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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.

Case Study 1

Mr. Sharp was appointed as whole time member of the Competition Commission of India in 2015 and is presently a whole time member. Before joining Competition Commission of India, during 2000-2014, he was acting as a trustee of several charitable trusts. For his contribution towards the society, he was awarded several times by the State Government. Prior to that during 1995-1999, he was acting as a managing director of 'Poor' Ltd., a Public Limited Company engaged in the commercial real estate and was overall in-charge of finance and sales function. During 2005, based on complaints filed by foreign investors, investigation into the affairs of the company was initiated by the SFIO and CBI. The Report of CBI and SFIO issued in October 2017 has revealed that affairs of the company were not managed in the interest of the company during 1998-2005 and has resulted into financial loss of ₹ 400 Cr to the shareholders and the Government. Considering the outcome of the report, Central Government has issued an order of expulsion of Mr. Sharp from the post of whole time member of the Competition Commission of India with immediate effect. He is in double mind to challenge the order keeping in view the grounds for disqualification and the fact that enactment of the Competition Act, 2002 is to provide an establishment of a Commission with certain objectives or join back 'Poor' Ltd. 'Poor' Ltd. has been a party to a proceeding before the Commission on the following issues:

- (a) Whether a person who is purchasing goods for resale can also be considered as a consumer?
- (b) Whether all agreements which causes or is likely to cause an appreciable adverse effect on competition in India, entered into in contravention shall be void?
- (c) Whether the Commission also has powers to enquire into the acts taking place outside India?

'Poor', Ltd., now is in default in repayment of mainly on account of the General slowdown in construction activities resulting in low capacity utilization and inadequate cash generation for timely repayment of dues to all concerned. Repeated follow-up by the Financial Institutions with the corporate debtor, 'Poor' Ltd., for submitting its specific plan of action for repayment of dues did not evoke any meaningful response. Therefore, after a joint lenders' meeting, all the financial creditors unanimously decided to apply under the provisions of the Insolvency and Bankruptcy Code, 2016 to the National Company Law Tribunal (NCLT) for starting the process of insolvency resolution in respect of corporate debtor, 'Poor' Ltd'. Financial Creditors filed an application before NCLT which was admitted by NCLT on 20th May, 2018 and orders issued for commencement of a moratorium period of 180 days, appointment of Mr. Ram, an Interim Resolution Professional and for his making a public announcement inviting claims from all concerned. With the advent of the public announcement the following creditors were identified:

- (1) Financial debts owed to unsecured creditors (D1)-₹10 crores.

- (2) Workmen's dues for the period of 24 months preceding the liquidation commencement date (D2)- ₹ 30 crores.
- (3) Debts owed to a secured creditor who has relinquished his security (D3)- ₹ 60 crores.
- (4) Debts owed to the Central Government (D4)-34 Crores.
- (5) Debts owed to a secured creditor for an amount unpaid following the enforcement of security interest (D5)- ₹ 52 Crores.

Mr. Ram who has been appointed as Interim Resolution Professional wants to know the functional responsibilities of Insolvency Professional Agency (IPA).

Mr. Ram, in the last financial year, has given some legal opinions on financial matters to 'Poor' Ltd. and has charged fees.

Smart was the statutory auditor of the corporate debtor. Mr. Sharp is the whole time member of the Competition Commission of India and has been identified as a relative of Mr. Dull, present Managing Director of 'Poor' Ltd. Mr. Dull is not dear on the provisions of Insolvency and Bankruptcy Code, 2016 (IBC) and requested Company Secretary to advise him on the vital objectives which are intended to be achieved with the Code and also whether the initiation of insolvency resolution process can be done by creditors only or by debtor also.

Mr. Dull also wants to know the specified procedure and term of appointment of an IRP. In case, 'Poor' Ltd. approach NCLT before the financial creditors and decide to appoint Mr. Ram as Interim Resolution Professional, advise Mr. Ram on the consent to be provided by him as required by regulations.

Answer the following questions:

- (1.1) Mr. Ram who has been appointed as the resolution professional can take the following actions without the approval of the Committee of Creditors:
 - (A) Undertake transactions with Mr. Sharp.
 - (B) Make changes in the appointment of Smart, the statutory auditor.
 - (C) File applications for avoidance of preferential or undervalued transactions.
 - (D) Record any change in the ownership interest of 'Poor' Ltd. **(2 Marks)**
- (1.2) The Adjudicating Authority has by an order declared moratorium period on the 'Poor' Ltd. Vide the moratorium order, the following shall not be prohibited:
 - (A) the action to foreclose security interest created by the corporate debtor in respect of its property.
 - (B) the institution of arbitration proceedings.

