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Further, in the Elective Papers which are Case Study based, the solutions have been worked out on the basis of certain assumptions/views derived from the facts given in the question or language used in the question. It may be possible to work out the solution to the case studies in a different manner based on the assumption made or view taken. Further, there should be no negative marking for wrong answers in MCQ based questions.

PAPER-6D – ECONOMIC LAWS

There are three case study questions in the question paper. Candidates are required to answer all the questions of any two case study questions.

CASE STUDY 1

Mr. Rohit writer is a well known industrialist based in Pune, India and is the founder director of M/s. Good Phones Private Limited (Good Phones), a fixed line and mobile phone manufacturer. Good Phones is one of the largest telephone companies in India and its products are much sought after in India and abroad. Mr. Rohit visits various countries as part of his business travels and during these visits he spend significant amount of time in Philanthropic activities and social gatherings and because of this, he is quite well known in the business circles globally. Mr. Rohit has a penchant for investing his money in buying various real estate property all over India and has passed this trait on to his son, Mr. Rahul Writer as well. Mr. Rahul completed his MBA from Stanford University and is assisting Mr. Rohit in his business. Mr. Rohit also has a daughter, Mr. Sonali Writer, who studies Art in Italy and has opened her own Art Studio in Milan. Mr. Rohit is very proud of Sonali and supports her financially for her stay in Italy as well as expenses towards maintaining the studio.

The marketing department of Good Phones introduced various new models in the last couple of months with new technology such as 2 selfie cameras, faster processor and sleeker look. Good Phones expect these phones to be a major attraction in the global markets due to the attractive price range and therefore wanted to promote these phones extensively on a global basis. For the purpose of advertisements, Good Phones engaged the services of Mr. David Smith, a prominent baseball player and Ms. Emma Drew, a Miss Universe winner and agreed to pay a “guaranteed” fee of USD 500,000 each plus 10% bonus based on the sales of the new models in year 1.

Mr. Rohit sent 5 sample mobile phones and 5 fixed line phones to his dealers abroad (numbering 1000 dealers), clearly marked as not for sale and other promotional material such a brochures, 3D moulds for display in dealer shops etc. The value of the items were approximately INR 4 crore. He also sent 1 mobile phone to each of his dealers as a token of gift and appreciation (total value of INR 0.50 Crores). Mr. Srinivas Rajan, the CFO of Good Phones indicated him that since these products have been sent free of cost and not for sale, these need not be included in the export declaration to be filed by Good Phones.

On 15 February 2018, Good Phones made a large sale to one of the dealers M/s. Delayed Ringtone Enterprise, Germany, for USD 5 million and had received USD 2 million by 15 May 2018 and did not receive the balance USD 3 million until 15 August 2018, i.e. 6 months from the date of sale. After several reminders and threatening calls to stop further shipment, another USD 1 million was received on 10 October 2018 and the balance remained outstanding as at 31 December 2018.

Based on the success of Good Phones, Mr. Rohit incorporated a new company, M/s. Stay Connected Private Limited, (Stay Connected) an Internet service provider and purchased a large consignment of networking equipment for providing internet operations through dedicated broadband lines along with a landline facility. This would then provide Mr. Rohit quite a few synergies with the existing Good Phones business and enable him to become an end to end Telecom Czar. Mr. Rohit held 60% stake in Stay Connected and the balance 40% was held by a foreign collaborator. Along with all the networking equipment, Stay Connected hired transponders from a company in Australia and paid AUD 10 million through its authorized dealer. Stay Connected also entered into an agreement with foreign collaborator (holding 40% stake) to pay royalty and technical fees for the support provided by them.

During his visit to Milan to meet Ms. Sonali, Mr. Rohit obtained EUR 10,000 from his Italian dealer for his use during his stay in Italy and instructed the dealer to reduce the sum from the payments to be made by the dealer for the supplies from Good Phones. Out of such funds, Mr. Rohit used EUR 5,000 towards purchasing sweepstakes tickets in Milan, Italy, unfortunately, he did not win any money in the sweepstakes event.

Mr. Rahul, after gaining experience in India, wanted to expand the business in the USA (by establishing a subsidiary of Good Phones in the USA) and therefore decided to move to the USA along with his wife. For this purpose, he wanted to dispose off some of the properties owned by him in India. Accordingly, Mr. Rahul sold an apartment in Mumbai owned by him to Mr. Stuart Cooper, a citizen of USA, and a fellow student of his at Stanford University. Mr. Stuart was planning to come to India for the first time in the next couple of months to take up a job and therefore, wanted to secure a place for his stay. Mr. Rohit also sold a villa and his agricultural land in Pondicherry to Mr. Rajesh Subramanian, his professor at Stanford, who was a person of India origin. The payment for the villa and agricultural land was paid by Mr. Rajesh partly (50%) from his FCNR account and the balance in USD traveller cheques, which will be of use to Mr. Rahul when he visits USA.

After obtaining his US visa, Mr. Rahul purchased a ranch (farm house) in Texas for USD 2 million, using USD 1.50 million from his RFC account and USD 500,000 sent from his INR account through normal banking channels.

Mr. William Rutherford, one of Mr. Rohit's business acquaintances and a citizen of the USA, is very much interested in Indian culture and practices and therefore stays in India for 8 months (from April 2018 to November 2018) to attend an art of living course and to learn/practice yoga. William believes that he has been resident in India for more than the prescribed 182 days and therefore, is a resident in India under FEMA.

Mr. Rohit, in his penchant for purchasing various properties, zeroed in on an exclusive apartment complex in Bangalore having state-of-the-art facilities. He purchased two 4 bedroom apartments costing INR 2 crore each, one in the name of Ms. Sonali and one in the name of Mr. Srinivas Rajan, since Mr. Rohit wanted Mr. Srinivas Rajan to feel happy and trusted. Both the apartments were given on rent to a large multinational bank and he received a rent of INR 0.20 Crores per year for each of the apartments in the bank accounts of Ms. Sonali and Mr. Srinivas

Rajan, respectively. After 4 years, Mr. Srinivas Rajan transferred the property back in the name of Mr. Rohit at zero consideration. Mr. Rohit also purchased a 3 bedroom apartment in the same complex in his name, jointly with his brother, Mr. Sunil Writer. The property (along with the stamp duty) was paid for by Mr. Rohit and was being used by Mr. Sunil for his stay though the property was pending registration due to Rohit's travel abroad.

Once the property was transferred back by Mr. Srinivas Rajan, Mr. Rohit wanted to sell the same to Mr. Arjun De Silva, a citizen of Sri Lanka. However, he was advised by Mr. Srinivas Rajan that Mr. Arjun De Silva cannot acquire property in India and therefore, Mr. Rohit proposed to lease it to Mr. Arjun De Silva for a period of 20 years for an upfront consideration of INR 1 crore and an annual rent of INR 8 lakhs payable in advance.

During the review of the bank reconciliation statements of Good Phones, Mr. Srinivasan Rajan noted that an amount of INR 2 Crore had been received in one of the bank accounts without any details relating to the same. Mr. Srinivas Rajan informed this to Mr. Rohit and Mr. Srinivas Rajan suggested to Mr. Rohit to immediately transfer that money out of the bank of Good Phones to Mr. Rohit's personal bank account, so that the Company's bank accounts are cleared and there are no reconciling items, which Mr. Rohit agreed to. Out of the INR 2 Crore, Mr. Rohit used INR 1.75 Crores for acquiring further 20% stake in Stay Connected from the foreign collaborator and the balance INR 0.25 Crores for purchasing a stunning diamond set for his wife, Ms. Anjali Writer, as a gift for her 50th birthday.

