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

PAPER-6D – ECONOMIC LAWS

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

CASE STUDY 1

AR Private Limited (ARPL) is one of the leading real estate companies in Vishakhapatnam and has built over 20 multi storey apartments in Vizag and adjoining areas. They have a strong and professional management team and have built their reputation of delivering the projects on time. ARPL was run by two brothers, Mr. Sesha and Mr. Easwar, who were the directors of the Company. The Government of India had established a new passport office in Vizag near the airport and therefore, the area became very prominent and the demand for housing increased. Therefore, ARPL wanted to start construction of 40 apartment(s) exclusive called "Seaview Altius" in a 3 acre plot very close to the passport office by 1st June 2017 and the project was expected to be completed in 24 months.

Mr. Srinivas Manohar, a senior officer in the Indian Navy was posted to work out of the naval base in Vizag. Since his posting is expected to be for a long term, Mr. Srinivas consulted with his spouse, Ms. Kruthi, who was a Chartered Accountant, and entered into an agreement with ARPL to purchase a 3BHK apartment for an amount of ₹ 109.94 lakhs or say ₹ 110 Lakhs (for a 1527 square- feet of carpet area @ ₹ 7200 per square feet), The carpet area includes the internal partition walls but did not include the open terrace area for exclusive use of the owner and open car parking facility to be charged separately. ARPL requested Mr. Srinivas to make an advance payment of ₹ 15 lakhs for proceeding with the booking and registration. Ms. Kruthi felt that this was exorbitant, however ARPL did not agree for reducing the advance and therefore they made the payment.

A few months after booking the apartment, Mr. Srinivas got a notice from ARPL that due to unforeseen circumstances they were not in a position to complete the project and therefore, needed his consent for transferring of ARPL's rights and obligations to another reputed real estate developer, GCH Private Limited ("GCHPL"). In case he does not agree, then he can get his money refunded. Mr. Srinivas noted that around 70% of the allottees had accepted but 30% of the allottees have contested that the Promoters have not fulfilled its obligations for transfer of project to the third party and these 30% of the allottees have threatened to take legal action against ARPL. Mr. Srinivas further noted that the authority had given its written approval for the transfer of the project under Real Estate (Regulation and Development) Act, 2016 (for short "the RERA"). Mr. Srinivas was also informed that GCHPL will rectify any structural damage for a period of 4 years from the date of handing over. GCHPL also leased one of the 3BHK apartments to Mr. Srinivas (and to many other allottees) for a period of 99 years by paying 90% of the sale price along with stamp duty and registration charges and a rent of ₹ 1000 per month thereafter.

Over the last 2 years, ARPL was constructing a large commercial complex in the suburbs of Vizag and invested significant amounts on the project. For this purpose, ARPL had taken secured loan of ₹ 200 crores from Addis Bank and ₹ 50 crores from Ababa Bank. In addition, Mr. Sesha, a director in ARPL had given an unsecured loan of ₹ 10 crores to ARPL. Due to certain structural issues in the construction, ARPL could not get the approval from the regulatory department for the building and therefore, incurred a huge loss on the project and could not repay the loans taken as well as pay its vendors and workmen.

The ARPL construction workers trade union, a registered trade union under the Trade Unions Act, in which all the workmen of ARPL were members, filed an application under Insolvency and Bankruptcy Code, 2016 (in short "IBC 2016") on behalf of all the workmen for non-payment of salary to the workmen for the last 6 months amounting to ₹ 15 crores. This application was however rejected by the adjudicating authority since the trade union is not an "operational creditor" or a "person" as defined under IBC, 2016. Further, no services were rendered by the trade union to ARPL to claim any dues which can be termed as debt under IBC, 2016. In the meantime, Addis Bank moved an application under Section 7 of IBC, 2016 which was admitted and an Interim Resolution Professional (in short "IRP"), who subsequently became the Resolution Professional (in short "RP") was appointed. The Committee of Creditors (comprising of Addis Bank and Ababa Bank) was formed and a resolution plan was submitted by the Resolution Professional. Both the directors of ARPL contended that they were not invited for the meeting of the Committee of Creditors and the notice for the meeting and the draft resolution plans were not shared with them by the Resolution Professional which is not in accordance with IBC, 2016, reference was drawn to the judgement of Hon'ble Supreme Court of India in Civil Appeal 8430 of 2018 as was held in the matter of Mr. Vijay Kumar Jain. Further, Mr. Sesha contended that he should also be part of the Committee of Creditors since he is also a financial creditor for ARPL.

Answer the following questions:

1.1 What is the maximum amount of booking advance that ARPL can collect from Mr. Srinivas under the Real Estate (Regulation and Development) Act 2016?

- (A) ₹ 11 lakhs;
- (B) ₹ 15 lakhs;
- (C) Based on the negotiation between the allottees and builder;
- (D) ₹ 12.50 lakhs.

(2 Marks)

1.2 What should ARPL do to ensure they are able to collect amounts from allottees for open car parking facilities under the Real Estate (Regulation and Development) Act, 2016?

- (A) Ensure that the same is separately mentioned in the agreement;

- (B) *Prior approval is obtained from RERA as part of the registration of the property;*
- (C) *They cannot charge unless the option is given to the buyer to choose specifically the car parking slot;*
- (D) *No amounts can be charged for open car parking slots. (2 Marks)*
- 1.3 *Ms. Kruthi seeks your advice on the appropriateness of the calculation of Carpet Area by ARPL under the Real Estate (Regulation and Development) Act, 2016.*
- (A) *Appropriate, since the method of calculation of carpet area is based on mutually agreed terms between the parties;*
- (B) *Not appropriate, both open terrace and internal partition walls to be excluded;*
- (C) *Not appropriate, open terrace to be included but internal partition walls to be excluded;*
- (D) *Not appropriate, open terrace to be excluded but internal partition walls to be included. (2 Marks)*
- 1.4 *GCHPL contends that the apartment leased to Mr. Srinivas is not covered the under Real Estate (Regulation and Development) Act, 2016 provisions. Advice Mr. Srinivas*
- (A) *RERA is not applicable since it is not a transaction of sale;*
- (B) *RERA is not applicable, since 100% of the sale value is not paid at the time of transfer of the property and it is a 99 year lease term;*
- (C) *RERA is applicable, since a substantial amount is paid along with stamp duty and registration charges. Further, the monthly rent is much lower than market;*
- (D) *RERA is applicable since GCHPL is a registered promoter under RERA. (2 Marks)*
- 1.5 *Addis Bank wants your advice with regard to its rights for selecting the interim resolution professional under the Insolvency and Bankruptcy Code, 2016.*
- (A) *Any financial creditor can appoint the IRP in the committee of creditors meeting by majority;*
- (B) *Addis Bank has the right to propose the name of the IRP in its application for corporate insolvency resolution process and the same person is appointed by the adjudicating authority if there are no disciplinary proceedings;*
- (C) *The Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*

- (D) Any financial creditor or operational creditor can appoint the IRP in the committee of creditors meeting by majority. **(2 Marks)**
- 1.6. Examine whether the contention of 30% of the allottees is correct on the basis that Promoter have not fulfilled its obligations and have not met the required conditions for transfer of project to the third party under the provisions of the Real Estate (Regulation and Development) Act, 2016. **(4 Marks)**
- 1.7 In the opinion of Resolution Professional, participation of both the directors of ARPL as member of the suspended Board of Directors is not mandatory in the meeting of Committee of Creditors under the Insolvency and Bankruptcy Code, 2016. Whether the contention of the Resolution Professional is correct vis-a-vis the judgement of the Hon'ble Supreme Court as was held in the matter of Mr. Vijay Kumar Jain (Civil appeal No 8430 of 2018). Explain briefly. **(7 Marks)**
- 1.8 "Mr. Sessa, a Director of the suspended Board of Directors, financial creditor and related party of the Corporate Debtor have right to vote and be a member of the Committee of Creditors." Examine this statement under the provisions of the Insolvency and Bankruptcy Code, 2016. **(4 Marks)**

Answer to Case study 1

- 1.1 (A)
1.2 (D)
1.3 (D)
1.4 (A) & (C), Both options are correct
1.5 (B)

Answer 1.6

According to Section 15 of the Real Estate (Regulation and Development) Act, 2016 (RERA), the obligations of a promoter in case of transfer of a real estate project to a third party are as follows:

- (1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.
- However, such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.
- (2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all

the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees.

