

DISCLAIMER

This Suggested Answers 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. While due care is taken in preparation of the answers, if any errors or omissions are noticed, the same may be brought to the attention of the Director of Studies. The Council of the Institute is not in any way 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 assumption made or view taken.

PAPER 6D: ECONOMIC LAWS

NOTE: *The question paper comprises five case study questions. The candidates are required to answer any four case study questions out of five.*

Case Study 1**PART A**

That one Mis Sun Energy (Pte.) Limited hereinafter addressed as the "petitioner" had invested in an Indian Company 'Z', a company promoted by RR, by way of shares and debentures. The petitioner held 51 per cent of the share capital of 'Z' respectively.

The petitioner filed writ petition with Hon'ble High Court seeking for issuance of writ of prohibition, restraining the official respondents from in any manner proceeding with the show cause notice dated 19-5-2017, issued by the Initiating Officer (Rank of Deputy Commissioner Income Tax-Regular Company Circle) under section 24(1) under the Prohibition of Benami Property Transactions Act, 1988 (or in short PBPT Act), calling upon the petitioner to show cause as to why 51 per cent shares and debentures were held by the petitioner in an Indian Company 'Z' not be treated as a "benami property" and wanted to impose penalty under the Prohibition of Benami Property Transactions Act, 1988. The petitioner were of the view that the Adjudicating Authority is biased and may take adverse view on the case of the petitioner and the petitioner even challenged the composition of the Adjudicating Authority on their membership and qualification. The petitioner also sought for issuance of a writ of Certiorari, to quash the impugned show cause notice dated 19-5-2017, issued under section 24(3) of the Prohibition of Benami Property Transactions Act, 1988, intimating the petitioner that pursuant to the provisional attachment of shares and debentures, enforced, the petitioner was restricted/prohibited from dealing in any manner and from exercising any rights in relation to the shares and debentures.

The petitioner stated that none of the transactions were benami transactions and the petitioner was not a benamidar and the shares and debentures were not benami property. The transactions done by the petitioner were completed well before the amendment to the Prohibition of Benami Property Transactions Act, 1988. (The amendment received the assent of the President of India on 11-8-2016 and the Act came into force with effect from 1-11-2016)

It was alleged by the petitioner that after receiving substantial investment from the petitioner, RR was alleged to have siphoned money out of 'Z', refused to make necessary disclosures and comply with the mandatory filings required under the Companies Act, 2013 and when the petitioner sought for transparency of the transactions, RR and various companies controlled by him initiated litigation against the petitioner with a view to prevent the petitioner from examining the affairs of 'Z'. In the meanwhile, RR filed company petition before the National Company Law Tribunal (NCLT) to restrain the petitioner from exercising its rights in relation to the shares and debentures and also approached the High Court in this regard, where the Court initially granted an ex parte interim injunction, which was vacated after the petitioner entered appearance and contested the matter, by order dated 1-6-2017 and RR's plea was dismissed.

The petitioner explained about the shareholding pattern in 'Z' and the pattern of investment made in the company and how the debentures and shares were allotted to the petitioner. It was submitted that on the date of issuance of the impugned show cause notice, the Initiating Officer had no jurisdiction to issue the same, as he was not the gazette initiating officer under the Act and thus lacked statutory jurisdiction even to issue the impugned orders. The transactions done by the petitioner with the Indian company were completed in all aspects long before the Amendment Act came into force i.e., on 01-11-2016 based upon the provisions of section 18 read with section 24 of the Act.

It was further submitted by the petitioner that the case of the Initiating Officer was solely based upon the date on which, the Gazette Notification was uploaded by the Directorate of Printing at the Government of India press to justify the jurisdiction of the Initiating Officer to initiate proceedings. It was submitted that the notification would come into operation as soon as it is published in the Gazette of India, i.e., the date of publication of Gazette and this being the correct legal position, the contention of the Initiating Officer referring to the date on which the notification was uploaded in the official website, was not sustainable based upon the provisions of section 2(21) of the Act.

PART-B

Further to the above case scenario M/s Sun Energy (Pte.) Limited had in the month of January 2014 pre-booked a commercial office unit of approximately 1200 sq. ft. with M/s J V Realty Limited, a leading developer in that area in their "S COURT" Greater Noida project developed in phases launched then by paying an amount of ₹ 25,00,000/- as booking amount out of ₹ 1,00,00,000 the total cost of flat but no Builder-Buyer agreement was entered into between the parties except that an allotment letter was issued by the developer mentioning the unit details. This project being developed over an area of approximately 15000 sq mts and having over 100 office units in its plan outlay and the company had paid till April 2017 almost 90% of the entire cost of the property based upon percentage of completion (progress) of the stage of construction but the developer had failed to provide neither possession nor had completed the project and was also not responding to their complaints on one pretext or the other. The legal counsel of M/s Sun Energy (Pte.) Limited in the month of May, 2017 informed the Board of Directors of the company about Real Estate (Regulation and Development) Act, 2016 (for short "the RERA"). They further informed that RERA was enacted by the Parliament as Act 16 of 2016 in the year 2016. Some of the provisions of the RERA came into force on a date prescribed by the Central Government under the notification published in the official gazette. Different dates were appointed for different provisions of the RERA. By Notification No. S.O.1544 (E), dated 26-4-2016, the Central Government appointed 1st day of May 2016 as a date on which some of the provisions of the RERA came into force, namely, Sections 2, 20 to 39, 41 to 58, 17 to 78 and 81 to 92. By Notification No. S. 0.1216, dated 19-4-2017 some more provisions of the RERA came into force, namely, Sections 3 to 19, 40, 59 to 70 and 79, 80 w.e.f 1st May, 2017. Meaning thereby that on May 1, 2017, all 92 provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA or the Act) were brought into force. The Act has introduced new obligations on real estate developers and in cases of default, prescribes penal liabilities and the company

can contemplate bringing a legal suit against the developers under RERA. The developer on the other hand is of the view that RERA is not applicable to this project as the same was launched and construction commenced much before the RERA came into force.

Answer the following questions:

- 1.1 Which of the following is correct statement as per Prohibition of Benami Property Transactions Act, 1988?
- (A) Prohibition to hold benami property.
 - (B) Prohibition of benami transactions.
 - (C) Prohibition of right to recover property held benami.
 - (D) Prohibition on re-transfer of property by benamidar.
- 1.2 As per the provision of Prohibition of Benami Property Transactions Act, 1988 the appellate tribunal or the adjudicating authority may in order to rectify any mistake apparent on face of the record, amend any order made under section 26 and section 46 respectively within a period
- (A) of two years from the end of the quarter in which the order was passed.
 - (B) of three years from the end of the quarter in which the order was passed.
 - (C) of one year from the end of the month in which the order was passed.
 - (D) of one year from the date of passing of order.
- 1.3 Where a builder is planning to develop a particular project in different phases spread over couple of years, then he is required to obtain registration under Real Estate (Regulation and Development) Act, 2016.
- (A) Only once for the entire project indicating all the phases.
 - (B) For each phase separately.
 - (C) As and when project commences registration will be required.
 - (D) As and when a particular phase is being developed registration of that phase will be required.
- 1.4 A promoter shall not accept a sum of more than _____ percentage of the cost of the apartment, plot or building, as an advance payment or an application fee from a person without first entering _____ a under the provisions of Real Estate (Regulation and Development) Act, 2016.
- (A) 15%, Sale Deed.

