aglasem.com

FOR CA FINAL EXAM PREPARATION

CA Final 2022 Suggested Answers · Paper 6D Economic Laws (Old Scheme)

EXAM	YEAR	TYPE
CA Final	2022	Suggested Answers

SUBJECT	DATE
Paper 6D Economic Laws (Old Scheme)	May 2022

DISCLAIMER

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

Further, in the Elective Papers which are Case Study based, the solutions have been worked out on the basis of certain assumptions/views derived from the facts given in the question or language used in the question. It may be possible to work out the solution to the case studies in a different manner based on the assumptions made or views taken.

© The Institute of Chartered Accountants of India

PAPER 6D: ECONOMIC LAWS

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

Case Study: 1

Today's millennials have an extraordinary amount of intelligence and are very hard working, while, at the same time, have inclination for having fun and enjoy their free time. One such young star was Mr. Kris Anand (Anand). Anand completed his B. Tech. in Metallurgy with NIT Suratkal and then went on to do his masters from IIT Kanpur. Being a bright and hard-working person that he is, he passed out with flying colours and went to Germany to work with BMW in Germany while doing his PhD with the Munich University on 1st November 2018. Anand opened an NR-E account with SBI, Bengaluru branch and transferred half his salary to the NR-E account from his salary account in Germany.

In addition to his work at the University, Anand also played football for his university team, and he won the 'player of the series' award in the inter-university tournament held in Munich and won an amount of EUR 100,000 out of which he transferred EUR 50,000 to his NR-E account in India.

In January ₹, 2020, Ms. Lakshmi, Anand's sister, staying in Coimbatore with her husband and kid, went to Germany to visit Anand and during that time, Anand gave Lakshmi a gift of EUR 5,000. Lakshmi was very happy to receive this gift and opened a bank account in Germany and deposited the amount in the same with a view to use it on her next trip to Germany with her family. During her visit to Germany, Lakshmi used her international credit card to go on a Europe trip along with Anand and paid an amount EUR 3,000 for the same. During Diwali, Mr. Yagna, Lakshmi's husband gave a gift to Anand of EUR 1,000 (by transferring from his Indian bank account to Anand's bank account in Germany) and another INR 100,000 to Anand's bank account in India.

Yagna runs a software company in Coimbatore and was looking for various investment opportunities in the Asia Pacific to expand his operations. During January, 2017, he came across two very good companies - one in South Korea and one in North Korea and he invested an amount of USD 100,000 and USD 140,000 respectively, in acquiring the shares of both the companies.

Anand, using the money earned by him in Germany, acquired an independent villa in Kochi for an amount of ₹ 120 lakh from a realtor in January, 2020. For this purpose, he transferred an amount of ₹ 40 lakh from his bank account in Germany to the realtor's bank account through the normal banking channels and obtained a loan of ₹ 70 lakh. For the balance amount of ₹ 10 lakh, he paid the amount using his Travellers' Cheque when he came to India for the registration of the property in March, 2020.

© The Institute of Chartered Accountants of India

Anand was to return to Germany by the end of March, 2020 but could not get the flight ticket due to Covid-19 restrictions. He had to remain in India with his parents in Kochi. Due to his long stay in India and not resuming his official duties in Germany; his employer expelled him in June, 2020. The salary income almost stopped, and Anand was not able to serve the EMT to the Bank. The house loan account was turned NPA by the end of November, 2020. The Bank took legal recourse and sent a notice under Section 13 (2) of the SARFAESI Act and recalled the entire loan amount (which was ₹ 60 lakh + interest accrued amounting to ₹ 5 lakh) and pay before the expiry of the notice period as mentioned in the notice, else the Bank will be forced to take possession of the villa. The notice of 60 days given under SARFAESI Act by the Bank was going to expire on 10th January, 2021. Since Anand did not come forward to negotiate/liquidate the house loan account, the Bank took possession of the villa and put its lock and displayed a notice on the villa's door "Under possession of SBI". The SBI, after taking possession of the villa, advertised in "Sale of Mortgaged Property" in the Tamil Nadu edition of "The Indian Express" and "Dinamalar", a Tamil newspaper. The expression of interest was invited from the prospective buyers with a reserve price of ₹ 100 lakh and the villa was finally auctioned for ₹ 110 lakh and the balance amount (after deducting the debt owed by Anand) was returned by the SBI to Anand. Anand was surprised to receive the amount since he was not informed of the auction and the sale of the villa by the Bank,

Answer the following question:

1.1 Can Lakshmi use her international credit card (ICC) for incurring expenses in Germany?

(A) Yes, provided it is for capital account transaction.

(B) No, use of ICC requires the prior approval of the RBI.

(C) Yes, ICC can be used without the prior approval of the RBI

(D) Yes, ICC can be used with the approval of the central bank of the country in which the ICC is being used.

1.2 Is the payment Mechanism used by Anand & fort acquiring the villa in accordance with FEMA?

(A) No; consideration for acquiring property should not be in the form of travellers' cheques.

(B) Yes, since he is an NRI and the property is other than agricultural land/farm house etc.

(C) No, an NRI can not aquire a loan in India to purchase imovable property in India.

(D) Yes, as long as the Authorised dealer/banker of the acquirer confirms the banking of the consideration (including the travellers' cheques) and reports it to the RBI.

© The Institute of Chartered Accountants of India

1.3 Assuming Anand makes a representation on receipt of the notice under section 13(2), what is the maximum period available to SBI for responding to such representation from Anand?

(A) 10 days.

(B) 20 days.

(C) 14 days.

(D) 15 days.

1.4 In view of the invoking of SARFAESI Act as given in the case study, can SBI invoke the provisions of SARFAESI for non-payment of dues by Anand for another loan taken in the past for acquiring an agricultural land in Idukki district?

(A) Yes, provided that the conditions mentioned in Section 13 and other provisions of the Act get triggered for the loan taken towards acquiring agricultural land.

(B) No, the same lender cannot invoke SARFAESI Act against the same borrower for more than one property at a point of time.

(C) No, the above is outside the purview of SARFAESI Act 2002.

(D) Yes, SBI Is entitled to group/consolidate all the loans to invoke SARFAESI Act.

1.5 In the given case, what would be the minimum amount of outstanding dues (including interest) that would entitle the Bank to issue notice under SARFAESI Act?

(A) Amount due is more than the 20% of the principal amount and interest thereon.

(B) Amount due is more than thereon 25% of the principal amount and interest thereon.

(C) No limit, as long as there is an amount which is due, and the loan has become an NPA.

(D) Notice can be sent by the Bank as per its Board Approved policies for issuing notice under SARFAESI. ***(2 x 5 = 10 Marks)***

Answer the following questions:

1.6 Evaluate the compliance with FEMA regarding the investment (in the form of shares) made by Mr. Yagna duly capturing the nature of the transactions and the limits available.

(3 Marks)

1.7 Analyse the gifts given/exchanged between Anand, Lakshmi and Yagna as described in the case study in the light of the provisions of FEMA. ***(4 Marks)***

1.8 Anand, while filing an appeal under Section 18 if the SARFAESI Act, 2002 with the Appellate Tribunal, did not make a pre-deposit of 50% of the amount of debt due, and the

© The Institute of Chartered Accountants of India

same was accepted by the Appellate Tribunal. Evaluate and conclude based on the provisions of the SARFAESI Act and the relevant case laws. ***(3 Marks)***

1.9 Evaluate whether the sale of the property by SBI was in accordance with the provisions of the SARFAESI Act. ***(5 Marks)***

ANSWER TO CASE STUDY 1

1.1 Option (C): Yes, ICC can be used without the prior approval of the RBI

1.2 Option (A): No, consideration for acquiring property should not be in the form of travellers' cheques.

1.3 Option (D): 15 days

1.4 Option (C): No, the above is outside the purview of SARFAESI Act, 2002

1.5 None of the option is correct.

Answer 1.6

Evaluation of Investment proposal:

a. Schedule I of Regulation 3(1)(A) of Foreign Exchange Management (permissible Capital Account Transactions) Regulations, 2000 allows investment by a person resident in India in foreign securities.

