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CA Final 2023 Suggested Answers · Paper 6D Economic Laws (Old Scheme)

EXAM	YEAR	TYPE
CA Final	2023	Suggested Answers

SUBJECT	DATE
Paper 6D Economic Laws (Old Scheme)	November 2023

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PAPER 6D: ECONOMIC LAWS

CASE STUDY - 1

Lifestyle Real Estate and Developers Limited (hereinafter called as "LRED") is a renowned company engaged in the real estate business of which all of its projects are registered under the Real Estate (Regulation and Development) Act, 2016 (hereinafter called as "RERA"). In pursuit of its objectives, it undertakes acquiring, developing and selling of plots construction and development of residential and commercial complexes. Several projects are in progress scattered all over the country.

Project - "Luxury Homes" and Purchase of Land

LRED's project styled as "Luxury Homes" was launched on the outskirts of Pune in the year July, 2021 which was scheduled to be completed and possession to be handed over by the end of June, 2024. Besides Luxury Homes, LRED has also purchased an open land in the urbanisable area near Nagpur and developed the land into plots and sold to the customers during the period from July 2021 till 30.09.2023.

Rohit and his Business Transactions

Mr. Rohit, a Promoter Director of LRED, is a civil engineer and has wide experience in the relevant field. He has adopted a practice to collect 50% sale price of the plots by cash (which is kept outside the tax bracket) and the balance amount through banking channels. Disposing of the huge cash money so collected, he purchased as an investment, for future exigency in his business, a diamond necklace and other jewellery in the name of his wife and one bungalow jointly in his name and in the name of his younger brother. His legal advisor brought to his notice that these transactions are violative of the Prohibition of Benami Property Transactions Act, 1988 (PBPTA). Mr. Rohit wanted to know as to who will be regarded as 'Benamidar', 'Beneficial Owner' and which property will be considered as a 'Benami Property' under these transactions.

Rajesh and his Investments

Mr. Rajesh, a Non-Resident Indian (NRI), who shifted to USA 10 years ago, is a best friend of Mr. Rohit. He is a reputed businessman in USA and a rich person. He has huge surplus funds which he intends to invest in India by purchasing agricultural land and some plots in the scheme/ projects of Mr. Rohit. He booked 20 apartments in "Luxury Homes" project of which 5 apartments were booked in his own name, five, one each, in the name of his wife, 2 minor daughters and 2 major sons respectively for their welfare and use and other 10 apartments in the name of his associate companies, firms and other entities for their business use. Mr. Rajesh does not intend to claim any beneficial interest, present or future, on these flats booked for such business entities who were aware of this transaction and have not denied to it. Mr. Chandan, an advocate of Mr. Rajesh, advised him that he can go ahead with this proposed investment as it is a permissible transaction under the Foreign Exchange Management Act, 1999 (FEMA).

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Show Cause Notice to Mr. Rajesh

The Competent Authority under the Prohibition of Benami Property Transactions Act, 1988 (PBPTA) taking cognizance of booking of the flats by Mr. Rajesh in the name of his associate companies, firm and other entities issued a show-cause notice to him as to why the flats so booked should not be declared as benami property and confiscated. Having received the notice, Mr. Rajesh is contemplating to re-transfer the flats in his name, if the contention of the notice is valid.

Mr. Rohit's Actions

Mr. Rohit siphoned huge money collected under "Luxury Homes" project to his various group entities affecting the pace of construction work, causing inordinate delay in its completion. The allottees of the project started building pressure on him to ensure completion of scheme on time. Anticipating that the completion of project and handing over possession of the flats as per the time schedule will not be possible, he started searching other developers whom he can transfer the project and get rid of this problem. As a result, he signed an agreement with Sweet Homes Developers (LLP) assigning the "Luxury Homes" project. To this arrangement, he obtained the approval of 67 allottees composed of Mr. Rajesh, his 10 associates entities and other 56 home buyers who have booked one flat each and thereafter submitted an Information Memorandum of the agreement executed with the approval of allottees obtained to the RERA Authorities.

Advice to Initiate Corporate Insolvency Resolution Process

Out of total 100 allottees of the project, 10 allottees (not being Mr. Rajesh, his family members or other associates) decided to withdraw from the project demanding the refund of money deposited by them to LRED which was turned down by it. Aggrieved by the decision of the promoter, these 10 allottees approached a practicing Chartered Accountant (CA) in Pune to find out any alternative remedy available to them under the circumstances. The CA advised them to jointly file an application before the NCL T to initiate 'Corporate Insolvency Resolution Process' against LRED. The other remedy is to move with the competent consumer forum constituted under the Consumer Protection Act, 1986 seeking relief.

Mr. Ashok and his Actions

Sweet Homes Developers (LLP) [hereinafter called as "the LLP"] admitted Mr. Ashok, who is resident but not permanently resident in India and a citizen of Canada, as the Managing Partner in LLP on attractive remuneration of ₹ 1,20,00,000 per annum after deduction of taxes for a short period of 36 months considering his expertise and educational qualification in the stream of business management. (Ignore other deductions). After a year of his admission, the LLP sent him to Canada for 6 month's higher studies in well-known Institute for the benefit of the LLP and the LLP is to incur the education expenses. On submission of requisite documents for remittance of USD 250,000. to the Institute towards education expenses, the Authorised Dealer (AD)

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refused to transfer the amount without the prior approval of the Reserve Bank of India (RBI). On termination of his tenure, Mr. Ashok wished to remit 60% of his net salary earnings to his bank account abroad plus USD 10,000 earned from other income to his father's bank account as a gift to him. [Assume Exchange Rate as INR 84 per USD on the date of transaction]. Mr. Ashok wants to know whether he is entitled to make such remittances without the approval of RBI.

On the basis of the above inputs, you are requested to answer the following questions as enumerated in Part A and Part B respectively.

PART - A

1.1. The CA has advised 10 allottees to move NCLT by making joint application for initiation of Corporate Insolvency Resolution Process (CIRP) against LRED. Will such an application be admissible under the Insolvency and Bankruptcy Code, 2016 (the IBC, 2016)?

(A) Such application shall not be admissible under the IBC,2016 as 10 allottees can move the appropriate authority under the RERA, 2016 only for relief against LRED.

(B) Such application, since made by 10% of the total number of allottees, shall be admissible under the IBC, 2016 in their capacity of financial creditors of LRED.

