

DISCLAIMER

This Suggested Answer hosted on the website do not constitute the basis for evaluation of the student's answers in the examination. The answers are prepared by the Faculty of the Board of Studies with a view to assist the students in their education. Alternate Answers have been incorporated, wherever necessary. While due care is taken in preparation of the answers, if any error or omission is noticed, the same may be brought to the attention of the Director of Board of Studies. The Council of the Institute is not in anyway responsible for the correctness or otherwise of the answers published herein.

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 assumptions made or views taken.

PAPER 6D: ECONOMIC LAWS

The solutions to case studies 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 different solutions based on the assumption made or view taken. Further, there should be no negative marking for wrong answers in MCQ based questions.

CASE STUDY - 1

You are a Chartered Accountant with waxing eloquence, computer savvy, possessing excellent communication skills, having proven hard core experience of two decades and is a much sought after professional. You are known for your sharp intellectual acumen and your expertise on the technical aspects of various economic laws in force in India has given you a deep recognition, not only by domestic companies spread across India, but also by foreign companies who want to set up business in India.

You have been approached by ABC Limited (the Company), a pharmaceutical, listed entity from Mumbai, one of the key companies closely monitored by the Equity Analysts, Mutual Funds and Investors to know from you the current state of affairs, compliance standards and regulatory assessment hygiene and sort out / clarify certain matters concerning the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), the Prevention of Money Laundering Act, 2002 (PMLA, 2002) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI, 2002) which may potentially have an impact on the Company. You viewed this assignment as an another opportunity to deal with and come out successfully in terms of your advise. You are of the opinion that as the complexities of the businesses increases, the amount of time spent by the Management and the Professionals in cracking up the law codes also increases. Going forward, the Executive Management of the Company has very high expectations from you regarding the expert advises that you are going to provide given the timing as well as the multiple challenges impacting the organization.

About ABC Limited

ABC Limited is a professionally managed, widely held, profit making, dividend paying company engaged in developing and manufacturing differentiated pharmaceutical products in house which it commercializes with multinational pharma companies. Various Financial Institutional Investors are holding about 25% of the overall equity of the Company. Benchmarked to international Standards, the Company's facilities are approved by various International Regulatory Agencies.

The Senior Management of the Company has provided you the necessary data and other inputs including its subsidiaries, cases against Senior Employees and Key Managerial Personnel in the following paragraphs for your perusal and the issues raised, clarifications sought are summarized in Part A and Part B thereafter. You are requested to go through the following contents carefully and provide your inputs accordingly based on your understanding of your requirements, issues if any and clarifications sought. Please make relevant assumptions as may

be required to explain your answer so as to provide a holistic and relevant feedback. Your responses would be very vital for the Company and hence, your best advice is anticipated.

(1) Inputs relating to the Prevention of Money Laundering Act, 2002 (PMLA, 2002).

- (A) One of the Key Managerial Personnel of the Company, namely Mr. 'H' obtained 5 Kg of smuggled gold and pledged with a Bank for securing a loan of ₹ 1 crore in connection with his sister's marriage. The bank manager knew that the gold pledged with the bank is a tainted property and released the loan amount to him at an excessive rate of interest. Mr. 'H' used a part of the loan amount for buying diamond jewellery and gifted the same to his sister. On receiving confidential information from a relative of Mr. 'H' that Mr. 'H' indulged in smuggling activities for acquiring gold and the subsequent purchase of diamond jewellery, the said gold and the diamond jewellery was provisionally attached by the Director and confirmed by the Adjudicating Authority. Subsequently, on completion of the trial, the Special Court passed an order confiscating the gold in the Bank's custody and the jewellery with the sister of Mr. 'H'.*
- (B) Mr. R, a Foreign Director of the Company is of the opinion that money laundering is a highly sophisticated act to cover up or camouflage the identity / origin of illegally obtained earnings so that they appear to have been derived from lawful sources. He further opines that money laundering is a process used by offenders to wash their 'tainted' money to make it clean by dealing with any property or assets of any description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible used in the commission of a Scheduled Offence under the PMLA, 2002. He further believes that money laundering can be carried out by any third person on behalf of an individual and includes a person who exercises ultimate effective control over a juridical person. Mr. R wants to understand from you the veracity of his above opinion. Mr. R also wants to understand the meaning and definition of 'Proceeds of Crime' and "Scheduled Offences" under the PMLA, 2002.*
- (C) Ms. 'Z', another Senior Employee of the Company, with an intent to deceive the general public, personated herself as a public servant and misguided the position and gained monetary benefits. She was arrested for the said cognizable and non-bailable offence for a term of imprisonment of 2 years. She approached the Special Court constituted under the PMLA, 2002 seeking bail.*

(2) Inputs relating to the SARFAESI Act, 2002.

- (A) MNO Limited is a subsidiary of ABC Limited. An 'Asset Reconstruction Company' (ARC) took over the management of the affairs of the said MNO Limited in order to realize its secured assets. On the other hand, the borrower company being aggrieved by its measures, requested the said ARC not to appoint any manager or administrator for the said purpose. The ARC, nevertheless, rejected the proposal and*

communicated its decision of rejection of the request to MNO limited. Now, as a remedial measure, MNO Limited wants to approach the Debt Recovery Tribunal (DRT) against the order of the ARC.

- (B) *DEF Limited, another subsidiary of ABC Limited, issued 9% Optionally Convertible Debentures for ₹ 15 crore on 01.04.2021 (interest payable half yearly on 30th September and 31st of March). Mr. OP was appointed as a Debenture Trustee to the issue and the security interest was created in his favour. The Company failed to pay interest for two consecutive tenures (i.e. on 31.03.2022 and on 30.09.2022) and going forward, Mr. OP issued notice to the Company to make good the outstanding interest immediately. On the other hand, the debenture holders decided to enforce the security interest as per the SARFAESI Act, 2002.*

In the meanwhile, Mr. OP issued another notice demanding full payment of interest within 60 days of the issue of notice. DEF Limited replied to the second notice within 20 days stating that it was facing a severe cash crunch situation and hence the default.

Whereas, the debenture holders felt that the default was willful and good amount of profits are being generated by the Company in its operations. Subsequently, Mr. OP reverted back to the Company stating that the reasons given by the Company is not justifiable and the Company's representation was rejected by him.

(3) Inputs relating to the Insolvency and Bankruptcy Code, 2016

- (A) *After the Insolvency and Resolution process in respect of ABC Limited (the Company) had commenced, the Adjudicating Authority declared a moratorium. One of the Promoters of the Company, namely Mr. 'A' has provided a Promoter-Guarantee to the corporate borrowings of the Company by mortgaging his house property - a posh bungalow valued at ₹ 75 crore situated at Nagpur. However, during the effective period of moratorium, the Resolution Professional initiated recovery proceedings against the house property of the Promoter - guarantor. Aggrieved by this motive, Mr. 'A' vehemently contended that the action of the recovery proceedings against his mortgaged property by the Resolution Professional is a breach of moratorium conditions violating the provisions of the IBC, 2016 and hence invalid.*

Besides the above, during the same effective period of moratorium, the Resolution Professional also desired to sell the unencumbered inventory of finished goods of the Corporate Debtor to an extent of 15% of the total claims admitted. This action of the Resolution Professional was also strongly objected by Mr. 'A' as invalid and against the law.

- (B) As per the latest Audited Balance Sheet of one of the wholly owned subsidiaries of ABC Limited namely RST Limited, which is engaged in the business of producing auto ancillary products, the turnover of the company was ₹ 200 crore and the investment in Plant and Machinery was ₹ 35 crore. The Turnover and investment in Plant and Machinery never crossed beyond ₹ 200 crore and ₹ 35 crore respectively.

Due to sudden fall in the demand for the products by auto companies, RST Limited started facing financial difficulties and liquidity crisis. In view of this, the Company defaulted in the repayment of term loans and servicing of the interest. The CFO of the Company evaluated many options for rescuing the business and discussed on multiple occasions with the lenders.

In one of the consortium meeting with the Bankers, the lenders decided to take action against the Company under the SARFAESI Act, 2002. At the meeting, one of the lenders holding 30% share in the consortium suggested that in the present circumstances, it would be apt to proceed under the provisions of the IBC, 2016 (Code) since the Code is one of the effective tools for the resolution of the debt. However, due to the difference of opinion amongst the lenders, a few of the lenders decided to move ahead under the SARFAESI Act, 2002 and the others decided to file an application under the Code.