- (C) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- (D) *The supply of raw material essential for construction of commercial real estate from its suppliers.* **(2 Marks)**
- (1.3) *The NCLT rejected the resolution plan for want of compliance with the Insolvency and Bankruptcy Code, accordingly the proceeds from the sale of liquidation shall be distributed in the following order of priority :*
- (A) *D2- D1-D3-D4 & D5 (ranked equally).*
- (B) *D2 & D5 (ranked equally)-D3-D1-D4.*
- (C) *D2 & D5 (ranked equally)-D1-D3-D4.*
- (D) *D3 & D2 (ranked equally)-D1-D5 & D4 (ranked equally).* **(2 Marks)**
- (1.4) *The NCLT rejected the resolution plan for want of compliance with the Insolvency and Bankruptcy Code and proceeded to initiate liquidation proceedings. During the course of liquidation, it was found that 'Poor' Ltd. had gifted some valuable assets of the Company to another friendly company Soft Ltd. on 20th April, 2016 and D1 (unsecured financial creditors) reported the transaction to the National Company Law Tribunal by way of an application. The National Company Law Tribunal may pass an order:*
- (A) *Rejecting the application of D1.*
- (B) *Requiring the Insolvency and Bankruptcy Board to initiate disciplinary proceedings against the liquidator.*
- (C) *Require any person to pay sums in respect of benefits received by such person to the liquidator.*
- (D) *Require any person to submit relevant documents of transaction to Insolvency and Bankruptcy board.* **(2 Marks)**
- (1.5) *The management of the affairs of 'Poor' Ltd., the corporate debtor undergoing corporate insolvency resolution process vests in the _____.*
- (A) *Mr. Ram, Interim Resolution Professional*
- (B) *Board of Directors*
- (C) *Committee of Creditors*
- (D) *Insolvency and Bankruptcy Board of India* **(2 Marks)**
- (1.6) *Mr. Sharp cannot be removed from the Competition Commission of India by the Central Government, if he:*

- (A) *has engaged at any time, in any paid employment.*
- (B) *has become physically or mentally incapable of acting as a member.*
- (C) *has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude.*
- (D) *is, or at any time has been, adjudged as an insolvent.* **(2 Marks)**
- (1.7) *Mr. Sharp shall not for a period _____ of years from the date on which cease to hold office in the Competition Commission of India, accept any employment in, or be connected with the management of administration of, any enterprise which has been a party to a proceeding before the Competition Commission of India.*
- (A) 1
- (B) 2
- (C) 1
- (D) *None of the above* **(2 Marks)**
- (1.8) *'Agreement' under the Competition Act, 2002 includes any arrangement or understanding or action in concert:*
- (A) *if it is in writing only.*
- (B) *if it is enforceable by legal proceedings only.*
- (C) *if it is in writing and enforceable by legal proceedings only.*
- (D) *If it is whether or not, in formal or writing or whether or not enforceable by legal proceedings.* **(2 Marks)**
- (1.9) *Any agreement under the Competition Act, 2002 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) *directly or indirectly results in bid rigging or collusive bidding.*
- (D) *All of the above* **(2 Marks)**
- (1.10) *If Central Government issues expulsion order to Mr. Sharp, the order:*
- (A) *is valid from the date of his joining the Commission.*
- (B) *is not valid but cannot be challenged.*

(C) *is not valid and can be challenged.*

(D) *is valid on the basis of outcome of the report from the date of receipt of the order. (2 Marks)*

(1.11) *Answer the following based on the facts given in the question with reference to the provisions of the Insolvency and Bankruptcy Code, 2016 (Code):*

(A) *Advise Mr. Dull on vital objectives which are intended to be achieved with the Code. (2 Marks)*

(B) *Advise Mr. Ram on the functional responsibilities of Insolvency Professional Agencies (IPA). (2 Marks)*

(C) *Advise Mr. Ram on the independence with the Corporate Debtor. (2 Marks)*

(D) *Advise 'Poor' Ltd. whether the initiation of insolvency resolution process can be done by creditor only or by corporate debtor also. (2 Marks)*

(E) *Interim Resolution Professional is to be appointed by following the specified procedure and for a specific term. Examine and advise Mr. Ram on the consent to be provided by him in Form 2 as required by the relevant rules. (7 Marks)*

(1.12) *Answer the following under the provisions of the Competition Act, 2002:*

(A) *Enactment of the Competition Act, 2002 is to provide for an establishment of a Commission with objectives. Advise Mr. Sharp for taking decision whether to challenge the order of the Supreme Court? (3 Marks)*

(B) *A person who is purchasing goods for resale can also be considered as a 'Consumer'. Examine and advise 'Poor' Ltd. (3 Marks)*

(C) *All agreements which causes or is likely to cause an appreciable adverse effect on competition in India, entered into in contravention shall be void. Examine and advise 'Poor' Ltd. (5 Marks)*

(D) *Advise 'Poor' Ltd. whether the Commission also has power to enquire into the acts taking place outside India. (4 Marks)*

Answer to Case Study 1

(1.1) **Option (C):** File applications for avoidance of preferential or undervalued transactions

(1.2) **Option (D):** The supply of raw material essential for construction of commercial real estate from its suppliers.

(1.3) **Option (D):** D3 & D2 (ranked equally)-D1-D5 & D4 (ranked equally)

(1.4) **Option (A):** Rejecting the application of D1.