(C) Such application, since not made by 100 allottees, shall not be admissible under the IBC, 2016 in their capacity of financial creditors of LRED.

(D) Such application shall not be admissible under the IBC, 2016 as the applicants shall be considered as consumers and not the financial creditors of LRED.

1.2. Whether the advice of the CA as an alternate remedy to move the competent consumer forum constituted under the Consumer Protection Act, 1986 for directing refund of money by LRED tenable?

(A) No. Since a remedy is provided in a special enactment i.e., the Real Estate (Regulation and Development) Act, 2016, (RERA), the consumer forum will have no jurisdiction over the matters falling under the scope of the RERA.

(B) No. Since Sweet Home Developers has agreed to complete the project taking over the assets and liabilities of "Luxury Homes" they cannot now move any authority including the consumer forum for refund of their money.

(C) No. Since the RERA provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force they cannot move any consumer forum other than the RERA Authority for refund of their money.

(D) Yes. Since the RERA provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force

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they can move any competent consumer forum constituted under the Consumer Protection Act, 1986 for refund of their money.

1.3. Mr. Ashok wants to remit 60% of his net salary earnings plus USD 10,000 out of other income earnings, without approval of RBI. He will be advised:

(A) Yes. Mr. Ashok can remit USD 257,143 towards 60% of net salary earnings after deduction of taxes without prior approval of RBI under Liberalised Remittance Scheme though it exceeds the permissible limit of USD 250,000. He can also remit USD 10,000 towards earnings of other income as a gift to his father without the prior approval of RBI as it is within the permissible limit of USD 250,000.

(B) Yes. Mr. Ashok can remit USD 257,143 towards 60% of net salary earnings after deduction of taxes without prior approval of RBI under Liberalised Remittance Scheme though it exceeds the permissible limit of USD 250,000. However, he needs to obtain prior approval of RBI for remittance of USD 10,000 being other income and the permissible limit of remittance of USD 250,000 is exhausted.

(C) No. Mr. Ashok cannot remit USD 257,143 towards 60% of net salary earnings after deduction of taxes without prior approval of RBI as the Liberalised Remittance Scheme is applicable to medical expenses and study expenses abroad and not applicable to salary earnings. Hence, he needs to obtain prior approval of RBI for remittance of USD 267,143 (including USD 10,000) as the amount to be remitted exceeds the permissible limit of remittance of USD 250,000.

(D) No. He is not allowed to remit net salary earnings after deduction of taxes to outside India as he is resident but not permanently resident in India. However, he can remit USD 10,000 to his father's bank account as a gift without prior approval of RBI as it is within the permissible limit of remittance of USD 250,000.

1.4. Mr. Chandan, an advocate advised Mr. Rajesh that he can go ahead with his proposed investment as it is a permissible transaction falling under the Foreign Exchange Management Act, 1999 (FEMA). Examine the correctness of his proposed investment.

(A) He can purchase land and flats in India except agricultural land.

(B) He cannot purchase any land, including plots but can purchase flats.

(C) He can purchase land including agricultural land and flats being non- resident Indian (NRI) and not a person resident outside India.

(D) He cannot purchase any type of immovable property in India as he is not a person resident in India.

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1.5. Which of the following shall correctly describe the Benamidar, Beneficiary and Benami Property?

(A) (i) Benamidar - Wife and Brother of Mr. Rohit

(ii) Beneficial Owner: Mr. Rohit

(iii) Benami Properly: Diamond Necklace, Jewellery and Bungalow

(B) (i) Benamidar - Wife of Mr. Rohit.

(ii) Beneficial Owner: Mr. Rohit and his Brother.

(iii) Benami Property: Diamond Necklace and Jewellery.

(C) (i) Benamidar - Mr. Rohit.

(ii) Beneficial Owner: Wife and Brother of Mr. Rohit.

(iii) Benami Property: Diamond Necklace, Jewellery and Bungalow.

(D) (i) Benamidar - Brother of Mr. Rohit.

(ii) Beneficial Owner: Mr. Rohit and his wife.

(iii) Benami Property: Bungalow. ***(2 x 5 = 10 Marks)***

Answer the following Questions:

PART - B

1.6 Referring to the provisions of the RERA examine, whether LRED can transfer "Luxury Homes" project to Sweet Home Developers (i.e., a third party)

(i) On the strength of approval of allottees obtained.

(ii) Will you differ from your answer, if the approval has been accorded by Mr. Rajesh, his 10 associates and other 66 allottees? ***(5 Marks)***

1.7 The Authorised Dealer refused to remit USD 250,000 to the Institute in Canada for want of RBI's prior approval. Referring to the provisions of the Foreign Exchange Management Act,1999 (FEMA), validate the action of the Authorised Dealer. ***(5 Marks)***

1.8 The Competent Authority under the Prohibition of Benami Property Transactions Act, 1988 (PBPTA) taking cognizance of booking of the flats by Mr. Rajesh in the name of his associate companies, firm and other entities issued a show-cause notice to him as to why the flats so booked should not be declared as benami property and confiscated. Having received the notice, Mr. Rajesh is contemplating to re-transfer the flats in his name, if the contention of the notice is valid. Referring to the provisions of PBPTA, advise Mr. Rajesh on the following points:

(i) How to respond to the notice?

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(ii) Validity of re-transferring the benami property by benamidar to the beneficial owner.

(iii) Validity of confiscation of benami property. ***(5 Marks)***

ANSWERS TO CASE STUDY 1

1.1 (B)

1.2 (D)

1.3 (B)

1.4 (A)

1.5 (A)

Answer 1.6

According to section 15 of the Real Estate (Regulation and Development) Act, 2016 [RERA], the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from **two-third** allottees, except the promoter, and without the prior written **approval** of the **Authority**.

The proviso to this section states that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(i) As per the provisions of the RERA, LRED can transfer "Luxury Homes" project to Sweet Home Developers on obtaining prior written consent from at least 67 allottees (2/3*100).

Calculation of number of allottees who have given consent:

Particulars	**No. of allottee for the purpose of section 15**
5 apartments booked by Mr. Rajesh in his name + apartments booked in his family's name + apartments in the name of Rajesh's associate companies, firms and other entities for their business use.	Shall be considered as 1 allottee
56 other home buyers	56
Total	57

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Since, only 57 allottees have given consent, and prior approval of the RERA Authority have not been obtained which is a mandatory requirement. The submission of information memorandum to the RERA Authority is not a compliance of the provision.

