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FOR CA FINAL EXAM PREPARATION

CA Final 2019 Question Paper · Paper 6D Economic Laws

EXAM	YEAR	TYPE	SUBJECT	DATE
CA Final	2019	Question Paper	Paper 6D Economic Laws	May 2019

Roll No. .....

Final New Syllabus
Paper - 6 D
Economic Laws

MAY 2019

Total No. of Case Study Questions – **3**

Total No. of Printed Pages – **31**

Time Allowed – **4** Hours

Maximum Marks – **100**

SLT2

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 three case study questions. The candidates are required to answer two case study questions out of three.

Answers in respect of Multiple Choice Questions are to be indicated in capital letters i.e., A or B or C or D, as the case may be.

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CASE STUDY-1 :

Mr. Rohit Writer is a well-known industrialist based in Pune, India and is the founder director of M/s. Good Phones Private Limited (Good Phones), a fixed line and mobile phone manufacturer. Good Phones is one of the largest telephone companies in India and its products are much sought after in India and abroad. Mr. Rohit visits various countries as part of his business travels and during these visits he spends significant amount of time in philanthropic activities and social gatherings and because of this, he is quite well known in the business circles globally. Mr. Rohit has a penchant for investing his money in buying various real estate property all over India and has passed this trait on to his son, Mr. Rahul Writer as well. Mr. Rahul completed his MBA from Stanford University and is assisting Mr. Rohit in his business. Mr. Rohit also has a daughter, Ms. Sonali Writer, who studies Art in Italy and has opened her own Art Studio in Milan. Mr. Rohit is very proud of Sonali and supports her financially for her stay in Italy as well as expenses towards maintaining the studio.

The marketing department of Good Phones introduced various new models in the last couple of months with new technology such as 2 selfie cameras, faster processor and sleeker look. Good Phones expects these phones to be a major attraction in the global markets due to the attractive price range and therefore wanted to promote these phones extensively on a global basis. For the purpose of advertisements, Good Phones engaged the services of Mr. David Smith, a prominent baseball player and Ms. Emma Drew, a Miss Universe winner and agreed to pay a "guaranteed" fee of USD 500,000 each plus 10% bonus based on the sales of the new models in year 1.

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Mr. Rohit sent 5 sample mobile phones and 5 fixed line phones to his dealers abroad (numbering 1000 dealers), clearly marked as not for sale and other promotional material such as brouchers, 3D moulds for display in dealer shops etc. The value of the items were approximately INR 4 crore. He also sent 1 mobile phone to each of his dealers as a token of gift and appreciation (total value of INR 0.50 Crores). Mr. Srinivas Rajan, the CFO of Good Phones indicated to him 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 Good Phones.

On 15 February 2018, Good Phones made a large sale to one of the dealers M/s Delayed Ringtone Enterprises, Germany, for USD 5 million and had received USD 2 million by 15 May 2018 and did not receive the balance USD 3 million until 15 August 2018, i.e. 6 months from the date of sale. After several reminders and threatening calls to stop further shipment, another USD 1 million was received on 10 October 2018 and the balance remained outstanding as at 31 December 2018.

Based on the success of Good Phones, Mr. Rohit incorporated a new company, M/s Stay Connected Private Limited, (Stay Connected) an Internet service provider and purchased a large consignment of networking equipment for providing internet operations through dedicated broadband lines along with a landline facility. This would then provide Mr. Rohit quite a few synergies with the existing Good Phones business and enable him to become an end to end Telecom Czar. Mr. Rohit held 60% stake in Stay Connected and the balance 40% was held by a foreign collaborator. Along with all the networking equipment, Stay Connected hired transponders from a company in Australia and paid AUD 10 million through its authorized dealer. Stay Connected also entered into an agreement with the foreign collaborator (holding 40% stake) to pay royalty and technical fees for the support provided by them.

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During his visit to Milan to meet Ms. Sonali, Mr. Rohit obtained EUR 10,000 from his Italian dealer for his use during his stay in Italy and instructed the dealer to reduce the sum from the payments to be made by the dealer for the supplies from Good Phones. Out of such funds, Mr. Rohit used EUR 5,000 towards purchasing sweepstakes tickets in Milan, Italy. Unfortunately, he did not win any money in the sweepstakes event.

Mr. Rahul, after gaining experience in India, wanted to expand the business in the USA (by establishing a subsidiary of Good Phones in the USA) and, therefore decided to move to the USA along with his wife. For this purpose, he wanted to dispose off some of the properties owned by him in India. Accordingly, Mr. Rahul sold an apartment in Mumbai owned by him to Mr. Stuart Cooper, a citizen of USA, and a fellow student of his at Stanford University. Mr. Stuart was planning to come to India for the first time in the next couple of months to take up a job and therefore, wanted to secure a place for his stay. Mr. Rohit also sold a villa and his agricultural land in Pondicherry to Mr. Rajesh Subramanian, his professor at Stanford, who was a person of Indian origin. The payment for the villa and agricultural land was paid by Mr. Rajesh partly (50%) from his FCNR account and the balance in USD traveller cheques, which will be of use to Mr. Rahul when he visits USA.

After obtaining his US visa, Mr. Rahul purchased a ranch (farm house) in Texas for USD 2 million, using USD 1.50 million from his RFC account and USD 500,000 sent from his INR account through normal banking channels.