Yagna being a person resident in India is eligible to invest in the foreign securities.

b. As per Regulation of 4 of the Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000, an amount of USD 2,50,000 per financial year can be utilized for making permissible capital account transactions.

c. As per clause (d) of Regulation of 4 of the Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000, the existing investment transactions, with any person who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, by a person resident in India, which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs shall be closed/ liquidated/ disposed/settled within a period of 180 days from the date of issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period.

Further, as per the Regulation 6 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004, an Indian Party has been permitted to make investment/ undertake financial commitment in overseas Joint Ventures

© The Institute of Chartered Accountants of India

(JV)/ Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank.

According to that any financial commitment (FC) exceeding USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route [i.e., within 400% of the net worth (Paid up capital + Free Reserves) as per the last audited balance sheet].

In the given case Yagna, invested an amount of USD 100,000 and USD 140,000 respectively in the companies, one in South Korea and one in North Korea in acquiring the shares in January, 2017. Accordingly, such an investment could be made without seeking approval of RBI, as it is within the limit of 1 billion in a financial year.

In view of the above provisions:

(i) Yagna being a resident Indian is allowed to invest in an amount of USD 1,00,000 in South Korea. [within the prescribed limit of USD 2,50,000 as per the Regulation of 4 of the Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000 and within the prescribed limit of USD 1 billion as per the Regulation 6 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004]

(ii) Though Yagna is allowed to invest further in foreign securities, however investment in an entity incorporated or otherwise in Democratic People's Republic of Korea has been specifically prohibited.

Yagna had invested USD 1,40,000 in a company of North Korea in January 2017. This being an existing investment transaction, Yagna had to close/ liquidate/ dispose/settle the said within a period of 180 days from the date of issue of this Notification (the effective date of this notification was 7-3-2019).

In view of this the investment in North Korea is in non compliance with the provisions of FEMA if still retained.

Answer 1.7

Gift of EUR 5,000 by Anand to Lakshmi: Lakshmi opened a bank account in Germany and deposited the amount in the same with a view to use it on her next trip to Germany with her family. Here Anand (PROI) gives EUR 5000 to Lakshmi (PRII), according to above provisions, Lakshmi cannot keep it abroad. She has to bring it to India.

Gift by Mr. Yagna to Anand (EUR 1,000 and INR 100,000): Mr. Yagna, gave a gift to Anand of EUR 1,000 (by transferring from his Indian bank account to Anand's bank account in Germany) and another INR 100,000 to Anand's bank account in India. The funds of EUR 1000

© The Institute of Chartered Accountants of India

are sent from the Yagna (PRII) Indian bank account to the Anand (NRI) bank account in Germany. Under accounts and income-tax law, gift is a "capital receipt". However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transaction is over. Hence it is a Current Account Transaction and permissible.

Also, Yagna (PRII) gives Anand (PROI) INR 1,00,000 to Anand's bank account in India, for Anand, it will result in funds lying in India (alteration of Indian asset). For Yagna, there is no creation of asset or a liability. As this transaction creates an asset in India for the Anand, it is a Capital Account transaction and permissible as per FEMA rules.

Answer 1.8

Appeal to Appellate Tribunal – Section 18 of the SARFAESI Act, 2002

(1) Any person aggrieved, by any order made by the DRT under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of DRT.

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the DRT, whichever is less.

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts and Bankruptcy (RDB) Act, 1993 and rules made thereunder. [Section 18(2)]

In a case law *Union Bank of India V/S Rajat Infrastructure Pvt. Ltd. & Ors., it was held that* there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre- deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal.

In view of above, it may be concluded that acceptance of appeal without deposit by Appellate Tribunal is not in order.

Answer 1.9

Sale of immovable secured assets – Rule 8 of the Security Interest (Enforcement) Rules, 2002.

Following shall be the requirement for the sale of property by SBI under the SARFAESI Act, 2002:

© The Institute of Chartered Accountants of India

1. **By delivering Possession Notice:** Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property. [Rule 8(1)]

2. **Possession Notice to be published in Newspaper:** The possession notice shall also be published in two leading newspaper, one in vernacular language having sufficient circulation in that locality, by the authorised officer. [Rule 8(2)]

   (2A) All notices under these rules may also be served upon the borrower through electronic mode of service. [Rule 8(2)]

3. **Actual possession of immovable property:** In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property. [Rule 8(3)]

4. **Insurance of immovable property:** The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary till they are sold or otherwise disposed of. [Rule 8(4)]

5. **Valuation of property:** Before effecting sale of the immovable property, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset.

6. **Notice to borrower and publication in newspaper:** The authorised officer shall serve to the borrower a notice of 30 days for sale of the immovable secured asset.

   Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale.

7. **Display of Notice:** Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems fit, put on the website of the secured creditor on the Internet. [Rule 8(7)]

8. **Other Methods:** Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing. [Rule 8(8)]

Here in the case study, the authorised officer has not served to the borrower a notice of 30 days for sale of the immovable secured asset. Further, there is violation of clause of public notice in

© The Institute of Chartered Accountants of India

two leading newspapers as the advertisements for sale of mortgage property were given in Tamil Nadu edition of newspapers, whereas the villa was in Kochi, Kerala.

Thus, the sale by SBI is not in accordance with the provisions of the SARFAESI Act, 2002.

Case Study: 2

Mr. Arvind Ashok is a hard-working educationalist with good amount of information technology *experience and currently residing in Hyderabad. After graduating from the Indian School of Business, Arvind started a Company, Aspire Consultancy Services Private Limited (ACS) along with Mr. Pandu Govind with their office in Jubilee Hills. ACS was aspiring to make ground breaking business opportunities in the Edu-Tech business, focusing on providing digital learning platforms for college students to equip themselves on big data, analytics, artificial intelligence and other cyber skills. Over the period of time, ACS expanded its product/service range and market reach apart from a significant improvement in customer response time through the introduction of innovative techniques. ACS's ethical work culture and employee- friendly policies allowed it to retain employees for a longer duration. Arvind and his team developed a core Leaming Management Solution (LMS), which also provided a portal for conducting online live classes, sharing course and conduct online exams, after which the successful candidates will be provided a certificate of completion. The software with the help of artificial intelligence automatically generated pop-up at the screen of candidates' device that he/ she is not viewing towards the camera and a similar pop- up also gets generated at the screen of the invigilator (who invigilate digitally from the control room, through the camera of candidates' device and control of screen). Further, the platform enabled direct one-to-one interaction between the students and the facilitators and thereby provided a lot of authenticity to the entire program. They also identified a new business model of only providing the LMS platform to other educational institutions like universities etc. on PAAS basis.*