Hence, LERD cannot transfer "Luxury Homes" project to Sweet Home Developers.

(ii) Calculation of number of allottees who have given consent:

Particulars	No. of allottee for the purpose of section 15
5 apartments booked by Mr. Rajesh in his name + apartments booked in his family's name + apartments in the name of Rajesh's associate companies, firms and other entities for their business use.	Shall be considered as 1 allottee
66 other home buyers	66
Total	**67**

Though, 67 allottees have given consent, but prior approval of the RERA Authority have not been obtained which is a mandatory requirement. The submission of information memorandum to the RERA Authority is not a compliance of the provision.

Hence, LERD cannot transfer "Luxury Homes" project to Sweet Home Developers.

Answer 1.7

Section 5 of the Foreign Exchange Management Act, 1999 permits any person to sell or draw foreign exchange to or from an Authorised person to undertake any current account transaction. The Central Government has the power to impose reasonable restrictions, in consultation with RBI and in public interest on current account transactions.

The Central Government has in exercise of this power issued the Foreign Exchange Management (Current Accountant Transactions) Rules, 2000 containing Schedule I (Negative list of transactions), Schedule-II Transactions which requires the approval of the Central Government) and Schedule-III facilities for individuals who can avail of foreign exchange Facility for the specified purposes within the limit of USD 250,000 in a Financial year without the prior approval of RBI. Such specified purposes include inter alia the remittance towards 'any other current account transaction'.

It has further been provided in this schedule that a person other than an individual may also avail of foreign exchange facility, mutatis mutandis within the limit prescribed under the said Liberalised Remittance Scheme (LRS) for the purposes mentioned herein above.

Combined reading of Section 5 with the said rules clearly manifest foreign currency may be drawn and remitted without limit for the residual current account transaction.

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In the given case study, LLP is sending Mr. Ashok to Canada for 6 month's higher studies. The expenses of USD 250,000 are borne by LLP and is a current account transaction.

As per Schedule III of FEMA- related to facilities other than individuals, the said remittance is not covered in prohibited list or requiring prior approval of the Reserve Bank of India. Hence, it can be freely undertaken.

Hence, the refusal of Authorised Dealer to remit USD 250,000 to the Institute in Canada for want of RBI's prior approval will not validate the action of the Authorised Dealer.

Answer 1.8

(i) As per Section 2(9) Benami Transaction means- (A) a transaction or an arrangement

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person, and

(b) the property is held for the immediate or future benefit, direct or indirect of the person who has provided the consideration.

The section has also provided certain exceptions to these provisions which are not applicable in this case as Mr. Rajesh does not intend to claim any beneficial interest, present or future, on these flats booked for such business entities who were aware of this transaction and have not denied to it.

In this context, the landmark verdict of Supreme Court in the case of Bhim Singh & Anr vs Kan Singh (And Vice Versa) 1980 AIR 727, 1980 SCR (2) 628 needs to be taken into account and relied upon. The Hon'ble Supreme Court of India observed that the principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus, the true character of the transaction is governed by the intention of the person who has contributed the purchase money; and the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;

If it is proved that the purchase money came from a person other than a person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary.

The true character of the transaction is governed by the intention of the person who has contributed the purchase money, and the question as to what his intension was, has to be decided on:

The basis of the surrounding circumstances,

The relationship of the parties,

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The motives governing their action in bringing about the transaction and

Their subsequent conduct etc.

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

Hence, the notice will be responded in a way that Mr. Rajesh has already made it clear that he does not intend to claim any beneficial interest, present or future, on these flats booked for such business entities and as such has gifted the flats to the associates for their business use and property which will not, as such, be held for his immediate or future benefits directly or indirectly. The onus to prove that it is a benami transaction lies on the competent authority. Hence, the notice is unfounded.

(ii) Prohibition on retransfer of property by benamidar [Section 6]

Benamidar cannot transfer property to beneficial owner – Section 6(1)

No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

Transfer of property to beneficial owner shall be null and void – Section 6(2)

Where any property is re-transferred in contravention of sub-section (1), the transaction of such property shall be deemed to be **null and void**.

(iii) Property held Benami liable to confiscation [Section 5]

Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

CASE STUDY - 2

Background

Mr. Dayanand, after qualifying Indian Police Service (IPS), joined the police department 35 years ago. Due to his calibre and best performance, he got promotions with quick intervals and he recently retired on superannuation from the post of the Commissioner of Police, Thane (Maharashtra). He received sumptuous retirement benefits such as PF, Gratuity and Encashment of Leave.

Mr. Vijay

He was happy at family front. His elder son, Mr. Vijay, was very brilliant since his childhood and completed his masters in engineering. After rendering services for five years in a renowned manufacturing company, he resigned and completed his post qualification MBA from IIM, Bangalore.

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Mr. Tushar

His younger son Mr. Tushar was inclined to make his carrier in the film industry as an actor. Gradually, he started getting roles in the films and after struggling for some time, he earned good name and fame in the industry. He was blessed with money and wealth which he started investing in the relevant field. After some years, he established his own production house and started producing his independent web series, short films, and TV Serials. However, he came into contact with some anti-social elements and smugglers. He was forced to carry out smuggling and other illegal activities such as smuggling of narcotic drugs, opium, gold etc., dealing with huge illegal money despite his awareness that indulging in such activities is an offence punishable under the Prevention of Money Laundering Act, 2002 (PMLA).

Mr. Dhananjay Mehta

Mr. Dhananjay Mehta (Mr. DM) is the founder and Chairperson of Mehta Group having many entities. The Group's operations are wide and had a presence in various sectors. One such group company is Life Pharmaceuticals Limited (LPL), engaged in manufacturing of generic drugs and medicines. Mr. DM is the close friend of Mr. Dayanand and knows very well the qualifications and calibre of Mr. Vijay and hence offered him to be a Whole-time Director of LPL which was accepted by him. Mr. Dayanand gifted some amount out of the retirement benefits funds to Mr. Vijay to become the equity shareholder of LPL.

Bank Borrowings

In a short period, the production of various medicines was at its highest peak. In order to meet the working capital requirements and for infrastructure development to increase the production capacity and marketing level of the products, LPL approached Star Bank Limited (Star Bank) and Sky Bank Limited (Sky Bank) with a loan proposal of ₹ 10 crore to be financed by them jointly. Both banks, in consortium, Star Bank being consortium leader, sanctioned the loan proposal in equal proportion at 10% interest rate per annum.

