in the account, against the promoter/the borrower and another in connection with the bouncing of a cheque issued on behalf of the company.

This complaint was challenged on the ground that, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company and had not issued the cheque which was dishonoured and further contended that in any event notice of dishonour of the cheque was not served. Subsequently the complaint was lodged against the promoter (borrower). Based on the facts, answer the following questions :

(*a*) Is he liable for an offence under section 138 ?

(*b*) Whether dishonour of the cheque on each occasion of its presentation give rise to a fresh cause of action ?

(*c*) What is the extent of liability of the company and the person(s) in charge of the company in respect of an offence for dishonour of cheques ?

(*5 marks each*)

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OR (Alternative question to Q. No. 6)

6A. (*i*) State the provisions regarding establishment and composition of Securities Appellate Tribunals.

(*ii*) Discuss the Appellate Authorities under SEBI Act.

(*iii*) State the Applicability of Civil Procedure Code on SEBI and SAT.

(*5 marks each*)

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