The extract of the last audited financial statements of Stay Connected was provided by Mr. Srinivas Rajan to Mr. Rohit to evaluate his acquisition.

| Particulars | Amount in INR (Crores) |
|---|-------------------------------|
| Immovable property (market value INR 8.00 Crores) | 5.00 |
| Other fixed assets (net of depreciation of INR 1.00 Crores) | 4.00 |
| Inventory | 2.00 |
| Receivables and Loans and Advances | 1.50 |
| Deferred Advertisement Costs | 0.50 |
| Advance tax paid | 1.00 |
| Total Assets | 14.00 |
| Shareholders' Funds (including 1,000,000 equity shares of INR 10 each, fully paid up) | 4.00 |
| Provisions for taxation | 0.50 |
| Loans from Banks | 3.00 |
| Trade Payables (including provision for unascertained liabilities - INR 1 crore) | 6.50 |
| Total Liabilities | 14.00 |

Other information:

- (i) Contingent liabilities-INR 2.00 Crores (including INR 0.50 cores relating to arrears on cumulative preference shares).
- (ii) The Board of Directors has proposed a dividend payout of INR 1 crore to the equity shareholders, which is pending approval of the shareholders.

The Bank, on noting the large transactions on Mr. Rohit's personal bank account, tipped the Income tax authorities regarding the same and the Initiating Officer summoned information from Mr. Rohit and Mr. Srinivas Rajan regarding the transactions to start proceedings under the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act, 1988).

Answer the following questions:

- 1.1 An Indian citizen resident outside India is permitted to transfer his agricultural property in India to:
- (A) any person resident in India
 - (B) a person resident in India if he is a citizen of India or a person of Indian origin
 - (C) a person resident in or outside India if he is a citizen of India or a person of Indian origin
 - (D) any person who is resident in the country where the Indian citizen currently resides
- (2 Marks)**
- 1.2 Out of the below, what are the transactions that requires prior approval of the Government of India ?
- (A) Payment of "guaranteed" fee by Good Phones to Mr. David Smith and Ms. Emma Drew.
 - (B) Payment of Royalty and Technical fees by Stay Connected to the foreign collaborator.
 - (C) Payment of hiring charges for the transponders by Stay Connected.
 - (D) Payment of INR 1.75 Crores by Mr. Rohit to acquire shares of Stay Connected from the foreign collaborator
- (2 Marks)**
- 1.3 Is the use of EUR 5,000 towards purchasing sweepstakes by Mr. Rohit as per the provisions of FEMA, 2002 ?
- (A) No, drawal of foreign exchange for purchasing lottery tickets, sweepstakes, etc. is prohibited under the FEMA 2002

- (B) No, Mr. Rohit should have obtained the prior approval of the RBI before purchasing the sweepstakes ticket
- (C) FEMA 2002 will not be applicable, since the money was directly obtained by Mr. Rohit from his Italian dealer outside the country
- (D) None of the above **(2 Marks)**
- 1.4 As per the provisions of FEMA, 2002, Mr. William Rutherford is :
- (A) a person resident in India in the financial year 2018-19 as per FEMA, "since he has resided for more than 182 days during the year
- (B) a person resident in India in the financial year 2019-20 as per FEMA, since he has resided for more than 182 days during the previous financial year
- (C) not a person resident in India since he is a foreign citizen
- (D) not a person resident in India, since he is on a short term visit to India and is not on a long term visa **(2 Marks)**
- 1.5 Is the purchase of Ranch in Texas by Mr. Rahul in accordance with FEMA, 2002?
- (A) No, Rahul, as a citizen of India cannot purchase a Ranch outside India.
- (B) Yes, there is no specific limit under FEMA 2002 with regard to purchase of immovable property outside India.
- (C) No, Rahul can purchase assets outside India only if the purchase is jointly with a relative, who is a resident outside India, and there is no outflow of funds.
- (D) No, since Rahul has used funds from his INR account for making the payment to the extent of USD 500,000. **(2 Marks)**
- 1.6 In case Mr. Rohit is proven guilty of violating the provisions of PBPT Act, 1988, what is the maximum punishment that he is liable for under the PBPT Act, 1988 ?
- (A) Rigorous imprisonment for a term of one to seven years, with fine which may extend to 25% of the fair market value of the property.
- (B) Rigorous imprisonment for a term of three to seven years, without fine.
- (C) Rigorous imprisonment for a term upto seven years, with fine which may extend to 50% of the fair market value of the property.
- (D) Fine which may extend to 25% of the fair market value of the property. **(2 Marks)**
- 1.7 Once the benami property acquired by Mr. Rohit and his family have been identified, which authority has the power to confiscate and vest the property?

- (A) *Initiating Officer*
- (B) *Administrator*
- (C) *Approving Authority*
- (D) *Adjudicating Authority* **(2 Marks)**

1.8 Which of the following is a benami property under the PBPT Act, 1988 ?

- (A) *Property held by a member of a Hindu Undivided Family (not the Karta) which is held for the benefit of the members of the family*
- (B) *Property purchased by a person in the name of his spouse paid out of money received from his father in law as a gift.*
- (C) *Property purchased by a person in the name of his brother out of his own funds.*
- (D) *Property purchased in the name of an individual, for which consideration was paid by another person and such another person enjoys the possession of the property.*

(2 Marks)

1.9 Assuming that the transactions relating to the receipt of INR 2 crores in the bank account of Good Phones and the subsequent transactions are considered as benami transactions, can the Initiating Officer take action against Mr. Srinivas Rajan ?

- (A) *Yes, he is the CFO of Good Phones and therefore, responsible for ensuring compliance with the law.*
- (B) *No, he has not received, held, or acquired the proceeds in his account or benefitted from the same.*
- (C) *Yes, since he abets Mr. Rohit in transferring the money from the bank account of Good Phones to Mr. Rohit's personal account.*
- (D) *No, he is responsible only for Good Phones and he has ensured that the funds are not retained in the books of Good Phones / used by Good Phones for its business.*

(2 Marks)

1.10 The Initiating Officer believes that Ms. Anjali is not a benamidar under the PBPT Act, 1988. What is your view?

- (A) *No, she is not a benamidar, since she has not purchased the diamond set, but received as a Gift.*
- (B) *Yes, she is a benamidar as she is in possession of a property acquired out of benami funds.*

- (C) No, she is not a benamidar, since the transaction is not a benami transaction.
- (D) Yes, she is a benamidar, but will not be liable for any prosecution under the PBPT Act, since she is not a party to any of the transactions but only a beneficiary.

(2 Marks)

1.11 Answer the following questions in the context of the provisions relating to the Foreign Exchange Management Act, 2002 :

- (i) Srinivas Rajan reaches out to you to confirm his views regarding inclusion / exclusion of the items sent free of cost to the dealers in the export declaration.

(4 Marks)

- (ii) Examine the validity / appropriateness of the sale of immovable property by Mr. Rahul to Mr. Stuart Cooper and Mr. Rajesh Subramanian.

(4 Marks)

- (iii) Srinivas Rajan reaches out to you and seek your support to evaluate if there is a non-compliance with the FEMA regulations regarding the sale made to M/s Delayed Ringtone and the receipt of the proceeds and if so, the quantum, the consequences and the future course of action that needs to be taken by Good Phones relating to the same.

(4 Marks)

- (iv) Arjun disagrees with the advice received from Srinivas Rajan and asks your views on why he cannot purchase the home from Mr. Rohit and if not, whether the terms and conditions of the lease are acceptable.

(2 Marks)

1.12 Examine/advice regarding the below questions relating to the Prohibition of Benami Property Transaction Act, 1988:

- (i) Examine the appropriateness/impact of the PBPT Act 1988 on the 3 apartments purchased by Mr. Rohit in Bangalore. How does the transfer back of the apartment by Mr. Srinivas Rajan to Mr. Rohit affect your conclusion?

(4 Marks)

- (ii) The Initiating Officer, who is probing the transactions relating to the INR 2 crores received and spent by Mr. Rohit, seeks your advice on identify the benami properties/transaction, the benamidars, the beneficial owner.