The CFO of RST Limited intervened and informed that once the proceedings are initiated under both the laws, the SARFAESI Act, 2002 being an old law would prevail over the IBC, 2016.

Under the circumstances, the MD of RST Limited pleaded with the lenders that the Company may be provided one more opportunity to submit a resolution plan for revival of the Company and to consider the Pre-Packaged Insolvency Resolution Plan (PPIRP). But, one of the lenders informed that PPIRP is at the nascent stage and it may take years to complete the process. In response, the MD clarified that the process of filing an application for PPIRP is very simple wherein it requires minimum documents for submission and as such is not time consuming.

Part-A

Answer the following MCQs:

- 1.1 With reference to the inputs given in para (1) (B) relating to the Prevention of Money Laundering Act, 2002 (the Act) above, a person on whose behalf a transaction is being conducted is known as:

- (A) Client
- (B) Intermediary

- (C) *Beneficial Owner*
 - (D) *Authorized Dealer*
- 1.2 *With reference to the inputs given in para (1)(B) relating to the Prevention of Money Laundering Act, 2002 (the Act) above, state which among the following is false in the context of "proceeds of crime" under the Act:*
- (A) *Any property acquired on account of criminal activities*
 - (B) *Criminal activity should relate to a Scheduled Offence*
 - (C) *All intangible properties are outside the purview of the Act*
 - (D) *Property derived indirectly by any person on account of criminal activities and held outside the Country*
- 1.3 *With reference to the inputs given in para (I)(C) relating to the Prevention of Money Laundering Act, 2002 (the Act) above, the correct legal position for Ms. Z would be:*
- (A) *She, being a women can get bail from the Special Court*
 - (B) *She will not get bail as the offence is not bailable*
 - (C) *Since the offence is not covered under the PMLA, 2002, her application is liable to be rejected*
 - (D) *She will be warned severely and levied a fine.*
- 1.4 *With reference to the inputs given in para (2) relating to the SARFAESI Act, 2002 above, advise the correct steps that DEF Limited can take:*
- (A) *Prefer an appeal to the Debt Recovery Tribunal (DRT) against the rejection by Mr. OP of the Company's representation.*
 - (B) *Ignore the notice sent by Mr. OP since it is not legally binding on DEF Limited.*
 - (C) *Communicate back to Mr. OP that the representation of DEF Limited cannot be legally rejected and doing so will enable to file an appeal with the ORT. After so communicating, if the representation is still rejected by Mr. OP, then an appeal is to be filed.*
 - (D) *DEF Limited cannot prefer an appeal to the DRT against the rejection by Mr. OP of the Company's representation.*
- 1.5 *With reference to the inputs given, in para (3)(8) relating to IBC, 2016, one of the lenders of RST Limited informed that since Pre-Packaged Insolvency Process (PPIRP) is at the nascent stage, it may take years to complete the process. Whether their apprehension is correct and what is the timeline for completion of the PPIRP?*

- (A) No. The timeline for completion of PPIRP is 60 days from the commencement date.
- (B) No. The timeline for completion of PPIRP is 90 days from the commencement date.
- (C) No. The timeline for completion of PPIRP is 120 days from the commencement date.
- (D) No. The timeline for completion of PPIRP is 180 days from the commencement date.

(2 x 5 = 10 Marks)

Part- B

- 1.6 With reference to inputs given in para (1) (A) on the Prevention of Money Laundering Act, 2002 above, critically examine the following:
- (i) Can the financing bank claim restoration of the pledged gold? **(2 Marks)**
 - (ii) Can the Special Court restore the diamond jewellery to the sister of Mr. 'H'? **(2 Marks)**
- 1.7 With reference to the inputs given in para (2) relating to the SARFAESI Act, 2002 above, analyze and advise whether MNO Limited would succeed in approaching the Debt Recovery Tribunal against the order of the Asset Reconstruction Company? **(3 Marks)**
- 1.8 With reference to the inputs given in para (3) (A) relating to IBC, 2016 above, examine the following:
- (i) Whether the action of the recovery proceedings by the Resolution Professional against the mortgaged properties of the Promoter-Guarantor valid in law? **(2 Marks)**
 - (ii) When does the moratorium period cease to have effect? **(1 Marks)**
 - (iii) What is the legal position regarding disposing off the inventory of finished goods of the Corporate Debtor other than in the ordinary course of business during the effective period of moratorium? **(1 Marks)**
- 1.9 With reference to the inputs given in para 3 (8) above on IBC, 2016, examine the legal position whether RST Limited is eligible for filing an application under Pre-Packaged Insolvency Resolution Process (PPIRP) as enshrined in the IBC, 2016? Will your answer differ, if RST Limited is classified as a Non-Performing Asset (NPA) in the books of the bankers for the last five years? **(4 Marks)**

ANSWER TO CASE STUDY 1

- 1.1 (C)
- 1.2 (C)
- 1.3 (A) and (C)
- 1.4 (D)
- 1.5 (C)

Answer 1.6

- (i) As per section 8(6) of the Prevention of Money Laundering Act, 2002 (PMLA), where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

The section 8(8) of the PMLA provides that where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering.

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

In the given situation, the offence of money laundering has been committed and the pledged gold is involved in money laundering. Further the financing bank does not have legitimate interest and not acted in good faith.

Hence, the financing bank cannot claim restoration of the pledged gold.

- (ii) The section 8(8) of the PMLA, 2002 provides that where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering;

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

In this case, the sister of Mr. 'H' acted in good faith and was not involved in the offence. The acceptance of the diamond jewellery gifted to her by her brother on marriage occasion caused her to suffer loss after it is confiscated to the Central Government.

Hence, the special court may direct the Central Government to restore the diamond jewellery to the sister of Mr. H.

Answer 1.7

As per section 13(4) of the Securitisation and Reconstruction of Financial Assts and Enforcement of Security Act, 2002 (SARFAESI Act, 2002), in case the borrower fails to discharge

his liability in full within the period of 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

- (a) Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured assets;
- (b) Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured assets;
- (c) **Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;**
- (d) **Require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.**

Further, section 17 of the SARFAESI Act, 2002 specifies that any person (including borrower) aggrieved by any of the measures taken by the secured creditor may make an application to the DRT within 45 days from the date on which such measure had been taken.

In the given case, ARC took over the management of the affairs of MNO Ltd. in order to realise its secured assets and the borrower company being aggrieved by its measures, requested the ARC not to appoint any manager or administrator for the said purpose which was rejected and communicated to MNO.

Accordingly, as per above provisions MNO Limited would succeed in approaching the DRT against the order of the Asset Reconstruction Company (ARC).

ALTERNATE ANSWER

As per section 15(1) of the SARFAESI Act, 2002, when the management of business of a borrower is taken over by an asset reconstruction company under clause (a) of section 9 or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit—

- (a) in a case in which the borrower is a company as defined in the Companies Act, to be the directors of that borrower in accordance with the provisions of that Act; or
- (b) in any other case, to be the administrator of the business of the borrower.

In this case, MNO limited would not succeed in approaching the DRT against the order of the Asset Reconstruction Company (ARC). In this case, ARC, as per section 15 needs to appoint the directors for management of the business of the MNO Limited. The company's proposal to

not appoint the same is against the legal / Compliance requirement. So, rejection of the proposal and communication of its decision of rejection of the request to MNO Limited is valid, in terms of fulfilment of requirement/ compliance. This cannot be considered as measures, against which an application may be made to the DRT.

Accordingly, as per above provisions MNO Limited would not succeed in approaching the DRT against the order of the Asset Reconstruction Company (ARC).

Answer 1.8

- (i) As per section 14(3) of the Insolvency and Bankruptcy Code, 2016, the provisions of sub-section (1) [Prohibiting the enforcement of the certain acts] shall not apply to-
 - (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

Thus, the action of recovery proceedings, during insolvency resolution process by the RP against the mortgaged property of the surety, Mr. A (the Promoter- guarantor) can be initiated even if moratorium is granted to corporate debtor. Such action of the RP is valid in law.

- (ii) As per section 14(4) of the Insolvency and Bankruptcy Code, 2016, where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- (iii) As per Regulation 29 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Resolution Professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, not exceeding 10% of the total claims admitted.

Disposing off inventory of finished goods of the corporate debtor to an extent of 15% of the total claims admitted, is exceeding the prescribed limit. Hence, said disposition of property is invalid.

