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FOR CA FINAL EXAM PREPARATION

CA Final 2020 Question Paper · Paper 6D Economic Laws

EXAM	YEAR	TYPE	SUBJECT
CA Final	2020	Question Paper	Paper 6D Economic Laws

DATE

November 2020

Roll No. ..... **Final New Syllabus** NOV 2020

Paper - 6 D

Economic Laws

Total No. of Case Study Questions Total No. of Printed Pages – **24**

Time Allowed – **4** Hours Maximum Marks – **100**

PCL

Answer to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate who has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

The Question Paper comprises five case study questions. The candidates are required to answer any four case study questions out of five.

Answer in respect of Multiple Choice Questions are to be marked on the OMR answer sheet only.

Answers to other questions to be written on the descriptive type answer book.

Answers to MCQs, if written in the descriptive type answer book will not be evaluated.

Candidates may use calculator.

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CASE STUDY-1 :

PART-A

That one M/s 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

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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

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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 ₹ 100,00,000 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

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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 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. O. 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:

5×2 =10

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.

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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 the case may be, as an advance payment or an application fee from a person without first entering into 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) ₹ 10000 ;

(B) ₹ 10000 for every day during which the default continues;

(C) ₹ 10000 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) ₹ 10000 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.

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Descriptive Questions:

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**

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**

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**

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**

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:

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(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 Crores. The said amount was utilized by him in the following manner:

(a) Around ₹100 crores were used for meeting certain cash expenses and paying certain bribes.

(b) ₹ 325 crores 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 crores + 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.

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For a very large upcoming film project, M/s KS Cinemas Ltd. has taken loan from TZB Bank Ltd. amounting to ₹ 350 crores 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 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 Indian Penal Code, 1860 and Prevention of Corruption Act, 1988.

Later on, the investigation was taken over by the C.B.I. while the C.B.I. 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

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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 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 Foreign Exchange Management Act, 1999 and Prevention of Money Laundering Act, 2002.

Answer the following questions: **5×2 =10**

2.1 Which of the following remittance will require prior approval of Government of India for drawal of foreign exchange under 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 charter by a Public Sector Undertaking.

2.2 As per the provisions of 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.

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2.3 Under 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 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 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.

Descriptive Questions:

2.6 Answer the following in light of the provisions of the Foreign Exchange Management Act, 1999: 3

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.

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PCL **Marks**

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 SCPL and noted the following:

Age	Amount in Rs. Lakhs	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 lakhs and Bank B amounting to ₹ 1050 lakhs.
- Loan taken from the son Mr. 'X' of the promoter of DMPL amounting to ₹ 75 lakhs attended Board meetings to provide guidance/directions on policy making process.
- Payable to SSTPL ₹ 905 lakhs.
- Outstanding wages to workmen amounting to ₹ 75 lakhs.
- Statutory employer contributions to the tune of ₹ 30 lakhs.
- Realisable value of the fixed assets of DMPL ₹ 2800 lakhs.
- Receivables from various customers ₹ 225 lakhs, out of which 50% is not realisable.
- Bank balance of ₹ 22.5 lakhs.

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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

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 routine in nature. Explain the powers of the Reserve Bank of India in case of non-compliance to notice. 3

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

II. Mr. Kamal seeks your advice on the remedy available with him under the Act against the said attachment order. 2

III. "Properties confiscated under the provisions of Money Laundering Act, 2002 shall be available for disposal by Ministry of Finance as and when necessary." Examine correctness of the statement. 2

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.

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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 EUR 500,000 (INR 400 lakhs) (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 14 April 2020, ACL, another supplier of DMPL, to whom DMPL owed INR 75 lakhs, 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 centers 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.

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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: **5×2 =10**

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 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 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 completion in the market.

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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 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 initiate 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 lakhs) 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.

Descriptive Questions:

3.6 Answer the following questions:

(i) Advice the IRP with regard to the appropriateness of the order of the adjudicating authority regarding the application made by MCL under the provisions of Insolvency and Bankruptcy Code, 2016. **4**

(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**

(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**

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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 these 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

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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.

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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 : **5×2 =10**

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 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 exempted from the provisions of Section 5 of the Competition Act, 2002

(A) Post-acquisition (incl. GHPL) asset value of ₹ 350 crores and ₹ 1000 crores respectively;

(B) Asset value of ₹ 350 crores and turnover of ₹ 1000 crores of the target entity being acquired;

(C) Post-acquisition (incl. GHPL) value of ₹ 1000 crores or turnover of ₹ 3000 crores of the target entity;

(D) Asset value of ₹ 350 crores or turnover of ₹ 1000 crores of the target entity being acquired.

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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 15 May 2018, what is the latest date by when the combination will come into effect (no orders have been passed by the Commission) ?

(A) 13 August 2018; (B) 11 December 2018;

(C) 15 May 2019; (D) 11 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; (B) Initiating Officer;

(C) Adjudicating Authority; (D) Administrator.

Descriptive Questions:

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**

(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**

(III) GHPL reaches out to you for your advice regarding the proposal from the other real estate developers under Competition Act, 2002. **5**

CASE STUDY-5 :

An Investigation was carried out at the Office of WWL Mumbai by the Assistant Director under 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:-

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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 year 1. 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 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 crores in Sure Returns out of the funds received from his antiquities business.

WWL sent 10 watches to his 500 dealers abroad, clearly marked as not for sale and other promotional material, for display in dealer shops etc. The value of the items were approximately INR 6 crores. He also sent 1 watch for each of his dealers as a token of gift and appreciation (total value of INR 40 lakhs). 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.

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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 wanted 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 lakhs 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 Prevention of Money Laundering Act, 2002. With Mr. Alex's help, Mr. Virender transferred an amount of INR 260 lakhs 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 lakhs as export incentive.

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On 30 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 15 May 2018 and did not receive the balance EURO 5 million until 30 October 2018, i.e. 7 months from the date of sale. After several reminders and threating calls to stop further shipment, another EURO 1 million was received on 10 October 2018 and the balance remained outstanding as at 31 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 : **5×2 =10**

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 lakhs ;

(D) Unaccompanied personal effects of travellers.

5.2 Out of the below, what is not part of the responsibility of ABC Bank Limited under 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 transactions for a period of 5 years.

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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 lakhs 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 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 Prevention of Money Laundering Act, 2002 requires the prior approval of the special court

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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 Prevention of Money Laundering Act, 2002. Express your views on the same. **7**

(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 Prevention of Money Laundering Act, 2002. Advice Mr. Raghav on the validity or otherwise of his contention. **4**

(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**

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