(1.5) **Option (A):** Mr. Ram, Interim Resolution Professional

- (1.6) **Option (A)** : has engaged at any time, in any paid employment.
- (1.7) **Option (B)** : 2
- (1.8) **Option (D)** : if it is whether or not, in formal or writing or whether or not enforceable by legal proceedings
- (1.9) **Option (D)** : All of the above
- (1.10) **Option (C)**: Is not valid and can be challenged.
- (1.11) **(A) Vital objectives which are intended to be achieved with the IBC:** The Insolvency and Bankruptcy Code, 2016 is intended to strike the right balance of interests of all stakeholders of the business enterprise so that the corporates and other business entities enjoy availability of credit and at the same time the creditor do not have to bear the losses on account of default. The purpose of enactment of the Insolvency and Bankruptcy Code, 2016 is as follows:
- (a) To consolidate and amend the laws relating to re-organization and insolvency resolution of corporate persons, partnership firms and individuals.
 - (b) To fix time periods for execution of the law in a time bound manner.
 - (c) To maximize the value of assets of interested persons.
 - (d) To promote entrepreneurship
 - (e) To increase availability of credit.
 - (f) To balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues.
 - (g) To establish an Insolvency and Bankruptcy Board of India as a regulatory body for insolvency and bankruptcy law.
- (B) Functional responsibilities of Insolvency Professional Agencies (IPA):**
- It will perform three key functions:
- (i) Regulatory functions**
 - drafting detailed standards and codes of conduct through bye-laws, that are made public and are binding on all members
 - (ii) Executive functions**
 - monitoring, inspecting and investigating members on a regular basis
 - gathering information on their performance, with the over-arching objective of preventing frivolous behaviour, and
 - malfeasance in the conduct of IP duties

(iii) Quasi-judicial functions

- addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions

(C) Eligibility of an insolvency Professional to be appointed as a Resolution Professional: As per Regulation 3 of the *Insolvency and Bankruptcy (Insolvency Resolution process for Corporate Persons) Regulation, 2016*, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor:-

- He is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company.
- He is not a related party of the corporate debtor.
- He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.
- He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years.

(D) As per Section 6 of the IBC, 2016, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter (Chapter II of part II). Therefore, Insolvency resolution process can be initiated by creditor as well as by the corporate debtor.

(E) Appointment of IRP: As per the Code, Adjudicating authority shall appoint an Interim Resolution Professional within 14 days from the commencement date of the Insolvency process. Section 16 of the Code lays down the procedure for appointment of an Interim Resolution Professional.

Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, the resolution professional as proposed in the application shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

Where the application for corporate insolvency resolution process is made by an operational creditor and

- No proposal for an interim resolution professional is made.** The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim

resolution professional.

- (b) **A proposal for an interim resolution professional is made** the proposed resolution professional shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.

Period of appointment of IRP: The term of Interim Resolution Professional shall not exceed 30 days from the date of appointment. **[Section 16]**

As per Form 2, written consent by proposed IRP is given to the Adjudicating authority under the relevant rule of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

- (1.12)(A) The preamble of the Competition Act, 2002 provides that it is an Act to establish a Commission to prevent anti-competitive practices, promote and sustain competition, protect the interests of the consumers and ensure freedom of trade in markets in India.

However Section 53T of the Competition Act, 2002, provides that the Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court.

Since the Supreme Court(SC) as per the Indian constitution is the apex body, so the decision of SC is binding on the Central Government / any State Government / the Commission / any statutory authority / any local authority /any enterprise / any person. So Mr. Sharp 's decision to challenge the order of the Supreme court is not possible.

- (B) The term 'consumer' is defined in section 2(f) of Competition Act, 2002. Accordingly, 'consumer' means any person who buys any goods for a consideration, which has been paid or promised or partly paid and partly promised, whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence, it is not necessary that a person must purchase the goods for personal use in order to be considered as a 'consumer' under Competition Act, 2002. Even a person purchasing goods for resale or for any commercial purpose will also be considered as a 'consumer' within the meaning of Section 2(f) of the Competition Act, 2002.

- (C) All agreements which causes or is likely to cause an appreciable adverse effect on competition in India, entered into in contravention shall be void

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.

However, any agreement entered into by way of joint ventures, if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services, shall not be considered to be an anti-competitive.

(D) Acts taking place outside India but having an effect on competition in India (Section 32)

The Commission shall, notwithstanding that,—

- (a) an agreement referred to in section 3 has been entered into outside India; or
- (b) any party to such agreement is outside India; or
- (c) any enterprise abusing the dominant position is outside India; or
- (d) a combination has taken place outside India; or
- (e) any party to combination is outside India; or
- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India;

have power to inquire in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 the Act into such agreement or abuse of dominant position or

combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.

Case Study 2

Mr. Cute had given an application to the state authorities for purchase of land for farming and agricultural use. This application was made by him through his company M/s Hip Hop Farms Ltd. (HHFL). HHFL was initially incorporated in 2003 with two shareholders Mr. A and Mr. B. Through an executed share transfer deed, shares of this company were transferred to Mr. Cute and his wife Mrs. Pretty. Consequent to transfer of shares, first directors were also replaced with new directors i.e. Mr. D, Mrs. E and Mr. Sharp. Mr. D and Mrs. E are parents of Mrs. Pretty.

To enable HHFL to purchase the said piece of land, Mr. Cute, had given unsecured loan amounting to ₹ 11 Crore to HHFL. Since the subject piece of land was an agricultural land, during the time of representation, Mr. Sharp declared himself an agriculturist. Accordingly, the additional collector allowed the purchase of the land on condition that it would be used for farming within two years.

During the year 2010, Ms. F (sister of Mrs. Pretty) was appointed as director of HHFL in place of Mr. Sharp.

HHFL was preparing financial statements on a regular basis and was compliant in filing various documents with the Registrar of Companies. Financial Statements for the year ended on 31st March, 2018 and previous years did not show any income from farm activities or agricultural activities. Instead, the said piece of land was developed by HHFL and constructed a palatial bungalow with swimming pool and a dedicated space to facilitate landing and parking fixed wing aircrafts.