Pandu and Arvind were very happy with the success of their new learning management solution. However, they also understood that there is significant competition for the same due to the presence of many active players in the market who were already rendering service of conducting the online exam for testing agencies either at their own location (test centres) or remote location; hence, it was not easy for ACS to penetrate in the market and capture reasonable share. ACS entered a Platform as a Service (PAAS) agreement with the top universities in different cities to use their respective computer lab facilities for running the LMS. In this manner, ACS also got equipped with testing centres in different cities. Against the competitors, they had the leverage of AI-equipped testing software. ACS, against the prevailing market prices of ₹ 850 and ₹ 550 per candidate for the conduct of online tests at the centre and remote respectively, offered and charged the price of ₹ 700 and ₹ 400 respectively. Since ACS has its own server and other IT facilities including human resources, hence after covering the directly attributable and overhead (for centralised shared services) costs, it barely managed to break even and which are substantially lesser than the ACS's average rate of earning. After few years of the success of testing LMS in the market, ACS market share reached 45% in the online testing segment. Many small and standalone players in the industry had to quit during this period. Only those who

© The Institute of Chartered Accountants of India

reduced their prices (and were able to cover their operating costs with such reduced prices) were able to survive. During that time, Pandu decided to increase the prices to ₹825 and ₹525 per candidate for online tests at the centre and remote, respectively. ACS successfully managed to retain a 40% market share. The loss of market share was compensated by high profits due to enhanced prices, hence the bottom line improved a bit. Using their PAAS with one of the top universities which fixed a limited number of seats for a course, ACS wrote a dynamic pricing algorithm based on which the fee for the course will be decided and as per the PAAS agreement, ACS retained 20% of the fee as their revenue and remitted the balance to the university. Both the university and the student did not have a role in the pricing model. For the purpose of construction of a new home, Arvind took a loan of INR 200 lakhs from ABC Bank and for that purpose, ACS provided a guarantee to ABC Bank.

For the import of servers from the UK for hosting the LMS, ACS had sought professional advice from Server and Networks PLC (S&N) based in the UK for which they raised a bill of GBP 305,000, equivalent to INR 305 lakhs. S&N were not paid GBP 110,000 out of their total receivable amount, so the advocate of S&N sent a demand notice for payment under Section 8 of the Insolvency and Bankruptcy Code, 2016 against which there was no reply made by ACS within the stipulated time and so the advocate of S&N moved a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking commencement of insolvency process against ACS. They were not having any office or bank account in India, so it could not submit a "Certificate from a financial institution" as required under the Code. S&N also contended that Pandu fraudulently removed assets of ACS to the tune of INR 1,000,000, 6 months before the insolvency commencement date. Once ACS became aware of the fact that S&N have filed an application for insolvency process, ACS sent an email to S&N stating that there was the existence of dispute for the unpaid amount of GBP 110,000 because there was a breach by S&N of a warranty and liquidated damages clause as per the agreement between the two parties but there was no evidence available with ACS to support its assertion of fact and thereafter also filed a hard copy of the email with the Adjudicating Authority within 5 days of the filing of application by S&N.

Due to certain difficulties, Arvind could not repay the loan taken from ABC Bank and ABC Bank wanted to invoke the provisions of IBC, 2016.

Answer the following questions:

2.1 Assuming that the allegations of S&N against Pandu are upheld, what is the potential penalty I punishment applicable for Pandu under IBC 2016?

(A) Imprisonment for a term of 3 to 5 years, fine ranging from one lakh to one crore or both

(B) Imprisonment for a term of 1 to 5 years, fine ranging from one lakh to one crore or both.

© The Institute of Chartered Accountants of India

(C) *Imprisonment for a term of 3 to 5 years, fine ranging from one lakh to three lakhs or both.*

(D) *Fine ranging from one lakh to one crore.*

2.2 *What is the status of ACS regarding the invocation of IBC, 2016 by ABC Bank for the housing loan obtained by Arvind?*

(A) *ACS is considered as a corporate debtor.*

(B) *ACS is not considered as a corporate debtor since it is not the principal borrower.*

(C) *The guarantee provided by ACS is not covered within the definition of financial debt under IBC 2016.*

(D) *The guarantee given will be considered as an operational debt since it has been given based on the "services provided" by Arvind to the Company.*

2.3 *Pandu wanted to provide a free tablet for every student who undergoes a course with ACS and wanted to ensure that the LMS platform is accessible only on the tablet provided by the Company and cannot be accessed through the web and ACS refused to provide the LMS without the tablet. What is the nature of this arrangement?*

(A) *Refusal to deal*

(B) *Horizontal agreement*

(C) *Exclusive supply agreement*

(D) *Tie in agreement*

2.4 *Which of the following is not one of the advantages of perfect competition?*

(A) *Promotes innovative practices*

(B) *Providing greater choice to sellers to decide the buyer*

(C) *Ensure cost of production is kept at its lowest*

(D) *Effective allocation of resources*

2.5 *Can the price of ₹700 and 400, respectively charged by ACS be considered as predatory pricing?*

(A) *No, because the price charged recovers the costs incurred.*

(B) *No, because ACS is free to fix whatever price it wants in a free economy.*

(C) *Yes, because these are lower than the prevailing market price.*

© The Institute of Chartered Accountants of India

(D) Yes, because the profits earned are lower than the average rate of return for ACS.

(2 x 5 = 10 Marks)

Answer the following questions:

2.6 Examine, with reasons whether ACS holds a dominant position in the relevant market and whether its actions tantamount to abuse of dominant position. ***(5 Marks)***

2.7 One of ACS's competitors was of the view that the PAAS agreement entered into by ACS with the dynamic pricing model was in violation of Section 3(1) read with Section 3(3)(a) of the Competition Act. Evaluate with reasons. ***(4 Marks)***

2.8 Can the adjudicating authority reject the application filed by S&N based on the premise that the amount claimed by S&N is under dispute? ***(3 Marks)***

2. 9. Does the non-availability of the certificate from a financial institution in any way impact the CIRP process filed by S&N? ***(3 Marks)***

ANSWER TO CASE STUDY 2

2.1 Option (A): Imprisonment for a term of 3 to 5 years, fine ranging from one lakh to one crore or both

2.2 Option (A): ACS is considered as a corporate debtor.

2.3 Option (D): Tie in agreement

2.4 Option (B): Providing greater choice to sellers to decide the buyer

2.5 Option (A): No, because the price charged recovers the costs incurred.

Answer 2.6

(i) Whether ACS holds a dominant position in the relevant market

As per explanation (a) to section 4 of the Competition Act, 2002, "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

ACS didn't enjoy dominance when it came up initially with the testing software, but after few years of success, ACS truly acquired the dominant position. Quite a large share i.e. 45% of the segment of the market, is a clear indicator of their dominance in the relevant market online testing. In the journey of being zero to acquiring 45% market share, ACS has affected the competitors particularly, those who are small and in early years of operation, who can't sustain the heat of low price competition. ACS has captured the market by its own penetration strategy, independent of market forces. Here, it is to be

© The Institute of Chartered Accountants of India

mentioned that maintaining of the dominant position in the relevant market is not prohibited, but abuse of the dominant position in the relevant market is prohibited.

(ii) Whether its actions tantamount to abuse of dominant position.

Further, Section 4(2)(a)(ii) says, there shall be an abuse of dominant position under sub-section (1) of section 4, if an enterprise or a group directly or indirectly, impose unfair or discriminatory prices in purchase or sale.