In compliance with the loan agreement, the security interest was created on the movable and immovable properties of LPL in favour of the banks which comprised plant and machinery, vehicles, office building, factory building and one open plot in an industrial area. In addition, collateral security by way of personal guarantee of Mr. DM was also provided.

Setback

However, over the years, due to entry of competitors, lack of attention in the affairs of the company of Mr. DM, owing to his old age, steep reduction in demand and other relevant factors, the turnover of LPL started declining causing losses and making serious defaults in servicing and repayment of the bank loan. Both the banks then classified the debt outstanding as non-performing asset (NPA) in their books and thereafter the Star Bank, being leader of consortium, served a notice to LPL mentioning therein to discharge, in full, its outstanding debts of ₹ 10

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crore on the date of notice, as detailed below, within 60 days from the receipt of the notice failing which the measures for taking possession of the secured assets and also the management of the business of LPL will be taken under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after called as "the SARFAESI Act").

The details of amount due was as below:

(a) Star Bank: ₹ 4.00 crore including interest due of ₹ 1.00 crore.

(b) Sky Bank: ₹ 6.00 crore including interest due of ₹ 5.00 crore.

Filing of a Writ Petition

LPL reacted against the action of the banks by filing a writ petition before the High Court of competent jurisdiction challenging inter alia, the classification of its account as NPA by the banks and prayed for setting aside the previous letters including demand notice issued by State Bank. The appeal was dismissed by the High Court. The second appeal was filed before the Supreme Court for the same relief which was also dismissed for the reason that LPL is moving the Court through writ / appeal without first availing the remedy available under the SARFAESI Act.

Mr. DM's Apprehensions

Mr. DM is of the opinion that the said Act is one sided in favour of the secured creditor, rather, it is unconstitutional. He has doubt whether he and Mr. Vijay will be entitled for compensation, for the loss of their office after taking over the management of the business of LPL by the secured creditors and have contended that notice of demand cannot be issued to LPL as it has got a notification issued in its favour under the Maharashtra Relief Undertakings (Special Provisions) Act, 1958 which suspends all its obligations and liabilities to secured creditor.

Mr. Vijay is aggrieved by the measures being taken by the secured creditor under Section 13(4) of the SARFAESI Act, 2002 and intends to make an application before the Debt Recovery Tribunal (DRT) and seeks from you the fee payable for filing an application.

Mr. Tushar's Actions

Mr. Tushar was advised by some other friends already involved in such illegal activities as to how to bring back such illegal money in the formal financial system. As advised, he used to do multiple transactions in different banks in a single day and transferring the deposited amount to a third party for safe keeping and moving them around in a series of complex bank electronic transfers between different jurisdictions and through offshore accounts or financial transactions such as investing in real estate, purchasing jewellery for his family members, purchasing benami properties, forming trusts, business investments etc., and adopting the activities of sale and purchase of the real estate properties, gold and other jewellery, expensive gifts, loans etc. to reintroduce the funds into the financial system for further use.

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He started utilising such money for production of own web series, short films, financing to other film producers etc. As a measure of cleaning the tainted money, he purchased a bungalow for which 50% margin money was contributed by him out of the proceeds of crime and rest of the loan finance obtained from Jaya Bank Limited (Jaya Bank) which was unaware of the tainted money brought in by him for purchase of a bungalow as his self-financing and relying on the security provided by Mr. Tushar by mortgaging the bungalow Jaya Bank provided loan finance for purchase of this property. Mr. Tushar initially paid EMI regularly but afterwards he stated defaulting the payment of EMI for which Jaya Bank issued him a notice to pay the defaulted amount and bring the account in order, otherwise it will proceed for enforcement of the security interest.

Provisional Attachment of Properties

In the meanwhile, on receiving information of Mr. Tushar being indulged in smuggling activities of narcotic drugs, opium, gold etc. and has purchased a bungalow from the proceeds of crime, the Director, by order in writing, provisionally attached the property by following the due procedure. The provisional attachment of property was confirmed by the Adjudicating Authority. Afterwards, on conclusion of the trial, the Special Court passed an order for confiscation of the property. Jaya Bank referred the matter to its legal department to examine the feasibility of restoration of the property to it for enforcement of its security interest.

Based on the above information you are requested to answer the following questions as contained in Part A and Part B:

PART - A

2.1 Whether notice cannot be issued by Star Bank to LPL since it has got a notification under the Maharashtra Relief Undertakings (Special Provisions) Act, 1958 [MRU(SP) Act] which suspends all its obligations and liabilities to a secured creditor and in case, the management of business of LPL is taken over Mr. DM and Mr. Vijay, they will be entitled for a compensation?

(A) Yes. The contention of Mr. DM is correct that demand notice cannot be issued till the notification issued under MRU(SP) Act, suspending all its obligations and liabilities, is in force and hence the question of payment of compensation to Mr. DM and Mr. Vijay would not arise.

(B) No; The contention of Mr. DM is not correct and demand notice can be issued as the SARFAESI Act overrides all other laws. The Act further provides that no compensation will be paid to the managing director or any other directors or a manager or any other officer of the borrower for loss of office where the management of the borrower is taken over by the secured creditor. Hence, Mr. DM and Mr. Vijay shall not be entitled for compensation.

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(C) *No. The contention of Mr. DM is not correct and demand notice can be issued as the SARFAESI Act overrides all other laws. The Act further provides that no compensation will be paid to directors for loss of their office where the management of the borrower is taken over by the secured creditor. Hence, Mr. DM shall not be entitled for compensation but Mr. Vijay shall be paid compensation being a whole-time director.*

(D) *No. The contention of Mr. DM is not correct and demand notice can be issued as the SARFAESI Act overrides all other laws. The Act further provides that no compensation will be paid to the managing director/whole-time director or the manager for loss of office where the management of the borrower is taken over by the secured creditor. Hence, Mr. DM shall be entitled for compensation being a non executive director but Mr. Vijay shall not, as he is a whole-time director.*

2.2 *Star Bank, being a leader of consortium, has issued demand notice, the validity of which is to be examined. Which of the following will decide the validity of the action taken by Star Bank:*

(A) *Action taken by Star Bank is valid because it is a leader of consortium.*

(B) *Action taken by Star Bank shall not be valid unless approved by Sky Limited holding not less than 60% in value of the amount of ₹ 10 crore outstanding on the record date.*

(C) *Action taken by Star Bank shall be valid as it is holding 75% in value (i.e. not less than 60%) of the principal amount outstanding on the record date.*