- (B) 10%, written agreement for sale.
- (C) 15%, Sale Deed which is duly registered.
- (D) 10%, written agreement to sale which is duly registered.
- 1.5 Where a Real Estate Agent contravenes the provisions of section 9 or section 10 of the Real Estate (Regulation and Development) Act, 2016 he shall be liable to penalty as determined by the Authority of _____
- (A) ₹10,000.
- (B) ₹ 10,000 for every day during which the default continues.
- (C) ₹10,000 for every day during which the default continues upto 5% of the cost of the plot, apartment or building of the project for which sale has been facilitated.
- (D) ₹10,000 for every day during which the default continues upto 2% of the cost of the plot, apartment or building of the project for which sale has been facilitated.
- (5 x 2 = 10 Marks)**
- 1.6 In the light of given case study state the quantum of penalty imposed whosoever enters into any Benami Transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016. **(3 Marks)**
- 1.7 State the qualifications for appointment of Chairperson and Members of the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988. **(2 Marks)**
- 1.8 In the light of the given case study decide stating the provisions of the Real Estate (Regulation and Development) Act, 2016, whether M/s Sun Energy (Pte.) Limited can initiate legal proceedings against the developer M/s J V Realty Limited under the said Act or the contention of the developer that the said Act is not applicable to the project is correct. **(5 Marks)**
- 1.9 From the provisions of the Real Estate (Regulation and Development) Act, 2016, you are of the view that the Act is applicable to the developer then decide as per the provisions of the said Act, can the company seek refund of the entire amount paid to the developer till date along with interest? Whether apart from principal and interest, can the company also seek certain compensation from the developer? **(5 Marks)**

ANSWER TO CASE STUDY 1

- 1.1 Options B, C, & D

Note: In the light of the Preamble of the Prohibition of Benami Property Transaction Act, 1988, Options B, C, & D, are correct Options

1.2 Option C

1.3 Option B

1.4 Option D

1.5 Option C

Answer 1.6

Quantum of Penalty for Benami Transactions [Section 53]

As per Section 53 of the Prohibition of Benami Property Transactions Act, 1988: [substituted for Benami Transactions (Prohibition) Act, 1988 by the Benami Transactions (Prohibition) Amendment Act, 2016 w.e.f. 01.11.2016] :

Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

Whoever is found guilty of the offence of benami transaction referred to above shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.

Answer 1.7

As per Section 9 of the Prohibition of Benami Property Transactions Act, 1988 as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 w.e.f. 01.11.2016:

- (1) A person shall not be qualified for appointment as the chairperson or a Member of the Adjudicating Authority unless he:
 - (a) Has been member of the Indian Revenue Service and has held the post of Commissioner of Income tax or equivalent post in that service
 - (b) Has been a member of the Indian legal service and has held the post of joint Secretary or equivalent post in that service.
- (2) The Chairperson and other members of the Adjudicating Authority shall be appointed by the Central Government in such manner as may be prescribed.
- (3) The Central Government shall appoint the senior most member to be the chairperson of the Adjudicating Authority.

Answer 1.8

As per Section 3(1) of The Real Estate (Regulation & Development) Act, 2016, (the Act) the promoter shall make an application to the Authority for registration of the project that is ongoing

on the date of commencement of this Act and for which completion certificate has not been issued within a period of three months from the date of commencement of this Act.

Further Section 3(2) of the Act says that no registration of the real estate project shall be required :

- (a) where the area of land proposed to be developed does not exceed 500 square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases;
- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this act;

As per the facts, "S COURT" greater Noida project was launched before the enforcement of the Act. As M/s Sun Energy (Pte.) Limited had pre-booked in January 2014 with M/s J V Realty Limited. So it was an ongoing project on the date of commencement of this Act and for which completion certificate has also not been issued within a period of three months from the date of commencement of this Act.

Further project was developed over an area of approximately 15000 sq. mts. and having over 100 office units in its plan outlay, which exceed 500 square meters and the number of apartments exceeding eight inclusive of all phases.

Hence in the given case, M/s Sun Energy (Pte.) Ltd can initiate legal proceedings against developer M/s J V Realty Limited under the Act stating the violation of the above mentioned provisions under the Act and the contention of the developer that the said Act is not applicable to the project, is incorrect.

Answer 1.9

Return of Amount and Compensation (Section 18)

Section 18 of the of The Real Estate (Regulation & Development) Act, 2016, (RERA) provides for the return of amount and compensation.

- (1) 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.

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

- (2) 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.
- (3) If the promoter fails to discharge any other obligations imposed on him under this Act or the Rules or Regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Therefore in the given case study as per the provision of Section 18 reproduced herein above, the Company can seek refund if they wish to withdraw and also claim interest apart from compensation.

CASE STUDY 2

Mr. Kamal is engaged in the real estate business of development of townships through his company- M/s P Homes Ltd. During the course of business, he has accumulated enormous amount of wealth in the form of cash which was generated through illegal businesses. Police cases under several sections of various Indian laws have also been registered against Mr. Kamal.

Mr. Kamal has a son Mr. Vimal who was residing in India during F.Y. 2016-17. He left for UAE on 25th August 2017 to undergo training for a period of 4 years. Mr. Shyam, brother of Mr. Kamal, has a daughter, Ms. Priyadarshini pursuing higher studies in UAE. Mr. Shyam intends to:

- (a) *open a bank account in foreign currency in UAE.*
- (b) *remit money from India to his daughter in her account for studies.*

Separately, Ms. Priyadarshini has requested Mr. Shyam to sponsor a chess tournament in UAE which will involve remittance amounting to USD 85,000 (after conversion). Mr. Shyam generally remits money through TZB Bank Ltd. after complying necessary formalities.

On the other hand, since Mr. Vimal's interest lies in India, he intends to invest money in India in the following manner:

- (a) *Incorporating a Company in India followed by infusion of capital in the said company.*
- (b) *Buying an agricultural farm in his individual capacity.*

Above investments require funding which will be sought from Mr. Kamal.

From the business of real estate, total wealth generated by Mr. Kamal amounts to approx.

