

*Solved*  
**Scanner Appendix**  
**CS Executive Programme Module - I**  
**(New Syllabus)**  
**(Solution of June - 2015)**

**Paper - 3 : Economic and Commercial Laws**

**Chapter - 1: Foreign Exchange Management**

**2015 - June [1] (b)**

**Foreign Contribution:**

Foreign contribution, as defined under the Foreign Contribution (Regulation) Act, 2010 means only

- Donation
- Delivery
- Transfer

made by any foreign source of-

article (other than gift given to a person as a gift for his personal use) if the market value in India, of such article, on the date of gift is not more than such sum as may be specified from time to time by Central Government.

- any currency, whether Indian or foreign
- of any security as defined in clause (h) of section 2 of the Securities Contract (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of the Foreign Exchange Management Act, 1999. [As per FCRA, 2010].

**2015 - June [2] (d)**

As per Foreign Direct Investment Policy, Person of Indian Origin (P I O), means a citizen of any country other than Bangladesh or Pakistan, if

- (1) he at any time held Indian Passport.
- (2) he or either of his parents or any of his grand parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955: or
- (3) the person is a spouse of an Indian citizen or a person referred to in sub-clause (i) or (ii).

**2015 - June [2A] (Or) (v)**

'Foreign Currency Convertible Bond' (FCCB) means a bond issued by an Indian company, which is denoted in a foreign currency, the principal and interest of which is payable in foreign currency too. They are governed by the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993. They are issued to non-resident entities against convertible foreign currency. These bonds are later convertible into ordinary shares of the issuing company, either in whole or in part.

**Chapter - 2 : Foreign Trade Policy and Procedures**

**2015 - June [2A] (Or) (iv)**

Under the Market Development Assistance (MDA) Scheme, financial assistance is provided for a variety of promotional activities arranged for by the Export Promotion Councils and Trade Promotion Organizations. The scheme is administered by the Department of Commerce.

The schemes provide assistance for participation in trade fairs and buyer-seller meets abroad or in India, export promotions seminars etc. They also provide financial assistance along with aid for travel to exporters traveling to focus areas, viz., Latin America, Africa, CIS region, ASEAN countries, Australia and New Zealand. MDA assistance is available to exporters having an annual export turnover as prescribed in MDA guidelines. The Department of Commerce also provides for reimbursement of charges/expenses for fulfilling statutory requirements in the buyer country, including registration charges for product registration for pharmaceuticals, bio-technology and agro-chemicals products on recommendation of Export Promotion Councils. Financial assistance is also provided for legal charges, cost of contesting litigation(s) in the foreign country concerning restrictions/anti-dumping duties etc. on particular product(s) of Indian origin.

**Chapter - 3 : Competition and Consumer Protection**

**2015 - June [1] (a)**

'Basic rights of consumers' as provided under the Consumer Protection Act, 1986 can be described as follows:

- (i) **Right to safety** : Every consumer has the right to safety i.e the right to be protected against the marketing of goods & services which are hazardous to life & liberty.
- (ii) **Right to be informed** : Under the Consumer Protection Act, 1986, consumer has the right to be informed about the quality, quantity, purity, standard & price of goods & services so as to protect himself against any unfair trade practices.
- (iii) **Right to choose** : Right to choose means right to be assured & have access to the variety of goods & services at competitive prices. In case of monopolies it means right to be assured of satisfactory quality & services at a fair price.
- (iv) **Right to be heard** : Consumer Protection Act, 1986 provides the right to be heard which means that the consumers interest will receive proper & due consideration at appropriate forums. In broad sense, it also includes right to be represented at various forums formed to consider the consumer welfare.
- (v) **Right to seek redressal** : One of the basic right of consumer under the Consumer Protection Act, 1986 is the right to seek redressal which means the right to seek redressal against unfair practices or restrictive trade practices. It includes the right to fair settlements of the genuine grievances of the consumers.
- (vi) **Right to Consumer Education** : Basic rights of the consumer under the Act includes the right to consumer education which means the right to acquire the knowledge & skill to be an informed consumer.