(D) *Action taken by Star Bank shall not be valid unless approved by Sky Limited being joint financer on the record date.*

2.3 *In the above case, if, LPL, in response to the notice, would have repaid 80% of the total outstanding debts before expiry of the notice period, would it be entitled to recover the balance outstanding debts under the SARFAESI Act, 2002?*

(A) *Yes. The Star Bank, a secured creditor, shall be entitled to proceed for recovery of any amount of outstanding debts under the SARFAESI Act, 2002.*

(B) *No. The Star Bank, a secured creditor, shall not be entitled to proceed for recovery of outstanding debts under the SARFAESI Act, 2002 as the balance amount due is not more than 25% of the principal amount and interest thereon.*

(C) *No. The Star Bank, a secured creditor, shall not be entitled to proceed for recovery of outstanding debts under the SARFAESI Act, 2002 as the balance amount due is not more than 20% of the principal amount and interest thereon.*

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(D) Yes. The Star Bank, a secured creditor, shall be entitled to proceed for recovery of outstanding debts under the SARFAESI Act, 2002 as the balance amount due is not less than 20% of the principal amount and interest thereon.

2.4 Mr. Vijay, being a person other than the borrower i.e., LPL, if aggrieved by any of the measures referred to in Section 13(4) of the SARFAESI Act, 2002 being taken by the secured creditor may make an application along with such fee as may be prescribed, to the Debt Recovery Tribunal (DRT) having jurisdiction within the prescribed time limit. Advise him of the fee payable to make an application:

(A) Fee payable would be ₹1,250 + ₹125 for every ₹1 lakh or part thereof in excess of ₹10 lakh subject to a maximum of ₹50,000.

(B) Fee payable would be ₹5000 + ₹250 for every ₹1.00 lakh or part thereof in excess of ₹10.00 lakh subject to a maximum of ₹1,00,000.

(C) Fee payable would be ₹125 for every ₹1 lakh or part thereof.

(D) Fee payable would be ₹200.

2.5 If Mr. Tushar is held guilty of offence under the Prevention of Money Laundering Act, 2002 (PMLA) the maximum punishment for which he will be liable shall be:

(A) Rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 10 years and fine as the offence is relating to smuggling in narcotic drugs.

(B) Rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and fine as the offence is relating to the Customs Act, 1962.

(C) Rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 10 years or fine as the offence is relating to smuggling in narcotic drugs.

(D) Rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and fine as the offence is relating to the Indian Penal Code.

(2 x 5 = 10 Marks)

Answer the following questions:

2.6 (i) Mr. Tushar is involved in money laundering activities and mobilising the money through multiple stages to bring the proceeds of crime into formal financial system. You are requested to identify the multiple transactions / activities undertaken by him to a relevant stage referring to the provisions of the Prevention of Money Laundering Act, 2002. ***(3 Marks)***

(ii) You are requested to opine whether Jaya Bank has any chances to restore the secured property confiscated by the order of the Special Court. ***(3 Marks)***

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2.7 Do you think that the SARFAESI Act, 2002, is one sided in favour of the secured creditor devoid of principle of natural justice especially in the light of the decisions of the High Court and Supreme Court supra dismissing the writ petition / appeal made against the demand notice of the secured creditor. Explain this aspect and the constitutional validity of the SARFAESI Act, 2002. ***(4 Marks)***

2.8 Having taken the possession of secured assets in consensus of the consortium members, Star Bank wants to sell out the secured immovable property. In this regard:

(i) Advise Star Bank (the Leader of Consortium) the requirement of valuation and method of selling of such immovable property.

(ii) Effect on sale, if made by private treaty, without notice to the borrower.

(iii) If Mr. Tushar makes full payment of due amount from his legitimate earnings to the Star Bank and the Sky Bank, the secured creditors, will it discharge the obligation of LPL? ***(5 Marks)***

ANSWERS TO CASE STUDY 2

2.1 (B)

2.2 (B)

2.3 (D)

2.4 (A)

2.5 (A)

Answer 2.6

(i) Various transaction/activities undertaken by Mr. Tushar and respective stages under money laundering as per section 3 of the Prevention of Money Laundering Act, 2002.

Transaction/activities	Relevant stage under money laundering
Multiple transactions in different Banks and transferring of the deposited amount to a third party for safe keeping,	Placement
Series of electronic transfers between different jurisdictions and through offshore accounts	Layering
Financial transactions such as investing in real estate, purchasing jewellery, benami properties, forming trusts, business investments,	Integration

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Utilisation for production of own web series, short films and financing to other film producers etc.	Integration
Purchasing of bungalow by contribution of 50% margin money	Integration

(ii) Where a property stands confiscated to the Central Government under section 8(5) of the Prevention of Money Laundering, 2002, the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering.

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

Accordingly, in the given case, Jaya bank can be restored the confiscated secured property as he was not aware of the source employed by Mr. Tushar in the purchase of the bungalow and relying on the security provided by him by mortgaging the same with Jaya Bank. Since it acted in good faith and has suffered the loss, so special court may consider the claim of the claimant for the purposes of restoration of such property.

Answer 2.7

In the case of **Mardia Chemicals Ltd. Etc. Etc vs U.O.I. & Ors. Etc. Etc**., Transfer Case (Civil) 92-95 of 2002, dated 8th April, 2004, the constitutional validity of the SARFAESI was challenged.

Some writ petitions were filed in different High Courts on promulgation of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Second Ordinance), 2002. However, the Act was enacted and enforced, vires of which is in question, more particularly, the provisions as contained in Sections 13, 15, 17 and 34 of the Act.

The Supreme Court examined in detail each of these sections and observed that the legislation has provided the alternate remedy to the aggrieved party. The Apex court observed that before taking action, a notice of 60 days is required to be given and after the measures under Section 13(4) of the Act have been taken, a mechanism has been provided under Section 17 of the Act to approach the Debt Recovery Tribunal. The above noted provisions are for the purposes of giving some reasonable protection to the borrower.

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The Apex Court further opined that the effect of some of the provisions may be a bit harsh for some of the borrowers but on that ground the impugned provisions of the Act cannot be said to be unconstitutional in view of the fact that the object of the Act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of the country and welfare of the people in general which would subserve the public interest. The Supreme Court uphold the validity of the Act and its provisions.