₹ 775 Crore. The said amount was utilized by him in the following manner:

- (a) Around ₹100 crore were used for meeting certain cash expenses and paying certain bribes.*
- (b) ₹ 325 crore were transferred through hawala transaction to Mr. Vimal.*

Transferring money through hawala route was chosen by Mr. Kamal since the money available with him in his bank account was not sufficient to remit legally under various provisions of Foreign Exchange Management Act, 1999. Therefore, he decided to strike a deal with Mr. Bhola, a hawala agent operating in India. Terms of the deal are as under:

- Mr. Kamal will pay ₹ 325 crore + commission in cash to Mr. Bhola.*
- Mr. Bhola, through his counterparts in UAE, will pay equivalent USD (after conversion) to Mr. Vimal against invoice for professional services dated 1st October 2018.*

Further Mr. Kamal and Mr. Shyam are promoters and directors of M/s KS Cinemas Ltd., a company engaged in the business of producing motion films in India.

For a very large upcoming film project, M/s KS Cinemas Ltd. has taken loan from TZB Bank Ltd. amounting to ₹ 350 crore after mortgaging all the assets of the company including rights related to the film. However, due to controversies surrounding the film, the Censor Board withheld the certification of the film. Even the Honorable High Court turned down plea of the producers that the film is not against the interest of the country or public at large. The Reserve Bank of India during the course of annual audit sent a notice to TZB Bank Ltd on suspicion of non-compliance of the provisions of the Foreign Exchange Management Act, 1999 by TZB Bank Ltd. In the said notice, the Reserve Bank of India sought certain information on the transactions carried out by Mr. Shyam. However, lawyer of TZB Bank Ltd. suggested not to provide any response to such notice, since such notice is generally issued to every bank as a part of audit procedure and is of routine in nature.

One of the disgruntled crew members filed a complaint against Mr. Kamal in police station under Indian Penal Code (IPC) for investigation. The complaint was accompanied with the details of how Mr. Kamal acquired massive amount of wealth and huge properties in his name and also in joint names. The accused person accumulated movable and immovable properties and assets not only in India but in abroad also. Those properties were acquired otherwise and were not included in their disclosed assets. Their criminal acts indicated misappropriation of public money. Accordingly, the complaint was registered under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988.

Later on, the investigation was taken over by the CBI., while the CBI. was proceeding with the investigation, the Enforcement Directorate on the basis of allegation made, lodged Enforcement Case Information Report (ECIR) against Mr. Kamal. Similarly, as per the said ECIR when complaint was filed under Section 45 of the Prevention of Money Laundering Act, 2002,

cognizance of the offence was taken against Mr. Kamal under section 3 of the Prevention of Money Laundering Act, 2002, punishable under section 4 of the said Act. The Enforcement Directorate issued a notice dated 27th January 2018 to Mr. Kamal, which was received by him on 31st January, 2018 directing him to pay penalty.

Subsequently, an order was issued by the authorities to provisionally attach properties belonging to Mr. Kamal. Mr. Kamal now intends not to challenge the action taken against him under the Prevention of Money Laundering Act, 2002 before the Adjudicating Authorities. On 01st May, 2018 a meeting was held with you in the said meeting Mr. Kamal informed that he wanted to engage you to advise for understanding, powers and remedy for his matters under the various provisions of the Foreign Exchange Management Act, 1999 and the Prevention of Money Laundering Act, 2002.

Answer the following questions:

- 2.1 Which of the following remittance will require prior approval of Government of India for drawl of foreign exchange under the Foreign Exchange Management Act, 1999?
- (A) Payment related to 'call back services' of telephones.
 - (B) Opening of foreign currency account abroad with a bank.
 - (C) Remittance of prize money / sponsorship of sports activity abroad by a person other than International / National / State Level bodies, if the amount involved is USD 90,000.
 - (D) Remittance of freight of vessel chartered by a Public Sector Undertaking.
- 2.2 As per the provisions of the Prevention of Money Laundering Act, 2002, person on whose behalf a transaction is being conducted is known as:
- (A) Client.
 - (B) Financial Institution
 - (C) Beneficial Owner.
 - (D) Authorized Dealer.
- 2.3 Under the Prevention of Money Laundering Act, 2002, Adjudicating Authority consists of following:
- (A) 3 persons including chairman.
 - (B) 4 persons including chairman.
 - (C) 2 persons one of whom can be appointed as a chairman
 - (D) 5 persons including a member from Ministry of Law and Justice.

- 2.4 Among other things, what is the qualification of a person to be appointed as a Public Prosecutor before the Special Court under the provisions of the Prevention of Money Laundering Act, 2002?
- (A) Minimum 10 years of experience as an advocate.
 - (B) Minimum 5 years of experience as an advocate.
 - (C) Minimum 7 years of experience as an advocate.
 - (D) Minimum 15 years of experience as an advocate.
- 2.5 Under the Prevention of Money Laundering Act, 2002, property can be provisionally attached for_____.
- (A) Not exceeding 60 days.
 - (B) Not exceeding 90 days.
 - (C) Not exceeding 180 days.
 - (D) Not exceeding 300 days. **(5 x 2 = 10 Marks)**
- 2.6 Answer the following in light of the provisions of the Foreign Exchange Management Act, 1999:
- Advise Mr. Kamal whether:
- I. he can invest in M/s P Homes Ltd. engaged in the business of building low budget homes.
 - II. he can buy agricultural farm in his individual capacity.
 - III. he can make payment through foreign currency notes. **(3 Marks)**
- 2.7 For investing activities in India by Mr. Kamal, he approached you on 1st May 2018 with a notice dated 27th January, 2018 received by him from the office of Enforcement Directorate on 31st January 2018 directing him to pay penalty. Kindly advise Mr. Kamal on timelines to pay the penalty and powers of the officers to recover the same. Mr. Kamal has informed that he doesn't intend to file an appeal. **(3 Marks)**
- 2.8 On suspicion of non-compliance of the provisions of the Foreign Exchange Management Act, 1999 by TZB Bank Ltd., the Reserve Bank of India had sent a notice to the bank seeking certain information on the transactions carried out by Mr. Shyam. However, lawyer of TZB Bank Ltd. had suggested not to provide any response to such notice since such notice is generally issued to every bank as a part of audit procedure and is of routine in nature. Explain the powers of the Reserve Bank of India in case of non-compliance to notice. **(3 Marks)**

2.9 Explain the following in light of the provisions of the Prevention of Money Laundering Act, 2002:

- I. Money Laundering does not mean just siphoning of funds. In light of this statement, explain the significance and aim of the Prevention of Money Laundering Act, 2002 and its three distinct stages. **(2 Marks)**
- II. Mr. Kamal seeks your advice on the remedy available with him under the Act against the said attachment order. **(2 Marks)**
- III. Properties confiscated under the provisions of the Prevention of Money Laundering Act, 2002 shall be available for disposal by Ministry of Finance as and when necessary. Examine correctness of the statement. **(2 Marks)**

ANSWER TO CASE STUDY 2

2.1 Option D

2.2. Option C

2.3 Option A

2.4 Option C

2.5 Option C

Answer 2.6

- (I) As per Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, no person resident outside India shall make an investment in India, in any form, in any company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage in real estate business. Since Mr. Kamal is a person resident in India, he can invest in M/s P Homes Ltd. engaged in the business of building low budget homes.
- (II) Yes, Mr. Kamal can buy agricultural farm in his individual capacity, since prohibitions as regard the purchase of agricultural farm is exercised in favour of person resident outside India. In other words there is no specific prohibition on person resident in India on buying of agricultural farm in his individual capacity.
- (III) A person resident in India can open, hold and maintain with an authorized dealer in India, a Resident Foreign Currency (Domestic) Account, out of foreign exchange acquired in the form of currency notes, Bank notes and travellers cheques from any of the sources like, payment for services rendered abroad. Yes Mr. Kamal can make payment through foreign currency notes through an authorized dealer.