In the instant case, the contention of 30% of the allottees **is not correct** as ARPL has taken prior written consent from two-third allottees i.e. 70% allottees (more than 66.67%) and prior written **approval** of the **Authority**. Thus, ARPL has fulfilled its obligations and have met the required conditions for transfer of project to the third party under the provisions of the RERA, 2016.

Answer 1.7

As per **Section 24(3)** of the Insolvency and Bankruptcy Code, 2016, the members of the committee of creditors may meet in person or by such electronic means. All the meeting of CoC shall be conducted by the RP. Notice of meeting shall be served to the following:

- (a) members of Committee of creditors, including the authorised representatives;
- (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;
- (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

The directors, partners and one representative of operational creditors, as referred above, may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings. And in their absence, shall not invalidate proceedings of such meeting.

Contention of the Resolution Professional vis-à-vis the judgement of the hon'ble Supreme Court in Mr. Vijay Kumar Jain (Civil appeal No. 8430 of 2018), is not correct. In this judgement in fact SC held that erstwhile BoD i.e. the suspended members being interested in resolution plan to be discussed by the members of the committee of creditors, must be given a copy of that plans as part of documents that have to be furnished along with the notice of such CoC meetings.

However, in light of the stated provision, Resolution professional has to give notice to all the participants as given enumerated in section 24. As members of the suspended Board of directors, they can attend the meeting as participants to deliberate on the issues, discuss and give their opinion but they cannot vote.

Answer 1.8

As per section 21(2) of the Insolvency and Bankruptcy Code, 2016, for the Financial creditor or the authorised representative of the financial creditor, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

Further, as per section 5(24) of the Code, related party, in relation to a corporate debtor, includes a director of the corporate debtor. Accordingly in the given instance, Mr. Sesha, a

Director of the suspended Board of Directors, is a financial creditor as had provided unsecured loan of ₹ 10 crores to the ARPL and is also a related party to ARPL.

Therefore, Mr. Sessa, shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

CASE STUDY 2

WF Private Limited (WFPL) is a well-known textile brand in Bengaluru and is known for its authentic Mysore sarees and dress materials. Mr. Suresh Kumar is the founder and CEO of WFPL and has been in the business for more than 30 years. WFPL made a turnover of ₹ 80 crores in Financial Year 2016-17 and was poised to grow its business to more than ₹ 100 crores in Financial Year 2017-18. Mr. Suresh has one daughter, Ms. Revathi, who is happily married and settled in the USA and has become a US Citizen, and one son, Mr. Mahesh Kumar, who helps his father in the textile business. For the purpose of expanding his operations, Mr. Suresh purchased a ground floor shop in Indira Nagar for an amount of ₹ 3.2 crores. The payment was made by cheque and the title deeds of the property were registered in his name after making the payment of appropriate stamp duty. Mr. Mahesh Kumar purchased an independent villa in Jaya Nagar for an amount of ₹ 7.2 crores (out of his own funds) and gave it on lease to a leading Information Technology company for a monthly rent of ₹ 10 lakhs.

On account of the continued success of the textile business, WFPL commenced exporting Mysore Sarees to all parts of the world and Suresh Kumar incorporated a company in the USA, WF LLC (WFLLC) and made Ms. Revathi as the Shareholder and Director. Ms. Revathi wanted to invest her earnings earned in USA to buy some ancestral property near Udupi, India and accordingly, purchased a large farm house which has a palatial bungalow and 8 acre farm land for an amount of ₹ 5 crores for which ₹ 4.5 crores was sent by her from USA to India through a Nationalised Bank in India. Balance ₹ 50 lakhs was paid through USD denominated traveller's cheques which she had with her and was encashed with the same Bank. She does not plan to continue the farming activity after a period of 5 years. WFLLC also incorporated a subsidiary in India called as WL Private Limited (WLPL) for making leather jackets and accessories and invested USD 700,000 as share capital through normal banking channels. WLPL made a payment of USD 107,000 to WFLLC as reimbursement of pre-incorporation expenses, incurred by WFLLC through its EEFC account. WLPL also obtained an external commercial borrowing from WFLLC for an amount of USD 1,000,000 for working capital purposes at an interest rate of 6 month LIBOR + 500 bps and repayable as a bullet repayment after 3 years. Notices were issued to Ms. Revathi for the alleged violation of the Foreign Exchange Management Act, 1999 from Reserve Bank of India.

Mr. Suresh Kumar had a windfall in his business during the 2017 and therefore, wanted to buy another apartment in Whitefield and therefore invested an amount of ₹ 2 crores for acquiring the apartment in the name of his wife Ms. Seethalakshmi by paying lesser stamp duty as a

relaxation was given to women. Ms. Seethalakshmi was a home maker and was involved in lot of social activities through NGO, apart from taking care of the family. Earlier Ms. Seethalakshmi have visited her daughter Ms. Revathi in USA and on her return she had around USD 10,000 in currency and travellers cheques which she retained with herself not aware of the provisions of the Foreign Exchange Management Act, 1999 (FEMA, 1999).

Mr. Mukund, son in law of Mr. Suresh Kumar was also from Karnataka and was fully settled in the USA as a US citizen. He was desirous of investing his funds through his NRE Bank account in India for acquiring a good independent home in Mangaluru. So, Mr. Mukund, along with Mr. Mahesh acquired an independent villa in Mangaluru in the joint names of Mr. Mahesh and Ms. Revathi (siblings) for a total consideration of ₹ 1.10 crores. Mr. Mukund intended to buy the property as a gift to Ms. Revathi and had informed her about the same. Mr. Mukund and Mr. Mahesh each paid ₹ 30 lakhs each from their side and procured a cheque for another ₹ 20 lakhs from family friend and the balance amount of ₹ 30 lakhs was paid by Mr. Suresh Kumar in cash. The property got registered in the name of Mr. Mahesh and Ms. Revathi for an amount of ₹ 90 lakhs and accordingly stamp duty was paid. Mr. Mahesh also purchased a small 2 BHK apartment in Koramangala for an amount of ₹ 60 lakhs in the name of his driver, Mr. Kumaraswamy, which was then rented out to a company under lease. Mr. Mahesh considered that he can get the property transferred back to his name at a later point of time.

Answer the following questions:

2.1 Revathi seeks your views regarding the appropriateness of the reimbursement of pre-incorporation expenses by WLPL to WFLLC under the provisions of the Foreign Exchange Management Act, 1999?

- (A) Appropriate, since the transaction is covered by Schedule II / Schedule III under the provisions the Foreign Exchange Management Act, 1999;
- (B) Not Appropriate, since the pre-incorporation expenses are specifically not allowed to be reimbursed under FEMA, 1999;
- (C) Appropriate, if the same is approved-by the Central Government of India;
- (D) Not Appropriate, since the amount of reimbursement is above the threshold prescribed and therefore required the approval of the Reserve Bank of India.