ACS increased the prices to ₹825/- and ₹525/- per candidate for online test at the centre and remote respectively. Even then, ACS successfully managed to retain 40% of the market share (reduced from 45%). The loss of market share was compensated by high profits due to enhanced prices, hence the bottom line improved a bit. However, one of the reasons that ACS was able to substantially retain its existing market share is the fact that it offers better technology i.e. Software that is AI-equipped, that gives its additional competitive advantage and leverage over others and such better technology can be considered as a justifiable reason for such increase in prices which have also not crossed the market prices that prevailed when ACS had entered the market of online testing.

According, it does not amount to an abuse of the dominant position.

Answer 2.7

The provision relating to Prohibition of Anti-Competitive Agreements has been defined under the Competition Act, 2002 as under:

Prohibition of Anti-Competitive Agreements [Section 3(1)]

No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition; or control of goods; or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

The clause Appreciable Adverse Effect on Competition (AAEC) has been defined under the Competition Act as under:

The probable factors mentioned under section 19(3) of the Act, that need to be looked into whilst determining whether or not an agreement is likely to have an AAEC in the market are provided in the Act.

These factors mentioned under section 19(3) of the Act, provide that the Commission while deciding whether or not an agreement is likely to have an AAEC in the market shall bring into consideration any or all of the following factors:

- creation of barriers to new entrants in the market;
- driving existing competitors out of the market;

© The Institute of Chartered Accountants of India

- foreclosure of competition by hindering entry into the market;
- accrual of benefits to consumers;
- improvements in production or distribution of goods or provision of services; and
- promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Further Anti-Competitive Agreements are Void Agreements – Section 3(2), the provision is mentioned as under:

Any agreement entered into in contravention of the provisions contained in sub-section (*1*) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition: Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services. Explanation.—For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section.

Analysis of the given case and conclusion: In the instant case, ACS (Started by Mr. Arvind along with Mr. Pandu) in order to penetrate in the market and capture reasonable share, entered a Platform as a Service (PAAS) agreement with the top universities in different cities to use their respective computer lab facilities for running LMS. They reduced the price of online test at the centre and remote and offered the charges of Rs. 700 and Rs. 400 respectively against the prevailing market prices of Rs. 850 and Rs. 550. This resulted that after few years of the success of testing LMS in the market, ACS market share reached 45% in the online testing segment. Due to this, many small and standalone players in the industry had to quit. During this time Pandu (of ACS) decided to increase the prices to Rs. 825 and Rs. 525 per candidate for online tests at the centre and remote respectively and ACS successfully managed to retain a 40%

© The Institute of Chartered Accountants of India

market share. Using its PAAS with the one of the top universities ACS came up with dynamic pricing algorithm based on which the fee for the course was decided in a way that it could retain 20% of the fee as their revenue and remitted the balance to the university (as their internal arrangements although both the university and the student did not have a role in the pricing model).

In the above manner ACS limited controlled the markets by first reducing their AI-equipped testing services first by reducing their penetrating prices lower than the market price and then increasing their prices but were still lower than the market prices. This resulted many small and standalone players in the industry to quit and only those who reduced their prices (and were able to cover their operating costs with such reduced prices) were able to survive. This amounts to AAEC in violation to section 3(3) (b) and NOT in terms of section 3(3)(a) as cited in the question.

Therefore, these acts of ACS have caused appreciable adverse effect on competition in violation to the section 3(3)(b) and not section 3(3)(a).

Answer 2.8

As per Section 5(6) of the Insolvency and Bankruptcy Code, 2016, dispute includes a suit or arbitration proceedings relating to—

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;

In the given case, ACS sent an email for dispute, post the time period for submitting a notice of dispute under section 8 of the code. In terms of section 8(2)(a), which states that the corporate debtor shall within a period of 10 days of the receipt of the demand notice or copy of invoice bring to the notice of the operational creditor existence of a dispute. The ACS had not replied to the aforesaid notice. ACS sent mail only after the initiation of the CIRP by the operational creditor. This reflects that dispute was not pre- existing and was thought afterwards.

In the case of *Mobilox Innovations (P.) Ltd. Vs Kirusa Software (P.) Ltd.* [Civil Appeal No. 9405 of 2017], the Supreme Court of India, dated 21.09.2017, the court decided that the dispute must truly exist in fact and is not spurious, hypothetical or illusory.

Conclusion:

Thus, in the given case, the adjudicating authority cannot reject the application of S&N on the ground that the amount claimed is under dispute.

Answer 2.9

As per Section 9 of the Insolvency and Bankruptcy Code, 2016, the operational creditor shall, along with the application filed in the prescribed form, furnish, *interalia*,-

© The Institute of Chartered Accountants of India

A copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

The words 'if available' used in section 9(3)I make it evident that such certificate shall only be submitted if such a copy is available.

Hence, the application of S & N cannot be rejected on the grounds of the non-availability of a 'Certificate from a financial institution'. Hence, the non availability of the certificate from a financial institution does not impact the CIRP.

In the case of Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. [*Civil Appeal No. 15135 of 2017] the Supreme Court of India, dated 15.12.2017*, opined that Section 9(3) I of The Insolvency and Bankruptcy Code, 2016 is directory in nature.

Case Study: 3

Mr. Shaswat Mishra is a dynamic young professional who moved from India to Boston in 2019. Shaswat, who holds an Indian passport moved abroad for higher studies and research in the field of material sciences and advanced Nano technology. After completing his studies, he was offered a role, as a teaching assistant at the Stanford University, which he gratefully accepted. There he met Ms. Shobs Rachel, a research scholar in bio-mechanics who is a British resident. Both got married to each other in September, 2020 in the US.

The family of Shaswat belongs to Bihar. Despite the fact that Shobs has never been to India, she was tempted by the Indian culture and traditions and wanted to settle in India. So, Shaswat purchased an apartment in Noida in the joint name of himself and Shobs, after around six months of their marriage. The payment was made through a debit entry to a non-resident account maintained by Shaswat. This apartment is their first owned immovable property.

Dr. Rekha Mishra, who is the sister of Shaswat, is working as a medical professional in RIMS, Jaipur. Shaswat visited his sister on her birthday and finds the PG house where she was staying was not fully equipped and did not have the required facilities. Considering an investment perspective and the comfort for his sister, Shaswat bought a studio apartment in Jaipur by making payment of ₹ 25 Lakh, registered in the name of Rekha. The price of the apartment is equal to the fair market value. Shaswat purchased another house in Patna, his hometown in the name of his mother because after retirement he also wishes to settle in Patna. He finalized the home for ₹ 125 Lakh, due to mild recession whereas the fair market value of such house is ₹ 140 Lakh on the date of registration, but now the same has fallen to ₹ 130 Lakh. Shaswat also purchased 50,000 shares of a private company, Dynamic Medical Devices Private Limited (DMDPL), which was founded by one of his friends, and held the same in the name of Shobs. DMD PL, in addition to trading on medical devices, also performed medical IT development and it exported its latest medical coding software to one of its customers over the electronic media on 30th June, 2020 for which the invoice was raised on 5th July, 2020.

During January, 2019, DMDPL had acquired medical devices from Switzerland for a value of EUR 1,000,000 under ·its EPCG license and payment was made. The goods were imported but

© The Institute of Chartered Accountants of India

kept in the bonded warehouse since the Bill of Entry was not made and therefore, DMDPL did not take delivery of the same within 6 months from the date of import/payment made. Once Shobs acquired the shares of DMD PL in January, 2020, she took over the operations of the Company as the Managing Director from that date. However, the goods continue to be retained in the bonded warehouse. In June, 2021, a show cause notice was sent to Shobs stating that there is a contravention of the provisions of FEMA and Shobs is liable for levy of penalty under the relevant regulations.