Answer 1.9

As per section 54A (1) of the Insolvency and Bankruptcy Code, 2016(Code), an application for initiating pre-packaged insolvency resolution process may be made in respect of a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

RST Limited is having turnover of ₹ 200 crore and investment in Plant and Machinery of ₹ 35 crore so it falls under the medium enterprise as its turnover is less than ₹ 250 crore and investment in Plant and Machinery is less than ₹ 50 crore.

Hence, RST Limited is eligible for filling an application under Pre-Packaged Insolvency Resolution Process (PPIRP).

If RST Limited is classified as an NPA, for last five years, then RST Limited will not be eligible for filling an application under Pre-Packaged Insolvency Resolution Process (PPIRP) in view of the restrictions as per section 29A of the Code.

CASE STUDY - 2

Kamal and Chintu are friends since their childhood. For business purposes, Kamal went to New York, USA and settled there for the past 9 years. Chintu started a real estate business in India by incorporating a Company called "New Heights Private Limited" (NHPL), with himself and his son Amar as the first directors of the company and subscribers to the Memorandum of Association of the Company.

Kamal was in possession of a plot of land having an area of approximately 7,000 square meters in his native place Bhilwara, Rajasthan which was acquired by him when he was staying in India. The land is situated on the outskirts of the city. With a view to develop a smart city, the Housing Board wanted to acquire this land. Eventually, Kamal sold this land through an agent based in the US for ₹ 30 crore (equivalent to \$ 3,525,000) to the Housing Board. Kamal paid a commission of \$ 80,000 to an agent in USA. The State Government on behalf of the Housing Board, then called out for tenders from various real estate companies for acquiring the land on a long term lease and develop a township on the same.

NHPL entered into agreements with the local suppliers near Bhilwara that all the material and man power requirements relating to any infrastructure projects shall be supplied only to their company and not to any other parties. NHPL's bid for the project was selected as it was the most cost-effective amongst all and was offered the contract to develop the township by taking the land on a long term lease.

One of the real estate companies, that participated in the tender filed a complaint with the Competition Commission of India (CCI) that the aforesaid agreements entered into by NHPL with the local suppliers was anti-competitive in nature, as in view of this type of agreements with the local suppliers, the cost of developing township for NHPL will be much lower in comparison to other builders and as a result of which it could offer the lowest bid amongst all. Had they been in the same position as NHPL was, they could also have offered such a low bid and could have got the contract.

The Competition Commission of India (CCI) after following the procedure prescribed in the Competition Act, 2002, concluded that the agreements entered into by NHPL is anti-competitive in nature and shall be null and void and NHPL shall be responsible to bear the bidding costs.

CCI also ordered that the bidding shall take place again with the participation of NHPL but subject to compliance of certain conditions as stipulated by the CCI.

Again, the bid for the project was awarded to NHPL in the bidding that took place again but this time with no objections against it. Finally, when the contract was offered, Chintu, in order to raise more funds for the Company, converted the constitution of the Company from a Private Limited Company to a Public Limited Company and also proposed an Initial Public Offering (IPO) in such a way that the Promoters stake, post listing, would be 50% of the total equity.

In the meanwhile, Chintu approached Kamal to invest substantially in his company and also to become a director in it and in compliance with the Companies Act, 2013, he requested Kamal to make a deposit of ₹1 lakh prior to his election as a director. On his election as a Director in NHPL at the general meeting of the company the said deposit of ₹1 lakh made by Kamal was refunded to him. He also acquired a 10% stake in NHPL through private placement. Kamal, then made three visits to India in the course of the project as a non-whole time director for the Company's work and was paid remuneration for the same along with reimbursement of the cost of travel and accommodation in accordance with the agreement made with Kamal.

Amar, being a civil engineer, went to USA as business travel by drawing \$ 85,000 to study the modern technologies that can be used in development of the township. Already, during the year he had drawn \$ 115,000 and his father remitted a further \$ 25,000 to him for his maintenance expenses abroad.

Amar made a contract worth \$ 2,100,000 with a consultancy firm in USA on behalf of NHPL that can provide consultancy services for the project of the township and remitted an amount of \$ 1,100,000 on account of NHPL from India as part payment. By the end of the year, Amar returned to India and was having \$ 10,500 left with him as an unspent foreign exchange.

The project of development of township included 2 commercial buildings, 1 residential building, 1 school, and 1 recreation center. The project was to be developed in phases and so phase-wise registration was obtained with the Authority as per the provisions of the RERA, 2016. The brochures and pamphlets of the project was issued and circulated by the promoter, Chintu.

The development of township attracted many a businessmen nearby the location of the project and within a short period of time, 80% of the units were sold and allotted.

One of the allottees, Hemu, required certain modifications in the layout plan of his allotted unit, as per the agreement of sale which was done but even then, he was not satisfied completely with the modifications made and felt that it was not in accordance with the agreement and proposed to claim a refund of the amount paid till date along with interest.

For some of the units allocated in the project, the promoter- Chintu had taken ₹ 6.25 crore by cash from various allottees, which was not disclosed anywhere. Chintu bought a property as a joint owner with his mother Parvati for ₹ 16.25 crore and paid ₹ 10 crore through account payee cheque and ₹ 6.25 crore through cash money which he had obtained from various allottees.

The Initiating Officer issued notice to Chintu and his mother Parvati to show cause as to why the aforementioned property should not be considered as a Benami property. The Initiating

Officer then passed an order provisionally attaching the property with the prior approval of the Approving Authority. On receipt of reference from the Initiating Officer, the Adjudicating Authority issued notice to Parvati to furnish the necessary papers of the agreement within 30 days from the date of this notice.

After taking into account, all the materials furnished, the Adjudicating Authority passed an order holding the property to be a Benami property, the Adjudicating Authority after giving Parvati an opportunity of being heard made an order for confiscating the Benami property.

Answer the following MCQ's:

- 2.1 As per the provisions of the Competition Act, 2002, the agreement entered into by NHPL with the local suppliers near Bhilwara will be termed as:
- (A) Tie-in Arrangement
 - (B) Exclusive Supply Agreement
 - (C) Refusal to Deal
 - (D) Exclusive Distribution Agreement
- 2.2 As per the provisions of the Foreign Exchange Management Act, 1999, the deposit made by Kamal with the company for his nomination as a director and the refund made to him will amount to:
- (A) Current Account Transaction requiring prior approval of RBI
 - (B) Current Account Transaction not requiring prior approval of RBI
 - (C) Permissible Capital Account Transaction
 - (D) Non- Permissible Capital Account Transaction
- 2.3 How much amount of additional remittance can be made to Amar without the prior approval of RBI as per the provisions of the FEMA, 1999?
- (A) \$ 250,000
 - (B) \$ 50,000
 - (C) \$ 25,000
 - (D) Nil
- 2.4 Whether the property held in the name of Parvati will be considered as a benami transaction, if the registry of the property was done by Parvati at a value of ₹11 crore only, as per provisions of the Prohibition of Benami Property Transactions Act (PBPT Act), 1988?
- (A) Yes, a Benami Transaction

- (B) *Not a Benami Transaction*
- (C) *Partially a Benami Transaction*
- (D) *Not Applicable as the provisions of the PBPT Act, is not applicable to this transaction*
- 2.5 *Within what period and how much amount of unspent foreign exchange represented in the form of foreign currency notes, shall be returned by Amar to the authorized dealer as per the provisions of the FEMA, 1999?*
- (A) *\$ 10,000 within 180 days of his return*
- (B) *\$ 8,500 within 180 day of his return*
- (C) *\$ 10,000 within 90 days of his return*
- (D) *\$ 8,500 within 90 days of his return* **(2 x 5 = 10 Marks)**
- 2.6 (A) *What procedure could have been followed by the Competition commission of India on receipt of the complaint from one of the real estate companies to conclude that the agreement entered into by NHPL was anti-competitive in nature as per the provisions of the Competition Act, 2002?* **(3 Marks)**
- (B) *Whether the payment of commission amount to an agent in USA by Kamal and remittance by NHPL for consultancy services to a consultancy firm in USA would require prior approval of RBI as per the provisions of the FEMA 1999?* **(2 Marks)**
- 2.7 (A) *Whether payments made to Kamal on his visit to India for the company's work require any permission of the RBI as per the provisions of the FEMA, 1999?* **(2 Marks)**
- (B) *Whether holding of and selling of the immovable property by Kamal is valid as per the provisions of the FEMA, 1999 and whether Kamal can repatriate the sale proceeds of the immovable property outside India?* **(2 Marks)**
- 2.8 (A) *Whether Hemu can claim a refund of the amount paid for the unit allocated to him as per the provisions of the Real Estate (Regulation & Development) Act (RERA), 2016?* **(3 Marks)**
- (B) *What is the option available with Chintu and Parvati against the confiscating order of the property passed by the Adjudicating Authority and also describe the procedure to be followed by Chintu and Parvati for the same as per the provisions of the PBPT Act, 1988?* **(3 Marks)**