Mr. William Rutherford, one of Mr. Rohit's business acquaintances and a citizen of the USA, is very much interested in Indian culture and practices and therefore stays in India for 8 months (from April 2018 to November 2018) to attend an art of living course and to learn / practice yoga. William believes that he has been resident in India for more than the prescribed 182 days and therefore, is a resident in India under FEMA.

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Mr. Rohit, in his penchant for purchasing various properties, zeroed in on an exclusive apartment complex in Bangalore having state-of-the-art facilities. He purchased two 4 bedroom apartments costing INR 2 crore each, one in the name of Ms. Sonali and one in the name of Mr. Srinivas Rajan, since Mr. Rohit wanted Mr. Srinivas Rajan to feel happy and trusted. Both the apartments were given on rent to a large multi-national bank and he received a rent of INR 0.20 Crores per year for each of the apartments in the bank accounts of Ms. Sonali and Mr. Srinivas Rajan, respectively. After 4 years, Mr. Srinivas Rajan transferred the property back in the name of Mr. Rohit at zero consideration. Mr. Rohit also purchased a 3 bedroom apartment in the same complex in his name, jointly with his brother, Mr. Sunil Writer. The property (along with the stamp duty) was paid for by Mr. Rohit and was being used by Mr. Sunil for his stay though the property was pending registration due to Rohit's travel abroad.

Once the property was transferred back by Mr. Srinivas Rajan, Mr. Rohit wanted to sell the same to Mr. Arjun De Silva, a citizen of Sri Lanka. However, he was advised by Mr. Srinivas Rajan that Mr. Arjun De Silva cannot acquire property in India and therefore, Mr. Rohit proposes to lease it to Mr. Arjun De Silva for a period of 20 years for an upfront consideration of INR 1 Crore and an annual rent of INR 8 lakhs payable in advance.

During the review of the bank reconciliation statements of Good Phones, Mr. Srinivas Rajan noted that an amount of INR 2 Crore had been received in one of the bank accounts without any details relating to the same. Mr. Srinivas Rajan informed this to Mr. Rohit, and Mr. Srinivas Rajan suggested to Mr. Rohit to immediately transfer that money out of the bank of Good Phones to Mr. Rohit's personal bank account, so that the Company's bank accounts are cleared and there are no reconciling items, which Mr. Rohit agreed to. Out of the INR 2 Crore, Mr. Rohit used INR 1.75 Crores for acquiring further 20% stake in Stay Connected from the foreign collaborator and the balance INR 0.25 Crores for purchasing a stunning diamond set for his wife, Ms. Anjali Writer, as a gift for her 50th birthday.

The extract of the last audited financial statements of Stay Connected was provided by Mr. Srinivas Rajan to Mr. Rohit to evaluate his acquisition.

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Particulars	Amount in INR (Crores)
Immoveable Property (market value INR 8.00 Crores)	5.00
Other fixed assets (net of depreciation of INR 1.00 Crores)	4.00
Inventory	2.00
Receivables and Loans and Advances	1.50
Deferred Advertisement Costs	0.50
Advance tax paid	1.00
Total Assets	**14.00**
Shareholders' Funds (including 1,000,000 equity shares of INR 10 each, fully paid up)	4.00
Provision for taxation	0.50
Loans from Banks	3.00
Trade Payables (including provision for unascertained liabilities - INR 1 crore)	6.50
Total Liabilities	**14.00**

Other information :

(i) Contingent liabilities - INR 2.00 Crores (including INR 0.50 Crores relating to arrears on cumulative preference shares).

(ii) The Board of Directors has proposed a dividend payout of INR 1 crore to the equity shareholders, which is pending approval of the shareholders.

The Bank, on noting the large transactions on Mr. Rohit's personal bank account, tipped the Income tax authorities regarding the same and the Initiating Officer summoned information from Mr. Rohit and Mr. Srinivas Rajan regarding the transactions to start proceedings under the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act, 1988).

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Answer the following questions :

1.1. An Indian citizen resident outside India is permitted to transfer his agricultural property in India to : **2**

(A) any person resident in India

(B) a person resident in India if he is a citizen of India or a person of Indian origin

(C) a person resident in or outside India if he is a citizen of India or a person of Indian origin

(D) any person who is resident in the country where the Indian citizen currently resides

1.2. Out of the below, what are the transactions that requires prior approval of the Government of India ? **2**

(A) Payment of "guaranteed" fee by Good Phones to Mr. David Smith and Ms. Emma Drew.

(B) Payment of Royalty and Technical fees by Stay Connected to the foreign collaborator.

(C) Payment of hiring charges for the transponders by Stay Connected.

(D) Payment of INR 1.75 Crores by Mr. Rohit to acquire shares of Stay Connected from the foreign collaborator

1.3. Is the use of EUR 5,000 towards purchasing sweepstakes by Mr. Rohit as per the provisions of FEMA, 2002 ? **2**

(A) No, drawal of foreign exchange for purchasing lottery tickets, sweepstakes, etc. is prohibited under the FEMA 2002

(B) No, Mr. Rohit should have obtained the prior approval of the RBI before purchasing the sweepstakes ticket

(C) FEMA 2002 will not be applicable, since the money was directly obtained by Mr. Rohit from his Italian dealer outside the country

(D) None of the above

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1.4. As per the provisions of FEMA, 2002, Mr. William Rutherford is : 2

(A) a person resident in India in the financial year 2018-19 as per FEMA, since he has resided for more than 182 days during the year

(B) a person resident in India in the financial year 2019-20 as per FEMA, since he has resided for more than 182 days during the previous financial year

(C) not a person resident in India since he is a foreign citizen

(D) not a person resident in India, since he is on a short term visit to India and is not on a long term visa

1.5. Is the purchase of Ranch in Texas by Mr. Rahul in accordance with FEMA, 2002 ? 2

(A) No, Rahul, as a citizen of India cannot purchase a Ranch outside India.