(4 Marks)

- (iii) Assuming that the cost of acquisition and the market value based on discounted cash flow method is INR 2 crores, calculate the fair market value of M/s. Stay Connected in accordance with Rule 3 of the Prohibition of Benami Transactions Rules, 2016.

(4 Marks)

- (iv) What is the process to be followed by the Initiating Officer for attachment of the property under a benami transaction?

(3 Marks)

Answer Case study 1

1.1 (A)

1.2 (C).

1.3 (A)

1.4 (D)

1.5 (D)

1.6 (A)

1.7 (D)

1.8 (D)

1.9 (C)

1.10 (B)

1.11 (i) As per the Regulation 3 of the *Foreign Exchange Management (Export of Goods and Services) Regulations, 2015*, in case of exports taking place through Customs manual ports, every exporter of goods or software to any place outside India, shall furnish to the specified authority, a declaration as regards the export value of the Goods. In respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and repatriate the same to India.

However, Regulation 4 of the said Regulation states of exemptions w.r.t. export of goods / software may be made without furnishing the declaration on the following items which are sent free of cost:

- trade samples of goods and publicity material supplied free of payment;
- by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value.

Therefore, sending 5 sample mobile phones and fixed line phones to 1000 dealers is exempted and does not require Good Phones to include in the export declaration.

With regard to sending mobile phones to the dealers as gift for a total value of INR 50 lakhs, as per the above Regulation, the exemption for sending gifts by an export is available only if the value of the goods are not more than ₹ 5 lakhs in value. In the case study, since the value of the goods is more than the exemption limit, they need to be included in the export declaration.

(ii) As per regulation 3 of the *Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018*, an NRI or OCI, may acquire

immovable property in India other than agricultural land/farm house/plantation property. Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Mr. Staurt Cooper, being an Overseas Citizen of India is entitled to acquire an apartment in Mumbai owned by Mr. Rahul.

Whereas in case of Mr, Rajesh Subramanian, being NRI, he may acquire immovable property in India other than agricultural land/farm house/plantation property.

Provided further that no payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this regulation. Since with related transactions, payment was made partly from FCNR account and in USD Traveler cheques, which was against the mode of payment prescribed in the said regulation.

Therefore, sale of immovable property by Mr. Rahul to Mr. Stuart Cooper is valid, whereas to Mr. Rajesh Subramanian, the said transaction is invalid.

- (iii) Regulation 9 of the *Foreign Exchange Management (Export of Goods and Services) Regulations, 2015* specifies the Period within which export value of goods/software/services to be realised.

According to it the amount representing the full export value of goods/software/services exported shall be realised and repatriated to India within nine months from the date of export.

Further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the period of nine months.

Due to delay in of the proceeds of sale, M/s Delayed Ringtone contravened provision of this Act & Regulations.

According to Regulation 14 of the *Foreign Exchange Management (Export of Goods and Services) Regulations, 2015*, where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing,

- (a) the payment therefor if the goods or software has been sold and
- (b) the sale of goods and payment thereof, if goods or software has not been sold or reimpart thereof into India as the circumstances permit, within such period as

the Reserve Bank may specify in this behalf;

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

Therefore, in such situation, M/s Delayed Ringtone shall, upon adjudication under Section 13 of the FEMA, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Hence, Mr. Delayed will be liable to USD 6 million [2 million (sum involved in such contravention) x 3]] and further penalty up to five thousand rupees for every day after the first day during which the contravention continues.

- (iv) As per Regulation 9 of the *Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018*, prohibition on acquisition or transfer of immovable property in India is cast on the citizens of certain countries. Accordingly, no person being a citizen of Sri Lanka, without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Since in the given case, Arjun, being a citizen of Sri Lanka, is prohibited to acquire property in India, except on lease for 5 years. If Mr. Rohit proposes to lease Mr. Arjun for a period of 20 years, can do so only on the prior permission of the RBI.

- 1.12 (i) In the given case study, Mr. Rohit purchased 3 flats in Bangalore in the name of Ms. Sonali, Mr. Srinivas Rajan, and jointly with his brother Sunil.

Apartment purchased in the name of Ms. Sonali- The property has been purchased by Rohit in the name of his daughter Ms. Sonali. Therefore, although the consideration for the purchase has been made by Mr. Rohit, since this is covered by the exemption provided (since the property has been purchased in the name of his child), it is not covered as a benami transaction.

Apartment purchased in the name of Mr. Srinivas Rajan- A benami transaction is defined as a transaction where a property is transferred to or held by one person and consideration is paid by some other person. In this case, the property is in the name of Srinivas Rajan although the consideration is paid by Rohit. Therefore, this is a benami transaction.

Apartment purchased jointly in the name of Rohit and his brother Sunil- A property jointly held in the name of brother and they appear as joint owners. Hence, this is not a benami transaction.

First two flats were rented to a large multi-national bank. After 4 years, Mr, Srinivas Rajan transferred the property back in the name of Mr. Rohit without any consideration.

As per section 6 of the Prohibition of Benami Property Transactions Act, 1988, no person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf. In cases where any property is re-transferred, then such a transaction of a property shall be deemed to be null and void.

In the said above case transaction of transfer back of the apartment by Mr. Srinivas Rajan to Mr. Rohit is void.

- (ii) The Initiating Officer, who is probing the transactions relating to the INR 2 crores received and spent by Mr. Rohit, seeks your advice on identifying the benami properties/ transactions, the benamidars, the beneficial owner.

The following are the benami transactions and benamidars:

| Transaction | Benamidar |
|--|--|
| Receipt of INR 2 crores in the bank account of Good Phones | Good Phones |
| Transfer of INR 2 crores from the bank account of Good Phones to Mr. Rohit's personal bank account | Mr. Rohit (person abetting the transaction, Mr. Srinivas Rajan) |
| Acquisition of shares of Stay Connected using the benami money | Shares of Stay Connected becomes benemi property |
| Purchase of Jewellery as gift for Ms. Anjali Writer | The jewellery becomes benami property. Mrs. Anjali also becomes Benamidar. |

The original beneficial owner is not identified- the person who should have been the original recipient of the funds, may be the original beneficial owner, although these funds are not being held by Rohit/ Anjali for their benefit.

- (iii) According to section 2(16) of the Prohibition of Benami Property Transaction Act, 1988, fair market value", in relation to a property, means—
- (1) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
 - (2) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed in Rule 3 of the Prohibition of Benami Property Transaction Rules, 2016.

As per the said Rule, the price of unquoted equity shares shall be the higher of-

- (i) its cost of acquisition;
- (ii) the fair market value of such equity shares determined, on the date of

transaction, by a merchant banker or an accountant as per the Discounted Cash Flow method; and

- (iii) the value, on the date of transaction, of such equity shares as determined by the formula given in the Rules.

The value of (iii) above is determined as below:

| Particulars | Amount (₹ In Crores) | Value to be considered for calculation (₹ In Crores) | Remarks |
|---|-------------------------|---|--|
| Immovable Property | 5.00 | 8.00 | Market value to be considered |
| Other fixed assets | 4.00 | 4.00 | Book value net of depreciation |
| Inventories | 2.00 | 2.00 | Book value |
| Receivables and Loans and Advances | 1.50 | 1.50 | Book value |
| Deferred Advertisement Costs | 0.50 | 0.00 | Not to be considered |
| Advance tax paid | 1.00 | <u>0.00</u> | Not to be considered |
| Total Value of Assets | | 15.50 | |
| Shareholders' funds | -4.00 | 0.00 | Share capital and Reserves not to be considered |
| Provision for taxation | -0.50 | 0.00 | Not to be considered |
| Loans from Banks | -3.00 | -3.00 | |
| Trade Payables | -6.50 | -5.50 | Provision for unascertained liabilities not to be considered |
| Contingent Liabilities | -2.00 | -0.50 | Arrears of dividend on cumulative preference shares to be considered |
| Proposed dividend on equity shares | -1.00 | <u>-0.00</u> | Not to be considered |
| Total Value of Liabilities | | -9.00 | |
| Fair Market Value (Asset-Liabilities) *Paid up Equity | | 6.50 | |

| | | | |
|---|--|------|--|
| Capital/ Paid up value of equity shares | | | |
| Value of equity shares acquired i.e. 20% of total | | 1.30 | |

In the said question, the cost of acquisition is assumed at ₹ 2.00 crores, the value, on the date of transaction, of such equity shares as determined by the formula given in the Rules is ₹ 1.30 crores and the market value based on discounted cash flow method is given as ₹ 2 crores. Thus, the fair market value of the acquisition in M/s. Stay Connected will be ₹ 2 crores being highest of above and ₹ 10 crores for the company as a whole (i.e. $2.00/0.20$).