Answer 2.7**Recovery of Fine or Penalty [Section 69 of the Prevention of Money Laundering Act, 2002]**

Where any fine or penalty imposed on any person under Section 13 or Section 63 of Prevention of Money Laundering Act, 2002 is not paid within 6 months from the day of imposition of fine or penalty, the Director or any other officer authorized by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorized by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose. Accordingly, Mr. Kamal must pay penalty latest by 31st July, 2018.

Answer 2.8**Reserve Bank's powers to issue directions to authorized person [Section 11]**

- (1) The Reserve Bank may, for the purpose of securing compliance with the provisions of this Act and of any rules, regulations, notifications or directions made thereunder, give to the authorized persons any direction in regard to making of payment or the doing or desist from doing any act relating to foreign exchange or foreign security.
- (2) The Reserve Bank may, for the purpose of ensuring the compliance with the provisions of this Act or of any rule, regulation, notification direction or order made thereunder, direct any authorized person to furnish such information, in such manner, as it deems fit.
- (3) Where any authorized person contravenes any direction given by the Reserve Bank under this Act or fails to file any return as directed by the Reserve Bank, the Reserve Bank may, after giving reasonable opportunity of being heard, impose on the authorized person a penalty which may extend to ten thousand rupees and in the case of continuing contravention with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

As per above provisions, Reserve Bank of India may impose penalty on TZB Bank Ltd. for non-compliance to notice.

Answer 2.9

- (I) Money laundering does not mean siphoning of fund. It actually refers to a whole process or an entire system by which money is actually generated from serious crimes but they are given such shape (by disguising its origin into a series of transactions) that it looks like it has originated from legitimate sources.

The **Prevention of Money Laundering Act, 2002** As stated in the Preamble to the Act, it is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and to punish those who commit the offence of money laundering.

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

1. **Placement:** It is the first and the initial stage when the crime money is injected into the formal financial System.
 2. **Layering:** Then under the second stage, money injected into the system is layered and moved or spread over various transactions in different accounts and different countries. Thus, it will become difficult to detect the origin of the money.
 3. **Integration:** Under the third and final stage, money enters the financial system in such a way that original association with the crime is sought to be obliterated so that the money can then be used by the offender or person receiving as clean money.
- II. **Section 25** of the Prevention of Money Laundering Act, 2002 (the Act) empowers the Central Government to establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the Authorities under the Act.

Section 26 of the Act deals with the rights and time frame to make an appeal to the appellate Tribunal. Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which copy of the order is received by him. The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days.

The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

According to **Section 42** of the Act, any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.

In the light of the above provisions of the Act, Mr. Kamal is advised to prefer an appeal to the Appellate Tribunal in the first instance.

(III) Management of Properties confiscated (Section 10)

Under **Section 10** of the Prevention of Money laundering Act, 2002:

The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

- (1) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (5) or sub-section (6) or sub-section (7) of Section 8 or Section 58B or sub-section (2A) of Section 60 in such manner and subject to such conditions as may be prescribed.
- (2) The Administrator shall also take such measures as the Central Government may direct to dispose of the property which is vested in the Central Government under Section 9.

In view of the above, the state that the properties under the Act shall be available for disposal by the Ministry of Finance as and when necessary is correct.

CASE STUDY 3

SSTPL is one of India's leading television manufacturers and has its manufacturing plant in Chennai, with more than 200 dealers across the country. SSTPL specializes in manufacturing LED Smart televisions both for direct retail sales as well as contract manufacture for other television manufacturers. SSTPL has a very robust Board of Directors who are highly involved in the operations of the entity.

During one of the Board Meetings held in the month of July 2019, the Board of Directors reviewed the amounts receivable from the dealers of SSTPL and noted the following:

Age	Amount in Lakh ₹	Number of Dealers
0 to 180 days	1505	135
180 to 720 days	280	34
> 720 days	905	1
Total	2,690	170

The CFO went on to explain that the amount which is outstanding for more than 2 years is receivable from DMPL and the Company has been following up with the dealer on a regular basis. The independent director on the Board asked the CFO to explore the possibility of taking action against DMPL under the Insolvency and Bankruptcy Code, 2016 (in short 'IBC 2016'). The CFO informed that the financial creditors of DMPL has already commenced the process and the Interim Resolution Professional (IRP) reached out to the CFO last week to understand the claims of SSTPL against DMPL.

The IRP identified the following assets and liabilities of DMPL:

- Bank loans taken by DMPL from Bank A amounting to ₹1500 lakh and Bank B amounting to ₹1050 lakh.
- Loan taken from the son Mr. 'X' of the promoter of DMPL amounting to ₹75 lakh attended Board Meetings to provide guidance/directions on policy making process.
- Payable to SSTPL ₹905 lakh.

- *Outstanding wages to workmen amounting to ₹ 75 lakh.*
- *Statutory employer contributions to the tune of ₹ 30 lakh.*
- *Realisable value of the fixed assets of DMPL, ₹ 2800 lakh.*
- *Receivables from various customers, ₹ 225 lakh, out of which 50% is not realisable.*
- *Bank balance off ₹ 22.5 lakh.*

The IRP also received information that MCL, a Company registered in Germany, pursuant to an agreement entered with DMPL and supplied spares to DMPL for an amount of EVR 500,000 (INR 400 lakh) (though this claim is not disputed by DMPL, the same was not recorded in the books of accounts of DMPL inadvertently). Since this amount was not paid by DMPL even after several reminders, MCL filed an application under the IBC 2016. However, this application was rejected by the Adjudicating Authority since as per the agreement between MCL and DMPL, any disputes between the parties are to be decided by the courts in Germany. DMPL, in its agreement, with its distributors, specified that the distributors be necessarily required to purchase spares for 2 models of cars on a bundled basis (the sale price fixed based on fair market value/mutual discussion). On 14th April 2020, ACL, another supplier of DMPL, to whom DMPL owed INR 75 lakh, also wanted to initiate Corporate Insolvency Resolution Process against DMPL for non-payment of undisputed dues.