ANSWER TO CASE STUDY 2

- 2.1 (C)
- 2.2 (B)
- 2.3 (C)

2.4 (C)

2.5 (B)

Answer 2.6

(A) As per Section 26 and 27 of the Competition Act, 2002 read with regulation 15 to 21 of the Competition Commission of India (General) regulations, 2009, the procedure that would have been followed by the commission on receipt of complaint, would be as follows:

- (i) **Where Commission is of opinion of existence of prima facie case:** Section 26 provides that on receipt of a reference from the Central Government or a State Government or a Statutory Authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, **it shall have direct the Director-General to cause an investigation to be made into the matter.**

The proviso states that if the subject matter of information received was, in the opinion of the Commission, substantially the same as or had been covered by any previous information received, then the new information might have been clubbed with the previous information.

- (ii) Submission of report: The Director General should have on receipt of direction had submitted a report on his findings within such period as may be specified by the Commission.
- (iii) Forward of copy of report: The Commission then would have forwarded a copy of the report to the parties concerned.
- (iv) In case of recommendation of contravention: The report of the Director General should have recommended that there is a contravention of any of the provisions of this Act, and the Commission might have called for further inquiry into such contravention in accordance with the provisions of this Act.
- (v) Passing of an order: After inquiry, the Commission would have found that the agreement referred to in section 3 or action of an enterprise in a dominant position, was in contravention of section 3 or section 4, as the case may be, and it would have passed an order that the agreement would be null and void as per Section 27 of the Competition Act, 2002 and not to re-enter into such agreement again.

In compliance with the above stated procedure, the Commission on receipt of the Complaint filed by one of the real estate companies with prescribed fee as per regulation 49(1) will pass an order concluding that the agreements entered into by NHPL was anti-competitive in nature.

- (B) As per rule 5 read with Schedule III of FEM (Current Account Transactions) Rules, 2000, every drawal of foreign exchange for transactions included in Schedule III shall be governed as provided therein.

Para 1 of Schedule III provides that individuals can avail of foreign exchange facilities for the purposes mentioned therein within the limit of USD 250,000 only in a financial year. Any additional remittance in excess of the said limit for the following purposes shall require prior approval of the Reserve Bank of India. One such purpose mentioned therein is “Any other current account transaction”.

Para 2 of Schedule III deals with the matter relating to the facilities for persons other than individual. Its para (iii) states that remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India, shall require prior approval of the Reserve Bank of India.

Explanation— the expression “infrastructure” shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated May 3, 2000.

In the given case,

- (1) **Payment of commission amount to agent in USA by Kamal:** It has been given that Kamal is settled in the New York in USA for the past 9 years, so, his residential status would be considered as a “person resident outside India” and the above rules are applicable for an individual who is a “person resident in India” and hence the question of obtaining prior approval of RBI does not arise in case of Kamal for payment of commission.
- (2) **Remittance by NHPL for consultancy services to consultancy firm in USA:** The limit of remittance specified in case of any consultancy services in respect of infrastructure projects is USD 10,000,000 per project and here the remittance made by NHPL is USD 1,100,000 which is below the limit and hence, approval of RBI is not required.

Answer 2.7

- (A) Section 3(b) of the Foreign Exchange Management Act, 1999 (FEMA) provides that save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall make any payment to or for the credit of any person resident outside India in any manner.

The RBI has issued general permission permitting any person resident in India to make payment in Indian rupees in few cases, one of which includes the following:

A company or resident in India may make payment in rupees to its non-whole time director who is resident outside India and is on a visit to India for the company's work and is entitled to payment of sitting fees or commission or remuneration, and travel expenses to and from and within India, in accordance with the provisions contained in the company's Memorandum of Association or Articles of Association or in any agreement entered into it or in any resolution passed by the company in general meeting or by its Board of Directors, provided the requirement of any law, rules, regulations, directions applicable for making such payments are duly complied with.

Hence, there is no requirement to obtain permission from RBI for remuneration paid to Kamal along with the reimbursement of the cost of travel and accommodation.

- (B) Holding and selling of immovable property:** As per the provisions of the Foreign Exchange Management Act, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security, or any immovable property situated in India if such currency, security, or property was acquired, held, or owned by such person when he was resident in India or inherited from a person who was resident in India. [Section 6(5)]

It is given that property was acquired by Kamal when he was staying in India, so it can be understood that his residential status at the time of acquisition of the said property would have been person resident in India and hence, as per section 6(5) as aforesaid, the act of holding the property by Kamal being a person resident outside India, is valid.

As per the Regulation 3(b) & (c) of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, an NRI or an OCI may,

- (i) acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013;
- (ii) transfer any immovable property in India to a person resident in India.

Hence, the act of Kamal of transferring the immovable property to Housing Board is also valid.

Repatriation of the sale proceeds of immovable property: Regulation 8 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 provides that-

- (a) A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.

However, if such a person is an NRI or a PIO [as defined in Foreign Exchange Management (Remittance of Assets) Regulations, 2016] resident outside India, he/she can utilise the remittance facilities available under the Foreign Exchange Management (Remittance of Assets) Regulations, 2016, as amended from time to time;

- (b) In the event of sale of immovable property other than agricultural land/farm house/plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
- (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;
 - (ii) the amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account, or (b) the foreign currency equivalent, as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External account for the acquisition of the property; and
 - (iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

Kamal can repatriate the sale proceeds of the immovable property outside India which he had acquired when he was a person resident in India provided, he satisfies all the above-mentioned conditions.

Answer 2.8

(A) As per 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:

- (a) in **accordance with the terms of the agreement for sale** or, as the case may be, duly completed by the date specified therein; or
- (b) due to **discontinuance of his business** as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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.

Provided that 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.

In the given case, it appears that the promoter is not able to adhere to the requirements of allottee Hemu as per the agreement of sale, and hence as per section 18 as aforesaid, Hemu is entitled to claim a refund of the amount paid by him along with the interest as may be prescribed.

- (B) Remedy available against confiscating order of the property:** As per Section 46 of the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act, 1988) - Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority under Section 26(3), **within a period of forty-five days** from the date of the order.

Section 46(2) provides that the **Appellate Tribunal may entertain any appeal** after the said period of forty-five days, if it is satisfied that the appellant was prevented, by sufficient cause, from filing the appeal in time.

Section 46(3) states that on receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

Thus, Chintu and Parvati can file an appeal with the appellate tribunal as specified above.

Procedure to be followed by Chintu and Parvati, is as follows:

Rule 10 of the Benami Transactions Prohibition Rules, 2016 prescribes the following–

- (1) An appeal to the Appellate Tribunal under section 46 of the PBPT Act, 1988 shall be filed in Form No. 3 annexed to these rules.
- (2) At the time of filing, every appeal shall be accompanied by a fee of ten thousand rupees.
- (3) The appeal shall set forth concisely and under the distinct head the grounds of objection to the order appealed against and such grounds shall be numbered consecutively; and shall specify the address of service at which notice or other processes of the Appellate Tribunal may be served on the appellant and the date on which the order appealed against was served on the appellant.

- (4) Where the appeal is preferred after the expiry of the period of forty-five days referred to in section 46 of the PBPT Act, 1988, it shall be accompanied by a petition, in quadruplicate, duly verified and supported by the documents, if any, relied upon by the appellant, showing cause as to how the appellant had been prevented from preferring the appeal within the period of forty-five days.

CASE STUDY - 3

Unique Rubber Factory Ltd. (URF) is a listed entity. It produces tyres and tubes for all types of vehicles, whether it be the commercial vehicles or light motor vehicles. The Registered Office of the Company is at Nariman Point, Mumbai, whereas the factory is at Nagpur. The tyres of the URF are in great demand covering the States of Maharashtra, Karnataka, Andhra Pradesh, Kerala, Tamil Nadu and Goa. In these areas, the Company's market share is more than 40% of the relevant geographical area. Rest of the market share is shared by small companies in the private sector. URF is not having any group companies.