- (iv) As per section 24 of the Prohibition of Benami Property Transactions Act, 1988, where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, issue a show cause notice to the person.

Where the notice specifies any property as being held by a benamidar, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as prescribed in Rule 4 of the *Benami Transactions Prohibition Rules, 2016*, for a period not exceeding ninety days from the date of issue of notice.

The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice -

- (i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority; or
- (ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

where provisional attachment has not been made, pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority; or decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

Where the Initiating Officer passes an order continuing the provisional attachment of the property or passes an order provisionally attaching the property, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

CASE STUDY 2

Winner Builders Private Limited ("Winner") is a premium real estate builder who specializes in constructing mid-sized apartment complexes (20 - 40 apartments) in South India. Winner was started in the year 2004 by Mr. Vijay Nair, Managing Director and has its head office in Kochi, Kerala with branches in Trivandrum, Bengaluru, Chennai and Tirupati. Mr. Vijay Nair has been in the real estate business for more than 30 years and comes from a family of civil engineers who are highly respected by their customers. Mr. Arun Nair, son of Mr. Vijay Nair, is a Chartered Accountant and is the Chief Financial Officer of Winner. Mr. Vijay and Mr. Arun together own 60 of the share capital of Winner and the balance is held by a large private equity investor.

Although the company is a private limited company, the affairs of the company are handled in the most professional manner akin to a listed company and Mr. Arun ensures that the financial statements are properly prepared and presented to the Board of Directors (Mr. Vijay, Mr. Arun and a representative of the PE investor) on a quarterly basis. The financial performance of Winner has been reasonable and being a conservative person, Mr. Vijay was never in the mind-set of taking aggressive positions with regard to business. Over the last few months, the PE investor has been pushing the company in making changes in the operational mechanism, sale prices etc. to increase the profits of the company and ensure decent return on their investment. Due to this, Mr. Vijay and Mr. Arun are under tremendous pressure to complete the ongoing projects fast and start new projects immediately and increase the revenues / profits of the Company.

In June 2018, Winner announced a new 80 apartment project in Kochi named as "Winner Shikaram", an ultra-modern luxury apartment complex with a variety of amenities including swimming pool, skating rink, basketball court, fully equipped club house with all amenities, etc. As per RERA regulations the Company applied for registration of the project on 15th June 2018. On 20th June 2018, the Company announced the launch of the project and commenced a big advertisement campaign in the TV media and also through release of promotion material through social media. It also collaborated with a regional TV Channel and announced a free home in "Winner Shikaram" for the first prize winner of a popular reality show. The property was registered by RERA on 10th July 2018 after scrutiny of the information provided by the promoter.

Based on the past performance of the Winner group and the general image of Mr. Vijay Nair, there was tremendous demand for the apartments in the project and all the apartments were booked within 1 month from the date of launch (20th June, 2018). The following were some of the conditions mentioned in the agreement to sale entered into by Winner with its allottees:

1. *Expected date of completion of construction -31st March, 2020.*
2. *Expected date of handover-31st May, 2020, subject to a grace period of 4 months.*
3. *Booking Advance amount to be paid prior to entering into agreement to sale – 20% of total cost of apartment*
4. *Open car parking cost-INR 200,000*

5. *Any delay in payment of dues by the allottees will liable for interest on such delayed payments.*
6. *Return of booking amount shall not be entertained for any reason whatsoever.*
7. *Winner Group shall be liable for any deficiency in quality of construction for a period of 3 years from the date of handing over the apartments.*

Winner Group collected a total amount of INR 80 crores from the allottees and deposited an amount of INR 60 crores in an escrow account for exclusive use for construction of the complex. Separately, an amount of INR 5 lakhs each was collected from the 80 allottees in cash, aggregating to INR 400 lakhs towards interior work, modular kitchen, supplying fans and lights, etc. This money was accounted as receipt in a separate company, M/s. Wonderful Interiors, which was owned by Ms. Anusha Nair, daughter of Mr. Vijay Nair and Mr. Arun Nair.

Although the construction was proceeding apace, the Company encountered severe rock formations under the ground in one section of the land area which was previously not known and due to the same, the Company concluded that the swimming pool could not be constructed as designed and the size of the same had to be reduced. Winner got in touch with the allottees and proposed that the reduction of the size of swimming pool will be compensated suitably by Winner by providing a Jacuzzi and Spa inside the club house. This was accepted by majority (45 of the 80) of the allottees and, accordingly, Winner proceeded with the construction based on the amended plan.

Few of the allottees reached out to Mr. Vijay Nair and stated that the carpet area for their apartments was lesser than the size stipulated in the sale agreement and therefore, wanted to be compensated. Mr. Vijay Nair mentioned to them that the reduction in the area was on account of the exterior walls appurtenant to their apartments and this is the case with all the apartments and not specific to their homes alone.

Mr. Arun Nair attended one of the real estate conclaves held in Bangalore, in which he met one Mr. Henry Stewart, who runs an interior designing warehouse in Dubai UAE and showed quite a few exhibits to Arun. Arun was impressed by the designs and the prices quoted by Mr. Henry. Mr. Henry was also amenable to receive funds in cash in India through an intermediary and then provide the material to Arun from UAE. Based on the same, Arun arranged for making cash payment to the extent of INR 200 lakhs (Out of the INR 400 lakhs received by M/s Wonderful Interiors) to an intermediary in Delhi, and the material was received from Henry in a month.

During his visit to India, Henry noted that his UAE passport got expired and he did not realise the same. Since he did wanted to leave India immediately, he got in touch with a travel agent, Mr. Anil Kumar, who helped him get a forged passport, for which Mr. Henry paid INR 2 lakhs in cash.

Out of the balance INR 200 lakhs cash available with Wonderful Interiors, Arun used cash amounting to INR 25 lakhs to pay amounts to various intermediaries to facilitate timely and smooth registration process of thie apartments of Winner Shikharam, which was paid by the

intermediaries to the officials of the Sub- Registrar. With Henry's help, Arun transferred the balance amount of INR 175 lakhs to an intermediary in Delhi and invested the amount to incorporate a shell company in the Cayman Islands. The funds were then transferred back by the Shell Company to the bank account of Winner. For this purpose, Mr. Arun raised export invoices in the books of Winner on the Shell Company for providing professional services relating to real estate business. Based on these invoices, Winner claimed export incentives under the relevant laws in India and received INR 20 lakhs as export incentive.

On 30th March 2019, a meeting was organised by the Company and all the allottees during which Mr. Vijay Nair provided a status update on the project and stated that bulk of the construction activities will be completed by the timeline mentioned in the sale agreement (31st May, 2020) and the apartments will be handed over by 31st July, 2020 (i.e. within the grace period). The common areas will be completed in parallel and handed over by 30th September, 2020. The slight delay in completion was on account of non-availability of quality labour and he wanted only the best labour to work on the project to ensure that the home owners have a happy life after hand over. He also mentioned that the labour rates increased by 15% after the sale agreements were entered and the Company did not ask for increase in prices from the allottees only for good will reasons. The allottees were unhappy with the delay but, accepted the same, since there was no other choice.