Evaluate the following questions:

3.1 Evaluate and identify whether any of the below mentioned are Benami 2 transactions under the PBPT Act assuming

(A) Purchase of property by Rekha worth ₹ 80 Lakh by paying ₹ 70 Lakh through bank transfer and ₹ 10 Lakh in cash. The registration was done for ₹ 70 Lakh.

(B) Purchase of property by Shobs (paid for by DMDPL) holding it in fiduciary capacity.

(C) Purchase of property by Shaswat in his name by using money of his friend.

(D) Purchase of property by Shaswat in the name of his mother and himself.

3.2 What is the latest date by which DMDPL must realize the full value of the medical coding software exported by it through electronic mode?

(A) 5th April, 2021.

(B) 5th January, 2021.

(C) 30th March, 2021.

(D) 31st December, 2021

3.3 Whether the immovable property purchased by Shaswat in Noida, in the 2 joint name of himself and his wife is valid under PBPT Act, 2016?

(A) Valid, because the payment was made through a debit entry to the non-resident account of Shaswat.

(B) Valid, because the property is acquired jointly.

(C) Valid, since this is the only property, they own.

(D) Invalid, since it is a Benami transaction.

3.4 When evaluating the character of the transaction and the intention of the 2-person contributing the money to acquire a property, and identifying it is a Benami transaction or not, which of the following is not a relevant criterion:

(A) Motives governing their actions for making the transaction.

© The Institute of Chartered Accountants of India

(B) Relationship between the parties.

(C) The basis of the surrounding circumstances.

(D) The difference, if any, between the actual consideration and value at which the registration is made.

3.5 Assuming that Shaswat purchased the shares in the name of his wife out of 2 sale proceeds of the immovable property purchased by Shaswat in Patna and not held jointly with his mother, then whether shares can be termed as Benami Property?

(A) Yes.

(B) No.

(C) Partially yes, partially no.

(D) Need more information to conclude ***(2 x 5 = 10 Marks)***

Answer the following questions:

3.6. Evaluate with reasons whether Shobs could be made liable for a contravention committed - by the erstwhile management of the DMDPL. ***(6 Marks)***

3.7. Rekha is of the view that Shobs has violated the requirement of FEMA by acquiring a property in India. Evaluate. ***(4 Marks)***

3.8. Which of the following persons may be considered as a Benamidar?

Discuss with reasons.

(a) Shaswat Mishra

(b) Rekha Mishra

(c) Mother of Shaswat

(d) Husband of Rekha ***(5 Marks)***

ANSWER TO CASE STUDY 3

3.1 **Option (C):** As per 2(9) of the Benami Act, Purchase of property by Shaswat in his name by using money of his friend.

3.2 None of the option is correct.

3.3 **Option (A):** Valid, because the payment was made through a debit entry to the non-resident account of Shaswat.

3.4 **Option (D):** The difference, if any, between the actual consideration and value at which the registration is made.

© The Institute of Chartered Accountants of India

3.5 Option (A): Yes

Answer 3.6

According to section 42 of the Foreign Exchange Management Act, 1999, where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly [Sub-section (1)].

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention.

In the given question, the contravention was committed by the erstwhile management of the DMDPL (in January 2019). However, after taking over the operations of the company as the Managing Director (from January 2020) Shobs could have looked into the matter as to why the medical devices imported from Switzerland were still lying in the bonded warehouse. Further, as the Managing Director of the company Shobs did not take corrective measures in right earnest after joining the company and in particular after becoming aware of the situation.

Therefore, Shobs is liable for penal provisions under FEMA [the same was also decided in *Suborno Bose v/s Enforcement Directrate & Anr*].

Answer 3.7

According to Regulation 6 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018,

A person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse.

Provided that:

7. The consideration for transfer, shall be made out of (i) funds received in India through banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;

(ii) No payment for any transfer of immovable property shall be made either by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;

(iii) Provided that the marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;

© The Institute of Chartered Accountants of India

(iv) Provided further that the non-resident spouse is not otherwise prohibited from such acquisition.

In the given question, Shaswat and Shobs acquired the property in joint name after around six months of their marriage. Since, their marriage has been registered and subsisted for period less than two years, Shobs has violated the requirement of FEMA.

Answer 3.8

Sub-section (9) to Section 2 of the Prohibition of Benami Property Transactions Act, 1988, is required to be considered here along with sub-section (8) and sub-section (10) of the said section.

Benamindar: As per Sub-section 10, benamidar means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.

Benami Property: As per sub-section 8, benami property means any property which is the subject matter of a benami transaction and also includes the proceeds from such property.

Benami Transaction: As per section 2(9)(A)(b)(iii), property registered in name of the child of an individual will not be considered as a benami transaction, where the consideration for such property has been paid out of the known sources of the individual.

As per section 2(9)(A)(b)(iv), property registered in the joint name of an individual and his brother or sister or lineal ascendant or descendant will not be considered as a benami transaction, where the consideration for such property has been paid out of the known sources of the individual.

Hence, in the present case:

(a) Shaswat Mishra is not a benamidar as per Sub-section (10) itself.

(b) Rekha Mishra is a benamidar by virtue of section 2(9)(A)(b)(iv), read with clause (8) and clause (10) respectively as acquiring property in the sole name of Rekha and is not covered by the exceptions, it should have been acquired jointly in the name of Shaswat Mishra and Rekha Mishra.

(c) Mother of Shaswat is a benamidar by virtue of section 2(9)(A)(b)(iv), read with clause (8) and clause (10) respectively as acquiring property in the sole name of the mother is not covered the exceptions, it should have been acquired jointly in the name of Shaswat Mishra and his mother.

(d) Husband of Rekha is not a benamidar as he is not a person in whose name the benami property is transferred or held or a person who lends his name.

© The Institute of Chartered Accountants of India

Case Study: 4

Nutcase Private Limited ("NPL") is a premium cashew, almond farming and manufacturing company which specialises in growing, and selling salted cashew, almonds and other dry fruits in India and abroad. NPL was started in the year 2014 by Mr. Vishwanath Naroda, Managing Director and has its head office in Nasik, Maharashtra with branches all over the country. Vishwanath started this company along with his long-time friend Mr. Arjun Nambiar, who comes from a family of civil engineers. Arjun is a Chartered Accountant and is the Chief Financial Officer of NPL. Vishwanath and Arjun together own 70% of the share capital of NPL and the balance is held by a large private equity investor.

Arjun and his brother Ajit, commenced a real estate company called Nambiar Constructions (NC) with its head office in Trivandrum and announced a new 60 apartment project named as "Nambi Sundaram", a luxury apartment complex in Trivandrum with a variety of amenities including swimming pool, cricket net, fully equipped club house with all amenities, etc. The Company applied for registration of the project on 15th September, 2020.

Based on the past performance of the Nambiar Constructions group and the general image of Arjun and Ajit, there was tremendous demand for the apartments in the project and all the apartments were booked within 1 month from the date of launch (20th September, 2020). After registering the apartments in the name of the allottees, Nambiar Constructions informed the allottees that they need to pay the water and electricity charges directly to the concerned departments for their apartments. The following were some of the conditions mentioned in the agreement for sale entered into by NC with its allottees:

(1) Expected date of completion of constructions - 31st March, 2022.

(2) Expected date of handover – 31st May, 2022, subject to a grace period of 4 months.