Answer 2.8

(i) Star Bank is required to follow the below method of valuation and manner of selling the immovable property as prescribed under Rule 8 of the Security Interest (Enforcement) Rules, 2002:

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 by any of the following methods:—

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction including through e-auction mode; or

(d) by private treaty. [Rule 8(5)]

(ii) In the case of **J. Rajiv Subramaniyan *v.* Pandiyas,** Civil Appeal Nos. 3865 & 3866 of 2014, 14th March, 2014 (SC)**,** the Supreme Court opined that Sale of secured asset effected by bank in favour of purchaser by a private treaty without informing borrower would be in violation of rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 and, thus, illegal.

(iii) As per Section 6 of the SARFAESI Act, 2002, where a notice of acquisition of financial asset is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned ARC, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment. [Section 6(2)].

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In the given case, Mr. Tushar, is not in the capacity of the obligor, who shall be liable to the originator to pay a financial asset or to discharge any obligation in respect of a financial asset. Hence, LPL will not be discharged of its obligation.

CASE STUDY - 3

Ratan Singh is a wholesale vegetable vendor. He has a shop in Jaipur Krishi Upaj Mandi. In the Mandi Yard, the Bank of Jaipur (BoJ) is having its branch, where Ratan Singh is operating his bank accounts since May, 2015.

Until June, 2021, the transactions in the said bank account of Ratan Singh remained satisfactory but thereafter, some bulk credits and debits in the account happened which triggered system generated exception report. The branch manager inquired into the finacle system, to have an overview of profiling of the customer.

Initially, the account was opened as a savings bank account (which is not meant for business transactions), the occupation was shown as private service, income ranging between ₹ 1 lakh to 5 lakh yearly, no complete KYC norms were followed and the account was not linked with Aadhar and PAN number.

The branch manager, asked for retrieval of the physical documents, but the same were also not traceable at the branch level. The branch manager called on Ratan Singh in the branch to enquire about sudden hike in transactions in monetary terms, since it was not matching with the profile of the customer. The branch manager also insisted Ratan Singh to submit Re-KYC documents to enable the bank branch to update his profile.

Ratan Singh informed that the transactions were on account of sale of his ancestral property situated in a village near Jaipur and purchase of another property in the Jaipur city. However, the manager was not convinced with the reply of the Ratan Singh since there were repeated transactions in bulk in the account. After bulk credits of amount in cash and subsequently followed by withdrawal, leaving bare minimum balance in the account created suspicious in the eyes of banker. The branch officials repeatedly asked Ratan Singh to submit the Re-KYC documents in order to do the Enhanced Due Diligence (EDD), else the transaction in his account will be stopped. Annoyed with this, Ratan Singh, finally decided to close the account in September, 2021.

The Transaction Monitoring Team of the Bank reported the suspicious transactions to the Financial Intelligence Unit, India (FIU-IND), as a result, the Director asked certain information and relevant papers viz: identity of client, account file, and business correspondence etc. from the Bank relating to the account of Ratan Singh in November, 2022.

The Mandi Yard branch of the Bank informed that since the account has already been closed in September 2021, they are not having any record / documents of the account of Ratan Singh. The branch informed that they do maintain records of the live accounts only and for closed

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accounts, they do not maintain any records relating to the profiling, account opening information, addresses proof, transaction monitoring etc.

The Director re-acted based on information given by the Mandi Yard branch of the Bank and issued a show causes notice on the branch manager, stating therein, why a penalty should not be imposed on him for not adhering to the provisions of the Prevention of Money Laundering Act, 2002 (PMLA). The branch manager submitted the reply to the Director and gave reference of the Bank's Internal Circular, which do not stipulate to maintain the records of the closed transactions. The Director imposed maximum penalty as suggested in the PMLA on the Bank.

Ratan Singh slowed down the business activity as vegetable vendor. He got in touch with the wild life hunters, who illegally hunt for the wild animals and used to illegally sell their skins, nails and bones at high very prices in India and abroad. Hunting of wild animals is an offence under 51 of the Wild Life (Protection) Act, 1972. Ratan Singh keeps the stock of such items at his residence. Ratan Singh earned a good amount of wealth 'during the past few years since he associated himself with wild life animal hunting activity.

Ratan Singh purchased a 4 BHK flat in Jaipur in the name of Tara Devi, (his wife) and the consideration was paid by him out of the income which he earned from vegetable business for which he had earlier paid taxes and filed Income-tax returns.

Ratan Singh's brother Shamsher Singh is not engaged in any gainful business and was fully dependent on him. To take care of Shamsher Singh, Ratan Singh also purchased a 3 BHK flat in the joint name of Shamsher Singh and Ratan Singh and the consideration was paid out of the income earned from wild life animal hunting activity.

At one mid-night, when Ratan Singh was returning from Ranthambore Wild Life Sanctuary, to a Hotel in Dausa, he observed that a Police Jeep is coming behind his vehicle. At that time Ratan Singh was carrying skins of deer's in the vehicle. Although the skins of deer's were cleverly kept beneath the back seat of vehicle in a secret box, but Ratan Singh was afraid, if anything goes wrong. The Police Jeep followed the vehicle of Ratan Singh up to Hotel, and thereafter interrogated Ratan Singh and searched inside the vehicle. The prohibited items were found in the vehicle which was seized and Ratan Singh was arrested on the spot. The residence of the Ratan Singh was also searched at Jaipur by the Director and his team with the escort of Police and found wild life animal skins and other materials, cash gold jewellery and some property papers. The Director made out a detailed list of the items found and seized and obtained the signature of Ratan Singh and filed a case before the Adjudicating Authority.

After a certain period of time, some family dispute arose between Shamsher Singh and Ratan Singh. Due to this unfortunate situation, Ratan Singh strongly informed Shamsher Singh that since the consideration for the purchase of 3 BHK was paid by him only and nothing was contributed by Shamsher Singh, and therefore, he should immediately vacate and hand over

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the possession of the property to Ratan Singh. Ratan Singh also forced Shamsher Singh to execute a Power of Attorney in favour of Ratan Singh, so that he (Ratan Singh) may sell the property. However, Shamsher Singh did not agree. Rather, Shamsher Singh told that since he is the first name holder of the property, so he have every right to retain it.

The Initiating Officer (IO) based on the records collected from the Registry Office, issued a notice to Ratan Singh to submit certain explanation and information relating to the 3 BHK flat standing in the name of Shamsher Singh and Ratan Singh. Ratan Singh appeared before the IO with his Counsel but could not convince the IO. The IO, ordered for provisional attachment of the subjected property. The matter thereafter, was referred to the Adjudicating Authority (AA), wherein, the AA, after following the due procedures, held the property as benami and ordered for its confiscation.