Mr. Cute had separately obtained a loan for his personal use from a Non- Banking Finance Company amounting to ₹ 65.Crore. The said loan was secured by the mortgage created on the property owned by HHFL. Mr. Cute defaulted on payment of last few installments and tried persuading bank to restructure the covenants of the loan agreement. Bank officials did not agree to his request and decided to take action against him and the said mortgaged property.

This particular case came under the scanner of the authorities when the Collector of the region claimed that this particular property along with other 110 properties have allegedly flouted other applicable regulations prevailing in the State. Due to this matter, the case was forwarded to the Income Tax department. Acting proactively on the matter, the Income Tax department had issued an attachment notice under the Prohibition of Benami Property Transaction Act, 1988 to HHFL for provisionally attaching the property and filed a report before an adjudication authority to confirm the attachment.

Mr. Cute had engaged a lawyer to prepare a reply in response to the notice received. His lawyer had advised that maximum penalty for contravention, if any would be 10% of the cost of the property. Further, he has stated that in the worst case situation, attachment in no case under the provisions of the Prevention of Benami Property Transactions Act, 1988 exceed 3 months.

Mr. Cute after knowing the provisions, had instructed the lawyer to furnish a fabricated reply in response to the notice and include a point as to why notice has been issued to him. The said notice should have been issued to HHFL only.

After the legal proceedings were completed, the order was passed by the adjudicating authorities. After, perusing the order, Mr. Cute identified certain errors and misplaced facts, and asked his lawyer to discuss the same with the authorities. However, his lawyer forgot the matter due to other cases in hand. When he was reminded again after almost 11 months, he responded that the matter is time barred.

Besides the said piece of land on which bungalow and swimming pool were constructed, there were other seven pieces of non-agricultural land just adjacent to the land. Survey numbers of the same were 112/1, 112/2, 112/3, 112/4, 112/5, 112/6 and 112/7.

Mr. D and his family were quite affluent and generally they were seen in lavish social gatherings apart from managing their real estate development business. During a family function in 2012, they made a fixed deposit amounting to ₹ 10 crore in the name of Mrs. Pretty which was a gift for her.

Mrs. Pretty on maturity of the said deposit, transferred the amount in the name of Mr. Cute for his personal use. During 2015, the said amount was used by Mr. Cute to buy a piece of land bearing survey number 112/1 in the name of Mrs. Pretty. Owner as per the land records was Mrs. Pretty and payment for the said land bearing survey number 112/1 was made by Mr. Cute.

Mr. D was the owner of land bearing survey numbers 112/2, 112/3, 112/4, 112/5, 112/6 and 112/7. During the third quarter of financial year 2017-18, he developed and launched a new residential-cum-commercial project on the said pieces of land after seeking registration under the Real Estate (Regulation and Development) Act, 2016 (RERA). For the said project Ms. F was acting as an authorized agent for marketing. When the commercial launch was organized, it was announced by Ms. F that the project is available at an attractive rate of ₹ 8,800 per square feet and the units are very spacious since they admeasure 1500 square feet built-up with total 100 units.

Also, marketing brochure contains following features included in the project:

- (1) Italian marble in the kitchen
- (2) 5 Star rated Air Conditioners
- (3) 3 Star rated Geysers

- (4) French Windows of reputed brand
- (5) Elevators of top brands
- (6) Open parking slot at a nominal price of ₹ 11,000
- (7) Massive multi-level kids play area
- (8) Ducts attached to each flat
- (9) Comprehensive insurance for the project

Marketing brochure mentioned that builder provides warranty of 5 years of the products with additional free 1 year warranty.

It was informed in the marketing material that the project would be completed in a time frame of 5 years. One of the allottee complained about Ms. F for project's registration to which she replied that project is already registered and since she is daughter of the promoter, she is not required to take the separate registration, only outsiders are required to take registration under RERA. Ms. F receives facilitation fees from the company owning the project.

Mr. Bhakt was one of the allottee who bought flat number 205 in Tower 1 of the project after several rounds of meeting with Ms. F. It was told to him that a Ganesh Temple would be constructed as a part of the project in the eastern side of Podium 2.

During the course of the project, an intimation along with a certificate from engineer was sent to all the allottees that due to a technical objection received from fire department, temple will have to be shifted from Podium 2 to Podium 3.

When this fact came in the knowledge of Mr. Bhakt, he consulted his lawyer who advised to file a complaint against the builder with the authorities. Also, he mentioned in the complaint that he bought flat through Ms. F who was not registered under RERA and reported several defects in the features contained in the marketing brochure.

Just before the completion of the project, the promoter got an offer to sell the entire project to an American builder at an attractive price. The acquirer informed the promoter that since it is the deal between us and I have never defaulted on the delivery in projects in last 50 years there is practically no use of seeking approval of allottees. There were several rounds of discussions between the promoter and the acquirer; however, the deal did not go through due to difference in valuation.

The project was completed on time and the invitation was sent to all the allottees to take physical possession of their respective units. After staying for about 8 months in the flat number 406 in Tower 4, Mr. Sultan informed builder that he is facing serious issues with the quality of MCB provided and there is a potential risk of short circuit which could lead to massive losses to the building as a whole. On investigation by an independent electrician appointed by Mr. Sultan, it was found that lining of electricity wire was done along with water pipe lines and due to internal damage, problem is arising. However, the promoter was harping

on the fact that the issue is in the MCB and not in the wirings. The investigation done by electrician was confirmed by other electricians who surveyed a few other flats.