**2015 - June [2A] (Or) (ii)**

'Defect' means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods [Section 2(1)(i) of the Consumer Protection Act, 1986]

Hence, even non-fulfilment of any of the standards or requirements laid down under any law for the time being in force or as advertised or claimed by the trader in relation to any goods falls under the ambit of defect. Contravention of any of the following acts might be a contravention –

- Drugs & Cosmetics Act, 1950
- Prevention of Food Adulteration Act, 1955
- Indian Standards Institution (Certification Marks) Act, 1952 etc. (or any rules framed under any such acts).
- Not following the conditions or implied warranties under the Sale of Goods Act, 1930.

Fault, imperfection or shortcoming in quality, quantity, potency, purity or standard as claimed by the trader in any manner whatsoever in relation to goods is to be determined with reference to the warranties or guarantees expressly given or communicated or agreed upon by a trader.

**2015 - June [3] (a)**

In a similar case of Union of India v. Nathmal Hansaria, the daughter of the respondent, traveling by train, fell down from the running train while she was passing through the vestibule or the inter-connecting passage between two train compartments and died as a result of injuries on her head. In response to the appellants' petition for compensation, the Railways claimed that the Consumer Redressal Agencies had no jurisdiction to consider such a complaint according to Sections 13 and 15 of the Railway Claims Tribunal Act and therefore the case was wrongly presented.

However, the State Commission was of the view that a railway passenger traveling in a train on payment of consideration was a consumer as per the Consumer Protection Act, 1986, as the travel fare is valid consideration. The Railways Act and the Railway Claims Tribunal Act, 1987 and the rules made thereunder provided compensation for railway accidents and not for accidental death of this nature. The National Commission held a similar view. On due enquiry, it was found that the railway administration had claimed the coach to be a new coach. Moreover, as per their norms, all coaches had been thoroughly checked at the starting point of the train and no defect was reported. However, the railways could not prove that this particular coach

was checked at the time of commencement of the journey; there was no paperwork to prove this. Thus, the State Commission's decision was held as correct in holding that the deceased passenger was a consumer. On similar grounds, the MRTP Commission awarded a compensation of ₹ 18 lakhs with 9% interest to the parent of deceased.

Hence, Ashok will be entitled to compensation for Neelam's death.

**2015 - June [4] (b)**

Dominance of an enterprise or of a group implies a position of supremacy arising from financial or other strength or clout, which enables an enterprise to operate independently of the surrounding competitive forces or to manipulate its competitors or consumers or to control the market as per its desires. Actual dominance does not necessarily imply its abuse. Abuse of dominant position means impeding fair competition between two entities, exploiting consumers and controlling the market towards personal ends.

Abuse of dominant position includes:

- Imposing unfair conditions of supply or unfair pricing,
- predatory pricing,
- limiting production or technical development,
- segregating market,
- creating barriers to entry and impeding healthy competition,
- offering different conditions for similar transactions, i.e. differentiating between consumers,
- hindering market access of consumers or competitors,
- using dominant position in one market to gain advantages in another market.

Section 4 of the Competition Act, 2002, expressly prohibits any enterprise or group from abusing its dominant position. Thus the Act does not prohibit the dominance position, it only prohibits the abuse or misuse of such dominant position by an enterprise.

#### **Chapter - 4 : Intellectual Property Rights**

**2015 - June [1] (e)**

##### **GENERAL AGREEMENT ON TRADE IN SERVICES (GATS):**

General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally enforceable set of rules covering international trade in services. It was negotiated and formalized in the Uruguay Round of World Trade Organization.

The basic principles of GATS are as follows:

- All services are covered by GATS
- The Most-Favoured-Nation (MFN) treatment applies to all services, except temporary exemptions given to certain countries
- The principle of National Treatment will be applicable only in cases where agreement has been reached
- Transparency in internal regulations, setting up national inquiry points
- Reasonable and unambiguous regulations
- No restrictions to international payments, generally
- Each country to negotiate and bind commitments
- Progressive liberalization.

**2015 - June [2] (e)**

##### **Deceptive Similarity:**

In Mahendra and Mahendra Paper Mills Ltd. Vs. Mahindra and Mahindra Ltd., the Supreme Court broadly stated that the following factors are to be considered for deciding the question of inherent deceptive similarity -

- **The nature of the marks** i.e. whether the marks are composed of words, labels, images etc.
- **The degree of resemblance** between the two marks, ideologically or phonetically or otherwise similar.
- **The nature of the goods** in respect of which they are used as trademarks.  
The similarity in comparison to the goods of the rival traders.
- **Type of consumers** likely to buy the goods and who are susceptible to deception by the mark.
- **Mode of buying**, for example, by internet order, or through retail shops etc.