(B) Yes, there is no specific limit under FEMA 2002 with regard to purchase of immoveable property outside India.

(C) No, Rahul can purchase assets outside India only if the purchase is jointly with a relative, who is a resident outside India, and there is no outflow of funds.

(D) No, since Rahul has used funds from his INR account for making the payment to the extent of USD 500,000.

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1.6. In case Mr. Rohit is proven guilty of violating the provisions of PBPT Act, 1988, what is the maximum punishment that he is liable for under the PBPT Act, 1988 ? **2**

(A) Rigorous imprisonment for a term of one to seven years, with fine which may extend to 25% of the fair market value of the property.

(B) Rigorous imprisonment for a term of three to seven years, without fine.

(C) Rigorous imprisonment for a term upto seven years, with fine which may extend to 50% of the fair market value of the property.

(D) Fine which may extend to 25% of the fair market value of the property.

1.7. Once the benami property acquired by Mr. Rohit and his family have been identified, which authority has the power to confiscate and vest the property ? **2**

(A) Initiating Officer

(B) Administrator

(C) Approving Authority

(D) Adjudicating Authority

1.8. Which of the following is a benami property under the PBPT Act, 1988 ? **2**

(A) Property held by a member of a Hindu Undivided Family (not the Karta) which is held for the benefit of the members of the family

(B) Property purchased by a person in the name of his spouse paid out of money received from his father in law as a gift.

(C) Property purchased by a person in the name of his brother out of his own funds.

(D) Property purchased in the name of an individual, for which consideration was paid by another person and such another person enjoys the possession of the property.

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1.9. Assuming that the transactions relating to the receipt of INR 2 crores in the bank account of Good Phones and the subsequent transactions are considered as benami transactions, can the Initiating Officer take action against Mr. Srinivas Rajan ? **2**

(A) Yes, he is the CFO of Good Phones and therefore, responsible for ensuring compliance with the law.

(B) No, he has not received, held, or acquired the proceeds in his account or benefitted from the same.

(C) Yes, since he abets Mr. Rohit in transferring the money from the bank account of Good Phones to Mr. Rohit's personal account.

(D) No, he is responsible only for Good Phones and he has ensured that the funds are not retained in the books of Good Phones / used by Good Phones for its business.

1.10. The Initiating Officer believes that Ms. Anjali is not a benamidar under the PBPT Act, 1988. What is your view ? **2**

(A) No, she is not a benamidar, since she has not purchased the diamond set, but received as a Gift.

(B) Yes, she is a benamidar as she is in possession of a property acquired out of benami funds.

(C) No, she is not a benamidar, since the transaction is not a benami transaction.

(D) Yes, she is a benamidar, but will not be liable for any prosecution under the PBPT Act, since she is not a party to any of the transactions but only a beneficiary.

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1.11. Answer the following questions in the context of the provisions relating to the Foreign Exchange Management Act, 2002 :

(i) Srinivas Rajan reaches out to you to confirm his views regarding inclusion / exclusion of the items sent free of cost to the dealers in the export declaration. **4**

(ii) Examine the validity / appropriateness of the sale of immoveable property by Mr. Rahul to Mr. Stuart Cooper and Mr. Rajesh Subramanian. **4**

(iii) Srinivas Rajan reaches out to you and seek your support to evaluate if there is a non-compliance with the FEMA regulations regarding the sale made to M/s Delayed Ringtone 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 Good Phones relating to the same. **4**

(iv) Arjun disagrees with the advice received from Srinivas Rajan and asks your views on why he cannot purchase the home from Mr. Rohit and if not, whether the terms and conditions of the lease are acceptable. **3**

1.12. Examine / advice regarding the below questions relating to the Prohibition of Benami Property Transactions Act, 1988 :

(i) Examine the appropriateness / impact of the PBPT Act 1988 on the 3 apartments purchased by Mr. Rohit in Bangalore. How does the transfer back of the apartment by Mr. Srinivas Rajan to Mr. Rohit affect your conclusion ? **4**

(ii) The Initiating Officer, who is probing the transactions relating to the INR 2 crores received and spent by Mr. Rohit, seeks your advice on identifying the benami properties / transactions, the benamidars, the beneficial owner. **4**

(iii) Assuming that the cost of acquisition and the market value based on discounted cash flow method is INR 2 crores, calculate the fair market value of M/s. Stay Connected in accordance with Rule 3 of the Prohibition of Benami Transactions Rules, 2016. **4**

(iv) What is the process to be followed by the Initiating Officer for attachment of the property under a benami transaction ? **3**

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CASE STUDY – 2 :

Winner Builders Private Limited ("Winner") is a premium real estate builder who specialises in constructing mid-sized apartment complexes (20 – 40 apartments) in South India. Winner was started in the year 2004 by Mr. Vijay Nair, Managing Director and has its head office in Kochi, Kerala with branches in Trivandrum, Bengaluru, Chennai and Tirupati. Mr. Vijay Nair has been in the real estate business for more than 30 years and comes from a family of civil engineers who are highly respected by their customers. Mr. Arun Nair, son of Mr. Vijay Nair, is a Chartered Accountant and is the Chief Financial Officer of Winner. Mr. Vijay and Mr. Arun together own 60% of the share capital of Winner and the balance is held by a large private equity investor.