(2 Marks)

2.2 WFPL received a large export order on 15 May 2018 from a retailer in the UK for supplying material for which WFPL received an advance payment of GBP 100,000 on 15 June 2018. What is the last date by which WFPL has to supply goods under the agreement, under the provisions of the Foreign Exchange Management Act, 1999?

- (A) 15th May 2019;

- (B) 15th May 2019 or as per the terms of the agreement, whichever is later;
- (C) 15th June 2019;
- (D) 15th June 2019 or as per the terms of the agreement, whichever is later. **(2 Marks)**
- 2.3 Ms. Seethalakshmi went to visit Ms. Revathi in the USA for a holiday and after coming back noted that she had around USD 10,000 in currency and travellers cheques. She is keen to know whether she has to surrender the same to the Authorised Dealer under the provisions of the Foreign Exchange Management Act, 1999.
- (A) Yes, within a period of 180 days;
- (B) Yes, she has to return the travellers cheques within 180 days, but can retain the currency for future visits;
- (C) No, she can retain both travellers cheques (subject to expiry date consideration) and currency for future visits;
- (D) No, the amount of USD 10,000 is within the limit prescribed under FEMA for possessing foreign currency. **(2 Marks)**
- 2.4 Can Mr. Mahesh get the property purchased in the name of his driver, Kumaraswamy re-transferred in his name?
- (A) Yes, he can after paying the required stamp duty;
- (B) No, he cannot unless Kumaraswamy agrees;
- (C) No, not allowed under the Prohibition of Benami Property Transactions Act, 1988;
- (D) Yes, since he was the person who funded the property. **(2 Marks)**
- 2.5 With regard to the property purchased in Mangaluru in the name of Mr. Mahesh and Ms. Revathi, how much amount of the property will be considered as a benami property under the Prohibition of Benami Property Transactions Act, 1988?
- (A) ₹ 1.10 crores;
- (B) ₹ 20 lakhs;
- (C) ₹ 50 lakhs;
- (D) None of the options. **(2 Marks)**
- 2.6 Examine whether the purchase of property in Udupi by Ms. Revathi violates the provisions of the Foreign Exchange Management Act, 1999 as alleged in the notice received by Ms. Revathi from Reserve Bank of India. **(3 Marks)**

- 2.7 *The contention of Ms. Revati that the equity investment and the external commercial borrowing investment by WFLLC are not complying with the provisions of Foreign Exchange Management Act, 1999. Examine the contention.* **(3 Marks)**
- 2.8 *"There is no violation of the provisions of the Prohibition of Benami Property Transactions Act, 1988 in respect of properties purchased/transactions specified in case study". Justify your answer for each property purchased/transactions as per the provisions of Prohibition of Benami Property Transactions Act, 1988.* **(9 Marks)**

Answer to Case study 2

- 2.1 (D)
- 2.2 (C) and (D), both options are correct
- 2.3 (A)
- 2.4 (C)
- 2.5 (B)

Answer 2.6

As per FEM (Acquisition and Transfer of immovable property in India) Regulations, 2018, an NRI or an OCI may Acquire immovable property in India other than agricultural land/farm house/plantation property.

Provided that in case of acquisition of immovable property, payment of purchase price, if any shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank of India.

Provided further that no payment of purchase price for acquisition of immovable property shall be made earlier by traveller's cheque or by currency notes of any foreign country or any mode other than those specifically permitted by this clause.

In the instant case, Ms. Revathi purchased a large farm house in India which has a palatial bungalow and 8 acre farm land. Further, a portion of the payment (₹ 50 lakhs) was made through traveller's cheques.

As per FEMA Regulations, an OCI cannot acquire immovable property in India in the form of agricultural land/farm house/plantation property and cannot make payment through traveller's cheques. Thus, Ms. Revathi has violated the provisions of FEMA for purchase of property in near udupi.

Answer 2.7**W.r.t. Equity Investment by WFLLC in WLPL:**

As per Schedule II relating to the Capital Account Transactions, investment in equity capital of a body corporate in India by a person resident outside India is a permissible transaction

Accordingly, the contention of Ms. Revati that the equity investment by WFLLC in its subsidiary in India, WLPL of USD 700,000 is not correct It is a permitted Transaction.

W.r.t. ECB investment by WFLLC: The Minimum Average Maturity Period (MAMP) will be 5 years for ECB raised from foreign equity holder for working capital purposes.

All-in-cost ceiling per annum is Benchmark rate i.e. 6-months LIBOR rate plus 450 bps spread.

All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route.

Under the approval route, the prospective borrowers are required to send their requests to the Reserve Bank through their AD Banks for examination.

In the instant case, WLPL obtained an external commercial borrowing from WFLLC for an amount of USD 1,000,000 for working capital purposes at an interest rate of 6 month LIBOR + 500 bps and repayable as a bullet repayment after 3 years.

Hence, amount of borrowing and interest rate is exceeding. Therefore, WLPL has to take approval from RBI.

Hence, the contention of Ms. Revati in this regard is correct.

Answer 2.8

1. **Ground floor shop in Indira Nagar:** Mr. Suresh purchased a ground floor shop in Indira Nagar for an amount of ₹ 3.2 crores. The payment was made by cheque and the title deeds of the property were registered in his name after making appropriate stamp duty.

It is not a benami property.

2. **Independent villa in Jaya Nagar:** Mr. Mahesh Kumar purchased an independent villa in Jaya Nagar for an amount of ₹ 7.2 crore (out of his own funds) and gave it on lease to a leading Information Technology company for a monthly rent of ₹ 10 Lakhs.

It is not a benami property.

3. **Apartment in Whitefield:** Mr. Suresh Kumar purchased an apartment for ₹ 2 crore in Whitefield in the name of his wife Ms. Seethalakshmi by paying lesser stamp duty as a relaxation was given to women.

It is not a benami property.

4. **Independent villa in Mangaluru:** This property will be a benami property as ₹ 20 lakhs has been procured from family friend and balance ₹ 30 Lakhs was paid by Mr. Suresh

Kumar in cash. Also, the property got registered in the name of Mr. Mahesh and Ms. Revathi for an amount of ₹ 90 Lakhs and accordingly stamp duty was paid. The value of the apartment was ₹ 1.10 crore but got registered for ₹ 90 lakhs.

Hence, it is a benami property.

5. **BHK apartment in Koramangal:** Mr. Mahesh also purchased a small 2 BHK apartment in Koramangala for an amount of ₹ 60 Lakhs in the name of his driver, Mr. Kumaraswamy then rented it out to a company under lease.

It is a benami property.

6. **Farm House near Udipi:** MS. Revathi purchased farm house which has palatial bungalow and 8 acres farm land for an amount of ₹ 5 crores for which ₹ 4.5 crores was sent by her from USA to India through nationalised bank in India. Balance ₹ 50 lakhs was paid through USD denominated traveller's cheques.

It is not a Benami property.

CASE STUDY 3

Mr. Prateek, Mr. Sachin and Mr. Prabhu are brothers, running their family business as directors of their company, PSP Pvt. Ltd. A Corporate Insolvency Resolution process, under the Insolvency and Bankruptcy Code, 2016 was initiated against PSP Pvt. Ltd. by an assignee of an operational creditor for non-payment of dues and there was no intimation of any dispute within the date of the demand notice and due to which the adjudicating authority admitted his application.