**2015 - June [2A] (Or) (iii)**

Intellectual property is usually divided into two branches, viz, industrial property and copyright. Industrial property is also a kind of intellectual property and relates to all creations of the human mind that can be put to industrial use, e.g., inventions and industrial designs. Inventions are new solutions to technological problems and industrial designs are aesthetic aspects related to the appearance of industrial product. Industrial property also includes trademarks, service marks, brand names or commercial names, geographical indications and the right to protection against unfair competition. The Paris Convention also accepts these inclusions.

Hence, industrial property right is a collective name for right referring to the commercial or industrial activities of a person, covering everything from inventions, creations, new technology, new products, new processes, new designs or updated models of the same product and a brand mark or name that distinguishes them etc.

**2015 - June [3] (b), (c)**

**(b)** Copyright is a type of property right, that comes under the common law system and is hence covered by the national laws of each country. It is the exclusive right given to the author or the creator to protect his work from infringement, use his creation as he thinks fit and to stop others from using it without his permission. The Copyright Act, 1957, applies only to works first published in India, irrespective of the nationality of the author.

However Section 40 of the Act does allow the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country instead of in India. The benefit granted to foreign works will not extend beyond what is available to the works in the home country and that too, on a reciprocal basis i.e. benefits will be given considering what terms the other country's government is offering to India in a similar situation. However, the period of copyright protection in India will not exceed that conferred by the foreign country according to its home laws.

On the other hand, the Government of India has passed the International Copyright Order, 1958, according to which, any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be given the same treatment as if it were first published in India and for the purpose of affording copyright benefits, treated the same as any Indian case.

**(c)** A geographical indication (GI) is a sign or indicator used on products that originate or are produced in a particular place and possess qualities or a reputation that are due to that origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production, as that is what gives the product value or special worth. Geographical indications are generally used for agricultural products, foodstuffs, wines and liquor, cheeses, handicrafts and industrial products. For example, Darjeeling tea, French wines, etc.

They are a part of industrial property, referring to a country or to a place situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country. The Paris Convention for the Protection of Industrial Property recognises geographical indications as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, a part of the Agreements forming the GATT.

India, which is a member of the World Trade Organization (WTO), formulated the Geographical Indications of Goods (Registration & Protection) Act, 1999 which became effective from 15<sup>th</sup> September, 2003. Geographical indications are best secured by registration. The benefits of registration of geographical indications are as under -

- Provides legal safeguard against infringement
- Prevents unauthorized use by others
- Enhances exports, by giving a quality assurance.



- Ensures economic prosperity of producers of goods produced in a geographical territory.

Any association of persons, producers, organisation or authority established by or under the law can apply for registration. The application should be addressed to the Registrar of Geographical Indications.

Section 8 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 provides that a geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by a region or locality in that territory and in respect of a definite territory of a country.

Section 16 provides that on the registration of a geographical indication, the Registrar shall issue each to the applicant and the authorized users, if registered with the geographical indication, a certificate sealed with the seal of the Geographical Indications Registry, which will entitle them to a legal claim.

## **Chapter - 5 : Law Relating to Arbitration and Conciliation**

### **2015 - June [1] (c)**

Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 contains the definition of an arbitral award, which includes an interim award. The essential ingredients of an arbitral award, however, are contained in Section 31 of the Act, which contains the details regarding the form and contents of such an award. It can be a 'speaking award' or a simple one, just giving the decision. In case it is a speaking award, it will be more detailed, giving the reasons and justifications for the award. It will contain also the date and place of passing the award (Section 20). The prescribed form requires that the award be in writing and signed by the members of the tribunal. Moreover, if the award includes decision regarding monetary payments, it has to contain details of payment, interest to be paid alongwith and the specifications regarding the period to which these sums pertain. It will also speak of the allocation of the cost of arbitration, i.e. in what ratio are the parties to bear it, who should bear it etc.