Although the company is a private limited company, the affairs of the company are handled in the most professional manner akin to a listed company and Mr. Arun ensures that the financial statements are properly prepared and presented to the Board of Directors (Mr. Vijay, Mr. Arun and a representative of the PE investor) on a quarterly basis. The financial performance of Winner has been reasonable and being a conservative person, Mr. Vijay was never in the mind-set of taking aggressive positions with regard to business. Over the last few months, the PE investor has been pushing the company in making changes in the operational mechanism, sale prices etc. to increase the profits of the company and ensure decent return on their investment. Due to this, Mr. Vijay and Mr. Arun are under tremendous pressure to complete the ongoing projects fast and start new projects immediately and increase the revenues / profits of the Company.

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In June 2018, Winner announced a new 80 apartment project in Kochi named as "Winner Shikaram", an ultra-modern luxury apartment complex with a variety of amenities including swimming pool, skating rink, basketball court, fully equipped club house with all amenities, etc. As per RERA regulations the Company applied for registration of the project on 15 June 2018. On 20 June 2018, the Company announced the launch of the project and commenced a big advertisement campaign in the TV media and also through release of promotion material through social media. It also collaborated with a regional TV Channel and announced a free home in "Winner Shikaram" for the first prize winner of a popular reality show. The property was registered by RERA on 10 July 2018 after scrutiny of the information provided by the promoter.

Based on the past performance of the Winner group and the general image of Mr. Vijay Nair, there was tremendous demand for the apartments in the project and all the apartments were booked within 1 month from the date of launch (20 June, 2018). The following were some of the conditions mentioned in the agreement to sale entered into by Winner with its allottees :

1. Expected date of completion of construction – 31st March, 2020.
2. Expected date of handover-31st May, 2020, subject to a grace period of 4 months.
3. Booking Advance amount to be paid prior to entering into agreement to sale – 20% of total cost of apartment
4. Open car parking cost-INR 200,000
5. Any delay in payment of dues by the allottees will liable for interest on such delayed payments.
6. Return of booking amount shall not be entertained for any reason whatsoever.
7. Winner Group shall be liable for any deficiency in quality of construction for a period of 3 years from the date of handing over the apartments.

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Winner Group collected a total amount of INR 80 crores from the allottees and deposited an amount of INR 60 crores in an escrow account for exclusive use for construction of the complex. Separately, an amount of INR 5 lakhs each was collected from the 80 allottees in cash, aggregating to INR 400 lakhs towards interior work, modular kitchen, supplying fans and lights, etc. This money was accounted as receipt in a separate company, M/s. Wonderful Interiors, which was owned by Ms. Anusha Nair, daughter of Mr. Vijay Nair and Mr. Arun Nair.

Although the construction was proceeding apace, the Company encountered severe rock formations under the ground in one section of the land area which was previously not known and due to the same, the Company concluded that the swimming pool could not be constructed as designed and the size of the same had to be reduced. Winner got in touch with the allottees and proposed that the reduction of the size of swimming pool will be compensated suitably by Winner by providing a Jacuzzi and Spa inside the club house. This was accepted by majority (45 of the 80) of the allottees and, accordingly, Winner proceeded with the construction based on the amended plan.

Few of the allottees reached out to Mr. Vijay Nair and stated that the carpet area for their apartments was 5% lesser than the size stipulated in the sale agreement and therefore, wanted to be compensated. Mr. Vijay Nair mentioned to them that the reduction in the area was on account of the exterior walls appurtenant to their apartments and this is the case with all the apartments and not specific to their homes alone.

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Mr. Arun Nair attended one of the real estate conclaves held in Bangalore, in which he met one Mr. Henry Stewart, who runs an interior designing warehouse in Dubai UAE and showed quite a few exhibits to Arun. Arun was impressed by the designs and the prices quoted by Mr. Henry. Mr. Henry was also amenable to receive funds in cash in India through an intermediary and then provide the material to Arun from UAE. Based on the same, Arun arranged for making cash payment to the extent of INR 200 lakhs (Out of the INR 400 lakhs received by M/s Wonderful Interiors) to an intermediary in Delhi, and the material was received from Henry in a month.

During his visit to India, Henry noted that his UAE 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, Mr. Anil Kumar, who helped him get a forged passport, for which Mr. Henry paid INR 2 lakhs in cash.

Out of the balance INR 200 lakhs cash available with Wonderful Interiors, Arun used cash amounting to INR 25 lakhs to pay amounts to various intermediaries to facilitate timely and smooth registration process of the apartments of Winner Shikharam, which was paid by the intermediaries to the officials of the Sub-Registrar. With Henry's help, Arun transferred the balance amount of INR 175 lakhs to an intermediary in Delhi and invested the amount to incorporate a shell company in the Cayman Islands. The funds were then transferred back by the Shell Company to the bank account of Winner. For this purpose, Mr. Arun raised export invoices in the books of Winner on the Shell Company for providing professional services relating to real estate business. Based on these invoices, Winner claimed export incentives under the relevant laws in India and received INR 20 lakhs as export incentive.