Further, Mr. Sultan complained that the grass given by the builder in the flower bed area was of sub-standard quality and needs replacement.

Answer the following Questions:

(2.1) Who is Benamidar in the above case as per Prevention of Benami Property Transactions Act, 1988?

(A) HHFL.

(B) Mr. D.

(C) Mr. E.

(D) All of the above

(2 Marks)

(2.2) Whether is it a requirement under Prevention of Benami Property Transactions Act, 1988 that Benamidar shall be aware that property is registered in his / her name to categorize a transaction as Benami ?

(A) Yes, it is necessary.

(B) No, it is not necessary

(C) Can't say

(D) None of the above

(2 Marks)

(2.3) Under Prevention of Benami Property Transactions Act, 1988, property which has been declared as Benami can be confiscated by which authority?

(A) The President of India.

(B) State Government.

(C) Central Government.

(D) None of the above

(2 Marks)

(2.4) In a scenario where authorities conclude that the subject property is hit by the provisions of the Prevention of Benami Property Transactions Act, 1988, what could be the quantum of penalty?

(A) 25% of the cost of the property.

(B) 10% of the fair market value of the property.

(C) 10% of the cost of the property.

- (D) 25% of the fair market value of the property. **(2 Marks)**
- (2.5) Under Prevention of Benami Property Transactions Act, 1988, notice for initiating action shall be submitted by following means?
- (A) By Post.
- (B) By way of summons.
- (C) By e-mail.
- (D) Either (A) or (B) **(2 Marks)**
- (2.6) As per the provisions of RERA, which of following are treated as part of common area?
- (A) Kids play area.
- (B) Duct attached to the units.
- (C) Balcony attached to the living room.
- (D) All of the above **(2 Marks)**
- (2.7) Under RERA, 20% of the flat cost cannot be accepted unless:
- (A) Property is registered.
- (B) Marketing brochure mentioned terms of payment.
- (C) 20% project is completed.
- (D) All of the above **(2 Marks)**
- (2.8) Under RERA, provision related to 5 years warranty is applicable to following:
- (A) Chipped beam in the kitchen.
- (B) Loose tiles in the washrooms.
- (C) Leakage in the internal pipe lines.
- (D) All of the above **(2 Marks)**
- (2.9) Under RERA, when all documents in connection with insurance shall be handed over by the promoter to the allottees?
- (A) On receipt of final payment / installment.
- (B) On receipt of occupancy certificate.
- (C) On receipt of NOC from fire department.
- (D) On formation of society. **(2 Marks)**

(2.10) On completion of the project and after receipt of occupancy certificate, when can an allottee take physical possession of the flat?

- (A) Within two months.
- (B) Within three months.
- (C) Within six months.
- (D) None of the above **(2 Marks)**

(2.11) Explain the following in light of the provisions of the Prevention of Benami Property Transactions Act, 1988:

- (A) Owner of the land as per land records shall make payment for the land standing in his/her name. Examine the correctness of the statement. **(3 Marks)**
- (B) Whether action proposed by the officials of the bank is defensible? Advise officials of the bank. **(3 Marks)**
- (C) Examine legal ramifications of the instructions made by Mr. Cute to his lawyer and advice by his lawyer in the matter. **(6 Marks)**
- (D) Mr. Cute has approached you after hearing response from his lawyer after 1 month. Please advise him. **(3 Marks)**

(2.12) Explain the following in light of the Provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA):

- (A) Mr. Bhakt has approached you to confirm advice given by his lawyer. Kindly assist Mr. Bhakt on the points mentioned by the lawyer. **(9 Marks)**
- (B) Promoter of the project has appointed you to advise on the issue raised by Mr. Sultan. **(4 Marks)**
- (C) Examine legal validity of the proposal given by the American builder. **(3 Marks)**

Answer to Case Study 2

- (2.1) Option (A): HHFL
- (2.2) Option (B): No, it is not necessary.
- (2.3) Option (C): Central Government
- (2.4) Option (D): 25% of the fair market value of the property
- (2.5) Option (D): Either (A) or (B)
- (2.6) Option (D): All of the above

(2.7) Option (A): Property is registered

(2.8) Option (D): All of the above

(2.9) Option (D): On formation of society

(2.10) Option (A): Within two months

(2.11)(A) As per section 2(9) of the Prohibition of Benami Property Transactions Act, 1988, all such type of transaction or an arrangement made in respect to a property, where -

- such a property is transferred to or held by one person and consideration is paid by some other person,
- such a property carried out or made in a fictitious name,
- owner of a property is not aware of, or, denies knowledge of, such ownership;
- where the person providing the consideration is not traceable or is fictitious.

Such a transaction is said to be a benami transaction.

Accordingly, in the light of the above provisions, the owner of the land as per land records shall make payment for the land standing in his/her name in order to be valid transaction and not to be considered as benami transaction in the terms of section 2(9) of the said Act.

(B) As per the facts given in the case study, Mr. Cute defaulted in the payment of few installments on the loan secured on the property owned by the HHFL. He tried persuading bank to restructure the covenants of loan agreement. Bank Officials did not agree to his request and decided to take action against him and the said mortgaged property.

As per Section 18 of the Prohibition of Benami Property Transactions Act, 1988, the following Authorities shall be there for the purposes of this Act, namely:—

- (a) the Initiating Officer;
- (b) the Approving Authority;
- (c) the Administrator; and
- (d) the Adjudicating Authority.