From the Audited Balance Sheet as at 31st March, 2022 some of the financial data were as under:

(₹ in Crore)

Turnover	5000
Cost of Plant and Machineries	1000
Cost of the Other Assets	200
Accumulated Depreciation on Plant and Machinery and other Assets (up to 31.03.2022)	200
Value of Trademark of URF	160
Value of Patents	165
Value of Goodwill associated with the brand name of URF	175

At the meeting of the Board of Directors of URF held on 25th April, 2022, the Board of Directors discussed to further expand the area of marketing network in the States of Gujarat, Madhya Pradesh, Chhattisgarh and Odisha.

Hari Kishan, the Vice President (Production) appraised the Board that the present capacity of the Company in producing more tyres to cater the needs of these new areas / States is insufficient and suggested to acquire companies operating in those areas. In this regard, Hari Kishan suggested the names of the following three companies for their acquisition:

- i. Yes Tyres Pvt. Ltd. - Gujarat
- ii. Shiv Tyres Pvt. Ltd. - Madhya Pradesh, and
- iii. Kwaliti Tyres Pvt. Ltd. - Odisha

URF offered its proposal to acquire these companies and offered 10% premium over the valuation of assets of these three companies. The URF agreed to keep the existing employees and will offer shares of URF to the existing shareholders of these companies towards the purchase consideration. The promoters of all the three companies agreed for merger.

The figures of Turnover and Value of Assets of all the above three companies for the year ended on 31st March, 2022 were as under:

(₹ in Crore)

Particulars	Yes Tyres Pvt. Ltd.	Shiv Tyres Pvt. Ltd.	Kwality Tyres Pvt. Ltd.	Total
Turnover	900	600	500	2000
Value of Assets	200	150	100	450

On 10th June, 2022 all the three private limited companies and URF passed a Board Resolution, approving the merger of these private limited companies with the URF. Subsequently, the URF submitted the Board Approved Resolution of merger of all the three companies with URF to the Competition Commission of India (CCI) on 30th June, 2022.

The CCI was of the opinion that the combination is likely to have an appreciable adverse effect on competition, but such adverse effect can be eliminated by suitable modification to such combination. The CCI, advised to do certain modifications to the parties to the combination and issued an order on 31st August, 2022.

The parties to the combination accepted the modifications proposed by the CCI and resubmitted the proposal on 20th September, 2022. The CCI on 7th October, 2022 approved the combination.

Hari Kishan's friend Ram Mohan is in the business of Real Estate. Ram Mohan incorporated a private limited company in the name of RM Buildcon Pvt. Ltd. (RMB) in the year 2010. RMB had constructed a residential complex in CBD Belapur area, named as "RMB Estate", bookings of which were made in January 2012 and construction of the flats were started thereafter in August, 2012. In the RMB Estate, there were 8 wings, each having 10 floors. All the flats were booked and the possession was scheduled to be handed over in December 2015. The promoter obtained the Completion Certificate in February 2016.

However, the possession was delayed and the actual possession started in a phased manner to the allottees only from December, 2016 onwards. Some of the allottees complained with the Real Estate Regulatory Authority, Mumbai (RERA Authority) that possession of the flats are being delayed by the promoter and the project has not been registered with the RERA Authority.

However, Ram Mohan (the Promoter) believed that since RMB has already obtained the completion certificate of 'RMB Estate' even before the RERA Act, 2016 came into force, only registration of 'RMB Estate' is required now and that RMB will not be liable for any penalty for non-registration of the project before the commencement of the project in August, 2012.

In April 2017, RMB undertook to construct a residential project in Panvel, Navi Mumbai and obtained necessary permission from the local authority for use of the land for residential purposes. The salient features of this project were as under:

Name of the Real Estate Project: "RMB Heights"

Number of Wings: 10 Wings, which will be constructed in two Phases.

Phase I: Consisting of Wing A to Wing E.

Phase II: Consisting of Wing F to Wing J.

Number of Flats in each Wings: 20 Flats (Total 200 flats). Cost of each Flat: Rupees 70 lakh.

Expected date of possession: April 2020.

The Promoter got the registration of Phase I of RMB Heights with the RERA Authority. In Phase I there were 100 flats to be constructed for which advertisements were made by the promoter in leading newspapers of Mumbai and in prominent cities/ places of Maharashtra. But on account of good reputation of the builder in the market, the promoter received more enquiries / bookings from the prospective buyers. As a result, the promoter was forced to accept the bookings for all the 200 flats of Phase I and II.

There was no change in the construction plan, layout, carpet area, price etc., between Phase I and II. Everything was similar. So, the promoter was in this belief that since everything is similar to Phase I, there is no need to have separate registration for Phase II.

Ram Mohan approached Hari Kishan, for booking of the flats in RMB Heights for the URF employees and told that one Wing (Wing E) shall be exclusively earmarked for the employees of the URF and has offered a discount of 5% from the cost of a flat to the URF employees. The other terms and conditions would remain same as of other flats.

All the applications earmarked for the public (i.e., Wing - A to Wing - D, consisting of 80 flats) and Wing - E for URF employees (consisting of 20 flats) were booked. The Promoter received the same amount as booking amount from all the allottees, without first entering into a written agreement for sale. After receiving the booking amount, the sale agreement of the flats were prepared after a month's time and were executed with the respective allottees and registered with the Office of Registrar, Mumbai.

The possession of flats as promised by the Promoter was to be given in April 2020. However, due to world-wide spread of COVID-19, the speed of the project went slow and the builder gave the new expected date of possession in December 2020.

The Promoter obtained the occupancy certificate from the competent Authority and thereafter gave possession of the flats in RMB Heights in the month of December, 2020. The Promoter enabled the formation of a society of the allottees of the RMB Heights and also executed a registered conveyance deed of the flats in favour of the allottees.

Harshita, one of the allottee in the 'RMB Heights' did not turn up for taking possession of her flat in December 2020 as she was in Paris on her office work. She informed the Promoter that

since she is out of India and will come back only in the first week of February 2021, but the Promoter insisted to take the possession in time either personally or through an authorised person holding a Power of Attorney to take possession.

Somewhere in the month of January, 2022 some of the flat owners of Wing - A, observed some structural defects. Some flat owners also doubted on the title deeds of the land on which the project is developed/ constructed. They informed the same to the Officials of the Society. The Secretary of the Society advised them to lodge complaint with the Promoter. The Promoter assured them that he will look into the matter, but he never turned up to RMB Heights to see the defects nor called any engineer/ workmen to get it repaired.

Part-A

On the basis of the above inputs given in the case study, you are required to answer the following MCQs:

- 3.1 In how many days the URF shall be required to give notice to the Competition Commission of India, disclosing the details of the proposal relating to the prospective merger of three companies with the URF:
- (A) Within 7 days of the approval of the proposal relating to the merger by the Board of Directors of URF
 - (B) Within 15 days of the approval of proposal relating to the merger by the Board of Directors of URF
 - (C) Within 30 days of the approval of proposal relating to the merger by the Board of Directors of URF
 - (D) Within 60 days of the approval of proposal relating to the merger by the Board of Directors of URF.
- 3.2 On which day, the combination of URF and the prospective merger of all the three companies shall come into effect:
- (A) After the elapse of 210 days from the day (30th June, 2022) on which the URF has given the notice to the CCI.
 - (B) On 31st August, 2022 when the CCI passed an order for modification of the combination.
 - (C) On 20th September, 2022 when the modified proposal of combination was filed by the URF.
 - (D) On 7th October, 2022 when the CCI approved the modified proposal of combination.