After following all the due procedures prescribed in the Insolvency and Bankruptcy Code, 2016, in the end, adjudicating authority passed an order to liquidate the corporate debtor, on intimation from the resolution professional to do so, as decided by the committee of creditors by requisite voting, before the approval of any resolution plan.

The financial highlights related to PSP Pvt. Ltd. for the purpose of liquidation are as given below:

Particulars	Amount (₹ in lakhs)
Equity Share Capital	300
Preference Share Capital	200
Financial Creditors:	
Secured	250
Unsecured	150
Operational Creditors:	
Secured	60

<i>Unsecured</i>	70
<i>Government Dues</i>	50
<i>Workmen's Dues</i>	80
<i>Employees' Dues</i>	80
Total Liabilities	1240
<i>Property, Plant and Equipment's</i>	
<i>Land & Building</i>	350
<i>Plant & Machinery</i>	150
<i>Current Assets:</i>	
<i>Stocks</i>	100
<i>Trade Receivables</i>	300
<i>Other current Assets</i>	50
<i>Cash & Cash equivalents</i>	100
<i>Recoverable from Statutory Authorities</i>	190
Total Assets	1240

Other Information:

- (1) *Workmen's dues represent amount payable for the period of 30 months preceding the liquidation commencement date.*
- (2) *Employee liability includes ₹ 72 lakhs, outstanding to employees for a period of 12 months, preceding the liquidation commencement date.*
- (3) *Land & Building would realize 11.0% of its book value; Plant & Machinery would realize 60% of its book value, net of any realization cost Stock and trade receivables would realize 72% of its book value.*
- (4) *The secured financial creditors worth ₹ 45 lakhs decided to enforce their security interest in the other current assets and they could realize 80% of its value.*
- (5) *There has been a pending court case against the company for use of child labour which could result into penalty of approximately ₹ 30 lakhs. This has been reflected as a contingent liability only. It has been finally decide to pay ₹ 25 lakhs and settle the case.*
- (6) *Based on the amount realized & distributed, the cost of liquidation and insolvency period cost is computed to be ₹ 20 lakhs and ₹ 12 lakhs respectively.*

Meanwhile, when Mr. Prateek was engaged in providing professional assistance to the liquidator as per Section 34 of the Insolvency and Bankruptcy Code, 2016, he and his wife Ms. Geetu received a notice from the Initiating officer to start proceedings under the Prohibition of Benami Property Transactions Act, 1988, with respect to the 50,000 unquoted shares of CFL Pvt. Ltd., held by Mr. Prateek in the name of his wife

The extract of the last audited financial statements of CFL Pvt. Ltd. as provided as under:

Particulars	Amount (₹ in lakhs)
Land & Building (Market value ₹45 lakhs)	35
Plant & Machinery (Gross) (Market value ₹10 lakhs)	20
Stock and Trade Receivables	18
Income Tax paid in advance	2
Total Assets	75
Shareholder's Funds (5 lakhs equity shares @ ₹3 each)	35
Accumulated Depreciation	5
Trade Payables	12
Income Tax Provision	7
Provision for ascertained liabilities	6
Provision for unascertained liabilities	5
Total Liabilities	70

Other information:

Contingent liabilities - ₹3 lakhs (including ₹1 lakh relating to arrears on cumulative preference shares).

As a result of the proceedings made by the Initiating officer as per Section 24 of the Prohibition of Benami Property Transactions Act, 1988, after the valuation of the shares was done as per Rule 3 of the relevant rules, the officer came to know that the source of the purchase of shares by Mr. Prateek was the sale proceeds of one of the properties of PSP Pvt. Ltd which he had fraudulently/wrongfully removed before 9 months of the insolvency commencement date and accordingly the Initiating officer after taking approval of adjudicating authority informed the Enforcement Director under the Prevention of Money Laundering Act, 2002 as now the property appeared to be proceeds of crime. Also, Mr. Prateek, was prosecuted as per the penal provisions of the Insolvency and Bankruptcy Code, 2016.

¹ To be read ₹7

Answer the following questions:

- 3.1 What should be the minimum value of the property which is fraudulently removed, in order for the penal provisions under the Insolvency and Bankruptcy Code, 2016, to attract and within how many months preceding the insolvency commencement date, such an act should have occurred?
- (A) ₹1 lakh or more and 12 months;
(B) ₹ 10,000 or more & 12 months;
(C) ₹ 10,000 & 12 months;
(D) ₹ 10 lakhs or more & 9 months. **(2 Marks)**
- 3.2 Under which Act's, Mr. Prateek can be prosecuted for his fraudulent act?
- (A) Benami Transactions Act, 1988 and Insolvency and Bankruptcy Code, 2016;
(B) Prevention of Money Laundering Act, 2002 and Insolvency and Bankruptcy Code, 2016;
(C) Companies Act, 2013, Benami Transactions Act, 1988, Prevention of Money Laundering Act, 2002 and Insolvency and Bankruptcy Code, 2016;
(D) Companies Act, 2013, Prevention of Money Laundering Act, 2002 and Insolvency and Bankruptcy Code, 2016. **(2 Marks)**
- 3.3 As per the given case study, how much amount shall be distributed to government dues, to secured creditors whose debts remain unpaid following the enforcement of security interest and for the court case-penalty amount, if the funds available with the liquidator after distribution to unsecured financial creditors is ₹ 64 lakhs under the Insolvency and Bankruptcy Code, 2016?
- (A) ₹ 40 lakhs to government dues, ₹ 4 lakhs to secured creditors with unpaid debt and ₹ 20 lakhs for the court case-penalty amount;
(B) ₹ 50 lakhs to government dues, ₹ 5 lakhs to secured creditors with unpaid debt and ₹ 9 lakhs for the-court case-penalty amount;
(C) ₹ 39.33 lakhs to government dues, ₹ 5 lakhs to secured creditors with unpaid debt and ₹ 19.67 lakhs for the court case-penalty amount;
(D) ₹ 50 lakhs to government dues, ₹ 2.33 lakhs to secured creditors with unpaid debt and ₹ 11.67 lakhs for the court case-penalty amount. **(2 Marks)**

- 3.4 If Mr. Prateek had purchased the shares in the name of his wife from the sale proceeds of the immovable, property held by Mr. Prateek, as a joint owner with his mother; then whether it can be termed as a benami transaction under the provisions of the Benami Property Transactions Act, 1988?
- (A) Yes;
(B) No;
(C) Partially Yes, partially No;
(D) Can't say. **(2 Marks)**
- 3.5 What could be the punishment to PSP Pvt. Ltd. and its officers for the use of child labour as per the provisions of the Prevention of Money Laundering Act, 2002 read with offences under the Juvenile Justice (Care and Protection of Children) Act, 2020?
- (A) Imprisonment for 3 to 7 years and fine without any limit;
(B) Imprisonment for 3 to 10 years and fine without any limit;
(C) Imprisonment upto 2 years and fine upto ₹ 50,000;
(D) Not an offence under the Prevention of Money Laundering Act, 2002, so not punishable under this act. **(2 Marks)**
- 3.6 Examine whether the decision made by the Adjudicating Authority of admitting the application filed by the assignee of an operational creditor against PSP Pvt. Ltd. is valid as per the provisions of the Insolvency and Bankruptcy Code, 2016? **(3 Marks)**
- 3.7 How in your opinion, the property held by Prateek in the name of his wife can be considered as proceeds of crime and whether any action can be taken by the Enforcement Director against such property under the provisions of the Prevention of Money Laundering Act, 2002? **(5 Marks)**
- 3.8 Assuming that the cost of acquisition and the market value based on discounted cash flow method is ₹ 1.5 lakhs and ₹ 4 lakhs respectively, calculate the fair market value of the shares held by Prateek's wife of CFL Pvt. Ltd. in accordance with Rule 3 of the Prohibition of Benami Transactions Rules, 2016. **(4 Marks)**
- 3.9 Whether in your opinion any other circumstances are there, other than the situation mentioned in the case study, that may also have led the Adjudicating Authority to pass an order of liquidation under the provisions of the Insolvency and Bankruptcy Code, 2016? **(3 Marks)**