As one of the shareholders of Wonderful Interiors, Ms. Anusha Nair decided to visit Dubai to see the interior designs and then place an order for the upcoming projects. During her visit, she purchased 500 grams worth of gold (costing INR 15 lakhs) and since, she did not have enough money, she asked Mr. Arun Nair to make the payment through the intermediary in Delhi. Based on the discussion with the intermediary, Mr. Arun Nair provided an antique painting which he got from one of his social friends to the intermediary as consideration for the gold purchased by Ms. Anusha Nair in Dubai. Based on the same, Ms. Anusha brought the gold with her through the green channel.

One of the employees of Wonderful Interiors, noting the substantial amount of cash transactions, informs the Bank regarding the same, which in turn informs the enforcement directorate. The ED has issued a show cause notice to all the parties regarding the above transactions.

Answer the following questions:

2.1 RERA authorities sent a notice to Winner that their advertisement campaign was not in accordance with the RERA 2016. Evaluate.

- (A) Valid, Since Winner decided to use Social media platform for promotion, without obtaining specific approval from RERA.
- (B) Valid, Since Winner collaborated with a TV channel to give a free home in Winner Shikaram when the construction itself was not complete.
- (C) Valid, Since Winner launched the project and commenced marketing even before the project received registration from RERA.

- (D) Not Valid, Since Winner applied for the registration prior to the launch of campaign and the registration was ultimately received within the stipulated period. **(2 Marks)**
- 2.2 As per RERA, Winner is required to enable the formation of the association of allottees of Winner Shikaram within-months.
- (A) 3 months of the majority of the allottees having booked their apartment.
- (B) 3 months of the receipt of occupancy certificate.
- (C) 3 months of the majority of the allottees registering their apartments with the sub-registrar.
- (D) 3 months of all the allottees making the full payment for the apartments. **(2 Marks)**
- 2.3 After registering the apartments in the name of the allottees, Winner informed the allottees that they need to pay the water and electricity charges to the concerned departments for their apartments. Evaluate.
- (A) The registration of the apartments denote that the allottees are now the legal owners of the apartments and hence, need to bear the water and electricity charges.
- (B) The promoter is liable for making payment for the water and electricity charges until the physical possession is transferred to the allottees.
- (C) This is dependent on the terms of the agreement of sale between Winner and the allottees.
- (D) This amount need to be paid equally by Winner and the allottees, since the registration is completed and only transfer of physical possession is pending.
- (2 Marks)**
- 2.4 The time limit within which the allottees of winner Shikaram are required to take physical possession of the apartment after issuance of occupancy certificate is:
- (A) Three months
- (B) One month
- (C) Five months
- (D) Two months **(2 Marks)**
- 2.5 As per provisions of RERA, collection of cash by Wonderful Interiors for interior work, modular kitchen, supplying fans and lights, etc. :
- (A) May be appropriate, since RERA does not specify the mode of collection.

- (B) *May not be appropriate, since collection should be done as per the stipulations of RERA.*
- (C) *May be appropriate, since provisions of RERA are not applicable.*
- (D) *May not be appropriate, since Wonderful Interiors are not registered with RERA.*

(2 Marks)

2.6 *What are the three distinct stages of Money Laundering?*

- (A) *Information, Interrogation, Indictment*
- (B) *Placement, Layering, Integration*
- (C) *Planning, Comingling, Profiting*
- (D) *Monitoring, Adjudicating, Punishing*

(2 Marks)

2.7 *Which of the following are not circumstances which need to be considered by the Director of Enforcement for performing search of the offices of Winner and other parties mentioned in the case study?*

- (A) *Possession of any property related to crime*
- (B) *Possession of any records relating to money laundering*
- (C) *Possession of records relating to RERA compliance by Winner*
- (D) *Possession of any proceeds of crime involved in money laundering*

(2 Marks)

2.8 *Ms. Anusha Nair brought gold jewellery worth INR 15 lakhs from Dubai through the green channel. Is this an offence under the PMLA 2002 ?*

- (A) *Yes, because she came through the green channel and evaded duty of customs.*
- (B) *No, whilst it is an offence, it is not actionable under the PMLA 2002.*
- (C) *No, she did not pay any cash for the purchase.*
- (D) *Yes, since purchase of gold from gulf countries requires specific consent as per the agreement entered with foreign countries as per Section 56 of PMLA 2002.*

(2 Marks)

2.9 *As per RERA 2016, what is the minimum amount that Winner was required to deposit in the escrow account ?*

- (A) *INR 50 crores*
- (B) *INR 56 crores*
- (C) *INR 54 crores*

(D) INR 58.8 crores **(2 Marks)**

2.10 Of the below, which of the practices are not common schemes of money laundering?

(A) Bribery and Corruption

(B) False declarations under Customs act

(C) Usage of false trade Marks/copyrights

(D) Possession of foreign currency over and above permitted limit **(2 Marks)**

2.11 Answer the following questions in the context of the provisions relating to the Real Estate (Regulation & Development) Act, 2016 (RERA 2016).

(i) Examine the appropriateness of the conditions mentioned in the agreement to sale, in the context of the provisions of RERA 2016. **(4 Marks)**

(ii) What are the provisions in RERA 2016 relating to the changes in design of the construction from the sanctioned plans? Analyse if the changes made by Winner are appropriate in this context. **(4 Marks)**

(iii) What would be your advice if the customers of Winner reach out to you for your views with regard to the validity of the explanations provided by Mr. Vijay Nair on the reduction of carpet area? **(3 Marks)**

(iv) Evaluate the statements made by Mr. Vijay Nair in the meeting with the allottees on 30th March 2019 regarding the delay and the increase in labour costs in the context of provisions of RERA 2016. **(4 Marks)**

2.12 Examine / advice regarding the below questions relating to the Prevention of Money Laundering Act, 2002 (PMLA 2002).

(i) As a leading consultant on PMLA matters, the enforcement directorate has sought your advice on identifying :

(a) the offences (b) the parties involved and (c) the punishment for the offence of money laundering. **(8 Marks)**

(ii) The Bank, in which Winner holds its bank account, has reached out to you to understand their obligations for maintaining and reporting of transactions under the PMLA 2002. Advise. **(4 Marks)**

(iii) When the Enforcement Directorate proposed to take action against Mr. Vijay Nair under the PMLA 2002, Mr. Vijay Nair contended that he was not a party to any of the alleged offences and he was managing the real estate business of Winner only.

Examine whether his statement is valid. What would be the position of the nominee director of the PE investor? **(3 Marks)**

Answer Case study 2

2.1 (C)

2.2 (A)

2.3 (B)

2.4 (D)

2.5 (C)

2.6 (B)

2.7 (C)

2.8 (B)

2.9 (B)

2.10 (C)

2.11 (i)

1. Expected date of completion of construction- 31st March, 2020 -This condition is valid.
2. Expected date of handover- 31st May 2020, subject to a grace period of 4 months. -This condition is valid.
3. According to Section 13, a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.
Hence, the condition in the agreement for sale for booking advance amount to be paid prior to entering into agreement to sale @20% of total cost of apartment is not valid.
4. Section 2(n) of RERA, 2016 defines 'common areas' to include 'open parking areas', thus open parking areas cannot be sold to the allottees.
Hence, the condition in the agreement for sale for open car parking cost ₹ 2,00,000 is not valid.
5. As per section 19(7) of RERA, 2016, the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid.
Hence, the condition about any delay in payment of dues by the allottees will be liable for interest on such delayed payments, is valid.

6. The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

Hence, the condition for return of booking amount shall not be entertained for any reason whatsoever is not valid.

7. The builder has to provide five-year warranty for any structural defects in the building. They are liable to pay equal rate of interest in case of default or delays as home buyers.