## **Chapter - 6 : Law Relating to Transfer of Property**

**2015 - June [2] (a)**

**(a) Immovable property:** Property that is permanently affixed to land. Severing it would result in loss in value or functionality of the property. Section 3 of the Transfer of Property Act, 1882 does not provide for a comprehensive definition of 'immovable property', however, it only mentions that 'immovable property' does not include standing timber, growing crops, or grass. Thus the definition only points out certain kinds of property to be not considered as an immovable property and further classifies certain kind of properties which can be considered to be immovable property. As per the provision of Section 3, the immovable property includes the things attached to the earth, which has been sub-divided into three categories:

- (a) Things rooted in the earth, as in the case of trees and shrubs
- (b) Imbedded in the earth, as in the case of walls or buildings
- (c) Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

For example, rights to lease of a property, right to collect rents arising out of immovable property, etc.

**(c)** 'One cannot approbate and reprobate at the same time.' This is the main theme of the Doctrine of Election covered under Section 35 of the Transfer of Property Act, 1882. This doctrine is based upon the principle that anyone taking over some benefit has to shoulder the responsibilities coming with it too; he cannot just choose to take the benefit and reject the rest of the contract.

**In R.N.Gosain v. Yashpal Dhir, it has been laid down that:**

"Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid and then turn round and say it is void for the purpose of securing some other advantage."

There are certain prerequisites to this principle:

- The counterpart of the transaction giving some benefit to the party should contain the liabilities or the conditions in which the transfer intended for him can take place. For example, if B gives a property to A on condition that he transfers property to C, both these transactions should form part of the same contract, otherwise the doctrine fails.
- This doctrine will apply only when there is a direct transfer of interest or benefit. For example, if X transfers his land to Y's wife on condition that Y transfers his property to Z, this transaction will not bind Y.
- In case there are multiple properties being transferred and the condition of election applies only on one property, the transferee can benefit from the other transfers on which no conditions apply.

### **Chapter - 7 : Law Relating to Stamps**

#### **2015 - June [1] (d)**

Section 12(3) of the Indian Stamp Act, 1899, deals with the mode of cancellation of adhesive stamps. It provides that the cancellation of an adhesive stamp may be done by the person concerned by writing on or across the stamp his name or initials, or the name or initials of his firm with the current date, or in any other effectual manner, so as to render the stamp not reusable. Sub-section (3) merely lays down as a guidance one of the ways in which an adhesive stamp can be cancelled; the efficacy of the actual methods will depend on the facts of each case.

In *Mahadeo Koeri v. Sheoraj Ram Teli*, it was held that a stamp may be treated as having been effectively cancelled by merely drawing a line across it. However, in the case of *Haq Allah Baksh v. Dost Mohammed*, it was held that if it is possible to reuse a stamp despite a line being drawn across it, there is no effectual cancellation. These two cases stress the fact that mode of cancellation and its efficacy depend on the facts of the case.

### **Chapter - 8 : Law Relating to Contract**

#### **2015 - June [2] (b)**

An agreement to do an act impossible in itself is void. This is covered under Section 56 of the Indian Contract Act. For example, A and B enter into an agreement that B will run 50 kilometers in 5 minutes. The agreement is void

as per Section 56, which says that an agreement to do an act impossible in itself is void. Impossibility can be of two types – that existing at the time of entering into the contract and that which arises subsequently, i.e. supervening impossibility. Both have the same effect, of rendering the contract void. If only the promisor knows of the impossibility, then he is bound to compensate the promisee for any loss he may suffer through the non-performance of the promise in spite of the agreement being void ab-initio (as per Section 56). In *Satyabarta Ghose v. Mugnurang*, the Supreme Court interpreted the term 'impossible' and observed that the word has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless, then too it can be said that the promisor found it impossible to do the act agreed to by him.

**2015 - June [2A] (Or) (i)**

There are certain circumstances under which a contract made under the Indian Contract Act may still be void, because of its inherent flaw or error. Where there is no real agreement, the law has three remedies:

**Firstly:** The agreement may be treated as void.

**Secondly:** The law may give the aggrieved party the option of cancelling the contract if he so desires and the contract is then voidable at his option.