Answer to Case Study 3

3.1 (B)

3.2 (D)

3.3 (A)

3.4 (D)

3.5 (A)

Answer 3.6

As per the provisions of the Insolvency and Bankruptcy Code, 2016:

Default means non-payment of debt when whole or any part of instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be. [Section 3(12)]

Operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred; [Section 5(20)]

Serving of demand Notice: On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

On receipt of demand notice by corporate debtor: The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor about-

- (a) existence of a dispute about debt, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
- (b) the payment of unpaid operational debt— It is possible that corporate debtor might have already paid the unpaid operational debt, there in such situation, corporate debtor will inform within 10 days-
 - (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
 - (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. [Section 8]

If no reply is received or payment or notice of the dispute under section 8(2) from the corporate debtor within ten days from the date of delivery of the notice or invoice demanding payment, operational creditor can file application before Adjudicating Authority (NCLT) for initiating a corporate insolvency resolution process as per Section 9 of the Code.

Thus, based on the aforementioned provisions the decision made by the adjudicating authority of admitting the application filed by the assignee of an operational creditor is valid as operational creditor also includes a person to whom such debt has been assigned.

Answer 3.7

Section 2(1)(u) of the Prevention of Money Laundering Act, 2002 defines "**proceeds of crime**" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity **relating to a scheduled offence** or the value of any such property or where such property is taken/held outside the country, then the property equivalent in value held within the country or abroad.

Paragraph 29 of Part A of Scheduled Offence prescribes offence under section 447 of the Companies Act, 2013.

In the given case, the offence of fraudulently/ wrongfully removing the property of PSP Pvt. Ltd. and using the sale proceeds for personal benefit is an offence punishable under section 447 of the Act which is also a scheduled offence mentioned under the provisions of the Prevention of Money Laundering Act, 2002 and any property derived from criminal activity relating to a scheduled offence falls under proceeds of crime as defined above.

The action that can be taken by the Enforcement director against such property is provided on the basis of provisions of section 5 of the Act as follows:

Where the Director or any other officer (not below the rank of Deputy Director authorised by the Director) for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

- (a) any person is in possession of any proceeds of crime; and
- (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

Condition for attachment: Provided that no such order of attachment shall be made unless, in relation to the scheduled offence:

- a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or
- a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or

- a similar report or complaint has been made or filed under the corresponding law of any other country.

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

Thus, the director can pass an order of provisional attachment of the property for a maximum period of 180 days subject to the conditions as aforesaid.

Answer 3.8

According to section 2(16) of the Prohibition of Benami Property Transaction Act, 1988, fair market value, in relation to a property, means—

- (1) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
- (2) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed in Rule 3 of the Prohibition of Benami Property Transaction Rules, 2016.

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

- (i) its cost of acquisition;
- (ii) the fair market value of such equity shares determined, on the date of transaction, by a merchant banker or an accountant as per the Discounted Cash Flow method; and
- (iii) the value, on the date of transaction, of such equity shares as determined by the formula given in the Rules.

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

Particulars	Amount (₹ in Lakhs)	Value to be considered for calculation (₹ in lakhs)	Remarks
Land & Building (Market value ₹ 45 lakhs)	35	45	Market value to be considered

Plant & Machinery (Gross) (Market Value ₹ 10 lakhs)	20	15 (20-5)	Book value net of accumulated depreciation
Stock & trade Receivables	18	18	Book value
Income tax paid in advance	2	0	Not to be considered
Total Value of Assets		78	
Shareholder's Funds (5 lakh equity shares @ ₹ 3 each)	35	0	Share capital and Reserves not to be considered
Accumulated Depreciation	5	0	Considered in Value of Plant & Machinery above
Trade Payables	12	-12	To be considered
Income Tax Provision	7	0	Not to be considered
Provision for ascertained liabilities	6	-6	To be considered
Provision for unascertained liabilities	5	0	Not to be considered
Contingent Liabilities	3	-1	Arrears of divided on cumulative preference shares to be considered
Total Value of Liabilities		-19	
Fair Market Value (Asset- Liabilities) *Paid up Equity Capital/ Paid up value of equity shares		59	
Value of equity shares acquired i.e. 10% of total (50,000/5,00,000)		5.9	

In the said question, the cost of acquisition is assumed at ₹ 1.5 lakhs, the value, on the date of transaction, of such equity shares as determined by the formula given in the rules is ₹ 5.9 lakhs and the market value based on discounted cash flow method is given as ₹ 4 lakhs. Thus, the fair market value of the acquisition in CFL Pvt. Ltd. will be ₹ 5.9 lakhs being highest of above.

Answer 3.9

It is given in the case study that before passing of the resolution plan, the committee of creditors decided to liquidate the corporate debtor, so accordingly the other circumstances mentioned

² To be read as ₹ 7

hereunder are related to situations where resolution plan has not been received or it has been rejected.

Section 33 of the Code, *interalia*, provides that where the Adjudicating Authority, —

- (a) **Not received a Resolution plan:** Before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process or the fast track corporate insolvency resolution process, as the case may be, does not receive a resolution plan; or
- (b) **rejects the resolution plan** for the non-compliance of the requirements specified therein, it shall pass an order requiring the corporate debtor to be liquidated.

CASE STUDY 4

The world of cinemas has always drawn quite a lot of dreamers and talented people into its fold and there are many artists who have become super stars through their hard work notwithstanding their humble beginnings. Mr. Sanjay Shankar is one such star who came to Mumbai from a small town in Madhya Pradesh dreaming of becoming a super star. Through his sheer hard work and commitment, he got opportunities to act in few small films and due to his great work ethic and acting skills, he became very famous and acted in almost 30 films over a period of 4 years and won many accolades. In 2020, he launched his own movie and digital media production house. Futuristic Cinemas Private Limited (FCPL), with an objective to provide opportunities to deserving professionals from humble backgrounds like himself. One such professional he met through his production house was Ms. Chaitya Prakash, a beautiful and talented dancer and both of them became close, were planning to get married soon.

FCPL started producing various movies and was reasonably successful and profitable and Mr. Sanjay was able to manage both his acting career as well as the production house along with Ms. Chaitya. In 2021, Mr. Sanjay, in his free time watched a lot of English and European digital series through online platforms and he was interested in bringing some of the best series into India by dubbing in Hindi and regional languages. Accordingly, FCPL entered into a contract with the foreign production houses and obtained the rights to broadcast these digital series in India after dubbing them in local languages. When the news of this broke out, the All India Production Houses Association (APHA) as well as All India Movie and TV Actors Association (AMTAA) opposed this move by FCPL for broadcasting this in India on the basis that this will hamper the viewership of the serials currently being made in India and thereby would adversely affect the job of local producers and artists. FCPL is of the view that the actions of APHA and AMTAA are anticompetitive in nature and therefore, not in accordance with the Competition Act, 2002. Reference was drawn from Honourable Supreme Court Judgement in Competition Commission of India Vs Coordination Committee of Artists and Technicians of W.B. Film and Television and Others. Kishor Movies Limited (KML), one of the largest production houses in

India and also a member of APHA, also alleged that KML had the copy right for one of the digital series and FCPL has violated the Copyright Act as well.