Hence, the condition that Winner Group shall be liable for any deficiency in quality of construction for a period of 3 years from the date handing over the apartments is not valid.

(ii) Adherence to sanctioned plans and project specifications by the promoter (Section 14)

- (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

- (2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

- (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person.

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or

alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

- (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

- (3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

In the instant case, the proposal of Winner for reduction of the size of swimming pool and the same to be compensated by providing a Jacuzzi and spa inside the club house was accepted by majority (45 of the 80) of the allottees and accordingly, Winner proceeded with the construction based on the amended plan.

According to the above provisions, the promoter shall not make any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Hence, approval by majority (45 of 80) is not valid.

- (iii) As per section 2(k) of the Real Estate (Regulation & Development) Act, 2016 "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Accordingly, Sale of property will be on carpet area, not super built area. Therefore, the homebuyer will have to pay only for the carpet area, that is the area within walls, and the builder cannot charge for the super built-up area.

Therefore, the explanations provided by Mr. Vijay Nair on the reduction of the carpet area was invalid. So, home buyers/ customers are liable to pay only for the carpet area, that is the area within walls.

- (iv) As given in the question that on 30th March, 2019, meeting was organized by the company with all the allottees. During the meeting, Mr. Vijay Nair provided a status update on the project and of the construction activities to be completed and the other information mentioned in the sale agreement. As per the Section 11 of Real Estate (Regulation & Development) Act, 2016, it is the duty of the promoter, to alter a project plan, structural design and specifications of the plot, apartment or a building, the promoter has to get the consent of minimum two-third allottees (buyers) after the necessary disclosures.

Since in the given case no approval of 2/3rd of the allottees was taken w.r.t. to delay and the increase in labour costs i.e., as to the updation of the status of the said project. This act of Mr. Vijay Nair is not in compliance with the Law.

- 2.12 (i) (a) Offences: The term "**scheduled offence**" has been defined in clause (y) of sub-section (1) of section 2. It means –

- (a) the offences specified under Part A of the Schedule; or
- (b) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
- (c) The offences specified under Part C of the Schedule.

The Schedule to the Act gives a list of all the above offences. The Schedule is divided into three parts- Part A, Part B and Part C, which are given in Annexure to the Chapter.

- (b) The parties involved: Clause (p) of sub section (1) of section 2 provides that "**money-laundering**" has the meaning assigned to it in section 3. Moving to section 3, it is observed that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.

- (c) The punishment for the offence of money laundering: Section 4 provides for the Punishment for Money-Laundering - Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule (i.e. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985), the maximum punishment may extend to ten years instead of seven years.

(ii) **Obligation of Banking Companies, Financial Institutions and Intermediaries**

Reporting entity to maintain records

Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries.

1. **Maintenance of records:** According to sub-section (1), every reporting entity shall –
 - (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
 - (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;
 - (c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;
 - (d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;
 - (e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
2. **Confidentiality:** Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force shall be kept confidential.
3. **Maintenance of records (for clause a):** The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.
4. **Maintenance of records (for clause e):** The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account

has been closed, whichever is later.

5. **Exemption by the Central Government:** The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this chapter.

Access to information [Section 12A]

1. The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.
2. Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.
3. Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.

(iii) **Offences by companies [Section 70]**

1. Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

2. Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

In the instant case, Mr. Vijay Nair contended that he was not a party to any of the alleged offences and he was managing the real estate business of Winner only.

His statement is not valid on the grounds of section 70 of the PMLA 2002.

The position of the nominee director of the PE investor would be same as of

Mr. Vijay Nair and he shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

CASE STUDY 3

(Part-A)

The appellant "M/s Transmission Corporation of Andhra Pradesh Limited" is a successor of Andhra Pradesh State Electricity Board (for short, 'APSEB') and is in the activities relating to transmission of electricity. It had awarded certain contracts to the respondent "M/s Equipment Conductors & Cables Limited" herein for supply of goods and services. Some disputes arose and the respondent initiated arbitration proceedings. As many as 82 claims were filed by the respondent before Haryana Micro and Small Enterprises Facilitation Council (hereinafter referred to as 'Arbitral Council'). These proceedings culminated into Award dated June 21st, 2010. The Arbitral Council came to the conclusion that the claims made on the basis of Invoice Nos. 1 - 57 were barred by law of limitation and, therefore, no amount could be awarded against the said claims. In respect of Invoice Nos. 58-82, the award was passed in favour of the respondent. Against the aforesaid award rejecting claims in respect of Invoice Nos. 1 - 57 as time barred, the respondent herein filed an application under Section 34 of the Arbitration and Conciliation Act before the Additional District Judge, Chandigarh. The Additional District Judge passed the order dated August 28, 2014 in the said application thereby remanding the case back to the Arbitral Council for fresh decision. Against this order, the appellant filed the appeal before the High Court of Punjab and Haryana at Chandigarh. This appeal was allowed by the High Court by its order dated January 29, 2016 thereby setting aside the direction of the Additional District Judge remanding the matter to Arbitral Council for fresh consideration.

The respondent herein filed execution petition for execution of judgment dated January 29, 2016 passed by the High Court of Punjab and Haryana as well as the award dated June 21, 2010 passed by the Arbitral Council. In so far as award of Arbitral Council is concerned, as noted above the respondent's claim pertaining to Invoice Nos. 58 - 82 was allowed and the execution thereof was sought. The respondent, however, filed another execution petition seeking execution of amount in respect of Invoice Nos. 1 - 57 also. This application was entertained and both the petitions were directed to be dealt with simultaneously vide orders dated August 17, 2016. The High Court vide its order dated November 08, 2016 allowed the said Revision Petition holding that there was no award in respect of claim towards Invoice Nos. 1 - 57 and, therefore, it was not permissible for the respondent to seek the execution. When the things rested at that, the respondent approached the NCLT by means of a Company Petition under Section 9 of IBC, 2016 read with Rule 6 of Insolvency and Bankruptcy (AAA) Rules, 2016. In this petition, the respondent stated that it had served demand notice dated October 14, 2017 upon the appellant under the provisions of the IBC, thereby claiming the amount of ₹ 45,69,31,233/- which was not paid by the appellant. As mentioned above, this petition was dismissed by the NCLT filed under section 9 of IBC vide its order dated April 09, 2018 being non maintainable on account of existence of a dispute between the parties and this assertion of the NCLT is based on the fact that these very claims of the respondent were subject matter of arbitration and the award was passed rejecting these claims as time barred. Against this order, the respondent has filed appeal

before the NCLAT in which impugned orders dated September 04,2018 have been passed. The Honourable NCLAT passed an order stating "Prima facie case has been made out by the Appellant in view of the part decree awarded by the competent court under Section 34 of the Arbitration and Conciliation Act, 1996. However, taking into consideration the fact that if appeal is allowed and Corporate Insolvency Resolution Process is initiated against the Respondent - "Transmission Corporation of Andhra Pradesh Ltd. ", the government undertaking may face trouble. Therefore, by way of last chance we grant one opportunity to respondents to settle the claim with the appellant, failing which this Appellate Tribunal may pass appropriate order on merit."

This very order of the National Company Law Appellate Tribunal, (for short, 'NCLAT) dated September 04, 2018 is the subject matter of challenge before the Honourable Supreme Court by the appellant M/s Transmission Corporation of Andhra Pradesh Limited and prays that the same be reversed as there exists a Dispute and the application under IBC cannot be accepted.

(Part-B)

One Shri Rajendra Singh (Informant) filed an information under Section 19(1)(a) of the Competition Act, 2002 (the 'Act') against Ghaziabad Development Authority ('OP' /GDA) alleging contravention of the provisions of Section 4 of the Act. As per the information, the Informant is an allottee of a flat under the Adarsh Vihar residential housing scheme for the Economically Weaker Sections (EWS) ('Scheme') being developed by the OP in Ghaziabad, U. P. in 2008. It is informed that OP is constituted under Section 4 of the Urban Planning and Development Act, 1973 of Uttar Pradesh and is, inter alia, engaged in the activity of development and sale of real estate in Ghaziabad, U. P.