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On 30 March 2019, a meeting was organised by the Company and all the allottees during which Mr. Vijay Nair provided a status update on the project and stated that bulk of the construction activities will be completed by the timeline mentioned in the sale agreement (31 May, 2020) and the apartments will be handed over by 31 July, 2020 (i.e. within the grace period). The common areas will be completed in parallel and handed over by 30 September, 2020. The slight delay in completion was on account of non-availability of quality labour and he wanted only the best labour to work on the project to ensure that the home owners have a happy life after hand over. He also mentioned that the labour rates increased by 15% after the sale agreements were entered and the Company did not ask for increase in prices from the allottees only for good will reasons. The allottees were unhappy with the delay but, accepted the same, since there was no other choice.

As one of the shareholders of Wonderful Interiors, Ms. Anusha Nair decided to visit Dubai to see the interior designs and then place an order for the upcoming projects. During her visit, she purchased 500 grams worth of gold (costing INR 15 lakhs) and since, she did not have enough money, she asked Mr. Arun Nair to make the payment through the intermediary in Delhi. Based on the discussion with the intermediary, Mr. Arun Nair provided an antique painting which he got from one of his social friends to the intermediary as consideration for the gold purchased by Ms. Anusha Nair in Dubai. Based on the same, Ms. Anusha brought the gold with her through the green channel.

One of the employees of Wonderful Interiors, noting the substantial amount of cash transactions, informs the Bank regarding the same, which in turn informs the enforcement directorate. The ED has issued a show cause notice to all the parties regarding the above transactions.

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Answer the following questions :

2.1. RERA authorities sent a notice to Winner that their advertisement campaign was not in accordance with the RERA 2016. Evaluate. 2

(A) Valid, Since Winner decided to use Social media platform for promotion, without obtaining specific approval from RERA.

(B) Valid, Since Winner collaborated with a TV channel to give a free home in Winner Shikaram when the construction itself was not complete.

(C) Valid, Since Winner launched the project and commenced marketing even before the project received registration from RERA.

(D) Not Valid, Since Winner applied for the registration prior to the launch of campaign and the registration was ultimately received within the stipulated period.

2.2. As per RERA, Winner is required to enable the formation of the association of allottees of Winner Shikaram within _____ months. 2

(A) 3 months of the majority of the allottees having booked their apartment.

(B) 3 months of the receipt of occupancy certificate.

(C) 3 months of the majority of the allottees registering their apartments with the sub-registrar.

(D) 3 months of all the allottees making the full payment for the apartments.

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2.3. After registering the apartments in the name of the allottees, Winner informed the allottees that they need to pay the water and electricity charges to the concerned departments for their apartments. Evaluate. 2

(A) The registration of the apartments denote that the allottees are now the legal owners of the apartments and hence, need to bear the water and electricity charges.

(B) The promoter is liable for making payment for the water and electricity charges until the physical possession is transferred to the allottees.

(C) This is dependent on the terms of the agreement of sale between Winner and the allottees.

(D) This amount need to be paid equally by Winner and the allottees, since the registration is completed and only transfer of physical possession is pending.

2.4. The time limit within which the allottees of Winner Shikaram are required to take physical possession of the apartment after issuance of occupancy certificate is : 2

(A) Three months

(B) One month

(C) Five months

(D) Two months

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2.5. As per provisions of RERA, collection of cash by Wonderful Interiors for interior work, modular kitchen, supplying fans and lights, etc. : **2**

(A) May be appropriate, since RERA does not specify the mode of collection.

(B) May not be appropriate, since collection should be done as per the stipulations of RERA.

(C) May be appropriate, since provisions of RERA are not applicable.

(D) May not be appropriate, since Wonderful Interiors are not registered with RERA.

2.6. What are the three distinct stages of Money Laundering ? **2**

(A) Information, Interrogation, Indictment

(B) Placement, Layering, Integration

(C) Planning, Comingling, Profiting

(D) Monitoring, Adjudicating, Punishing

2.7. Which of the following are not circumstances which need to be considered by the Director of Enforcement for performing search of the offices of Winner and other parties mentioned in the case study ? **2**

(A) Possession of any property related to crime

(B) Possession of any records relating to money laundering

(C) Possession of records relating to RERA compliance by Winner

(D) Possession of any proceeds of crime involved in money laundering

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2.8. Ms. Anusha Nair brought gold jewellery worth INR 15 lakhs from Dubai through the green channel. Is this an offence under the PMLA 2002 ? **2**

(A) Yes, because she came through the green channel and evaded duty of customs.

(B) No, whilst it is an offence, it is not actionable under the PMLA 2002.

(C) No, she did not pay any cash for the purchase.

(D) Yes, since purchase of gold from gulf countries requires specific consent as per the agreement entered with foreign countries as per Section 56 of PMLA 2002.

2.9. As per RERA 2016, what is the minimum amount that Winner was required to deposit in the escrow account ? **2**

(A) INR 50 crores

(B) INR 56 crores

(C) INR 54 crores

(D) INR 58.8 crores

2.10. Of the below, which of the practices are not common schemes of money laundering ? **2**

(A) Bribery and Corruption

(B) False declarations under Customs act

(C) Usage of false trademarks/copyrights

(D) Possession of foreign currency over and above permitted limit

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2.11. Answer the following questions in the context of the provisions relating to The Real Estate (Regulation & Development) Act, 2016 (RERA 2016).