During the aforesaid Board Meeting of SSTPL, the CFO also placed a revised draft agreement to be entered into with all the dealers after introduction of GST and as part of the same, the following clauses were proposed to be included:

- *Dealers are required to obtain specific approval of SSTPL prior to making change in the marketing model or technical developments to the prejudice of customers.*
- *Specify the geographical area where the dealers can market the cars.*
- *Limit the operation of service centres by specifying dealers who can operate service centres.*
- *Bar transactions or transfer of cars and spares between dealers.*
- *Mandate the floor price at which services may be provided by the dealers.*
- *Higher pricing of substitutable products and services.*
- *Mandate the dealers to acquire certain number of cars of the base version, when ordering high end variants.*

The agreement envisaged that no sale would be made to dealers who do not comply with the above conditions. The Directors of the Company felt that some of these clauses are not in compliance with the provisions of the Competition Act 2002.

Answer the following questions

- 3.1 What is the percentage share of Bank A in the Committee of Creditors of DMPL under IBC, 2016 proceedings?
- (A) 57.14%.
 - (B) 58.82%.
 - (C) 41.27%.
 - (D) 42.13%.
- 3.2 Out of the below, identify who is a related party of DMPL under the IBC, 2016?
- (A) Mr. A, who holds 15% shares in DMPL.
 - (B) Indigenous Private Limited, who has one common independent director (with no shareholding) with DMPL.
 - (C) Mr. X, who although not an employee or director of DMPL, is close to the promoter and attends Board Meetings to provide guidance/directions on policy making process;
 - (D) Ms. Y, who controls the composition of Board of Directors of SSTPL.
- 3.3 Does the contract entered into by DMPL with its distributors cause an appreciable adverse effect on competition under the Competition Act, 2002?
- (A) Yes, since this is in the nature of a tie-in arrangement.
 - (B) No, this is a contract between a 'willing buyer' and 'willing seller' and they are free to determine the contract terms;
 - (C) Yes, since transaction is in the nature of predatory pricing by DMPL to reduce competition from other spares manufacturers.
 - (D) No, the contract actually promotes and sustains competition in the market.
- 3.4 The plan of SSTPL to consider a higher cost of substitutable goods and services for the dealers is covered under which of the below factors under the Competition Act, 2002?
- (A) Appreciable adverse effect on competition.
 - (B) Abuse of dominant position.
 - (C) Price rigging.
 - (D) Collusive pricing.

- 3.5 Can ACL file Corporate Insolvency Resolution Process against DMPL under IBC, 2016?
- (A) Yes, ACL is an operational creditor and all the conditions under IBC, 2016 have been fulfilled.
- (B) No, ACL is not a financial creditor.
- (C) No, since the amount of default is less than the minimum amount of default (₹ 100 lakh) for being covered under Section 4 of IBC, 2016;
- (D) Yes, since the amount of default is not, disputed by DMPL and there is no ongoing dispute. **(5 x 2 = 10 Marks)**
- 3.6 Answer the following questions:
- (i) Advise the IRP with regard to the appropriateness of the order of the Adjudicating Authority regarding, the application made by MCL under the provisions of the Insolvency and Bankruptcy Code, 2016. **(4 Marks)**
- (ii) Calculate the amount receivable by SSTPL from DMPL based on the facts given in the case study (assume-no liquidation costs) as per Section 53 of the Insolvency and Bankruptcy Code, 2016. **(5 Marks)**
- (iii) Evaluate the terms of the agreement proposed to be entered into by SSTPL with the dealers based as per the provisions of the Competition Act, 2002. **(6 Marks)**

ANSWER TO CASE STUDY 3

- 3.1 Option (C)
- 3.2 Option (C)
- 3.3 Option (A)
- 3.4 Option (B)
- 3.5 Option (C)

Answer 3.6

Enabling provisions for cross border transactions: India is no more an isolated business place. India is now part of global business hub. Indian businesses have investments outside India while many businesses outside India have presence in India. India is now a global village. Enabling provisions in the Code are Sections 234 and 235 for this purpose.

Agreements with Foreign Countries: The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Code.

Letter of request to a country outside India in respect of assets: If, in the course of insolvency resolution process, or liquidation or bankruptcy proceedings, as the case may be,

under this Code, the resolution professional, liquidator or bankruptcy trustee, is of the opinion that assets of the corporate debtor or debtor, are situated in a country outside India with which reciprocal arrangements have been made under section 234 of Insolvency and Bankruptcy Code, 2016, he may make an application to the Adjudicating Authority that evidence or action relating to such assets is required in connection with such process or proceeding.

The Adjudicating Authority on receipt of an application and, on being satisfied that evidence or action relating to assets, is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may issue a letter of request to a Court or an authority of such Country competent to deal with such request. **[Section 235]**

Accordingly, in the given case, order of the Adjudicating Authority of rejection of filing an application under IBC, 2016 by MCL (a Company registered in Germany) is not in order because as per Section 235, the Adjudicating Authority on receipt of an application on being satisfied that evidence or action relating to assets, is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may issue a letter of request to a Court or an authority of such Country competent to deal with such request.

Answer 3.6 (ii)

Section 53 of the Insolvency & Bankruptcy Code, 2016 lays the provisions related to distribution of assets or the proceeds from the sale of the liquidation assets.

Distribution of proceeds from the sale of the liquidation assets: The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority —

- (a) the insolvency resolution process costs and the liquidation costs paid in full;
- (b) the following debts which shall rank equally between and among the following :—
 - (i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors;
- (e) the following dues shall rank equally between and among the following:—
 - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

- (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) any remaining debts and dues;
- (g) preference shareholders, if any; and
- (h) equity shareholders or partners, as the case may be.

Realisable value of the fixed assets + realisable value of receivables (50% of Rs. 225 lakhs) + Bank Balance Amount=

(Rs 2800 + 112.5 + 22.5) lakhs = Rs. 2935 lakhs

Less outstanding wages to workmen = Rs.75 lakhs*

Less unpaid dues on account of statutory employer's contribution treating them as workmen's dues = 30 lakhs

Less amount debts owed to a secured creditor** = (1500 + 1050) = Rs. 2550 lakhs

Less Loan taken from Mr. X = 75 lakhs

Balance amount available = 2935 – (75+30+2550+75) lakhs = 205 lakhs (which to be shared between SSTPL and ACL***)

Therefore, amount receivable by SSTPL (205 / 980**x905) = Approx. Rs. 189.31 lakhs.**

* It is assumed that outstanding wages of Rs. 75 Lakhs due to the workmen relate to the period of 24 months preceding to the date of commencement of liquidation. [The question does not mention the date of commencement of liquidation. Moreover, the term IRP needs to be replaced by the term Liquidator since it is a case of Liquidation of a Corporate Person].

** It is assumed that the both the banks have relinquished their security interest and their securities have been realized by the Liquidator for inclusion in the Liquidation estate. [In fact, consolidated amount of Rs. 2800 lakhs being the realizable value of fixed assets validates this assumption.]