- 3.3 Any acquisition between the URF and the three private limited companies, whose shares are being acquired, should jointly have, in India:
- (A) The assets of the value of more than rupees 2,000 crore or turnover more than rupees 6,000 crore.
 - (B) The assets of the value of more than rupees 8,000 crore or turnover more than rupees 24,000 crore.
 - (C) The assets of the value of more than rupees 2,000 crore or turnover more than rupees 8,000 crore.
 - (D) The assets of the value of more than rupees 6,000 crore or turnover more than rupees 24,000 crore.
- 3.4 The Promoter of the RMB Estate did not get the project registered with the RERA Authority. For this non-compliance, the Promoter shall be:
- (A) Liable for a penalty which may extend up to 5% of the cost of RMB Estate.
 - (B) Liable to a penalty which may extend up to 10% of the cost of the RMB Estate.
 - (C) The Promoter shall be punishable with imprisonment for a term which may extend up to three years or with fine.
 - (D) The Promoter is not liable for any penalty.
- 3.5 The Promoter shall not accept more than----- towards the booking amount of the flats in RMB Heights, from the employees of URF, without first entering into a written agreement for sale:
- (A) ₹ 6,50,000
 - (B) ₹ 6,56,000
 - (C) ₹ 6,65,000
 - (D) ₹ 7,00,000
- (2 x 5 = 10 Marks)**

Part-B**Answer the following questions:**

- 3.6 In what manner the 'Value of Assets' for 'Combination' is determined as per the Competition Act, 2002? **(1 Marks)**
- 3.7 What shall be the 'Value of Assets' of URF for calculation of 'Combination', as on 31st March, 2022 under the Competition Act, 2002? **(3 Marks)**

- 3.8 *The possession of the flats in RMB Heights, which was scheduled to be given in April, 2020 was extended to December, 2020. In the light of the provisions of the RERA, 2016, state whether RMB can extend the date of possession?* **(2 Marks)**
- 3.9 *What are the rights of the allottees of RMB Heights:*
- (i) *When some structural defects were brought to the notice of the Promoter?*
 - (ii) *If any loss is caused due to defective title of the land on which the RMB Heights project is developed/ constructed?*
 - (iii) *Examine whether the flat owners are entitled to get the defect rectified from the Promoters without any charges?* **(5 Marks)**
- 3.10 *Harshita, one of the allottee in the RMB Heights, did not take possession of the flat in December, 2020. What is the timeline, within which the allottee shall take the possession of the flat after obtaining of the occupancy certificate by the Promoter?* **(1 Marks)**
- 3.11 *The construction plan of Phase I was much similar to the construction Plan of Phase II of RMB Heights. Whether registration with RERA Authority is mandatory for Phase II plan and what are its legal consequences for non-registration?* **(3 Marks)**

ANSWER TO CASE STUDY 3

3.1 (A)

3.2 (D)

3.3 (A)

3.4 (D)

3.5 (C)

Answer 3.6

As per section 5 of the Competition Act, 2002, the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

Answer 3.7

As per section 5 of the Competition Act, 2002, the value of assets shall be determined as follows for calculation of combination, as on 31st March, 2022:

Particulars	Amount (₹ In crore)
Cost of Plant and Machineries	1000
Cost of the Other Assets	200
Less: Accumulated Depreciation on Plant and Machinery and other Assets	(200)
Value of Trade Mark of 'URF'	160
Value of Patents	165
Value of Goodwill associated with the brand name of URF	175
Total value of Assets of URF	1500

Answer 3.8

As per section 6 of the Real Estate (Regulation and Development) Act, 2016(RERA), the registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority:

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation- For the purpose of this section, the expression "force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

The calamity has not been defined in the RERA however, since the Covid- 19 spread worldwide may be termed as a calamity. Based on above if the RERA authority on an application from promoter grant extension, RMB can extend the date of possession.

Answer 3.9

As per the provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA, 2016), following shall be the answers w.r.t. the rights of the allottees of RMB Heights:

- (i) **As per section 14(3) of the RERA, 2016**, 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.
- (ii) As per section 18 of the RERA, 2016, the promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this sub-section shall not be barred by limitation provided under any law for the time being in force.

Thus, the allottees are entitled to compensation if loss is caused due to defective title of the land on which the RMB Heights project is developed/ constructed.

- (iii) **As per section 14(3) of the RERA, 2016**, 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 the flat owners took possession in December, 2020 and the defects were identified and intimated in January 2022 i.e. within 5 years hence, the flat owners are entitled to get the defects rectified within 30 days from the promoters without any charges.

Answer 3.10

Duty to take physical possession: As per section 19 of the Real Estate (Regulation and Development) 2016, every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of **two months** of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

In view of above, Harshita can take physical possession of the flat within 2 months of the occupancy certificate.

Answer 3.11

As per explanation to section 3 of the Real estate (Regulation and Development) Act, 2016 (RERA, 2016), where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

Exemption from registration is applicable in the following cases:

- (i) Projects being developed on land less than 500 square meters
- (ii) Number of apartments does not exceed 8 (in all phases)

In the given case study, since the number of apartments is more than 8 and every phase requires separate registration, **hence registration was mandatory for Phase II also.**

The following are the **legal consequences for non- registration** as per Section 59 of the RERA, 2016:

- (1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to **ten per cent.** of the estimated cost of the real estate project as determined by the Authority.
- (2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with **imprisonment** for a term which may extend up to **three years** or with fine which may extend up to a **further ten per cent.** of the estimated cost of the real estate project, or with both.

If the promoters of RMB Heights do not take registration of Phase II, they are liable to the consequences as mentioned above.

CASE STUDY - 4

Sanjay Trading Private Ltd. (STPL) is engaged in the business of whole sale distributorship of Rice and Grains, in Grain Mandi, Kota. In order to increase the business, the company requires some additional working capital finance. The company approached its banker- Star Bank of Kota (the Bank) for increase of the Cash Credit Limits from the existing ₹ 2.35 crore to ₹ 3.90 crore and offered the Bank, three immovable properties (which are in the name of Sanjay, the Managing Director and Guarantor of the Company) which were purchased through a registered sale deed dated 22.11.2019) as mortgage for securing the said cash credit limit. Star Bank of Kota after securing the equitable mortgage of the property, sanctioned a cash credit limit of ₹ 3.90 crore to the Company.

The Star Bank of Kota also got the registration of the mortgage of the properties with the "Central Registry of Securitization Asset Reconstruction and Security Interest of India" (CERSAI) under the provisions of the SARFAESI Act, 2002.

In view of wafer thin margins and tough competition in the market, the business of the Company was adversely affected and STPL had to face the brunt of liquidity crisis and encountered default in repayments/servicing of cash credit and subsequently, the bank account was classified as NPA in the books of Star Bank of Kota. A recall notice was sent to the Company but no response was given. The bank issued a notice under Section 13(2) of the SARFAESI, Act, 2002 to the

Company mentioning therein that the Bank shall take possession of the secured assets and will also take over the management of the Company.

Under the circumstances, Sanjay wanted to take recourse under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) though he is under the apprehension that the provisions of the IBC, 2016 may not be applicable in his case.

Nevertheless, after receipt of the notice, the Company applied for the initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 10 of the Insolvency and Bankruptcy Code (IBC), 2016. The CIRP application was admitted by the Adjudicating Authority, moratorium was declared and an Interim Resolution Professional (IRP) was appointed.

The IRP collated the claims from the creditors. Star Bank of Kota submitted its claim as the financial creditor. Apart from Star Bank of Kota, some other operational creditors also lodged the claim. The Committee of Creditors was constituted in which there was a single financial creditor i.e. Star Bank of Kota.

Meanwhile the notice period under Section 13(2) of the SARFAESI Act, 2002 had expired and Star Bank of Kota started to take possession of the secured assets which were mortgaged by Sanjay in his capacity as a personal guarantor.

Sanjay vehemently objected to this action of the bank in view of the fact that since the Company is under moratorium all the legal proceedings against the Company are put on hold by the Adjudicating Authority and therefore, the decision of the Bank to take possession of the mortgaged properties is invalid. He filed a case with the Honorable National Company Law Tribunal (NCLT) pleading that since the moratorium is under way, the enforcement of security interest under the SARFAESI Act, 2002 against the Company be stopped altogether.

Meanwhile, the Enforcement Directorate (ED), on the basis of some solid information that the Company on the guise of dealing in Rice and Grains, is dealing with the prohibited drugs which is an offence, the ED along with its team, in the early hours of morning, raided the office of the Company and at the residence of Sanjay and found huge quantity of poppy straw at the office of the Company as well as at in the godown of Sanjay. The ED ordered a provisional attachment of the office premises and the residence of Sanjay. Both these properties were already under mortgage with Star Bank of Kota.

Answer the following MCQs:

- 4.1 Sanjay claims that the provisions of the Insolvency and Bankruptcy Code (IBC), 2016 are not applicable in his case. Which of the following statement is correct?
- (A) The claim of Sanjay is correct as the provisions of the IBC, 2016 is not applicable to a Private Limited Company.
 - (B) The claim of Sanjay is correct as the provisions of the IBC, 2016 is applicable only on a Public Limited Company.