(i) Examine the appropriateness of the conditions mentioned in the agreement to sale, in the context of the provisions of RERA 2016. **4**

(ii) What are the provisions in RERA 2016 relating to the changes in design of the construction from the sanctioned plans ? Analyse if the changes made by Winner are appropriate in this context. **4**

(iii) What would be your advice if the customers of Winner reach out to you for your views with regard to the validity of the explanations provided by Mr. Vijay Nair on the reduction of carpet area ? **3**

(iv) Evaluate the statements made by Mr. Vijay Nair in the meeting with the allottees on 30 March 2019 regarding the delay and the increase in labour costs in the context of provisions of RERA 2016. **4**

2.12. Examine / advice regarding the below questions relating to the Prevention of Money Laundering Act, 2002 (PMLA 2002).

(i) As a leading consultant on PMLA matters, the enforcement directorate has sought your advice on identifying : **8**

(a) the offences (b) the parties involved and (c) the punishment for the offence of money laundering.

(ii) The Bank, in which Winner holds its bank account, has reached out to you to understand their obligations for maintaining and reporting of transactions under the PMLA 2002. Advise. **4**

(iii) When the Enforcement Directorate proposed to take action against Mr. Vijay Nair under the PMLA 2002, Mr. Vijay Nair contended that he was not a party to any of the alleged offences and he was managing the real estate business of Winner only. **3**

Examine whether his statement is valid. What would be the position of the nominee director of the PE investor ?

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CASE STUDY – 3 :

(Part-A)

The appellant "M/s Transmission Corporation of Andhra Pradesh Limited" is a successor of Andhra Pradesh State Electricity Board (for short, 'APSEB') and is in the activities relating to transmission of electricity. It had awarded certain contracts to the respondent "M/s Equipment Conductors & Cables Limited" herein for supply of goods and services. Some disputes arose and the respondent initiated arbitration proceedings. As many as 82 claims were filed by the respondent before Haryana Micro and Small Enterprises Facilitation Council (hereinafter referred to as 'Arbitral Council'). These proceedings culminated into Award dated June 21, 2010. The Arbitral Council came to the conclusion that the claims made on the basis of Invoice Nos. 1 – 57 were barred by law of limitation and, therefore, no amount could be awarded against the said claims. In respect of Invoice Nos. 58-82, the award was passed in favour of the respondent. Against the aforesaid award rejecting claims in respect of Invoice Nos. 1 – 57 as time barred, the respondent herein filed an application under Section 34 of the Arbitration and Conciliation Act before the Additional District Judge, Chandigarh. The Additional District Judge passed the order dated August 28, 2014 in the said application thereby remanding the case back to the Arbitral Council for fresh decision. Against this order, the appellant filed the appeal before the High Court of Punjab and Haryana at Chandigarh. This appeal was allowed by the High Court by its order dated January 29, 2016 thereby setting aside the direction of the Additional District Judge remanding the matter to Arbitral Council for fresh consideration.

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The respondent herein filed execution petition for execution of judgment dated January 29, 2016 passed by the High Court of Punjab and Haryana as well as the award dated June 21, 2010 passed by the Arbitral Council. In so far as award of Arbitral Council is concerned, as noted above the respondent's claim pertaining to Invoice Nos. 58 – 82 was allowed and the execution thereof was sought. The respondent, however, filed another execution petition seeking execution of amount in respect of Invoice Nos. 1 – 57 also. This application was entertained and both the petitions were directed to be dealt with simultaneously vide orders dated August 17, 2016. The High Court vide its order dated November 08, 2016 allowed the said Revision Petition holding that there was no award in respect of claim towards Invoice Nos. 1 – 57 and, therefore, it was not permissible for the respondent to seek the execution. When the things rested at that, the respondent approached the NCLT by means of a Company Petition under Section 9 of IBC, 2016 read with Rule 6 of Insolvency and Bankruptcy (AAA) Rules, 2016. In this petition, the respondent stated that it had served demand notice dated October 14, 2017 upon the appellant under the provisions of the IBC, thereby claiming the amount of ₹ 45,69,31,233/- which was not paid by the appellant. As mentioned above, this petition was dismissed by the NCLT filed under section 9 of IBC vide its order dated April 09, 2018 being non maintainable on account of existence of a dispute between the parties and this assertion of the NCLT is based on the fact that these very claims of the respondent were subject matter of arbitration and the award was passed rejecting these claims as time barred. Against this order, the respondent has filed appeal before the NCLAT in which impugned orders dated September 04, 2018 have been passed. The Honourable NCLAT passed an order stating ***"Prima facie case has been made out by the Appellant in view of the part decree awarded by the competent court under Section 34 of the Arbitration and Conciliation Act, 1996. However, taking into consideration the fact that if appeal is allowed and Corporate Insolvency Resolution Process is initiated against the Respondent - "Transmission Corporation of Andhra Pradesh Ltd.", the government undertaking may face trouble. Therefore, by way of last chance we grant one opportunity to respondents to settle the claim with the appellant, failing which this Appellate Tribunal may pass appropriate order on merit."***

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This very order of the National Company Law Appellate Tribunal, (for short, 'NCLAT) dated September 04, 2018 is the subject matter of challenge before the Honourable Supreme Court by the appellant M/s Transmission Corporation of Andhra Pradesh Limited and prays that the same be reversed as there exists a Dispute and the application under IBC cannot be accepted.