(3) Booking Advance amount to be paid prior to entering into agreement to sale - 25% of total cost of apartment

(4) Open car parking cost - INR 400,000 (optional)

(5) Any delay in payment of dues by the allottees will be liable for interest on such delayed payments.

(6) Return of booking amount shall not be entertained for any reason whatsoever.

(7) Nambiar Constructions shall be liable for any deficiency in quality of construction for a period of 3 years from the date of handing over the apartments.

Nambiar Constructions collected a total amount of INR 8000 lakh from the allottees and deposited an amount of INR 6000 lakh in an escrow account for exclusively use for construction of the complex. Separately, an amount of INR 5 lakh each was collected from the 60 allottees in cash, aggregating to INR 300 lakh towards interior work, modular kitchen, supplying fans and lights, etc. This money was accounted as receipt in a separate company, M/s. Decorit Interiors, which was owned by Ms. Amaya Nambiar, sister of Arjun.

© The Institute of Chartered Accountants of India

Ajit attended one of the real estate conclaves held in Mumbai, in which he met one Mr. Hershelle Stuart, who runs an interior designing warehouse in Belgium and showed quite a few exhibits to Ajit. Ajit was impressed by the designs and the prices quoted by Hershelle. He was also amenable to receive funds in cash in India through an intermediary and then provide the material to Ajit from Belgium. Based on the same, Ajit arranged for making cash payment to the extent of INR 200 lakh to an intermediary in Delhi, and the material was received from Hershelle in a month. During his visit to India, Hershelle noted that his Belgian passport got expired and he did not realise the same. Since he did want to leave India immediately, he got in touch with a travel agent, Saurabh Shankar, who helped him get a forged passport, for which Hershelle paid INR 4 lakh in cash.

Out of the balance INR 100 lakh cash available with Decorit Interiors, Ajit used cash amounting to INR 25 lakh to pay amount to various intermediaries to facilitate timely and smooth registration process of the apartments of Nambi Sundaram, which was paid by the intermediaries to the officials of the Sub Registrar.

As one of the shareholders of Decorit, Amaya decided to visit Belgium 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 lakh) and since, she did not have enough money, she asked Ajit to make the· payment through the intermediary in Delhi. Based on the discussion with the intermediary, Ajit provided an antique coin which he got from one of his social friends to the intermediary as consideration for the gold purchased by Amaya in Belgium. Based on the same, Ms. Amaya brought the gold with her through the green channel. The Enforcement Directorate sent a notice to Ajit that he was in possession of the immovable property in the US jointly with a relative outside India and it was observed that there was an outflow of funds from India equivalent to USD 300,000. Ajit responded that the outflow of funds to the extent of USD 250,000 was from the Resident Foreign Currency (RFC) account held in his name. The adjudicating authority held an inquiry in which it was found that the balance USD 50,000 were sent out of India from the earnings by Ajit out of' the proceeds from the sale of opium to a dealer in Nigeria.

Answer the following questions:

4.1 As per provisions of RERA, collection of cash by Decorit Interiors for interior work, modular kitchen, supplying fans and lights, etc.:

(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 Decorit Interiors are not registered with RERA.

4.2 Evaluate the view of the Nambiar Constructions relating to the payment of water and electricity charges by the allottees.

© The Institute of Chartered Accountants of India

(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 Nambiar Constructions and the allottees.*

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

4.3 *Which of the following entities are not obligated to provide information under Section 12A of the PMLA 2002*

(A) *Person running a Casino*

(B) *Department of Tourism*

(C) *Real Estate Agents*

(D) *Real Estate Investment Trust*

4.4 *Post demonetization, the intermediary helped many of his customers in exchanging their old currency notes with newly issued currency. Is he liable for punishment under any of the provisions of the law applicable in India, if the total value involved in such transactions is less than INR 100 lakh?*

(A) *Liable for the commission of offence under the Indian Penal Code,1860 as well as under the Prevention of Money Laundering Act, 2002.*

(B) *Liable to be punished under the Indian Penal Code, 1860 for the commission of offence but he is not liable under the Prevention of Money Laundering Act, 2002 as the total value involved is less than INR 1 crore.*

(C) *Liable under the Foreign Exchange Management Act, 1999 for non-compliance with regulations related to foreign exchange.*

(D) *Not liable for any punishment under any of the provisions of the law applicable in India, since this was done on humanitarian grounds to assist people who needed cash urgently.*

4.5 *Amaya bought gold jewellery worth INR 15 lakhs from Belgium through the green channel. Is this an offence under the PMLA, 2002?*

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

© The Institute of Chartered Accountants of India

(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 EU countries requires specific consent as per the agreement entered with foreign countries as per Section 56 of PMLA 2002.

(2 x 5 = 10 Marks)

Answer the following questions:

4.6 Examine the appropriateness of the conditions mentioned in the agreement for sale, in the context of the provisions of RERA, 2016. ***(5 Marks)***

4.7 The enforcement directorate has sought your advice on identifying all 6 the offences committed by the parties under the PMLA, 2002 described in the case study. Identify the offences, the parties involved and the punishment for the offence of money laundering.

(6 Marks)

4.8 What are the possible actions that can be taken against Ajit for the offence committed by him under the provisions of the Prevention of Money Laundering Act, 2002? ***(4 Marks)***

ANSWER TO CASE STUDY 4

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

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

4.3 Option (B): Department of Tourism

4.4 Option (A): Liable for the commission of offence under the Indian Penal Code, 1860 as well as the under the Prevention of Money Laundering Act, 2002

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

Answer 4.6

The following were the conditions mentioned in the agreement for sale entered into by NC with its allottees:

S. No.	Conditions	Appropriateness
1	Expected date of construction: 31st March 2022	Appropriate. There is no time limit specified with regard to completion.

© The Institute of Chartered Accountants of India

2	Expected date of handover: 31st May, 2022, subject to a grace period of 4 months	Appropriate. No specific time limit. NC should ensure that the apartments are handed over within 2 months from the date of occupancy certificate.
3	Boking advance amount to be paid prior to entering into agreement to sale: 25% of total cost of apartment	Not appropriate. As per section 13, the maximum amount of advance that can be obtained is 10%.
4	Open car parking cost: INR 4,00,000 (optional)	Not appropriate. The definition of common area in section 2(n) of the Act states that it includes open car parking and therefore, no amount can be collected towards open car parking.
5	Any delay in payment of dues by the allottees will liable for interest on such delayed payments	Appropriate but vague. It shall mention the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default
6	Return of booking amount shall not be entertained for any reason whatsoever	Not appropriate. As per section 18, if the promoter fails to complete or is unable to give possession, and in case allottee wishes to withdraw from the project, he has to refund the entire amount received from the allottee with interest and compensation
7	NC shall be liable for any deficiency in quality of construction for a period of 3 years from the date of handing over the apartments	Not appropriate. As per section 14(3), the promoter is liable for a period of 5 years from the date of handing over of physical possession

Answer 4.7

Following are the Offences committed by the parties under the Prevention of Money Laundering Act, 2002 **alongwith parties involved and punishment:**

S. No.	Particulars	Parties involved	Punishment
1.	Diversion of funds by the Nambiar Constructions by incorporating M/S. Decorit Interiors (Shell company) on name of doing interior work, by collecting cash from allottees	Ajit Ms Amaya Arjun	Rigorous imprisonment from 3-7 years and fine