It is further stated that the OP had conducted a lottery draw for allotment of EWS flats under the aforesaid scheme. On being successful in the said lottery draw, the Informant was allotted a flat bearing no. A-1/222 and accordingly, an allotment letter dated 04.05.2009 was issued in favour of the Informant mentioning the final price of the flat as ₹ 2,00,000 and other conditions relating to payment plan, date of giving possession, penal interest in case of delay in the payment of the balance amount etc. As per the condition of the scheme, the Informant paid ₹20,000 to the OP as registration amount constituting 10% of the total price of the said house.

It is averred by the Informant that on 27.11.2015, the OP issued a letter to all the allottees of the aforesaid scheme asking them to pay ₹ 7,00,000 as sale price of the flats allotted to them failing which their allotment would stand cancelled. It is alleged that the OP has arbitrarily increased the sale price of the said flat to ₹ 7,00,000 from ₹ 2,00,000 which was mentioned in the allotment letter dated 04.05.2009. As per the Informant, the OP has indulged in unfair and arbitrary practices and has misused its dominant position in the market. It is further averred that the OP has indulged in the said practice even after knowing that the allottees of the scheme belong to the weaker sections of the society and they are not in a position to challenge the OP for its unfair and arbitrary conduct. Further, it is stated that the allottees of the said scheme are dependent upon the OP for the residential flats under the said scheme. The Informant has

averred that the alleged conduct of OP is in contravention of the provisions of Section 4(2)(a) of the Act.

Based on the above submissions, the Informant has prayed before the Commission to initiate an inquiry against the OP under the provisions of the Act, set aside the impugned letter dated 27.11.2015 of the OP demanding ₹7,00,000 for the aforementioned flat, and direct the OP to deliver possession of the flat to the informant under the said scheme at the price of ₹2,00,000 per flat. Besides hearing the parties on 27.12.2016, the Commission has perused the information available on record and the documents submitted by the OP. From the facts of the case, it appears that the grievance of the Informant relates to the letter dated 27.11.2015 of the OP demanding a higher price of ₹7,00,000 for a EWS flat allotted to the Informant under the aforesaid scheme as compared with the price of ₹2,00,000 as declared in the scheme's initial brochure and intimated to the Informant vide allotment letter dated 04.05.2009. It is the case of the Informant that the OP has abused its dominant position by arbitrarily increasing the price of the said flat in contravention of the provisions of Section 4 of the Act.

The Commission observes that GDA is established under Section 4 of the Urban Planning and Development Act, 1973 of the State of Uttar Pradesh. It has a common seal with power to acquire, hold or dispose of both movable and immovable properties. The Urban Planning and Development Act, 1973 of Uttar Pradesh empower GDA to pursue activities for promoting and securing development of Ghaziabad in a planned manner. GDA has the power to acquire, hold, manage and dispose of land and other properties in Ghaziabad and to carry out building, engineering, mining and other operations, etc. Further, GDA is, inter alia, engaged in the activities of development and sale of buildings, flats, complexes etc. for residential, commercial, institutional and other purposes and with regard to the relevant geographic market. The Commission is of the view that the geographic area of Ghaziabad district of the State of Uttar Pradesh exhibits homogeneous and distinct market conditions for the development and sale of low cost residential flats under affordable housing schemes for EWS and can be distinguished from the conditions of competition prevailing in other adjacent areas of Ghaziabad such as Delhi, Noida, etc. It may be noted that a consumer intending to buy a low cost residential flat under affordable housing scheme for EWS in Ghaziabad may not prefer to purchase the same in other adjacent areas of Ghaziabad because of factors such as difference in regulatory authorities (and hence, different rules, regulation and taxes), distance to locations frequently commuted, regional or personal preferences, transport connectivity etc.

Simultaneously, the Competition Commission of India (CCI) received a complaint from the Tamil Nadu State Government alleging that two companies, M/s Sun Limited, a company engaged in the business of manufacturing solar panels, and M/s Shine Limited, a company engaged in the sale, installation and maintenance of solar energy generation plants, have entered into an informal agreement to limit or control the production, supply and marketing of the products to ensure maximum price realisation. M/s Sun Limited sells its manufactured panels on an exclusive basis to M/s Shine Limited, which is India's largest solar power generation company supplying solar plants to more than 60% of the current market.

Therefore, it is the case of the Tamil Nadu State Government that the agreement between M/s Sun Limited and M/s Shine Limited is anti-competitive and has an adverse effect on competition since the entities have abused their dominance in the market.

Answer the following questions:

- 3.1 Which of the following are not duties of the Competition Commission of India?
- (A) To promote and sustain competition in markets in India.
 - (B) To protect the interests of consumers.
 - (C) To ensure freedom of trade carried on by Indian suppliers in global market.
 - (D) To eliminate practices having adverse effect on competition. **(2 Marks)**
- 3.2 Notwithstanding anything contained in sub-regulation (2), the Commission may, after recording reasons, invalidate a notice filed under regulation 5 or regulation 8 of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 as amended when it comes to the knowledge of the Commission that such notice is not valid as per sub-regulation (1) and, in that case, the Secretary shall convey the decision of the Commission to the parties to the combination within _____.
- (A) Seven days of such decision of the Commission.
 - (B) Fourteen days of such decision of the Commission.
 - (C) Seven working days of such decision of the Commission.
 - (D) Fourteen working days of such decision of the Commission. **(2 Marks)**
- 3.3 Operate independently of competitive forces prevailing in the relevant market is----- component.
- (A) Abuse of Dominance
 - (B) Anti-Competition agreements
 - (C) Combinations Regulation
 - (D) Competition Advocacy **(2 Marks)**
- 3.4 Which of the following are not functions of Insolvency Professional Agencies (IPAs)?
- (A) Monitoring, Inspecting and Investigating members.
 - (B) Recommending Insolvency Professionals to Committee of Creditors.
 - (C) Drafting detailed standards and code of conduct for insolvency professionals.

(D) Addressing grievances, hearing complaints and taking suitable action. **(2 Marks)**

3.5 Following are the liabilities of M/s A Limited, which is under insolvency process under IBC 2016.

(i) Loan from Bank - INR 100 crores.

(ii) Secured Debentures issued to M/s B Limited - INR 20 crores.

(iii) Trade Payable (10 creditors, including B Ltd., whose outstanding is ₹ 2 crores) - INR 14 crores.

(iv) Amounts payable to workmen - INR 4 crores. **(2 Marks)**

Calculate the voting share of M/s B Limited in the Committee of Creditors.

(A) 15.9420%

(B) 16.6667%

(C) 16.4179%

(D) 16.1290% **(2 Marks)**

3.6 The liquidation process relating to corporate debtors under IBC 2016 will not be initiated under which of the following circumstances ?

(A) The Committee of Creditors do not approve a resolution plan within 180 days.

(B) The NCLT rejects the resolution plan submitted to it on technical grounds.

(C) The Committee of Creditors resolve to liquidate the debtor with a majority (> 50%).

(D) The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the debtor. **(2 Marks)**

3.7 The liquidator of M/s Wrongway has sought your help in prioritizing the claims against M/s Wrongway, as per IBC 2016:

(1) Costs payable to liquidator and resolution professional.

(2) Property tax payable to Government of Goa.

(3) Salary payable to the Finance team for past 6 months.

(4) Amounts payable to M/s Dhara Bank towards secured loans, where security was relinquished.

(5) Amounts payable to Holding company of M/s Wrong way for Royalty fees.

(A) (1), (2), (4), (3), (5)

(B) (2), (1), (4), (5), (3)

(C) (1), (4), (2), (3), (5)

(D) None of the above

(2 Marks)

3.8 Whether an operational creditor can assign or legally transfer any operational debt to a financial creditor ?

(A) Yes. However, the transferee shall be considered as an operational creditor to such extent of transfer.