- (C) *The claim of Sanjay is correct as the provisions of the IBC, 2016 is not applicable on the personal guarantor to Corporate Debtors.*
- (D) *The claim of Sanjay is incorrect as the as the provisions of the IBC, 2016 is applicable to any company, limited liability partnership and personal guarantor to Corporate Debtor.*
- 4.2 *Who is the Adjudicating Authority in the case of Sanjay being the personal guarantor as per provisions of the IBC, 2016:*
- (A) *The National Company Law Tribunal*
- (B) *The Debt Recovery Tribunal*
- (C) *The District Court*
- (D) *The High Court*
- 4.3 *Keeping of Poppy Straw by Sanjay is an offence under which Act:*
- (A) *The Indian Penal Code, 1860*
- (B) *The Narcotic Drugs and Psychotropic Substances Act, 1985*
- (C) *The Unlawful Activities (Prevention) Act, 1967*
- (D) *The Protection of Plant Varieties arid Farmers' Rights Act, 2001*
- 4.4 *Who among the following in the case study shall not be entitled to exercise any right of enforcement of securities by registration with CERSAI under the SARFAESI Act, 2002:*
- (A) *Star Bank of Kota, being Secured Creditors.*
- (B) *Operational Creditors being Unsecured Creditors.*
- (C) *Both Star Bank of Kota and Unsecured Operational Creditors.*
- (D) *Both Star Bank of Kota and the Operational Creditors.*
- 4.5 *Which among the following Act, overrides the other laws based on the facts given in the case study:*
- (A) *The Insolvency and Bankruptcy Code, 2016*
- (B) *The Prevention of Money Laundering Act, 2002*
- (C) *The Securitization and Reconstruction of Financial Assets Enforcement of Security Interest Act, 2002,*
- (D) *The Recovery of Debts and Bankruptcy Act, 1993*

(2 x 5 = 10 Marks)

4.6 *After the expiry of the notice issued under Section 13(2) by Star Bank of Kota, how it may proceed to take the possession of the security interest under the SARFAESI Act, 2002?*

(8 Marks)

4.7 *Whether moratorium declared by the Adjudicating Authority is also applicable on Sanjay, the personal guarantor? Examine the statement in the light of the provisions contained in the IBC, 2016.*

(7 Marks)

ANSWER TO CASE STUDY 4

4.1 (D)

4.2 (A)

4.3 (B)

4.4 (B)

4.5 (B)

Answer 4.6

Star Bank of Kota after ensuring the compliance of section 13(3) and communication of non-acceptance of objections within 15 days of its receipt to Sanjay as per section 13(3A) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002), may proceed to take possession of the security assets by following the process as mentioned in section 14 of the SARFAESI Act, 2002.

Section 14 of the SARFAESI Act deals with this matter. It reads as under:

(1) Where the **possession of any secured assets is required to be taken by the secured creditor** or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the **secured creditor may, for the purpose of taking possession or control of any such secured assets, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate** within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or as the case may be, the **District Magistrate shall**, on such request being made to him—

- (a) **take possession** of such asset and documents relating thereto; and
- (b) forward such asset and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—

- (i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;
- (ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;
- (iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;
- (iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;
- (v) Consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;
- (vi) affirming that the period of sixty days' notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;
- (vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower;
- (viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;
- (ix) that the provisions of this Act and the rules made thereunder had been complied with;

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of 30 days from the date of application:

Provided also that if **no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of 30 days** for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period **but not exceeding in aggregate 60 days.**

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him:

- (i) to take possession of such assets and documents relating thereto; and
- (ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

Thus, Chief Metropolitan Magistrate or District Magistrate will assist Star Bank of Kota (secured creditor) in taking possession of secured asset.

Answer 4.7

According to **Section 5(22) of the Insolvency and Bankruptcy Code, 2016 (IBC)**, “**personal guarantor**” means an individual who is the surety in a contract of guarantee to a corporate debtor.

Section 13(a) of the IBC states that the Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order declare a moratorium for the purposes referred to in section 14.

Section 14(1) of the IBC states that on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

- (a) the institution of suits or continuation of pending suits or proceedings **against the corporate debtor** including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

As per section 14(3) of the Insolvency and Bankruptcy Code, 2016, the provisions of sub-section (1) [Prohibiting the enforcement of the certain acts] shall not apply to-

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

Hence, moratorium declared by the Adjudicating Authority is not applicable on Sanjay (Personal Guarantor)

CASE STUDY - 5

Ramesh has 3 sons, Mahesh, Naresh, and Suresh. The eldest son, Mahesh, runs a Rice Mill taken over from his father Ramesh, as a family business. Suresh, the third son of Ramesh, always feels ignored by his family and looking for some fast easy money, joins hands with Himesh, a real estate agent, who promises to pay Suresh, a commission in cash, if he helps Himesh to buy 45 acres of land and hold the land in his name on behalf of one of his customers, Sonu, in good trust and in good faith.

Suresh agrees and a purchase agreement for 45 Acres of land was registered in the name of Suresh. Subsequently, Suresh entered into several similar agreements in his name on behalf of others. In due course of time, Suresh also formed a company, called Ramesh Suresh Private Limited (RSPL), with the objects of running a hotel business, but the source of funding for the business was through secret drug peddling / dealings. RSPL was involved in the following activities:

- (A) *RSPL accepted illegal monies by cash as legitimate business transactions supported with fake income and receipts.*
- (B) *The monies were then deposited into the bank accounts of RSPL as clean money.*
- (C) *Suresh also kept fraudulent records, which did not demonstrate the current state of affairs of his business.*

- (D) Monies in the bank accounts of RSPL were also often transferred as legitimate business transactions, to the bank accounts of GG Private Limited (GGPL), which is also in a similar business like RSPL. Original source of money was, thus, disguised.
- (E) RSPL also mobilized funds from various investors but were never utilized for the purpose for which they were collected.
- (F) Suresh also created a complex structure of group companies, subsidiaries, and associate companies, which were mainly paper /shell companies.
- (G) RSPL also took loans from various banks and financial institutions. The funds were diverted and transferred to bank accounts of group companies, from where they were systematically siphoned off and were used for the purchase of various properties in India and abroad.

Suresh led a lavish lifestyle. He also utilized the illegal cash for lavish stays in various hotels and entertained himself in night clubs in India and abroad. Suresh also held some properties in the name of his wife, Rama, which was bought from his known legal sources i.e. from his share of income from the Rice Mill.

Kamal, a friend of Naresh, is the Company Secretary of a listed public limited company, called KKC Limited. Kamal gave a loan of ₹7 lakh to Naresh, who in turn, gave the said amount to his other friend, Manu, for investment in the shares of KKC Limited. Manu traded in shares of KKC Limited on behalf of Kamal. Kamal also ensured that some money is passed on to various legitimate companies to buy the shares of KKC Limited, in order to inflate the price of the shares. The intention was to show a higher valuation of shares before proposing to the investors.

Ketan, is the brother-in-law of Mahesh, who is employed in UAE and is a non- resident Indian. Ketan purchased some properties in Mumbai in the name of his wife for ₹91 lakh. He paid ₹61 lakh through his NRE Account, ₹3 lakh through direct transfer from his salary account in UAE to the seller's account as advance through normal banking channels, complying with all the procedural requirements, but balance ₹27 lakh payment was made through some unknown sources.

Ketan also invested in equity shares of various listed companies in India in the name of his wife Jaya, who is a resident in India and himself, as joint holders, from an account that is not disclosed to tax authorities in India. Ketan also purchased a flat in Mumbai in the name of Jaya and himself, as joint holders, from his NRE Account.

Mahesh has a married daughter, Tina, who is a UK resident. Mahesh invested ₹1.80 crore in a bank fixed deposit in the name of Tina, without her knowledge. Later, during the course of inquiries by tax officials, Tina denied ownership of the said bank fixed deposit made in her name.

The Enforcement Directorate (ED) conducted raid operations against Suresh and his associates after his office obtained some inputs on the purported dubious financial transactions. ED seized incriminating documents, emails, and whatsapp chats during the raid.