The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or in accordance with such rules as may be prescribed.

The authorities under this Act shall have the same powers as are vested in a civil court (Under section 19).

Accordingly, denial to agree to the request of Mr. Cute to restructure the covenants of loan agreement by bank officials, is right. However, the decision to take action against him and the said mortgaged property is not available with the Bank officials under the Prohibition of Benami Property Transactions Act, 1988. Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government under section 5 of the Prohibition of Benami Property Transactions Act, 1988.

- (C) Following will be the legal ramifications of the instructions made by Mr. Cute to his Lawyer and advice by his lawyer with respect to furnishing of a fabricated reply in response to the notice and to include a point as to why notice has been issued to him. The said notice shall be issued to HHFL only-

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, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

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 —

- (a) where the provisional attachment has been made —
- (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;

- (b) where provisional attachment has not been made—
- (i) 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
 - (ii) 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.

Parties to be issued notice: On receipt of a reference under Section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:—

- (a) the person specified as a benamidar therein;
- (b) any person referred to as the beneficial owner therein or identified as such;
- (c) any interested party, including a banking company;
- (d) any person who has made a claim in respect of the property.

Therefore, as per the above given provisions, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein in the notice to the person specified as a benamidar therein; and to as the beneficial owner therein or identified as such.

- (D) After persuing the order passed by Adjudicating authorities, Mr. Cute identified certain errors and misplaced facts. He asked his lawyer to discuss the same with the authorities. However, his lawyer forgot the same. Reminding after 11 months, he responded that the said matter is time-barred.

According to section 47 of the Prohibition of Benami Property Transactions Act, 1988, the Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, within a period of one year from the end of the month in which the order was passed.

No amendment shall be made, if the amendment is likely to affect any person prejudicially, unless he has been given notice of intention to do so and has been given an opportunity of being heard.

Accordingly, above stated course of action may be available to the Mr. Cute in compliance with the said provision.

- 2.12 (A)** Mr. Bhakt, an allottee was told that Ganesh Temple would be constructed as a part of the project in podium 2. Due to technical objection, an intimation along with the certificate from engineer was sent to allottees stating that as of consequences temple will have to be shifted from podium 2 to podium 3. Also filed a complained against Ms. F and towards builders for several defects in the features contained in the marketing brochure.

According to section 18 of the Real Estate (Regulation & Development) Act, 2016, if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein;

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

However, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Further Section 9 of the Act specifies that no real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section. In case of contravention, Ms. F will be liable under section 62 of the said Act.

Accordingly, Mr. Bhakt will have above remedies under the RERA against the Ms. F and against builder with the authorities.

- (B)** According to section 14 of the RERA, 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.

As per section 14(3) of the Act, 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 given case, Mr. Sultan after 8 months of his staying, informed the builder of the quality of MCB with a potential risk of short circuit. Considering it a structural defect Mr. Sultan intimated within time frame. So promoter of the project will be liable here.

Whereas complain of grass given by builder in flower bed area for replacement is in the nature of "minor additions or alterations", so promoter will be discharged of his liabilities.

- (C) As per section 15(1) of the Real Estate (Regulation & Development) Act, 2016, the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.

However, such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

In the case study, the American Builder's, proposal was not valid as no prior written consent from two-third allottees and the authority were obtained.

Case Study 3

Question 3

Mr. Inder and Mr. Sunder are promoter directors of India Exports Limited having registered office in Jammu, is engaged in the export of software products to various countries in the world. One of the customer in U.S. to whom the company exported certain products failed to pay the amount due for these exports resulting into non-repatriation of amount to India. The Adjudicating Authority on coming to know about this, levied a penalty on the company under the provisions of the Foreign Exchange Management Act, 1999. The Company has sought advice on the followings:

- (a) *Relevant provisions for realization of export amount and its timeline.*

- (b) *Timeline to surrender the realized foreign exchange under the Act.*
- (c) *Cases where realization and repatriation enjoy exemption.*

Later, the company settled the amount for 50% with the customer and the amount was transferred through Hawala to India. The money so received was partly used by the company to part finance its office building in Mumbai. During search in the premises of Hawala businessman, some documentary evidence was captured by the search officer and based on which, the Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching the office of the company alleged to be involved in scheduled offence of money laundering. Mr. Prabhat, one of the employees was sent to Japan to develop a software program on deputation for 2 years. He earned a sum of US\$ 3000 as a honorarium.

Ms. Lilly, the daughter of Mr. Inder is an air hostess with the British Airways and flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she accommodated at 'base', which is normally the city, outside India where the airways are headquartered. However, for security considerations, she was based on Mumbai, during the current financial year and was accommodated at Mumbai for more than 182 days.

Mr. Victor, son of Mr. Sunder, having Indian origin and resident of USA desires to acquire two immovable properties in India comprising a residential flat in Noida and a farm house on the outskirts of Delhi. Further, Mr. Sunder has won lottery and want to remit the amount to his son Mr. Victor in USA for buying-immovable property in USA under joint ownership of 50% with Mr. Sunder. Mr. Sunder also wants to remit money to meet his obligation of 50% in the above immovable property.

The balance of the money received through Hawala was used by the company to part finance the residential flat in Noida purchased by Mr. Victor.

The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching the flat alleged to be involved in scheduled offence of money laundering. The company decides to challenge the action of the Adjudicating Authority.