***In respect of MCL, a Company registered in Germany, the Adjudicating Authority (AA) has rejected its application filed under IBC, 2016. Further, no direction has been issued by the AA regarding the outstanding amount of Rs. 400 lakhs. MCL has also not approached the Appellate Authority for revival of rejected application. No stay order has been issued favouring MCL. In addition, MCL has not filed any suit in Germany against DMPL for recovery of dues till the date of commencement of liquidation. In such a case, from the facts of the questions which are not elaborated in nature and from the limited information available, MCL cannot be treated as an operational creditor at par with SSTPL or ACL.

**** After considering SSTPL (Rs. 905 lakhs) and ACL (Rs. 75 lakhs) as operational creditors.

Answer 3.6 (iii)

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

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

Any agreement entered into between enterprises or persons at different levels of the production chain in different markets in respect of production, supply, distribution, storage, sale or price of trade in goods or provision of services shall be a void agreement if it causes or is likely to cause an appreciable adverse effect on competition in India including:

- (a) Tie-in agreement
- (b) Exclusive supply agreement
- (c) Exclusive distribution agreement
- (d) Refusal to deal
- (e) Resale price maintenance

Accordingly the clauses proposed in the revise draft agreement by SSTPL, is limiting and restricting to the production of goods or provision of services or market therefore specifying geographical areas where dealers can market the cars , restricting technical or scientific development relating to goods or services to the prejudice of consumers; resulting in denial of market access by limiting the operations of service centers, bar on the transactions of car and spares between dealers themselves, imposes unfair price in purchase or sale by mandating floor price, higher pricing of substitutable products and services and imposing the dealers to acquire certain numbers of cars while ordering high end variants

These all terms of agreement entered by SSTPL with dealers shows the abuse of dominant position as per section 4 of the Competition Act, 2002.

CASE STUDY 4

The decade of 1960 was known as the golden period for goldsmiths in India and there was tremendous interest in the minds of the people to buy and wear gold jewelry. Hard work and expertise in making this jewelry made many goldsmiths millionaires in a very short period. Two such goldsmiths were Mr. Selva Chetty and Mr. Thiagu Chetty, brothers who lived in Sivaganga district, Tamil Nadu. Using the boom period, the Selva ventured to start several new business, one of which was a small real estate company called Gangaikondan Holiday Properties Limited (GHPL).

In the year 1970, Mr. Thiagu migrated to the United Kingdom and started his jewelry business there. He used to visit India every year and give substantial sums to Mr. Selva to invest in India on behalf of Mr. Thiagu and for his benefit to use once he comes back to India Mr. Selva mentioned to him that it may be worthwhile to invest the money in buying large tracts of land near Sivaganga and the same is expected to appreciate significantly in the next 10 years. Mr. Thiagu was very much interested in this and therefore, in the year 1989, Mr. Selva purchased 10 acres of land from the Government in his name, in the capacity as fiduciary relationship/trustee of Mr. Thiagu and hold the property on behalf of and for the benefit of Mr. Thiagu. Mr. Selva used the land for cultivation of crops and was using the crops for his consumption and for sale. The proceeds from the sale was deposited by Mr. Selva in his bank account.

In the meantime, Mr. Selva got married and was blessed with a son Mr. Venkat. In the year 1971, when Mr. Venkat was 6 years old, Mr. Selva acquired a new residential house comprising of 4 individual units in the name of Mr. Venkat since he felt that buying the new home in his son's name will be auspicious for Mr. Selva and the new home. For this purpose, Mr. Selva took a 5 year loan from Bank of Sivaganga and was repaying the loans promptly on the due dates and got back the title deeds from the Bank once the loan was repaid. The new home was occupied by Mr. Selva and his family and Mr. Selva rented out 2 portions on rent to tenants. Mr. Selva paid the property taxes for the property and maintained the property on his own account. In 1980, Mr. Selva was blessed with another child who was named Ms. Bhagyalakshmi. In 1984, Mr. Selva prepared his will as per which he considered that the residential house will belong to Mr. Venkat and Ms. Bhagyalakshmi in equal measure, which was not disclosed to anyone.

GHPL commenced construction of a large apartment complex in an upcoming industrial belt of Sivaganga. There was tremendous expectation that several large companies were going to set up factories in the location and therefore, the demand for housing expanded significantly. A lot of housing companies commenced projects in the location.

In one of the discussions between the real estate companies, GHPL was approached by other leading real estate developers who were constructing high rise apartments in the vicinity to have a tacit (unwritten) understanding for jacking up the prices of the apartments and also in unbundling of the open car parking given to the allottees from the total price and charging separately for the same. This would help the companies in providing the best-in-class facilities to the apartment buyers at the same time ensure good profitability for the companies. GHPL did

not immediately agree to the same but wanted to evaluate the implications of such an agreement. One of the real estate developers wanted to extend the understanding to the infrastructure projects by these companies in UAE also (since many of them are constructing homes in UAE as well).

In the year 1986, Mr. Venkat got married and declared that he is the absolute owner of the residential house since the house is in his name and was purchased by his father in his name purely for his benefit when he was a minor and to help him settle down in his life. He then asked for vacation of the property by Mr. Selva and his family as well as the tenants. Mr. Selva was enraged by this act of Mr. Venkat and filed a suit for declaring the property as a benami property where Mr. Venkat was a benamidar and he was the rightful owner of the same. They discussed the matter with various consultants for determination of a benami transaction as decided by Hon'ble Supreme Court of India.

In May 2017, GHPL is evaluating the acquisition of another large real estate company in Sivaganga and is contemplating the implications of the Competition Act, 2002 in this regard.

Answer the following questions:

- 4.1 The CFO of GHPL seeks your views to understand which of the following would not be a violation of the provisions of the Competition Act, 2002?
- (A) Predatory Pricing.
 - (B) Limiting production of goods.
 - (C) Agreement for Protection of rights under the Designs Act, 2000.
 - (D) Denial of market access.
- 4.2 What is the term of the members of the Competition Commission under the Competition Act, 2002 which is reviewing the agreement / tacit understanding between the real estate companies in the case study?
- (A) 5 years, eligible for re-appointment for one more term.
 - (B) 5 years, eligible for re-appointment.
 - (C) 5 years, not eligible for re-appointment.
 - (D) Upto the discretion of the Central government.
- 4.3 Assuming that the acquisition of another real estate company by GHPL happened in the year 2019, what is the maximum amount of assets and revenue that can be acquired by GHPL for being accepted from the provisions of Section 5 of the Competition Act, 2002
- (A) Post-acquisition (incl. GHPL) asset value off ₹ 350 crore and ₹1000 crore respectively.