(B) Yes but the transferee shall be considered as a financial creditor in relation to such transfer.

(C) No. An operational creditor cannot assign or legally transfer any operational debt to a financial creditor.

(D) No. An operational creditor can assign or legally transfer an operational debt only to an operational creditor. **(2 Marks)**

3.9 Which of the following agenda items should be taken up in the first meeting of committee of creditors (COC) _____.

(A) Appointment of interim resolution professional as insolvency professional or replacement of the interim resolution professional by another resolution professional

(B) Preparation of draft resolution plan.

(C) Discussion of the status of the corporate debtor as on the present date and the road map ahead.

(D) Collection of information on corporate debtor from independent sources **(2 Marks)**

3.10 What is quorum in case of meeting of committee of creditors (CoC)?

(A) Members of the Committee representing at least 33% of the voting rights present either in person or video conference or other audio visual means.

(B) Members of the Committee representing at least 50% of the voting rights are present either in person or proxy.

(C) Members of the Committee representing at least 50% of the voting rights are present either in person or video conference or other audio visual means or proxy.

(D) Members of the Committee representing at least 66% of the committee present in person or proxy. **(2 Marks)**

3.11 What is to be construed as a "Dispute" under the Insolvency & Bankruptcy Code, 2016 ? State its significance for the maintainability of an application filed under section 9 of the Code.

In the given case study whether the appellant M/s Transmission Corporation of Andhra Pradesh Limited will succeed in its appeal ? Decide. (11 Marks)

3.12 (i) Examine the provisions of the Competition Act, 2002:

(a) Decide whether the agreement between Sun Limited and Shine Limited is covered under the scope of the Act with reasons. Also, clarify the nature of the agreement based on facts provided. (4 Marks)

(b) What factors shall the CCI consider while evaluating the views of the Government of Tamil Nadu? (6 Marks)

(c) What orders can the CCI pass on completion of the inquiry? (4 Marks)

(ii) In the given case study, decide with reasons whether Rajendra Singh (Informant) will succeed against the Opposite Party (OP) for alleged violation of Section 4(2)(a) of the Competition Act, 2002 ? (6 Marks)

Answer Case Study 3

3.1 (C)

3.2 (C) **Note:** Prior to Amendment in the combination Regulation, it was Option A.

3.3 (A)

3.4 (B)

3.5 (B)

3.6 (C)

3.7 (D)

3.8 (A)

3.9 (A)

3.10 (A)

3.11 **Meaning of dispute:** As per section 5(6) of the Insolvency and Bankruptcy Code, 2016 the word "Dispute" includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty;

Significance of "dispute" for filing of an application by operational creditor under section 9 of the IBC: If there is any dispute about debt, the corporate debtor is required to

reply within ten days of receipt of copy of invoice, existence of a dispute, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute [section 8(2)(a) of Insolvency & Bankruptcy Code, 2016].

After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The operational creditor shall, along with the application furnish the relevant documents, containing an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt. The Adjudicating Authority shall, within fourteen days of the receipt of the application, by an order admit the application and communicate such decision to the operational creditor and the corporate debtor if no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility.

In the given case study, appellant M/s Transmission Corporation, filed an appeal against the order of NCLAT before the Supreme court on the ground of existence of a dispute, so the application under IBC cannot be accepted and so order passed in the favour of respondent (M/s Equipment Conductors & Cables Ltd.) to be reversed.

As per the facts given in the case study, respondent filed petition seeking execution of amount in respect of Invoice Nos. 1-57. Vide order dated Nov, 8, 2016 high court held that this revision petition holding that there was no award in respect of claim towards Invoice Nos. 1- 57 and therefore, it was not permissible for the respondent to seek the execution. Against this order, respondent approached NCLT on the ground that it has served demand notice dated October 2014, 2017. This application was dismissed by the NCLT Vide Order April 9, 2018. Against this order of NCLT, respondent filed appeal before NCLAT. NCLAT challenged the orders and passed an order dated 4th September 2018.

Cause of action arised when, high court rejected on the execution of the petition which was holding that there was no award in respect of claim towards Invoice Nos. 1- 57, was passed, which means that still the dispute is pending. Against this order, respondent, served demand notice dated October 14, 2017.

As per the Code, if there is dispute about claim of debt between parties prior to issue of demand notice by operational creditor, application cannot be admitted. On the basis of this ground, Appellant challenged the subject matter of the order passed by NCLAT dated 4th September 2018 before Supreme Court.

In the judicial pronouncement, it was held that, application by operational creditor to initiate insolvency process was accepted when it was found that there was no existing dispute prior to date of demand notice and dispute raised after receipt of demand notice was not genuine [*Badjate Stock v. Snowblue Trexim (2018) 145 SCL 441 = 89 taxmann.com 64 (NCLT)*].

Also, If appeal has been filed under section 34 of Arbitration Act, the proceedings are pending as appeal is continuation of the adjudication proceedings. Hence, application for insolvency resolution is not maintainable. [*CG Power & Industrial Solutions Ltd. v. ACC Ltd. (2018) 91 taxmann.com 363 (NCLT)*].

Therefore, in the light of the given facts and circumstances, Appellant M/s Transmission Corporation of Andhra Pradesh Limited will succeed in its appeal.

3.12 (i) (a) Anti-Competitive Agreements [Section 3]:

It shall not be lawful for any enterprise or association of enterprises or person or association of persons to 'enter' into an agreement in respect of production, supply, storage, distribution, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India. All such agreements entered into in contravention of the aforesaid prohibition shall be void.

Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, shall be presumed to have an appreciable adverse effect on competition, which—

- (a) directly or indirectly determines purchase or sale prices;
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- (d) directly or indirectly results in bid rigging or collusive bidding.

In the instant case, M/s Sun Limited and M/s Shine Limited have entered into an informal agreement to limit or control the production, supply and marketing of the products to ensure maximum price realization. M/s Sun Ltd. sells its manufactured panels on an exclusive basis to M/s Shine Ltd. which is India's largest solar power generation company supplying solar plants to more than 60% of the current market.

The above agreement is covered under the scope of the Competition Act, 2002 as it is an Anti-competitive agreement under section 3.

(b) Dominant position of enterprise: The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not, have due regard to all or any of the following factors, namely:—

- (a) market share of the enterprise;

- (b) size and resources of the enterprise;
 - (c) size and importance of the competitors;
 - (d) economic power of the enterprise including commercial advantages over competitors;
 - (e) vertical integration of the enterprises or sale or service network of such enterprises;
 - (f) dependence of consumers on the enterprise;
 - (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
 - (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
 - (i) countervailing buying power;
 - (j) market structure and size of market;
 - (k) social obligations and social costs;
 - (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
 - (m) any other factor which the Commission may consider relevant for the inquiry.
- (c) **Orders by Commission after inquiry into agreements or abuse of dominant position [Section 27]**

Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse.

In case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three

times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.

- (c) Omitted
- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any.
- (f) Omitted
- (g) pass such other order or issue such directions as it may deem fit.

While passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

(ii) **Section 4(2)(a) of the Competition Act, 2002 says** there shall be an abuse of dominant position under sub-section (1), if an enterprise or a group,—

- (a) directly or indirectly, imposes unfair or discriminatory—
 - (i) condition in purchase or sale of goods or services; or
 - (ii) price in purchase or sale (including predatory price) of goods or service; or

Explanation.—For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or services referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory conditions or prices which may be adopted to meet the competition.

As Opposite Party (OP) has increased the price of the flat allotted to Rajendra Singh from ₹ 2,00,000 to ₹ 7,00,000. OP has been indulged in unfair and arbitrary practices and has misused its dominant position in the market.

Hence, OP has violated section 4(2)(a) of the Competition Act, 2002.