Mr. Sanjay and Ms. Chaitya travelled to Switzerland for a movie and dance show and settled in Switzerland for about 15 months in Lucerne. During their stay in Switzerland, they also visited Belgium where Ms. Chaitya purchased a beautiful Belgian diamond and gold set weighing, 30 grams for a value of EUR 2000. Mr. Sanjay purchased a swiss gold chain for himself weighing 10 grams for a value of EUR 500. When returning to India, Mr. Sanjay brought EUR 6,000 in cash and Ms. Chaitya brought EUR 9,000 (EUR 4,500 in cash and EUR 4,500 in traveller's cheque). When they returned to India, a heavy media contingent were waiting outside the airport and they came through the green channel waving away to the media. Ms. Chaitya, after returning home, handover the foreign currency and traveller's cheques to her mom, Ms. Sundari, who kept the same in her bank locker.

On the other hand, KML had produced a big budget action movie with the biggest star of the country acting as the hero based on India's freedom struggle and was planning to release it just before the 75th year of Indian Independence. This was expected to be a block buster movie and in order to utilize this opportunity, KML put forth a non-negotiable condition to all single screen theatres (which had a market share of around 35% of the total theatres) that for purchasing the exhibition rights for this movie, they had to necessarily acquire the exhibition rights for their next movie which was going to release couple of months later. Some of the single screen theatres agreed to the condition and few other declined and therefore did not get the right to exhibit the big budget movie. A few of the single screen theatres felt that KML was abusing its dominant position in the industry (being one of the largest movie production houses in the country) by forcing the theatres to buy the rights for two movies unnecessarily and thereby preventing some of the theatres to choose to acquire the rights for the big budget movie.

Note: For the purpose of above case study, 1 USD = 0.8 EUR, and 1 USD = INR 70

Answer the following questions:

- 4.1 Ms. Chaitya wanted to understand if she was correct in coming through the green channel on her return to India?
- (A) Yes, the value of materials (foreign currency and jewellery) brought by her is within the limits prescribed;
 - (B) No, the value of foreign currency and jewellery brought into India by her was more than the limits;
 - (C) No, since the value of jewellery brought into India is more than the limit and there is no limit for bringing in foreign currency (only a declaration is required);

- (D) Yes, the combined value of material brought into India by Mr. Sanjay and Ms. Chaitya was within the limits. **(2 Marks)**
- 4.2 What is the maximum value of jewellery that can be brought into India by Mr. Sanjay while coming through the green channel?
- (A) Forty grams, with a maximum value of INR 100,000;
(B) Twenty grams, with a maximum value of INR 50,000;
(C) Twenty grams, with a monetary limit based on the day's market rate of jewellery in India;
(D) None of the options. **(2 Marks)**
- 4.3. Assuming that KML had earlier obtained the copyright for one of the digital series now acquired by FCPL, what is the status of the violation under the PMLA 2002?
- (A) Prima facie, FCPL is in violation of PMLA 2002 if they have infringed on the rights of KML;
(B) No, a violation under Copyright Act is not covered under PMLA 2002;
(C) The violation under PMLA would arise only if the copyright was acquired by FCPL using proceeds of crime relating to another offence under PMLA 2002;
(D) None of the options. **(2 Marks)**
- 4.4 Which of the following factors are not to be considered when evaluating whether the conditions put forth by KML on the single screen theatres has appreciable adverse effect on competition?
- (A) Directly, or indirectly determines the sale price of the tickets;
(B) Tie-in arrangement;
(C) Exclusive supply agreement;
(D) Refusal to deal or restrict any person from dealing. **(2 Marks)**
- 4.5. When evaluating the facts, the Directorate General (DG) of the Competition Commission of India has sought your views on some of the aspects that he needs to consider for evaluating the relevant geographic market when determining the position taken by APHA and AMTAA ?
- (A) Local specification requirements, language, consumer preferences, price of services;
(B) Consumer preferences, language, existence of specialised producers, transportation costs;

(C) Physical characteristics or end use of services, price of services, national procurement policies, local specification requirements;

(D) Regulatory trade barriers, local specification requirements, language, consumer preferences. **(2 Marks)**

4.6 In the light of the facts mentioned in the case study regarding the items and foreign currency brought into India by Mr. Sanjay and Ms. Chaitya, evaluate the offences as per the provisions of the prevention of Money Laundering Act, 2002 read with offences under the Customs Act, 1962. **(5 Marks)**

4.7 Whether the contention of APHA and AMTAA are in violation of the Competition Act, 2002, vis-a-vis Hon'ble Supreme Court Judgement in Competition Commission of India Vs. Coordination Committee of Artists and Technicians of W.B. Film & Television and others. Explain briefly. **(7 Marks)**

4.8 Evaluate with reasons whether KML was abusing its dominant position in the industry by forcing the theatres to buy the rights for two movies unnecessarily and thereby preventing some of the theatres to choose to acquire the rights for a big budget movie. **(3 Marks)**

Answer to Case Study 4

4.1 (C)

4.2 (B)

4.3 (A)

4.4 (A)

4.5 (D)

Answer 4.6

Mr. Sanjay and Ms. Chaitya are guilty of offence under the Prevention of Money Laundering Act, 2002.

Mr. Sanjay and Ms. Chaitya purchased the following items from Belgium, when 1USD= 0.8 EUR and 1US\$ = ₹ 70:

Ms. Chaitya:

- i. A diamond and gold necklace of 30 grams for EUR 2000([i.e. ₹ 1,75,000)
- ii. EUR 9000 (EUR 4500 in cash and EUR 4500 in traveller's cheque): [i.e. USD 5625 in cash and USD 5625 in traveller's cheque]

Mr. Sanjay:

- i. Mr. Sanjay purchased a gold chain of 10 gms for EUR 500 (i.e. ₹ 43,750)

ii. EUR 6000 in cash [i.e USD 7500]

As per Rule 5 of Baggage Rules, 2016, a passenger residing abroad for more than one year, on return to India shall be allowed clearance free of duty in his bona-fide baggage of jewellery up to a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger. Since baggage item is also subject to duty beyond certain limit and in the case of Mr. Sanjay this limit is twenty grams with a value cap of fifty thousand rupees. Since he brought the gold chain within the prescribed amount (i.e. 10gms gold worth ₹ 43,750), hence Mr. Sanjay has not committed any offence under section 135 of the Customs Act, 1962.

Ms. Chaitya brought through the green channel, jewellery which is beyond the permitted limit (forty grams with a value cap of one lakh rupees) of baggage. But Ms. Chaitya walked through the Green Channel with dutiable goods. She should have walked through the Red Channel and declared her dutiable goods. Hence, Ms. Chaitya has committed an offence under section 135 of the Customs Act, 1962.

Further as per paragraph 12 of part A of Schedule to the Prevention of Money Laundering Act 2002, offences under the Section 135 of Customs Act, 1962 regarding evasion of custom duty; and offences under the Section 132 of Customs Act, 1962 regarding false declaration, false documents, etc. are considered as scheduled offence under the Prevention of Money Laundering Act, 2002.

Therefore, Ms. Chaitya is guilty of an offence under section 3 of the Prevention of Money Laundering Act, 2002.