- (B) Asset value off ₹ 350 crore and turnover off ₹ 1000 crore of the target entity being acquired.
- (C) Post-acquisition (incl. GHPL) value off ₹ 1000 crore or turnover of ₹ 3000 crore of the target entity.
- (D) Asset value off ₹ 350 crore or turnover of ₹ 1000 crore of the target entity being acquired.
- 4.4 Assuming that the proposed combination is covered under Section 5 of the Competition Act, 2002, and GHPL gave notice to the Commission on 15th May, 2018, what is the latest date by when the combination will come into effect (no orders have been passed by the Commission)?
- (A) 13th August 2018.
- (C) 15th May 2019.
- (B) 11th December 2018.
- (D) 11th November 2018.
- 4.5 Under the Prohibition of Benami Property Transactions Act, 1988, who is responsible for issuing notice for furnishing evidence to Selva and Venkat?
- (A) Approving Authority
- (C) Adjudicating Authority.
- (B) Initiating Officer
- (D) Administrator. **(5 x 2 = 10 Marks)**
- 4.6 Answer the following questions:
- (I) Discuss the judicial pronouncements on tests for determination of a benami transaction as decided by Hon'ble Supreme Court of India under Prohibition of Benami Property Transactions Act, 1988. **(6 Marks)**
- (II) Analyse the case with regard to Mr. Selva's contention regarding the house purchased by him in the name of Mr. Venkat and Mr. Selva's rights under the Prohibition of Benami Property Transactions Act, 1988 to recover the property. **(4 Marks)**
- (III) GHPL reaches out to you for your advice regarding the proposal from the other real estate developers under the Competition Act, 2002. **(5 Marks)**

ANSWER TO CASE STUDY 4

4.1 Option (C)

4.2 Option (B)

4.3 Option (C)

4.4 Option (B)

4.5 Option (A)

Answer 4.6**(I) Judicial pronouncements on tests for determination of a benami transaction:**

In the matter of Bhim Singh & Anr vs Kan Singh (And Vice Versa) 1980 AIR 727, 1980 SCR (2) 628, the Hon'ble Supreme Court of India, observed –

The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus:

- (a) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;
- (b) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is *prima facie* assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary;
- (c) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and
- (d) the question as to what his intention was has to be decided on
 - (i) the basis of the surrounding circumstances,
 - (ii) the relationship of the parties,
 - (iii) the motives governing their action in bringing about the transaction and
 - (iv) their subsequent conduct *etc.*

All the four factors stated above may have to be considered cumulatively [O P Sharma vs. Rajendra Prasad Shewda & Ors. (CA 8609-8610 of 2009) (SC)].

In the matter of Valliammai(D) by LRS.V.Subramaniam and Others (2004) 7 SCC 2330 the Honorable Supreme Court observed that the essence of a benami transaction is the intention of the party or parties concern and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties

do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him nor justify the acceptance of mere conjectures or surmises as a substitute for proof.

Answer 4.6 (II)

"Benami transaction" as per **Section 2(9)** of the Prohibition of Benami Transaction Act, 1988 means, a transaction or an arrangement where the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by 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.

In the instant case, Mr. Selva purchased the house in the name of his son Mr. Venkat through a 5 year bank loan and used 2 units for his family and rented out 2 portions on rent.

In the light of the above provisions, the said transaction is not a benami transaction and Mr. Venkat is not a benamidar and is a real owner.

Right of Mr. Selva under Section 4 of the PBPTA, 1988

No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

Moreover, the transaction in question was registered in the year 1978. The suit was filed in the year 1986, which was before coming into force of the PBTP Act in 1988. Since, the PBTP Act cannot have any retrospective applicability.

Accordingly, Mr. Selva's right is prohibited to recover the property.

Answer 4.6 (III)

As per **Section 3** of the **Competition Act, 2002**, any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, shall be presumed to have an appreciable adverse effect on competition, which—

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

(d) directly or indirectly results in bid rigging or collusive bidding.

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

Therefore the proposal of other leading real estate to have understanding with GHPL, in the light of facts, will increase efficiency in providing best class facilities to the apartment buyers and at the same time ensure good profitability for the companies. This proposal shall not be an anti-competitive agreement.

CASE STUDY 5

An Investigation was carried out at the office of WWL Mumbai by the Assistant Director under the Prevention of Money Laundering Act, 2002, in the process they came across violation of the Foreign Exchange Management Act, 1999. The Assistant Director discussed the case with you and apprised the matter as under:-

WWL is based in Mumbai and is India's premier watch manufacturing company and specializes in designing and manufacturing high-end watches. Its products are sold across premier stores in India and abroad. WWL was established by Mr. Virender Kohli, a first-time entrepreneur. The marketing department of WWL introduced new models in the past 4 months and expects these watches to be a major attraction in the global markets especially UK, France and US markets. For the purpose of advertisements, WWL engaged the services of Mr. George McKenzie, a prominent NBA player and Ms. Rudy Hobbs, a Miss Universe winner and agreed to pay a "guaranteed" fee of USD 1,000,000 each plus 5% bonus based on the sales of the new models in 1st year. The marketing strategy was highly successful and Virender earned a significant amount through the sale of 10% stake in WWL to a private equity investor.

This was invested in his various businesses to acquire agricultural farm land (to grow and export opium), acquiring and selling (export) of antiquities etc. A Marks majority of his dealings on the farm and antiquities businesses were done through cash transactions or through a specific bank account maintained with ABC Bank Limited. Amounts were received in cash from his international customers through a hawala agent known to Mr. Virender. He also purchased villas in India and in Spain using the money earned through his farm and antiquities businesses. Mr. Virender also established Sure Returns Private Limited, a small non-banking finance company for securing the lives of his employees and their families. Virender invested an amount of `5 crore in Sure Returns out of the funds received from his antiquities business.

WWL sent 10 watches to his 500 dealers abroad, clearly marked as riot for sale and other promotional material, for display in dealer shops etc. The value of the items were approximately INR 6 crore. He also sent 1 watch for each of his dealers as a token of gift and appreciation (total value of INR 40 lakh). The CFO of WWL is of the view that since these products have been sent free of cost and not for sale, these need not be included in the export declaration to be filed by WWL.

Mr. Virender attended one of the manufacturing conferences held in Mumbai, in which he met one Mr. Alex Smith, who runs a watch designing studio in Italy and showed quite a few exhibits to Mr. Virender. Mr. Virender was impressed by the designs and the prices quoted by Alex. Alex was also amenable to receive funds in cash in India through an intermediary and then provide the material to Virender from Italy. Based on the same, Mr. Virender arranged for making cash payment to the extent of INR 3 crore to an intermediary in Delhi and the material was received from Alex in a month. During his visit to India, Alex noted that his Euro passport got expired and he did not realise the same. Since he did not want to leave India immediately, he got in touch with a travel agent, who helped him get a forged passport, for which Mr. Alex paid INR 3 lakh in cash.