(Part-B)

One Shri Rajendra Singh ('Informant') filed an information under Section 19(l)(a) of the Competition Act, 2002 (the 'Act') against Ghaziabad Development Authority ('OP'/'GDA') alleging contravention of the provisions of Section 4 of the Act. As per the information, the Informant is an allottee of a flat under the Adarsh Vihar residential housing scheme for the Economically Weaker Sections (EWS) ('Scheme') being developed by the OP in Ghaziabad, U. P. in 2008. It is informed that OP is constituted under Section 4 of the Urban Planning and Development Act, 1973 of Uttar Pradesh and is, inter alia, engaged in the activity of development and sale of real estate in Ghaziabad, U. P.

It is further stated that the OP had conducted a lottery draw for allotment of EWS flats under the aforesaid scheme. On being successful in the said lottery draw, the Informant was allotted a flat bearing no. A-1/222 and accordingly, an allotment letter dated 04.05.2009 was issued in favour of the Informant mentioning the final price of the flat as ₹ 2,00,000 and other conditions relating to payment plan, date of giving possession, penal interest in case of delay in the payment of the balance amount etc. As per the condition of the scheme, the Informant paid ₹ 20,000 to the OP as registration amount constituting 10% of the total price of the said house.

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It is averred by the Informant that on 27.11.2015, the OP issued a letter to all the allottees of the aforesaid scheme asking them to pay ₹ 7,00,000 as sale price of the flats allotted to them failing which their allotment would stand cancelled. It is alleged that the OP has arbitrarily increased the sale price of the said flat to ₹ 7,00,000 from ₹ 2,00,000 which was mentioned in the allotment letter dated 04.05.2009. As per the Informant, the OP has indulged in unfair and arbitrary practices and has misused its dominant position in the market. It is further averred that the OP has indulged in the said practice even after knowing that the allottees of the scheme belong to the weaker sections of the society and they are not in a position to challenge the OP for its unfair and arbitrary conduct. Further, it is stated that the allottees of the said scheme are dependent upon the OP for the residential flats under the said scheme. The Informant has averred that the alleged conduct of OP is in contravention of the provisions of Section 4(2)(a) of the Act.

Based on the above submissions, the Informant has prayed before the Commission to initiate an inquiry against the OP under the provisions of the Act, set aside the impugned letter dated 27.11.2015 of the OP demanding ₹ 7,00,000 for the aforementioned flat, and direct the OP to deliver possession of the flat to the informant under the said scheme at the price of ₹ 2,00,000 per flat. Besides hearing the parties on 27.12.2016, the Commission has perused the information available on record and the documents submitted by the OP. From the facts of the case, it appears that the grievance of the Informant relates to the letter dated 27.11.2015 of the OP demanding a higher price of ₹ 7,00,000 for a EWS flat allotted to the Informant under the aforesaid scheme as compared with the price of ₹ 2,00,000 as declared in the scheme's initial brochure and intimated to the Informant vide allotment letter dated 04.05.2009. It is the case of the Informant that the OP has abused its dominant position by arbitrarily increasing the price of the said flat in contravention of the provisions of Section 4 of the Act.

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The Commission observes that GDA is established under Section 4 of the Urban Planning and Development Act, 1973 of the State of Uttar Pradesh. It has a common seal with power to acquire, hold or dispose off both movable and immovable properties. The Urban Planning and Development Act, 1973 of Uttar Pradesh empower GDA to pursue activities for promoting and securing development of Ghaziabad in a planned manner. GDA has the power to acquire, hold, manage and dispose of land and other properties in Ghaziabad and to carry out building, engineering, mining and other operations, etc. Further, GDA is, inter alia, engaged in the activities of development and sale of buildings, flats, complexes etc. for residential, commercial, institutional and other purposes and with regard to the relevant geographic market. The Commission is of the view that the geographic area of Ghaziabad district of the State of Uttar Pradesh exhibits homogeneous and distinct market conditions for the development and sale of low cost residential flats under affordable housing schemes for EWS and can be distinguished from the conditions of competition prevailing in other adjacent areas of Ghaziabad such as Delhi, Noida, etc. It may be noted that a consumer intending to buy a low cost residential flat under affordable housing scheme for EWS in Ghaziabad may not prefer to purchase the same in other adjacent areas of Ghaziabad because of factors such as difference in regulatory authorities (and hence, different rules, regulation and taxes), distance to locations frequently commuted, regional or personal preferences, transport connectivity etc.

Simultaneously, the Competition Commission of India (CCI) received a complaint from the Tamil Nadu State Government alleging that two companies, M/s Sun Limited, a company engaged in the business of manufacturing solar panels, and M/s Shine Limited, a company engaged in the sale, installation and maintenance of solar energy generation plants, have entered into an informal agreement to limit or control the production, supply and marketing of the products to ensure maximum price realisation. M/s Sun Limited sells its manufactured panels on an exclusive basis to M/s Shine Limited, which is India's largest solar power generation company supplying solar plants to more than 60% of the current market.

Therefore, it is the case of the Tamil Nadu State Government that the agreement between M/s Sun Limited and M/s Shine Limited is anti-competitive and has an adverse effect on competition since the entities have abused their dominance in the market.