**Thirdly:** The guilty party may be compelled to pay damages to the wronged party.

The chief flaws in contract that render it useless are as follows:

- (i) Incapacity of the parties to the contract
- (ii) Mistake
- (iii) Misrepresentation
- (iv) Fraud
- (v) Undue Influence
- (vi) Coercion
- (vii) illegality
- (viii) Impossibility.

**Chapter - 9 : Prevention of Money Laundering**

**2015 - June [4] (a)**

As economies grow and their economic reach widens, its financial transactions are greatly enhances. In such a situation, countries having inadequate controls become vulnerable to money laundering, lacking comprehensive anti-money laundering regulations. These loopholes are exploited by money launderers to process their ill-gotten gains. This in turn, affects the financial setup of that country, shaping in turn its FDI, since in this situation, the country's commercial and financial sectors are perceived to be subject to the control and influence of organized crime.

These laundered funds, in turn, dominate the economy and are out of reach of the legal agencies. They also cause far-reaching social, economic and political effects. They can be used for offering bribes to public officials, the very governments, thus weakening the social fabric, ethical standards and ultimately affecting the democratic institutions of society, thereby lowering people's trust in that country and its economic setup.

Since money laundering is an international, rather multi-national phenomenon, transnational co-operation becomes critical, as nothing of import can be achieved if countries persevere on their own. The creation of the Financial Action Task Force (FATF) in 1989, other regional groups, such as the European Union, Council of Europe, etc. also established anti- money laundering standards for their member countries.

The major international agreements governing money laundering issues include the United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances (the Vienna Convention) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The Basel Committee on Banking Regulation Supervisory Practices has emphasized the role of financial institutions in preventing and detecting money laundering.

### Measures

#### 2015 - June [5] (b)

Pre-packaged commodity has been defined in Section 2(l) of Legal Metrology Act, 2009 to mean a commodity which is placed in a package without the purchaser being present, so he has not witnessed the quantity being placed in the package.

To do so, the manufacturer or the packaging agency has to adhere to the standard quantities specified by this or other acts. Also, care needs to be taken that the package or container bears the following declarations and specifications regarding the net quantity or number of the commodity contained in the package.

Section 18 states that "no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed."

Such details also have to be mentioned in any advertisements sponsored by the manufacturer, seller, packaging agency, etc.

#### 2015 - June [6] (a)

In criminal law, *mens rea* - the Latin term for "guilty mind" - is usually one of the necessary elements of a crime. The standard common law test of criminal liability is usually expressed in the Latin phrase, *actus non facit reum nisi mens sit rea*, which means "the act does not make a person guilty unless the mind be also guilty."

With respect to the Essential Commodities Act, 1955, it was observed by the Supreme Court in *Nathulal v. State of Madhya Pradesh (AIR 1966 S.C.43)* that *mens rea* or guilty mind is an ingredient of the offence punishable under Section 7 of the Act i.e. an intentional contravention of an order made under Section 3. In other words, if the dealer did believe *bona fide* that he could store the foodgrains for instance, without infringing any order under Section 3, there could be no contravention under Section 7.

In *Hariprasad Rao v. State (AIR 1951 SC 264)*. It was observed that unless

a Statute either clearly or by necessary implication rules out *mens rea* as a constituent part of a crime, an accused cannot be found guilty of an offence against the criminal law unless he has got a guilty mind. Therefore, *mens rea* is an essential ingredient of an offence under Section 7 of the Act.

**2015 - June [6A] (Or) (ii)**

The Central Government has the power to issue orders in the following circumstances, providing for the regulation or prohibition of the production, supply and distribution of essential commodities and trade and commerce under Section 3(1) of the Essential Commodities Act, 1955:

- to maintain or increase supplies of any essential commodity,
- for ensuring equitable distribution and availability of essential commodities at fair price, or
- for securing any essential commodity for the defence of India or the efficient conduct of Indian military operations.