In order to clear the imported material critical for its manufacturing process, WWL used cash amounting to INR 30 lakhs to pay amounts to various intermediaries to facilitate timely and smooth import process and the amounts were paid by the intermediaries to Mr. Raghav Kapoor. Using this money, Mr. Raghav purchased a 1 acre farm house in Munnar in the name of his spouse, Ms. Anu Kapoor, who was not aware of the source of the funds and was residing in the farm house along with her parents. The Enforcement Directorate, as part of the proceedings against Mr. Raghav Kapoor sought to attach and confiscate the farm house owned / purchased in the name of Ms. Anu. This was challenged by Mr. Raghav on the basis that this property was owned and possessed by Anu who is not charged under a scheduled offence under the Prevention of Money Laundering Act, 2002. With Mr. Alex's help, Mr. Virender transferred an amount of INR 260 lakh to an intermediary in Delhi and invested the amount to incorporate a shell company in the Isle of Mann. The funds were then transferred back by the Shell Company to the bank account of WWL. For this purpose, WWL raised export invoices in its books on the Shell Company for providing professional services relating to watch designing. Based on these invoices, WWL claimed export incentives under the relevant laws in India and received INR 15 lakh as export incentive.

On 30th March 2018, WWL made a large sale to one of the dealers in Switzerland for EURO 8 million and had received EURO 3 million by 15th May 2018 and did not receive the balance EURO 5 million until 30th October 2018, i.e. 7 months from the date of sale. After several reminders and threatening calls to stop further shipment, another EURO 1 million was received on 10th October 2018 and the balance remained outstanding as at 31st December 2018. The CFO of WWL reaches out to Mr. Z and seek Mr. Z support to evaluate the level of compliances as stipulated under the Foreign Exchange Management Act, 1999.

Based on investigation carried out, the Assistant Director sought to arrest Virender and also wanted to attach the property for contravention of provision of Prevention of Money laundering Act, 2002 (in short 'PMLA, 2002')

After the discussions the Assistant Director sought your views on powers for attachment of property involved in money-laundering and on punishment for the offence of money laundering under the provisions of Prevention of Money Laundering Act, 2002.

Answer the following questions:

- 5.1 Out of the below, which are the items that require inclusion in the export declaration by WWL under the, Foreign Exchange Management Act, 1999?
- (A) Goods imported free of cost for re-export.
 - (B) Publicity materiality supplied free of cost;
 - (C) Gift of goods for a value of INR 10 lakh.
 - (D) Unaccompanied personal effects of travellers.
- 5.2 Out of the below, what is not part of the responsibility of ABC Bank Limited under the Prevention of Money Laundering Act, 2002?
- (A) Report suspicious transactions undertaken by Mr. Virender and the Group;
 - (B) Furnish all-information requested by the Director;
 - (C) Verify the identity of the clients and beneficial owners;
 - (D) Maintain records of transaction for a period of 5 years;
- 5.3 A friend of Mr. Virender is an Indian citizen resident outside India, is seeking to transfer his agricultural property held by him in India. Who can he transfer the property to?
- (A) Any person resident in India.
 - (B) Any person resident outside India if he is a citizen of India or a person of Indian origin.
 - (C) Any person resident in India and any person resident outside India if he is a citizen of India or a person of Indian origin.
 - (D) Neither any person resident in India nor any person resident outside India if he is a citizen of India or a person of Indian origin.
- 5.4 Mr. Virender bought gold watches worth INR 25 lakh from Italy through the green channel which he asked his Italian dealer to pay and deduct from their monthly payments to WWL. Is this an offence under the Prevention of Money Laundering Act, 2002?
- (A) Yes, because he came through the green channel and evaded duty of customs.
 - (B) No, whilst it is an offence, it is not actionable under the Prevention of Money Laundering Act, 2002.
 - (C) No, since he did not pay any cash for the purchase.
 - (D) Yes, since import of gold items from European countries requires specific consent as per the agreement entered with foreign countries as per Section 56 of Prevention of Money Laundering Act, 2002.

5.5 Does the Assistant Director have powers to arrest a person under the Prevention of Money Laundering Act, 2002?

- (A) Director or Deputy Director or Assistant Director have the powers to arrest an offender without prior approval of Central Government
- (B) Any arrest under the Prevention of Money Laundering Act, 2002 requires the prior approval of the Central Government
- (C) Only a Director or Deputy Director have the powers to arrest without prior approval of the Central Government
- (D) Any arrest under the Prevention of Money Laundering Act, 2002 requires the prior approval of the special court. **(5 x 2 = 10 Marks)**

5.6 Answer the following questions:

- (I) The Enforcement Directorate wanted to take your view on powers for attachment of property involved in money-laundering and your views on punishment for the offence of money laundering under the provisions of the Prevention of Money Laundering Act, 2002. Express your views on the same. **(7 Marks)**
- (II) The Enforcement Directorate, as part of the proceedings against Mr. Raghav Kapoor sought to attach and confiscate the farm house owned /purchased by Anu, This was challenged by Mr. Raghav on the basis that this property was owned and possessed by Anu who is not charged under a scheduled offence under the Prevention of Money Laundering Act, 2002. Advise Mr. Raghav on the validity or otherwise of his contention. **(4 Marks)**
- (III) The CFO of WWL reaches out to Mr. Z and seek Mr. Z support to evaluate if there is a non-compliance under the Foreign Exchange Management Act, 1999 regarding the sale made to the dealer in Switzerland and the receipt of the proceeds and if so, the quantum, the consequences and the future course of action that needs to be taken by WWL relating to the same. **(4 Marks)**

ANSWER TO CASE STUDY 5

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

Answer 5.6 (I)**Attachment of property involved in money-laundering [Section 5 of the Prevention of Money Laundering Act, 2002]**

1. Where the Director or any other officer (not below the rank of Deputy Director authorized by the Director) for the purposes of this section, has reason to believe 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.

Conditions 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 authorized 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.
2. The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment forward a copy of the order, along with the material in his possession, to the Adjudicating Authority, and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.
 3. Every order of attachment made shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of Section 8, whichever is earlier.
 4. The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

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

But where the proceeds of crime involved in money-laundering relate to any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985, the maximum punishment may extend to ten years instead of seven years.

Answer 5.6 (II)

Section 2(1)(u) of the **Prevention of Money Laundering Act, 2002**, "**proceeds of crime**" can be understood 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.

As per the stated facts, farm house was purchased by Mr. Raghav on the name of his spouse Ms. Anu who was not aware of sources of the funds. ED sought to attach the farm house and confiscate as a part of proceeding against Mr. Raghav. Here the contention of Mr. Raghav is not valid because the said property was derived from the proceeds of crime.

Answer 5.6(III)

Period within which export value of goods/software/ services to be realized:-

- (1) The amount representing the full export value of goods / software/ services exported shall be realized and repatriated to India within nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time.
 - (a) that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time;
 - (b) further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the said period, as the case may be.

Delay in Receipt of Payment:

Where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing,

- (a) the payment therefor if the goods or software has been sold and
- (b) the sale of goods and payment thereof, if goods or software has not been sold or re-import thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf;

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

Quantum: In the given case, out of total sale of EUR 8 million, an amount of EUR 4 million was received within the stipulated time period of 9 months and the balance EUR 4 million is outstanding for a period of more than 9 months. Accordingly, WWL is required to apply for an extension of time with the Authorized Dealer giving sufficient and reasonable reasons for the delay in receipt.

As per Section 8, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realize and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank. WWL will act in compliance with the above provisions.