© The Institute of Chartered Accountants of India

2.	Arranging of funds in cash in India to Hershalle through intermediary from Ajit for getting material from Belgium	Hershelle Intermediary Ajit	Rigorous imprisonment from 3-7 years and fine
3.	For forged passport, Hershelle paid INR 4 lakh in cash	Saurab Shanker Hershelle	Rigorous imprisonment from 3-7 years and fine
4.	Paying of cash by Ajit to various intermediary for paying to officials of Sub-Registrar for smooth registration process of Apartments of Nambi Sundaram	Ajit Intermediaries officials of Sub-Registrar	Rigorous imprisonment from 3-7 years and fine
5.	Provided antique coin to intermediary for purchasing and bring bringing gold in India by Ms. Amaya through green channel, by Ajit	Ajit Intermediary Ms. Amaya	Rigorous imprisonment from 3-7 years and fine
6.	Purchasing of immovable property from RFC account by Ajit	Ajit	Rigorous imprisonment from 3-7 years and fine
7.	USD 50,000 sent out of proceeds of crime involved from sale of opium for possession of immovable property in US jointly with a relative	Ajit	Rigorous imprisonment from 3-10 years and fine

Answer 4.8

Following are the offences said to be committed by Ajit:

Offences Committed	Reference of the offence under the Act
Diversion of funds by the Nambiar Constructions by incorporating M/S. Decorit Interiors on name of doing interior work, by collecting cash from allottees	Involved in formation of shell company, so committed offence under the PMLA Act.
Used cash amount available with Decorit Interiors to pay various intermediaries for paying to the officials of the Sub-Registrar, for smooth registration process of apartments of Nambi Sundaram	Its scheduled offence under the Prevention of Corruption Act, 1988
Providing of antique coin to intermediary as consideration for purchasing and allowing Ms. Amaya to bring the gold with her through the green channel	Its scheduled offence under the customs Act, 1962
Possession of immovable property with relative outside India made from his RFC	Its scheduled offence under part C of the Schedule

© The Institute of Chartered Accountants of India

account in which outflow of fund was from India	
USD 50,000 which were sent by him was out of proceeds of crime involved from sale of opium	Its scheduled offence under NDPS Act, 1985

Accordingly, following actions can be taken against Ajit involved in Money Laundering:

a) Attachment of property under section 5, Seizer/freezing of property and record under section 17, or search of persons under section 18. The property also includes property of any kind used in commission of an offence under the Prevention of Money Laundering Act, 2002, or any of the scheduled offences. If required, for taking possession of the property in the US, a letter of request can be transmitted under section 57 if there is an agreement made by the central Government of India with the Government of the US under section 56 of the Act.

b) Ajit shall be liable for committing the offence of money-laundering and for proceeds of crime involved in money-laundering relate to offence under the NDPS as specified under paragraph 2 of Part A of the Schedule. Therefore, shall be punishable with rigorous imprisonment from three to maximum ten years with fine.

c) As per section 19(1), the director may by passing an order, arrest him and shall inform him of the grounds for such arrest.

Case Study: 5

Mr. Murari Lal Chowdhury is a renowned businessman from Bhatinda (Punjab). He founded Supreme Grains Ltd. ("SGL") in the year 2007. The initial members included himself, his wife Gayatri Chowdhury, and his two sons Sagar and Sanjay.

Mr. Murari started procuring wheat and other pulses from the local farmers and after processing and packing, the same were supplied to local markets. He started his company with an initial capital of ₹ 50 lacs and controlled 90% of the company's voting share. Within a short span of 5 years the company became a household name with distribution network spread all over the states of Punjab and Haryana.

Seeing the opportunities offered by real estate sector, Mr. Murari decided to expand SOL's business into this sector. Accordingly, during the third quarter of financial year 2017-18, SOL developed and launched a new residential-cum commercial project in Bhatinda after seeking registration under the Real Estate (Regulation and Development) Act, 2016 (RERA). When the commercial launch was organized, it was announced by SOL that the project is available at an attractive rate of ₹ 8,800 per square foot and the units are very spacious since they admeasure 5,000 square feet built-up area with total 100 units.

© The Institute of Chartered Accountants of India

Also, marketing brochure contained the following features included in the project:

- *Italian marble in the kitchen*
- *5 Star rated Air Conditioners*
- *3 Star rated Geysers*
- *French Windows of reputed brand*
- *Elevators of top brands*
- *Open parking slot at a nominal price of ₹ 11,000*
- *Massive multi-level kids play area*
- *Ducts attached to each flat*
- *Comprehensive insurance for the project*

Marketing brochure mentioned that builder provides warranty of 5 years of the products with additional free 1 year warranty.

It was informed in the marketing material that the project would be completed in a time frame of 5 years.

Mr. Bhakt was one of the allottees who bought flat number 205 in Tower 1 of the project after several rounds of meeting with SGL. It was agreed with him that a Ganesh Temple would be constructed as a part of the project in the eastern side of Podium 2.

During the course of the project, an intimation along with a certificate from engineer was sent to all the allottees that due to a technical objection received from fire department, temple will have to be shifted from Podium 2 to Podium 3.

When this fact came to the knowledge of Mr. Bhakt, he consulted his lawyer who advised to file a complaint against the builder with the authorities. Also, he reported several defects in the features contained in the marketing brochure.

The project was completed on time and the invitation was sent to all the allottees to take physical possession of their respective units. After staying for about 8 months in the flat number 406 in Tower 4, Mr. Sultan informed builder that he is facing serious issues with the quality of MCB provided and there is a potential risk of short circuit which could lead to massive losses to the building as a whole. On investigation by an independent electrician appointed by Mr. Sultan, it was found that lining of electricity wire was done along with water pipe lines and due to internal damage, problem is arising. However, the promoter was harping on the fact that the issue is in the MCB and not in the wirings. The investigation done by electrician was confirmed by other electricians who surveyed a few other flats.

Further, Mr. Sultan complained that the grass given by the builder in the flower bed area was of sub-standard quality and needs replacement.

© The Institute of Chartered Accountants of India

With the onset of Covid-19 pandemic and the resultant slowdown in real estate sector, "SOL" got under financial pressure. SOL was now in default in repayment. Repeated follow up by the Financial Institutions with the corporate debtor, "SOL", for submitting its specific plan of action for repayment of dues did not evoke any meaningful response. Therefore, after a joint lenders' meeting, all the financial creditors unanimously decided to apply under the provisions of IBC, 2016, to the NCLT for starting the process of insolvency resolution in respect of the corporate debtor, "SOL". Financial creditors filed an application before NCLT which was admitted by NCLT on 20th May, 2021 and orders issued for commencement of a moratorium period of 180 days, appointed Mr. Ram, an IRP. Mr. Ram made a public announcement inviting claims from all concerned. Based on the claims filed, the following creditors were identified:

D 1: Financial debts owed to unsecured creditors - ₹10 crores.

D 2: Workmen's dues for the period of 24 months preceding the liquidation commencement date -₹30 Crores 03 :

D3: Debts owed to a secured creditor who has relinquished his security - ₹60 crores.

04: Debts owed to Central Government - ₹10 crores.

05: Debts owed to a secured creditor for an amount unpaid following the enforcement of security interest - ₹25 crores.

Mr. Ram, who has been appointed as Interim Resolution Professional, in the last financial year, had given some legal opinions on financial matters to "SOL" and had charged fees.

Mr. Murari is not clear on the provisions of Insolvency and Bankruptcy Code, 2016 and requested his Company Secretary to advise him on the vital objectives which are intended to be achieved with the Code and also whether the initiation of insolvency resolution process can be done by creditors only or by debtor also. Mr. Murari also wants to know the specified procedure and terms of appointment of an IRP.