Answer the following MCQs:

- 5.1 As per the provisions of the Prohibition of Benami Property Transactions Act (PBPT Act), 1988, the purchase of properties by Ketan in the name of his wife in Mumbai for ₹91 lakh:
- (A) Can be considered as a valid transaction for ₹91 lakh.
 - (B) Can be considered as a valid transaction to the extent of ₹61 lakhs only.
 - (C) Can be considered as a Benami transaction under the relevant law to an extent of ₹91 lakh.
 - (D) Can be considered as Benami transaction under the relevant law to an extent of ₹27 lakh.
- 5.2 Which one of the following transaction if undertaken by Suresh can be considered valid and lawful as per the provisions of the PBPT Act, 1988?
- (A) Transaction in respect of a property where the person providing the consideration to Suresh is not traceable.
 - (B) An arrangement by Suresh in respect of a property made in a fictitious name.
 - (C) Property held by Suresh in the name of his spouse and consideration paid out of known legal sources.
 - (D) A transaction by Suresh in respect of a property where the owner is unaware of or denies knowledge of the ownership.
- 5.3 As per the provisions of the Prevention of Money Laundering Act (PMLA), 2002, share trading by Manu on behalf of Kamal:
- (A) Is a valid transaction, since he is not at all connected with KKC Limited.
 - (B) Can be considered as an unlawful transaction as trading is indirectly done in the stock market by Kamal, the Company Secretary, who has insider price-sensitive information.
 - (C) Cannot be considered as an unlawful or an invalid transaction as per relevant provisions.
 - (D) Is a valid transaction, if Naresh does share trading on behalf of Kamal, out of the loan of ₹7 lakh given by Kamal.
- 5.4 RSPL also took loans from various banks and financial institutions. The funds were diverted and transferred to bank accounts of group companies, from where they were systematically siphoned off and were used for the purchase of various properties in India and abroad. RSPL claimed such proceeds of crime to be untainted property. Which one among the following statements is correct as per the provisions of the PMLA, 2002?
- (A) Such offences are non-cognizable.
 - (B) Such offences are always bailable.

- (C) Such offences are cognizable and always non-bailable.
- (D) Such offences are cognizable and non-bailable but a person can be bailed subject to certain conditions.
- 5.5 Monies in the bank accounts of RSPL were also often transferred as legitimate business transactions, to the bank accounts of GGPL, which is also in a similar business like RSPL. In respect of the transactions done by RSPL, the crime money injected into the formal financial system is moved or spread over various transactions in different accounts. This step, under the PMLA, 2002 is referred to as:
- (A) Smurfing
- (B) Integration
- (C) Layering
- (D) Placement **(2 x 5 = 10 Marks)**
- 5.6 Critically analyze the statement "the provisions of the Act need not necessarily apply only to persons, who try to hide their properties, but may also sometimes apply to genuine properties acquired out of disclosed funds". Also, cite the relevant incidence/s in the aforesaid case and the name of the relevant applicable Act. **(5 Marks)**
- 5.7 Suresh formed a company, RSPL, primarily in the hotel business, but the source of funding was secret drug peddling/dealings. Answer the following as per the provisions of the PMLA, 2002.
- (i) Is secret drug peddling/dealings and then disguising the original source of money for business, a predicate offence? Is there any difference between a Scheduled Offence and a Predicate Offence?
- (ii) Who investigates predicate offences?
- (iii) What are the possible actions that can be taken against Suresh or RSPL or other concerned persons in the above case, for the alleged offences? **(5 Marks)**
- 5.8 The Enforcement Directorate (ED) conducted raid operations against Suresh and his associates after it obtained some inputs on the purported dubious financial transactions. Answer the following as per the provisions of the PMLA, 2002.
- (i) What are the rights of Suresh and his associates, being searched during the raid operations?
- (ii) What are the rights of Suresh in case of his arrest? **(5 Marks)**

ANSWER TO CASE STUDY 5

- 5.1 (D)
- 5.2 (C)
- 5.3 (B)

5.4 (D)

5.5 (C)

Answer 5.6

Prohibition of the Benami Property Transactions Act, 1988 (PBPT Act) is the applicable Act here.

The general belief is that the provisions of the PBPT Act apply only to persons, trying to hide their properties and not to genuine properties acquired out of disclosed funds. But that is not true. Even a property acquired using disclosed funds in a genuine transaction may sometimes be treated as Benami.

“Benami Property” under Section 2(8) means any property, which is the subject matter of a Benami transaction and also includes the proceeds from such property.

Benami Property means property without a name. Here the person who pays for the property does not buy it under his own name. The person who finances the deal is the real owner of the property.

Section 2(10) defines the meaning of benamidar, which means a person or a fictitious person, as the case may be, in whose name the property is transferred or held and includes a person who lends his name.

As per the provisions of Section 2(9) of the Act-

Benami transaction means-

(A) A transaction or arrangement

- (a) where a property is transferred to, or held by, a person, and the consideration for such property has been provided, or paid by, another person; and
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person, who has provided or paid the consideration,

except when the property is held by-

- (i) a Karta, or a member of a HUF, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the HUF.
- (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
- (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
- (iv) any person in the name of his brother or sister or lineal ascendant or descendant,

where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint- owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

- (B) A transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
- (C) A transaction or an arrangement in respect of property where the owner of the property is not aware of, or, denies knowledge of such ownership;
- (D) A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.

Explanation: For the removal of doubts, it is hereby declared that *benami* transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882, if under any law for the time being in force:

- (i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;
- (ii) stamp duty on such transaction or arrangement has been paid; and
- (iii) the contract has been registered.

Any transaction where possession of any immovable property is taken as a part performance of a contract is not a Benami transaction if the contract is registered and consideration, as well as stamp duty, has been paid.

The property would include assets of any kind, whether movable or immovable, tangible or intangible and includes rights or interest as well as proceeds from the property.

In the above case study, in one of the cases, Mahesh invested ₹1.80 Crore in a bank fixed deposit in the name of his married daughter, Tina, who is a UK Resident, without her knowledge. Later during the course of inquiries by Tax officials, Tina denied ownership of the said bank fixed deposit. Here, the transaction is Benami, in terms of section 2(9)(C) of the PBPT Act, though the FD is generated using disclosed funds in a genuine transaction.

Answer 5.7

- (i) Money Laundering is not an independent crime in itself. It depends upon another crime, which is known as the “Predicate Offence”. **Every Scheduled Offence is a Predicate Offence.**

Offences under Narcotic Drugs and Psychotropic Substances is a Scheduled Offence and as such a Predicate Offence too. As such secret drug dealings and then disguising the original source of money by Rajesh and JJPL is a Predicate offence.

In terms of Section 2(1)(y) of the Prevention of Money Laundering Act, 2002 (PMLA), The Scheduled Offence 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 commission of any offence, as specified in the Schedule of the PMLA will attract the provisions of the PMLA.

The Schedule Office is also called Predicate Offence and the occurrence of the same is a pre-requisite for initiating an investigation into the offence of money laundering.

- (ii) Predicate offences are investigated by the agencies such as Police, Customs, SEBI, NCB, CBI, etc. under their respective Acts.
- (iii) Following actions can be taken against the persons involved in Money Laundering:
 - (a) **Attachment of property** under Section 5 of the PMLA, seizure/ freezing of property, and records under Section 17 of the PMLA or Section 18 of the PMLA. The property also includes property of any kind used in the commission of an offence under the PMLA or any of the scheduled offences.
 - (b) Persons found guilty of an offence of Money Laundering are **punishable with imprisonment** for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4 of the PMLA].
 - (c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.
 - (d) As per Section 19(1) of the PMLA, the Director may by passing an order, **arrest** such persons and shall inform them of the grounds for such arrest.

These are the possible actions that can be taken against Suresh, RSPL, or other concerned persons in the above case for their offences.

Answer 5.8

- (i) The following are the **rights of Suresh and his associates** under section 18 of the Prevention of Money Laundering Act, 2002 (PMLA), being searched during the raid operations;
 - (a) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate. [Section 18(3) of the PMLA]

- (b) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section. [Section 18(4) of the PMLA]
- (c) The Gazetted Officer or the Magistrate before whom any such person is brought shall if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made. [Section 18(5) of the PMLA]
- (d) Search shall be made in the presence of two or more persons. [(Section 18(6) of the PMLA]
- (e) No female shall be searched by anyone except a female. [Section 19(8) of the PMLA]
- (ii) The following are the **rights of Suresh in case of his arrest** under section 19 of the Prevention of Money Laundering Act, 2002 (PMLA):
 - (a) The Authorized Officer making an arrest shall, as soon as may be, inform the arrestee of the grounds of such arrest. [Section 19(1) of the PMLA]
 - (b) He shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction. **Provided that** the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the special court or magistrate's court. [Section 19(3) of the PMLA]