Aggrieved by the Order of the AA, Ratan Singh preferred an appeal before the Appellate Authority, where it upheld the decision given by the AA. Ratan Singh consulted a senior Advocate to file the matter before the High Court. However filing of the application before the High Court, Ratan Singh died in a road accident.

In the light of the above facts and inputs, please answer the following questions as found in Part A and Part B.

PART - A

3.1 The Bank of Jaipur did not maintain proper records relating to the bank account of Ratan Singh. What is the statutory requirement of maintaining the record of documents evidencing identity of its client, beneficial owners as well account files and business correspondence relating to its clients:

(A) The records needs be maintained for a period of 5 years from the date of commencement of the bank transactions.

(B) The records shall be maintained for a period of 5 years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(C) The Record shall be maintained as per the directions issued by the RBI from time to time.

(D) The record shall be maintained as per Guidelines / Circulars issued by the Board of Directors of the concerned Bank.

3.2 What is the maximum penalty, that can be imposed by the Director for non compliance with the obligations under Chapter IV of the Prevention of Money Laundering Act, 2002, on the Bank of Jaipur, being a Reporting Entity?

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(A) ₹ 10,000

(C) ₹ 1,00,000

(B) ₹ 50,000

(D) ₹ 2,00,000

3.3 Purchase of a 3 BHK flat by Ratan Singh in Jaipur in the name of Tara Devi, (his wife) consideration of which was paid by him out of the income which he earned from vegetable business i.e., from known sources of income. This transaction shall

(A) be a benami transaction since the consideration was paid Ratan Singh.

(B) be a benami transaction since Tara Devi is not having source of income.

(C) be a benami transaction since name of Ratan Singh is not appearing as joint-owner in the property document.

(D) not be a benami transaction since any person can purchase property in the name of his spouse, consideration of which has been paid from the known sources of income.

3.4 Purchase of a 3 BHK apartment in the joint ownership of Shamsher Singh and Ratan Singh is:

(A) not a benami property transaction, since it was in the joint ownership.

(B) not a benami property transaction since Shamsher Singh is not a fictitious person, but his brother is.

(C) a benami property transaction since the consideration was paid by Ratan Singh out of the income from illegal activities.

(D) a benami property transaction since the consideration was paid by Ratan Singh whereas the property is used by Shamsher Singh.

3.5 A dispute aroused between Ratan Singh and Shamsher Singh and Ratan Singh asked Shamsher Singh to vacate the flat and hand over the possession to Ratan Singh and to execute a Power of Attorney in favour of Ratan Singh, so that he may sell the property; Whether Ratan Singh can take back the property from Shamsher Singh?

(A) Yes, Ratan Singh can take back the property since the entire consideration was paid by Ratan Singh.

(B) Yes, Ratan Singh can take back the property since Ratan Singh is the legal owner and Shamsher Singh is only a beneficial owner.

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(C) *Yes, Ratan Singh initially out of love and affection towards his brother, has permitted Shamsher Singh to occupy the flat since he was unemployed, but after dispute, Ratan Lal can very well demand for the vacation of the flat.*

(D) *No, Ratan Singh cannot demand back the property, since the property was a benami property.* ***(2 x 5 = 10 Marks)***

Answer the following questions:

PART - B

3.6 In the given case study, the Mandi Yard branch of Bank of Jaipur did not adhere to the compliances mentioned under Chapter IV of the Prevention of Money Laundering Act, 2002 (PMLA) and hence, the Director imposed a fine. In this regard:

(i) Is it within the powers of the Director to impose a fine?

(ii) State any three powers that have been granted to Director under the PMLA, 2002.

(4 Marks)

1.7 The officials of Bank of Jaipur were continuously following the Enhance Due Diligence (EDD) in the bank account of Ratan Singh. Explain the concept of the EDD. ***(3 Marks)***

3.8 Explain the provisions of the Prohibition of Benami Property Transactions Act. 1988 (PBPT), which prohibits the right to recover the property held benami. ***(2 Marks)***

3.9 Every order made by the Appellate Tribunal under the Prohibition of Benami Property Transactions Act, 1998 (the Act) are not appealable to the High Court. Substantiate this statement under the provisions of the Act. ***(3 Marks)***

3.10 The Appellate Tribunal (AT) upheld the decision of the Adjudicating Authority, but Ratan Singh died in a road accident. Whether the legal representatives of Ratan Singh shall be bound by the decision of the AT? ***(3 Marks)***

ANSWERS TO CASE STUDY 3

3.1 (B)

3.2 (C)

3.3 (D)

3.4 (C)

3.5 (D)

Answer 3.6

As per section 12A of the Prevention of Money Laundering Act, 2002, the Director may call for from any reporting entity any of the records referred to in section 11A, sub-section (1) of section

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12, sub-section (1) of section 12AA and any additional information as he considers necessary for the purposes of this Act.

In the given case study, the Mandi Yard Branch of Bank of Jaipur did not adhere to the compliances as required to be maintained as per the abovementioned provisions in the PMLA, 2002.

As per section 13(2) of the said Act, in case of non-compliance with the obligations under chapter IV, by the reporting entity and others, following shall be the consequences:

If the Director, during inquiry, finds that a reporting entity /its designated director on the Board/any of its employees has failed to comply with the obligations under this Chapter, then, he may-

(a) issue a **warning** in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to **comply with specific instructions**; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, **to send reports at such interval as may be prescribed on the measures it is taking**; or

(d) by an order, **impose a monetary penalty** on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

In the light of the stated provisions, following shall be the answers:

(i) Yes, imposing of fine in case of non-compliance with the obligations by the reporting entity, is within the powers of the Director.

(ii) Besides with power of imposing fine, Director is also granted with any of other three powers mentioned in Point no. (a),(b) &(c) above.

Answer 3.7

Enhanced due diligence (EDD) [Section 12AA of the Prevention of Money Laundering, 2002]

As per the requirement of the legal provision, following are the Compliances that need to comply by every reporting authority w.r.t specified transactions:

(1) Verification of Identity of client [Section 12AA(1)]

Every reporting entity shall-

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(a) verify the identity of the clients by authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 as may be prescribed:

(b) take additional steps to examine the ownership and financial position, including sources of funds of the client, as may be prescribed;

(c) take additional steps as may be prescribed to record the purpose behind conducting the specified transaction and the intended nature of the relationship between the transaction parties.