Answer the following questions:

5.1 As per the provisions of RERA, which of following is not treated as part of common area?

(A) Kids play area.

(B) Duct attached to the units.

(C) Balcony attached to the living room.

(D) Area covered by the internal walls.

5.2. On completion of the project and after receipt of occupancy certificate, when can an allottee take physical possession of the flat?

(A) Within two months.

(B) Within three months.

© The Institute of Chartered Accountants of India

(C) *Within six months.*

(D) *Within one month.*

5.3 *Under RERA, when all documents in connection with insurance shall be handed over by the promoter to the allottees?*

(A) *On receipt of final payment / instalment.*

(B) *On receipt of occupancy certificate.*

(C) *On receipt of NOC from fire department.*

(D) *On formation of society.*

5.4 *The Adjudicating Authority has by an order declared moratorium period for "SOL". Vide the moratorium order, which of the following shall not be prohibited?*

(A) *The action to foreclose security interest created by the corporate debtor in respect of its property.*

(B) *The institution of arbitration proceedings.*

(C) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. ·*

(D) *The supply of raw wheat and pulses from its suppliers for processing and packing.*

5.5 *The NCLT rejected the resolution plan for want of compliance with the IBC, accordingly, the proceeds from the sale of liquidation shall be distributed in the following order of priority*

(A) *D2, D1, D3, D4 & DS (ranked equally)*

(B) *D2 & DS (ranked equally), D3, DI, D4.*

(C) *D2 & DS (ranked equally), D1, D3, D4.*

(D) *D3 & D2 (ranked equally), DS & D4 (ranked equally).* ***(2 x 5 = 10 Marks)***

5.6 *Answer the following based on the facts given in the Case Study with reference to the provisions of the IBC, 2016:*

(i) *Advise Mr. Ram on the independence with the Corporate Debtor.* ***(3 Marks)***

(ii) *Advise "SGL" whether the initiation of insolvency resolution process can be done by creditor only or by corporate debtor also.* ***(2 Marks)***

(iii) *Can IRP be appointed by the specified procedure and for a specific term? Please elaborate.* ***(4 Marks)***

© The Institute of Chartered Accountants of India

5.7 Explain the: following in light of the Provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA):

(i) Can home buyers commence proceedings under Consumer Protection Act, 1986 against developers even after commencement of RERA?

Discusses with the help of a case law. ***(2 Marks)***

(ii) Mr. Bhakt has approached you to confirm advice given by his lawyer. Kindly assist Mr. Bhakt on the points mentioned by the lawyer, and the remedies available.

(2 Marks)

(iii) Promoter of the project has appointed you to advise on the issues raised by Mr. Sultan. ***(2 Marks)***

ANSWER TO CASE STUDY 5

5.1 Option (C): Balcony attached to the living room. and

Option (D): Area covered by the internal walls.

5.2 Option (A): Within two months

5.3 Option (D): On formation of society

Note: Here the usage of the word "society" is to be construed as association of allottees. This can be considered as an appropriate answer out of the given options.

5.4 Option (D): The supply of raw wheat and pulses from its suppliers for processing and packing

5.5 None of the options is correct

Answer 5.6 (i)

According to the Regulation 3(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible to be appointed as an IRP or a RP, as the case may be, for a CIRP of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

A person shall be considered independent of the corporate debtor, if he in the last 3 financial years:

(a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;

(b) is not a related party of the corporate debtor; or

© The Institute of Chartered Accountants of India

(c) is not an employee or proprietor or a partner:

(i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or

(ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to 5% or more of the gross turnover of such firm

Accordingly, Mr. Ram is advised to consider the said requirements on the independence with the corporate debtor as his appointment would depend on whether fees charged by him from SGL was less than 5% of the gross turnover of SGL or not.

Answer 5.6(ii)

According to section 6 of the Insolvency and Bankruptcy Code, (IBC) 2016, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor.

According to section 10 of the IBC, where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority. For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

However, following restriction is marked by section 11 of the Code stating that a corporate debtor undergoing a corporate insolvency resolution process, shall not be entitled to make an application to initiate corporate insolvency resolution process.

Therefore, in the given case study, insolvency resolution process can be initiated by the creditors of SGL only.

Answer 5.6(iii)

Yes, in compliance with section 16 of the Insolvency and Bankruptcy Code, 2016.

Following is the Procedure for Appointment and term of Interim Resolution Professional (IRP)

(1) According to the section Adjudicating authority shall appoint an Interim Resolution Professional on the Insolvency Commencement Date.

(2) Where the application for corporate insolvency resolution process is made by a financial creditor or the corporate debtor, as the case may be, the resolution professional, as proposed in the application shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

(3) Where the application for CIRP is made by an operational creditor -

(a) Where no proposal for an interim resolution professional is made, there the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.

© The Institute of Chartered Accountants of India

(b) Where a proposal for an interim resolution professional is made, the proposed resolution professional shall be appointed as the interim resolution professional, if no disciplinary proceedings are pending against him.

The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within 10 days of the receipt of a reference from the Adjudicating Authority.

(4) The term of Interim Resolution Professional shall continue till the date of appointment of the resolution professional under section 22.

Answer 5.7(i)

Said question is based on the case law *M/s M3M India Pvt. Ltd. & Anr V/s Dr. Dinesh Sharma & Anr*. In this caselaw the principle laid down by the Delhi HC, was based on the judgment given in *Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India*.

Here, the litigation presented before the Supreme Court principally raised the question of remedies under IBC and RERA. In this case, it had been recorded that "*Remedies that are given to allottees of flats/apartments are therefore concurrent remedies and connected matters such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code*." Thus, it could not be said that any of those conclusions are obiter dicta and not intended to be followed.

Thereby the court concluded in the *M/s M3M India Pvt. Ltd. & Anr Vs Dr. Dinesh Sharma & Anr.* that "remedies available to the respondents herein under Consumer Protection Act and RERA are concurrent, and there is no ground for interference with the view taken by the National Commission in these matters."

Accordingly, Home buyers can commence proceedings under the Consumer Protection Act, 1986 and under the RERA at the same time.

[Note: Answer given in brief covering the principle laid in the given judgement with the correct conclusion of answer, may be considered as an adequate answer]

Answer 5.7(ii)

Section 14 of the RERA, 2016, it requires a promoter to adhere to the sanctioned plans and the project specifications.

According to the section, the promoter shall not make any additions and alterations in the sanctioned plans, layout plans and specifications, without the previous consent of that person. Provided that the promoter may make such minor additions or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Accordingly, advise given to Mr. Bhakt by his lawyer to file compliant against the builder with the authorities is not fair. There was a technical objection on the construction of the Ganesh temple

© The Institute of Chartered Accountants of India

in the eastern side of podium 2. The same have been intimated with a certificate from engineer to all the allottees in compliance with the requirement of Act.

Answer 5.7(iii)

According to Section 14 of the RERA, 2016, in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation provided under this Act.

In the given case, Mr. Sultan after 8 months of his staying, informed the builder of the quality of MCB with a potential risk of short circuit. Considering it a structural defect Mr. Sultan intimated within time frame.

Accordingly, promoter is required to rectify the structural defect within thirty days from the date brought to the notice of the promoter, by Mr. Sultan.

Whereas complain of grass given by builder in flower bed area for replacement is in the nature of ‘minor additions or alterations’, so, promoter of the project will not be liable on this account.

© The Institute of Chartered Accountants of India