In the meantime, Mr. Sunder requested the Chief Financial Officer to examine the following issues under the Prevention of Money Laundering Act, 2002:

- (a) *Process of money laundering*
- (b) *Multiple method of money laundering*
- (c) *The connection between 'proceeds of crime' and 'criminal activity'*
- (d) *The request from a contracting state for investigation.*
- (e) *The powers of the authority under the Act to survey*

Answer the following questions:

- (3.1) *Which of these is not a permissible capital account transactions?*

- (A) Investment by person resident in India in Foreign Securities.
- (B) Foreign currency loans raised in India and abroad by a person resident in India.
- (C) Export, Import and holding of currency/currency notes.
- (D) Trading in transferable development rights. **(2 Marks)**

(3.2) Mr. Prabhat can retain the honorarium earned by him on deputation to the extent of US \$:

- (A) 3000
- (B) 2000
- (C) 1000
- (D) Nil **(2 Marks)**

(3.3) The residential status of Ms. Lilly for the current financial year under FEMA would be:

- (A) Non-Resident irrespective of her citizenship.
- (B) Resident irrespective of her citizenship.
- (C) Non-Resident since she is British citizen.
- (D) Resident though she is British citizen. **(2 Marks)**

(3.4) The time limit within which the appeal can be lodged against the decision of the Adjudicating Authority by India Export Limited:

- (A) Within 30 days from receipt of order.
- (B) Within 60 days from receipt of order.
- (C) Within 45 days from receipt of order.
- (D) Within 90 days from receipt of order. **(2 Marks)**

(3.5) Mr. Victor can acquire the following properties by following the steps as mentioned in the provisions of the Foreign Exchange Management Act, 1999:

- (A) a farm house in outskirts of Delhi, only.
- (B) both farm house in the outskirts of Delhi and a flat in Noida.
- (C) a flat in Noida, only.
- (D) None of above **(2 Marks)**

(3.6) Section 2 of the Prevention of Money Laundering Act, 2002 defines the term 'scheduled offence', which accordingly means:

- (A) the offences specified under Part A of the Schedule.
 - (B) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more.
 - (C) the offences specified under Part C of the Schedule.
 - (D) All of the above
- (2 Marks)**

(3.7) Whoever commits offence of Money Laundering shall be punishable with:

- (A) imprisonment only.
 - (b) fine only
 - (C) imprisonment or fine.
 - (D) Imprisonment and fine.
- (2 Marks)**

(3.8) Money Laundering is a single process however, its cycle can be broken down into following three distinct stages:

- (A) Integration, Layering and Placement.
 - (B) Layering, Placement and Integration.
 - (C) Placement, Layering and Integration.
 - (D) Placement, Integration and Layering.
- (2 Marks)**

(3.9) Where an order of confiscation has been made under the provisions of section 58B of the Prevention of Money Laundering Act, 2002, in respect of any property of a person, all rights and title in such property shall vest absolutely in the _____ free from all encumbrances.

- (A) Central Government
 - (B) Supreme Court
 - (C) President of India
 - (D) None of the above
- (2 Marks)**

(3.10) The offences under the Prevention of Money Laundering Act, 2002 shall be:

- (A) cognizable and bailable.
 - (B) non-cognizable and non-bailable.
 - (C) cognizable and non-bailable.
 - (D) non-cognizable and bailable.
- (2 Marks)**

(3.11) Answer the following with reference to the provisions of the Foreign Exchange Management Act, 1999 (FEMA):

- (A) The FEMA extends to the whole of India. Examine and advise India Export Ltd. as they have registered office in Jammu. **(2 Marks)**
- (B) The drawal of foreign exchange is prohibited for certain current account transactions. Examine and advise Mr. Sunder whether he can remit the amount of lottery won by him to Mr. Victor in USA. **(2 Marks)**
- (C) The Act restricts acquisition or transfer of immovable property outside India by a person resident in India. Examine and advise Mr. Sunder whether he can remit amount to buy immovable property in USA. **(2 Marks)**
- (D) The amount representing full export value shall be realized within time limit permitted under the Act. Explain and advise India Export Ltd. the relevant provisions for realization of export value and its timeline. **(4 Marks)**
- (E) The realized foreign exchange is to be surrendered within the period specified under the Act. Examine and advise India Export Ltd. **(2 Marks)**
- (F) The realization and repatriation in certain cases enjoy exemption. Examine and advise India Export Ltd. **(3 Marks)**

(3.12) Examine and advise Mr. Sunder on the following with reference to the provisions of the Prevention of Money Laundering Act, 2002 (PMLA):

- (A) Money Laundering is a process. **(3 Marks)**
- (B) There are multiple methods of money laundering. **(3 Marks)**
- (C) The 'proceeds of crime' and 'criminal activity' have connection. **(2 Marks)**
- (D) The request from a contracting state can be accepted for investigation. **(3 Marks)**
- (E) The Authority under the Act can make survey only based on the material in his possession. **(4 Marks)**

Answer to Case Study 3

- (3.1) **Option (D)** : Trading in transferable development rights
- (3.2) **Option (B)** : 2000
- (3.3) **Option (A)** : Non-Resident irrespective of her citizenship
- (3.4) **Option (C)** : within 45 days from receipt of order

- (3.5) **Option (C)**: a flat in Noida, only.
- (3.6) **Option (D)** : All of the above
- (3.7) **Option (D)** : imprisonment and fine
- (3.8) **Option (C)** : Placement, Layering and Integration
- (3.9) **Option (A)** : Central Government
- (3.10) **Option (C)** : Cognizable and non-bailable

(3.11)(A) Extent and Application [Sections 1 of FEMA, 1999]

FEMA, 1999 extends to the whole of India. In addition, it shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

Accordingly, FEMA does not apply to citizens of India who are outside India unless they are resident of India. The scope of the Act has been further extended to include branches, offices and agencies outside India. The scope is thus wide enough because the emphasis is on the words "Owned or Controlled". Even contravention of the FEMA committed outside India by a person to whom this Act applies will also be covered by FEMA.