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Answer the following questions :

3.1. Which of the following are not duties of the Competition Commission of India ? **2**

(A) To promote and sustain competition in markets in India.

(B) To protect the interests of consumers.

(C) To ensure freedom of trade carried on by Indian suppliers in global market.

(D) To eliminate practices having adverse effect on competition.

3.2. Notwithstanding anything contained in sub-regulation (2), the Commission may, after recording reasons, invalidate a notice filed under regulation 5 or regulation 8 of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 as amended when it comes to the knowledge of the Commission that such notice is not valid as per sub-regulation (1) and, in that case, the Secretary shall convey the decision of the Commission to the parties to the combination within_____. **2**

(A) Seven days of such decision of the Commission.

(B) Fourteen days of such decision of the Commission.

(C) Seven working days of such decision of the Commission.

(D) Fourteen working days of such decision of the Commission.

3.3. Operate independently of competitive forces prevailing in the relevant market is _____ component. **2**

(A) Abuse of Dominance

(B) Anti-Competition agreements

(C) Combinations Regulation

(D) Competition Advocacy

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3.4 Which of the following are not functions of Insolvency Professional Agencies (IPAs) ? **2**

(A) Monitoring, Inspecting and Investigating members.

(B) Recommending Insolvency Professionals to Committee of Creditors.

(C) Drafting detailed standards and code of conduct for insolvency professionals.

(D) Addressing grievances, hearing complaints and taking suitable action.

3.5 Following are the liabilities of M/s A Limited, which is under insolvency process under IBC 2016. **2**

(i) Loan from Bank – INR 100 crores

(ii) Secured Debentures issued to M/s B Limited – INR 20 crores.

(iii) Trade Payable (10 creditors, including B Ltd., whose outstanding is ₹ 2 crores) – INR 14 crores.

(iv) Amounts payable to workmen – INR 4 crores.

Calculate the voting share of M/s B Limited in the Committee of Creditors.

(A) 15.9420%

(B) 16.6667%

(C) 16.4179%

(D) 16.1290%

3.6 The liquidation process relating to corporate debtors under IBC 2016 will not be initiated under which of the following circumstances ? **2**

(A) The Committee of Creditors do not approve a resolution plan within 180 days.

(B) The NCLT rejects the resolution plan submitted to it on technical grounds.

(C) The Committee of Creditors resolve to liquidate the debtor with a majority (> 50%).

(D) The debtor contravenes the agreed resolution plan and an affected person makes an application to the NCLT to liquidate the debtor.

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3.7 The liquidator of M/s Wrongway has sought your help in prioritising the claims against M/s Wrongway, as per IBC 2016 : 2

(1) Costs payable to liquidator and resolution professional.

(2) Property tax payable to Government of Goa.

(3) Salary payable to the Finance team for past 6 months.

(4) Amounts payable to M/s Dhara Bank towards secured loans, where security was relinquished.

(5) Amounts payable to Holding company of M/s Wrongway for Royalty fees.

(A) (1), (2), (4), (3), (5)

(B) (2), (1), (4), (5), (3)

(C) (1), (4), (2), (3), (5)

(D) None of the above

3.8 Whether an operational creditor can assign or legally transfer any operational debt to a financial creditor ? 2

(A) Yes. However, the transferee shall be considered as an operational creditor to such extent of transfer.

(B) Yes but the transferee shall be considered as a financial creditor in relation to such transfer.

(C) No. An operational creditor cannot assign or legally transfer any operational debt to a financial creditor.

(D) No. An operational creditor can assign or legally transfer an operational debt only to an operational creditor.

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3.9. Which of the following agenda items should be taken up in the first meeting of committee of creditors (COC)_____. **2**

(A) Appointment of interim resolution professional as insolvency professional or replacement of the interim resolution professional by another resolution professional

(B) Preparation of draft resolution plan.

(C) Discussion of the status of the corporate debtor as on the present date and the road map ahead.

(D) Collection of information on corporate debtor from independent sources

3.10 What is quorum in case of meeting of committee of creditors (COC) ? **2**

(A) Members of the Committee representing at least 33% of the voting rights present either in person or video conference or other audio visual means.

(B) Members of the Committee representing at least 50% of the voting rights are present either in person or proxy.

(C) Members of the Committee representing at least 50% of the voting rights are present either in person or video conference or other audio visual means or proxy.

(D) Members of the Committee representing at least 66% of the committee present in person or proxy.

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3.11	What is to be construed as a "Dispute" under the Insolvency & Bankruptcy Code, 2016 ? State its significance for the maintainability of an application filed under section 9 of the Code. In the given case study whether the appellant M/s Transmission Corporation of Andhra Pradesh Limited will succeed in its appeal ? Decide.	10
3.12	(i) Examine the provisions of the Competition Act, 2002 :	
	(a) Decide whether the agreement between Sun Limited and Shine Limited is covered under the scope of the Act with reasons. Also, clarify the nature of the agreement based on facts provided.	4
	(b) What factors shall the CCI consider while evaluating the views of the Government of Tamil Nadu ?	6
	(c) What orders can the CCI pass on completion of the inquiry ?	4
	(ii) In the given case study, decide with reasons whether Rajendra Singh (Informant) will succeed against the Opposite Party (OP) for alleged violation of Section 4(2)(a) of the Competition Act, 2002 ?	6

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