**Contents of the Order**

The orders may provide for all or any of the following matters:

- for regulating by licences, permit or otherwise, the production or manufacture of any essential commodity;
  - for bringing under cultivation any waste or arable land, whether appurtenant to a building or not,
  - for growing thereon of food crops generally or of specified food crops and for otherwise maintaining or increasing the cultivation of food crops generally, or of specified foodcrops;
  - for controlling the price at which any essential commodity may be bought or sold.
  - for regulating by licences, permits or often Nise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity;
  - for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale;
- 
- for requiring any person holding in stock, or engaged in the production,

or in the business of buying or selling, of any essential commodity-(a) to sell the whole or a specified part of the quantity held in stock or produced or received by him, or (b) in the case of any such commodity which is likely to be produced or received by him, to sell the whole or a specified part of such commodity when produced or received by him, to the Central Government or a State Government or to an officer or agent of such Government or to a Corporation owned or controlled by such Government or to such other person or class of persons and in such circumstances as may be specified in the order.

### **Chapter - 11 : Law Relating to Societies**

#### **2015 - June [6] (b)**

A Society registered under the Act is a legal entity. Upon registration, it becomes capable of suing and being sued in the name of the president, chairman, principal, secretary or trustees as determined by the rules and regulations of the society, as registered.

If there is no such prescription in its byelaws, then it is sued in the name of the person specifically appointed by the governing body for this purpose. If no such person is nominated by the governing body on an application made to it, then the president or chairman or secretary or trustee can be sued by the person bringing a case against the society.

Likewise, the suit shall not abate if the person originally framed in the suit as a defendant expires; such suit shall be continued in the name of or against the successor of such person. [Sections 6 and 7].

However, it was provided in the case of *Govind Prasad v. Laxminarain* that this is merely an enabling provision. Regardless of this, it is the right of society to sue or be sued in its own name.

### **Chapter - 12 : Law Relating to Trust**

#### **2015 - June [5] (a)**

No, this does not constitute a trust in favour of the intended beneficiaries, since the beneficiaries are not specified with certainty.

In order for a trust to be valid, certain elements have to be certain. They are as follows-

(1) Certainty of language of trust: The language used to create a trust must



- be clear and unambiguous, giving one and only one meaning; recommendatory or wishful phrasing like "I hope" or "I wish" is not valid.
- (2) Certainty in the object of the trust : The beneficiary, for whose benefit the trust is created, must be indicated clearly. If this is not clearly specified, the resulting trust is deemed to be created in favour of the author/creator of the trust.
  - (3) Certainty in the subject-matter of the trust : The subject matter of the trust must be clear, i.e., the property, in respect of which a trust is created, must be shown clearly. One cannot say, for example, that 'I give to B in trust all my property.' One has to specify the property by giving proper title and details enough to identify it clearly.
  - (4) Purpose of the trust should be certain, i.e. the use to which the property is to be put has to be clearly outlined.

### **Chapter - 13 : Industries Development and Regulation**

#### **2015 - June [5] (c)**

What do you mean by the day of acceptance?

Explanation to Section 2(b) (i) of the MSMED Act, 2006 defines "the day of acceptance" as to mean "the day of the actual delivery of goods or the rendering of services", or where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier, rendering the goods or services acceptable to the buyer.

The concept of "the day of deemed acceptance" also exists. Again, the Explanation to Section 2(b) (i) of the MSMED Act, 2006 defines "the day of deemed acceptance" to mean, "where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

#### **2015 - June [6A] (Or) (iii)**

Section 18FB of the Act empowers the Central Government to make certain declarations in relation to an industrial undertaking, the management or control of which has been taken over under Sections 18A, 18AA or 18FA.

Under this Section, the Government may notify by order, that

- (1) An industrial undertaking shall be exempted from all or some of the enactments mentioned in the Third Schedule to the Act.
- (2) All or some of the contracts, assurances, properties, agreements, settlement, awards, standing orders or other instruments in force, which are applicable to an industrial undertaking shall remain suspended or be modified as ordered by the Government.

Such changes shall be made keeping in mind the needs of the economy regarding the continued availability of the goods in question and the necessity for the continuity of the undertaking.

#### **Chapter - 14 : Law Relating to Pollution Control and Environmental Protection**

**2015 - June [5] (d)**

##### **Compulsory Insurance:**

Section 4 of the Public Liability Insurance Act, 1991, requires the owner to arrange for at least one or more insurance policies, before actually initiating the handling of hazardous substances. Such insurance policy should provide for contract of insurance against liability to give relief under Section 3(1) of the Act. The amount of insurance policy should not be less than the amount of paid up capital of the undertaking handling any hazardous substance and more than the amount, not exceeding rupees fifty crores. The purpose is to make it easier for the owner to handle any claims against it and for the aggrieved to get prompt and sufficient redressal.