Further, Ms. Sundari is holding foreign currency and traveller's cheque being proceeds of crime, is guilty of violating the provisions of the Prevention of Money Laundering Act, 2002.

Answer 4.7

In the light of the stated facts, APHA & AMTAA opposed the move taken by the FCPL for broad casting best European and English digital series in India. The contention of APHA & AMTAA that this will hamper the viewer ship of the serials currently being made in India and would adversely affect the job of local producers and artists.

In the light of the said scenario, both APHA & AMTAA comes under the purview of associations of enterprises as defined under section 2(h) of the Competition Act, 2002.

Enterprises – The said, APHA & AMTAA, associations are trade unions in nature, and so, by the virtue of the fact that the constituent members of the associations have been indulging in the activities relating to the production, distribution and exhibitions of the films. And therefore the said associations falls within the ambit of “association of enterprises” as used under the Act.

Agreement – the said enterprises as the members, take decisions on behalf of every such enterprise being engaged in similar kind of business, and also consult certain other organizations in order to safeguard the interest of the concerned enterprises, which further

shows the collective intent of the entire associations, and fall within the ambit of "Action in Concert" as given in Section 2(b).

As association of both the enterprises APHA & AMTAA, engaged in similar business of productions, distributions and exhibitions of films and take decisions on behalf of every such enterprise engaged in similar business and their decisions reflect the collective intent. Since the associations and FCPL, both the parties working at horizontal level, hence the action of the association attract the element of "Anti-Competitive Agreement" as specifically given under Section 3(3), since the associations by causing restriction on the dubbing in hindi and regional languages series, was limiting or controlling the production, supply of the serials, in India. Moreover, the said restrictions also prevented consumers from enjoying their "right to choose" and hence in totality it caused the "Appreciable adverse effect" on the competition of relevant business in the relevant market, which is prohibited by Section 3 of the Act .

Answer 4.8

The facts of the case are that KML was planning to release its big budget action movie on 75th year of Indian Independence. KML put forth a condition before the Single Screen Theatres that if they want to purchase the rights of the said action movie, they have to also purchase the exhibition rights of their next movie which was to be released in couple of months later. KML kept that as a non-negotiable condition.

These Single Screen Theatres had a market share of around 35% of the total theatres.

The majority of the Single Screen Theatres agreed to the condition because KML is the largest (number of films per year) producer, but some did not find it lucrative and hence declined. Unfortunately, the ones who declined did not get the rights to exhibit both, the movies.

Since KML put forward tie-in agreement (prohibited under section 3(4) the Competition Act, 2002 and explained through explanation to said sub-section) as a non-negotiable condition in front of Single Screen Theatres, hence guilty under section 3(1) the Competition Act, 2002 of entering an anti-competitive agreement.

KML being the largest producer, hold the dominance over the exhibitors (as well as on other producer and distributors) but that neither prohibited and nor considered as offence. This feature of being the largest production house and a member of APHA, empowers the KML to put forward the non-negotiable condition and also influences/forces the majority of the Single Screen Theatres to agree on the condition (tie-in i.e. to purchase the rights of the film, Single Screen Theatres have to also purchase the rights of the next film) hence KML also guilty under section 4(1) of the Competition Act, 2002 of abusing the dominance.

CASE STUDY 5

NC Private Limited (NCPL) was established in the year 2015 by Mr. Neelkant Sharma, a young but successful real estate mogul. The Company's real estate business was managed by Neelkant and his mother, Ms. SB Lakshmi. NCPL specialised in construction of medium sized luxury projects with around 80- 100 apartments in each project. With the challenges in the real

estate industry, NCPL was running in a fairly profitable manner and was able to complete its projects timely and thereby earned a good name in the Bangalore market.

In 2019, Mr. Neelkant wanted to increase the presence of the NCPL brand and decided to commence 4 super premium projects in Bangalore and Mysore.

Project Name	Size	Number of apartments
Neelkant Nandanam, Bangalore	500 sq.m	12
Neelkant Sankalp, Bangalore	50,000 sq.m	500
Neelakant Shristi, Mysore	5,000 sq.m	80
Neelkant Bhagyam, Bangalore	5,000 sq.m	100

He discussed this with his father, Mr. Yagna Sharma, who is also a Director and CFO in NCPL and was evaluating the source of funds for these projects.

NCPL decided that the booking for all the projects will start after 15th December 2019 after obtaining the required permissions under the Real Estate (Regulation and Development) Act, 2016 (RERA). In the Board meeting held on 5th December 2019, it was decided that in view of the shortfall of funds at this stage, the budget for two projects was reduced. NCPL decided to reduce the number of apartments in Neelkant Nandanam to 8 and in the case of Neelkant Sankalp, the construction will take place in two phases. In the first phase, 25,000 sq.m will be developed to construct 250 apartments and the balance will be done in phase II.

NCPL started to obtain bookings for the projects from 24th December 2019 post obtaining the required approvals with the cost of the apartments ranging from ₹ 300 lakhs to ₹ 500 lakhs in the projects. NCPL also gave an extra 2% discount to those who book the apartment within 3 months from the commencement of the construction.

Ms. SB Lakshmi, apart from managing 'the real estate business was also providing independent consultancy on real estate matters in India and abroad. In 2020, she went to visit her younger brother, Mr. Anand, who was pursuing his masters in Germany. During her visit, she was invited by the Hamburg University to give a lecture to the students on nuances in real estate management and she earned a honorarium of USD 1,500. After her return, she remitted USD 150,000 to Mr. Anand for his education expenses which includes college fees, accommodation and food expenses. She also remitted an amount of USD 5,000 from her RFC account as her gift for his birthday so he could travel to the UK to watch a football match of his favourite team, Arsenal.

Mr. Manohar Reddy, a registered real estate agent, wanted to get associated with NCPL for selling the flats in Bangalore and Mysore and Manohar gave an advertisement without NCPL's

knowledge, in the newspapers for the sale of the apartments with an offer that whosoever book any apartment via Manohar, they will get extra one percent discount in the booking amount.

NCPL got a very good response for the 3 projects in Bangalore. However, the project in Mysore got a lukewarm response with only 50% booking. In the Board Meeting held in March 2020, it was decided that the Company will sell the Mysore project to another third-party real estate developer, SI Projects Limited (SIPL) which was approved by 26 allottees who had purchased the apartments till date. Further, NCPL opined that the approval of 2 apartment owners were not required, since they had acquired the apartment through a transfer from the original allottees and therefore, are not to be considered for this purpose. After taking over the project and with 75% of the apartments sold, SIPL made certain changes in the layout of the project to move the position of the swimming pool from the ground floor to the roof top. This would provide more space for SIPL to include additional amenities for the use of the allottees. These changes were approved by 38 original allottees and the 2 apartment owners who had purchased through a transfer. The NCPL observed that SIPL have not adhered to the provisions of the Real Estate (Regulation and Development) Act, 2016, have altered plan and specification.

In 2020, Mr. Neelkant Sharma wanted to acquire some land in Whitefield for building a large duplex home for himself and he zeroed in on a piece of land close to his current residence, which belonged to Mr. Deepak Kumar, his cousin brother and an NRI. Mr. Deepak Kumar had emigrated to the USA in 2015 and married Ms. Ashlin, a citizen of USA in 2016. A consideration of INR 700 lakhs was agreed, out of which INR 600 lakhs was paid by Mr. Neelkant Sharma from his RFC account and the remaining amount was paid as a gift through a crossed cheque to Mr. Deepak Kumar, who deposited this in his NRO account. In 2021, Ms. Ashlin wanted to acquire one of the apartments constructed by SIPL, jointly with Mr. Deepak and agreed to remit an amount of ₹ 150 lakhs from her earnings outside India through normal banking channels. However since SIPL insisted on an immediate initial booking advance, she gave traveller's cheque for an amount of USD 10,000 during her visit to India, however the CFO of SIPL is skeptical regarding the compliance of the Foreign Exchange Management (Acquisition and Transfer of Immovable property in India) Regulations, 2018.