- (B)** According to Section 5 of the FEMA, 1999 and rules/regulations made thereunder, the drawal of foreign exchange for certain current account transactions is prohibited, a few need permission of appropriate Govt. of India authority and some other transactions would require RBI permission if they exceed a certain ceiling. According to Schedule I, Remittance out of lottery winnings is prohibited.

Hence, Mr. Sunder cannot remit the amount of lottery won by him to Mr. Victor in USA.

- (C)** According to Regulations on Acquisition and Transfer of Immovable Property outside India, a person resident in India may acquire immovable property outside India, jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India.

In the instant case, Mr. Sunder wants to remit money to meet his obligation of 50% in the immovable property in USA under joint ownership with his son Mr. Victor. Hence, as per the regulations, Mr. Sunder cannot remit amount to buy immovable property in USA.

- (D) Period within which export value of goods/software/ services to be realized**
[*Foreign Exchange Management (Export of Goods and Services) Regulations, 2015*]

- (1) 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, provided
- (a) that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months from the date of shipment of goods;
 - (b) 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 or fifteen months, as the case may be.
- (2) (a) Where the export of goods / software / services has been made by Units in Special Economic Zones (SEZ) / Status Holder exporter / Export Oriented Units (EOUs) and units in Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs) as defined in the Foreign Trade Policy in force, then, the amount representing the full export value of goods or software shall be realised and repatriated to India within nine months from the date of export.
- Provided further that the Reserve Bank, or subject to the directions issued by the Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the period of nine months.
- (b) The Reserve Bank may for reasonable and sufficient cause direct that the said exporter/s shall cease to be governed by sub-regulation (2);
- Provided that no such direction shall be given unless the unit has been given a reasonable opportunity to make a representation in the matter.
- (c) On such direction, the said exporter/s shall be governed by the provisions of sub-regulation (1), until directed otherwise by the Reserve Bank.
- Explanation*—For the purpose of this regulation, the “date of export” in relation to the export of software in other than physical form, shall be deemed to be the date of invoice covering such export.
- (E) Period for surrender of received/ realised/ unspent/ unused foreign exchange by Resident individuals [Regulation 5 of *Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000*]: A Person being an individual resident in India shall surrender the received/realised/unspent/ unused foreign exchange whether in the form of currency notes, coins and travellers cheques, etc. to an authorised person within a period of 180 days from the date of

such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be.

(F) Exemption from realisation and repatriation in certain cases [Section 9 of FEMA, 1999]

The provisions of sections 4 and 8 shall not apply to the following, namely:

- (a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify;
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing there on which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from;
- (e) foreign exchange acquired from employment, business, trade, vocation, service, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and
- (f) such other receipts in foreign exchange as the Reserve Bank may specify.

(3.12) (A) Money laundering is a process: It is the process by which illegal funds and assets are converted into legitimate funds and assets. In other words, it is basically the process of converting illegal or black money of a person in a legal or white money. It is the process used by criminals to wash their "tainted" money to make it "clean."

Money laundering is a single process however; its cycle can be broken down into three distinct stages

1. **Placement:** It is the first and the initial stage when the crime money is injected into the formal financial System.
2. **Layering:** Then under the second stage, money injected into the system is layered and moved or spread over various transactions in different accounts and different countries. Thus, it will become difficult to detect the origin of the money.
3. **Integration:** Under the third and final stage, money enters the financial system in such a way that original association with the crime is sought to be obliterated so that the money can then be used by the offender or person receiving as clean money.

- (B) **Multiple methods of money laundering:** There are multiple methods through which money can be laundered and huge profit is being made, some of them are:
- Cash Smuggling: Moving cash from one location to another or depositing the cash in Swiss Bank Account;
 - Structuring: Cash is broken down into formal receipts to buy money orders etc., smaller amounts are hard to detect;
 - Laundering via Real Estate: Buying a land for money and then selling it making the profits legal.
 - Stock Markets scams
 - By creating bogus companies.
 - Drug Trafficking;
 - Bribery and Corruption;
 - Kidnapping and Extortion.
- (C) Section 2(1)(u) defines "**proceeds of crime**" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken/held outside the country, then the property equivalent in value held within the country.
- (D) **Letter of Request to a Contracting State in Certain Cases [Section 57 of the PMLA, 2002]**
1. If, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-
 - (i) examine facts and circumstances of the case,
 - (ii) take such steps as the Special Court may specify in such letter of request, and
 - (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
 2. The letter of request shall be transmitted in such manner as the Central

Government may specify in this behalf.

3. Every statement recorded or document or thing received shall be deemed to be the evidence collected during the course of investigation.
- (E) **Power of authority to make survey [Section 16(1) of the PMLA]:** Where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—
- (i) within the limits of the area assigned to him; or
 - (ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated, at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,-
 - (i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;
 - (ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and
 - (iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation. - For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

Therefore, Authority under the Act can make survey as per the above stated section.