**2015 - June [5] (e)**

Increased industrialization and logistics, development of infrastructure at all levels have led to more pressure on the natural environment. With these come more environment related cases and more risks to human health and to the flora and fauna of the country.

Considering these and other factors and to decrease the pressure of pending cases on courts, a specialized tribunal was thought of in the form of the National Green Tribunal, for effective and expeditious disposal of civil cases relating to environmental protection and conservation of the forest cover of the country and protection of the other natural resources including

enforcement of legal rights pertaining to environment. It provides relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

The National Green Tribunal constituted under the National Green Tribunal Act, 2010 has been entrusted with the same powers as are vested in a Civil Court under the Code of Civil Procedure 1908.

**Some of the powers of the National Green Tribunal are as under:**

- Summoning & enforcing the attendance of any person and examining him on oath.
- Requiring the discovery & production of documents
- Receiving evidence on affidavits
- Requisitioning any public record or document or copy of the same
- Issuing summons for the examination of witness or documents
- Reviewing its decisions
- Setting aside any order
- Pass an interim order subject to some conditions.
- To provide relief and compensation to the victims of pollution and other environmental damage
- To provide for restitution of property damaged

The proceedings before the National Green Tribunal shall be deemed to be judicial proceedings.

**2015 - June [6] (c)**

**General Powers of the Central Government:**

The Central Government has been granted general powers under Section 3 of the Environment (Protection) Act, 1986 to take all such measures as it deems necessary, for protecting and improving the quality of the environment and for preventing, controlling and abating environmental pollution. Such measures include:

- coordinating the actions of various State Governments, officers and authorities under all environmental laws, rules and regulations;
- organizing nation-wide programmes against environmental pollution;
- laying down standards for the quality of environment;
- laying down standards for emission or discharge of environmental

pollutants, keeping in mind different sources;

- restricting the carrying on of industries, operations or processes in certain areas or prescribing certain safeguards in their context;
- laying down procedures and safeguards for the prevention of accidents likely to cause environmental pollution and pre-determining remedial measures for such accidents, in case they do occur;
- laying down procedures and safeguards for the handling of hazardous substances specifically;
- examining and giving permissions and clearances to manufacturing processes, materials and substances as are likely to cause environmental pollution and keeping an eye on them;
- carrying out and sponsoring investigations and research relating to current or probable problems of environmental pollution;
- inspecting any premises, plant, equipment, machinery, manufacturing process, materials, etc. and issuing directions to any person, officer or authority in charge of that facility to take steps for the prevention, control and abatement of environmental pollution;
- setting up environmental laboratories;
- collecting information relating to environmental pollution and educating people regarding the effects of pollution;
- preparing manuals, codes, guides etc. to prevent control and abate environmental pollution;
- other matters the Central Government may deem necessary or expedient for the proper implementation of the provisions of the Act.

Moreover, the Central Government is empowered to set up one or more authorities to help in the proper implementation of the Act.

**2015 - June [6A] (Or) (i)**

**LIABILITY FOR POLLUTION:**

Liability for pollution may be civil or criminal. Civil liability derives from a tort, or a civil wrong for which the ordinary remedy is damages. Here, the liability arises not just against a specific person, but against all those who are affected.

The Supreme Court in *M.C. Mehta and Another v. Union of India and others* decreed that an application for compensation in a pollution case can be

maintained under Article 32 of the Constitution because it is for the protection of the fundamental rights of the people. In the same case, on the question of liability of an enterprise engaged in hazardous activities, the Supreme Court declared that an enterprise engaged in a hazardous or an inherently dangerous activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the vicinity owes an absolute and non delegable duty to the community to ensure that no harm results to any one on account of an hazardous or inherently dangerous nature of the activity which it has undertaken. The Court further reiterated that the Rule of Strict Liability in *Rylands v. Fletcher* would apply in India but without any of the exceptions accepted under the English law. Another differing factor in Indian laws is that the compensation must be correlated to the magnitude and capacity of the enterprise so as to create a deterrent effect.

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**FOR NOTES**

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