Answer the following questions:

- 5.1 Mr. Yagna Sharma, seeks your views on whether NCPL can obtain External Commercial Borrowings from an interested overseas investor for funding the new projects, under the automatic route?
- (A) Yes, subject to compliance with RBI ECB Regulations with regard to all in cost ceiling, minimum average retention period etc;
 - (B) No, proceeds from ECB cannot be used for real estate activities;
 - (C) Yes, prior approval of the Authorised Dealer is required;

- (D) No, unless the loans are obtained by NCPL from an NBFC who in turn has obtained the ECB. **(2 Marks)**
- 5.2 NCPL decided to construct the Neelkant Sankalp in two phases due to shortage of funds. What shall be the impact of the decision on the project?
- (A) No, if the second phase is started immediately after completion of phase 1, no separate registration is required for the second phase;
- (B) No, both the phases are part of one project and hence, no separate registration is required;
- (C) Yes, each phase will be considered as a standalone project and separate registration is required;
- (D) None of the options. **(2 Marks)**
- 5.3 Which of the projects of NCPL do not require registration with RERA?
- (A) Neelkant Nandanam;
- (B) Neelkant Bhagyam;
- (C) Neelkant Shristi;
- (D) All projects require registration. **(2 Marks)**
- 5.4 What is your view regarding the position taken by NCPL on the exclusion of 2 apartment owners for the purpose of considering their need for approval of transfer of infrastructure project to SIPL?
- (A) Yes, the position is correct, since they are not the original acquirers of the apartment from NCPL and NCPL is not obligated to the current owners;
- (B) No, the position is incorrect, the subsequent owners of the apartment are also to be considered as allottees under RERA;
- (C) Yes, their position is correct, unless the original allottees obtaining NCPL's consent prior to transferring their ownership to the current apartment owners;
- (D) No, NCPL has obtained the approval from sufficient number of original allottees and therefore, they do not need to consider the other allottees. **(2 Marks)**
- 5.5 Ms. SB Lakshmi seeks your advice on the next steps to be undertaken by her with regard to the foreign currency earned by her during her visit to Germany,
- (A) She is required to surrender the same to the authorised person within 180 days of her return to India;

- (B) *She is allowed to retain the said sum in foreign currency without any time limit;*
- (C) *She is allowed to retain the said sum, provided she obtains the approval of the authorised dealer;*
- (D) *She is allowed to retain the said sum, provided she converts the currency into traveller's cheque. (2 Marks)*
- 5.6 *Evaluate with reasons, whether the remittances made by Ms. SB Lakshmi are in compliance with the provisions of the Foreign Exchange Management Act, 1999. Would your response change if the education Fee is USD 300,000 (instead of USD 150,000 as mentioned in the Case Study). (3 Marks)*
- 5.7 *Examine and analyse the implications of the transfer of Land by Mr. Deepak to Mr. Neelkant Sharma and remittance thereof under the Foreign Exchange Management (Acquisition and Transfer of immovable Property in India) Regulations, 2018. (3 Marks)*
- 5.8 *SIPL's CFO is of the opinion that stipulated booking of flat by Ms. Ashlin violates the conditions stipulated as under the Foreign Exchange Management (Acquisition and Transfer of immovable property in India) Regulations, 2018, kindly examine. (3 Marks)*
- 5.9 *Whether the contention of NCPL is justified that SIPL is within their legal rights to alter the plan and specification. Examine the same in light of provision of the Real Estate (Regulation and Development) Act, 2016. (6 Marks)*

Answer to Case study 5

- 5.1 (C)
- 5.2 (C)
- 5.3 (A)
- 5.4 (B)
- 5.5 (B)

Answer 5.6

According to Schedule III of the FEM (Current Account Transaction) Rules, 2000, individuals can avail of foreign exchange facility for the prescribed purposes within the limit of USD 250,000 only. Any additional remittance in excess of the said limit shall require prior approval of the Reserve Bank of India.

In the given case study, Ms. SB Lakshmi remitted USD, 150,000 to his brother, Mr. Anand for his education expenses including fees, accommodation and food expenses. She also remitted an amount of USD 5,000 from her RFC account as gift on account of his birthday to him.

Accordingly, here since the remittance is for the education and his maintenance along with the gift of amount are the prescribed purposes under Schedule III within the limit of USD 250,000 (i.e., USD 155,000= 150,000+5,000). Hence, no prior approval of RBI is necessitated.

Therefore the said remittances made by the Ms.SB Lakshmi is in compliance with the provisions of the Foreign Exchange Management Act, 1999.

Where if, education fee is USD 300,000, then she can remit based on confirmation from University and shall not require prior approval of the Reserve Bank of India.

Answer 5.7

Transfer of land by Mr. Deepak Kumar: As per the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, an NRI or an OCI may transfer any immovable property in India to a person resident in India. So accordingly, Mr. Neelkant Sharma can acquire immovable property belonged to Mr. Deepak Kumar (his cousin brother) and an NRI, residing outside India.

'Remittance outside India' means the buying or drawing of foreign exchange from an authorised dealer in India and remitting it outside India through banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted in foreign currency.

As per the fact, Mr. Neelkant Sharma, remitted INR 600 lakhs from his RFC account and remaining amount paid as gift through crossed cheque to Mr. Deepak Kumar who deposited this in his NRO account. This mode of remittance of amount in lieu of sale of immovable property, made to Mr. Deepak Kumar is in compliance with the said provisions.

Answer 5.8

As per the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, an NRI or an OCI may acquire immovable property in India ,Provided that the consideration, if any, for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non resident account maintained in accordance with the provisions of the Act, rules or regulations framed thereunder.

Provided further that no payment for any transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.

As per the facts, remittance of an amount of ₹ 150 lakh to be made by Ms. Ashlin, from her earnings through normal banking channels was permissible. However, on being insisted by SIPL on making immediate initial booking advance, payment of an amount of USD 10,000 by Ms. Ashlin through traveller's cheque during her visit in India, is not permissible. Therefore

stipulated booking of flat by Ms. Ashlin violates the requirements of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

Answer 5.9

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

Section 14 of the RERA requires a promoter to adhere to the sanctioned plans and the project specifications. According to it the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

If any additions and alterations are required to be carried out it shall be done with the previous consent of the concerned person. However, minor additions or alterations as may be required by the allottee can be made by the promoter. In case, certain minor changes or alterations as are necessary due to architectural and structural reasons, are to be made by the promoter, they shall be duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Further, in case of any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project, the promoter is permitted to do so but he must obtain the previous written consent of minimum two-thirds of the concerned allottees.

If an allottee brings to the notice of promoter any structural defect, etc. or some of his other unfulfilled obligation as per the agreement for sale within five years from the date of possession, the promoter shall be duty-bound to rectify such defects without further charge, within thirty days. If not so rectified within the specified time, the aggrieved allottee shall be entitled to receive appropriate compensation.

In the given case study, changes were approved by 2/3 (i.e.40/60*100) of the original allottees, therefore contention of NCPL is not justified and SIPL is within their legal rights to alter the plan and specification in compliance with the stated requirements of the RERA.