(2) Transactions not allowed if client do not furnish the identity [Section 12AA(2)]

Where the client fails to fulfil the conditions laid down above, the reporting entity shall not allow the specified transaction to be carried out.

(3) Monitoring of transactions [Section 12AA(3)]

Where any specified transaction or series of specified transactions undertaken by a client is considered suspicious or likely to involve proceeds of crime, the reporting entity shall increase the future monitoring of the business relationship with the client.

(4) Retention of records [Section 12AA(4)]

The information obtained while applying the enhanced due diligence**,** shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

Answer 3.8

Section 4 of the Prohibition of Benami Property Transaction Act, 1988 (The PBPT Act, 1988) deals with the Prohibition of the right to recover property held benami.

As per the section, no suit / legal re-course is permissible for benami transactions. According to the provision-

No suit, claim or action to enforce any **right and the defence** is tenable, in respect of any property held benami:

- against the person in whose name the property is held; or
- Against any other person shall lie by; or
- on behalf of a person claiming to be the real owner of such property.

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Answer 3.9

Section 49 of the Prohibition of the Benami Property Transaction Act, 1988 (The PBPT Act, 1988) deals with the provisions related to the Appeals to High Court.

As per the provision, any party who is aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court on the decision or order of the Appellate Tribunal only where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated.

Hence, every order made by the Appellate Tribunal under the PBPT Act, 1988 are not appealable to High Court.

Answer 3.10

Section 66 of the Benami Property Transaction Act, 1988 (The PBPT Act, 1988), states the following legal requirements:

Proceedings taken against deceased person -Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased.

Here in this case, AT upheld the decision of the Adjudicating Authority before Ratan Singh died in a road accident. So accordingly, decision of AT shall be deemed to have been taken against the legal representative and they shall be bound by the decision of the AT.

CASE STUDY - 4

Background

Mr. Mahesh, a Karta of a Hindu Undivided Family (HUF), is running his family business through 'Murugan Exploration and Mining Services Private Limited' (hereinafter called as "MEMS" / "the Company") in which Mr. Mahesh is a promoter-director and his two sons namely Mr. Manish and Mr. Sushil are directors. The Company is running the business of exploration of minerals in the mine areas of various mining companies. After the death of Mr. Mahesh, his two sons, Mr. Manish and Mr. Sushil inherited the family business holding 50% equity shares each and continued to be the directors of the Company.

Mr. Manish has done his masters in mining engineering and looking after the technical operations whereas Mr. Sushil who has done his MBA in marketing from IIM, Ahmedabad is focusing on the business development of the company. Due to good business relationship and contacts with the clients, the business of the company was growing very fast. To cope up with the work orders in hand and those are in pipeline, MEMS imported 3 drilling rigs costing ₹ 10

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crores from a German company (Hereinafter called as "the Exporter") creating security by way of hypothecation of three drilling rigs in favour of the Exporter in the month of December, 2018.

Setback on Business

During Covid-19 pandemic phase, the drilling operations were stalled in almost all drilling sites mainly due to lockdown measures and many labourers left the site and returned to their home places. The company started facing acute shortage of raw material, spare parts and skilled drillers and workers as the left-out workers did not return to the work. As a result, the production dropped and the company started incurring losses making default in repayment of EMI to the Exporter who issued several notices to the company for rectifying the default but all in vain.

Initiation of a Corporate Insolvency Resolution Process

Ultimately, in consultation with the Company's advocate in India, the Exporter issued final demand notice for payment of due amount of ₹ 6.00 crores as on 1.05.2023 and made an application along with all supporting documents except a certificate from a financial institution / bank, as required under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) as they were not having any office or bank account in India, to the NCLT on 15.05.2023 for initiation of Corporate Insolvency Resolution Process (CIRP) against MEMS (the Corporate Debtor) which was admitted by the Tribunal as no dispute regarding the dues was raised by the Company.

Approval of Resolution Plan by the Committee of Creditors

After following the due procedures prescribed in the Insolvency and Bankruptcy Code, 2016 (IBC-2016), the resolution plan submitted by MEMS (the Resolution Applicant) was approved by the Committee of Creditors (CoC) in its meeting by requisite majority and accordingly the Resolution Professional (RP) submitted the approved resolution plan to the Adjudicating Authority (NCLT).

Direction by NCLT to submit a Revised Resolution Plan

However, considering the objections raised by the suspended Board of Directors of MEMS, the NCLT directed the Resolution Applicant to submit the revised resolution plan to RP and directed the RP to obtain the approval of the CoC to the revised resolution plan after redetermination of the liquidation value of the Corporate Debtor.

Liquidation of the Corporate Debtor

Aggrieved by this order, the Resolution Applicant made an application before the NCLT, to allow it to withdraw from CIRP as they are no more interested in the process. Their application was rejected by the NCLT as Applicant submitted a revised resolution plan the value of which is much lower than the value of the original resolution plan and re-determined liquidation value. The CoC having considered that the revised resolution plan is not viable and feasible to

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implement, rejected the same with requisite majority. After that, on intimation by RP of the decision of the CoC to go for liquidation by rejecting the revised resolution plan, the NCLT ordered for liquidation of the Corporate Debtor.

Summary of Financial Information of the Corporate Debtor

The extract of the relevant information related to the Corporate Debtor for the purpose of liquidation is produced as follows:

Particulars		***₹ in Crore***
(1)	*Financial Creditors (Secured).*	
	(i) Easy Financing Limited.	*150*
	(ii) Strong Bank Limited.	*75*
(2)	*Secured Debt of Exporter (Operational Creditor).*	*6*
(3)	*Land.*	*100*
(4)	*Land & Buildings.*	*250*
(5)	*Plant & Machinery (including 3 drilling rigs having book value of ₹ 7 crore).*	*100*
(6)	*Stocks.*	*200*
(7)	*Trade Receivables.*	*200*
(8)	*Cash & Cash Equivalents.*	*5.90*
	(a) Land & Buildings would realise 110% of its book value. Drilling Rigs would realise 80% and Other Plant & Machinery, Stocks and Trade Receivables would realise 70% of the book value.	
	(b) Strong Bank Limited decided to enforce their security interest in the land and they could realise 120% of its book value	
	(c) The Exporter decided to enforce their security interest in 3 drilling rigs supplied by them.	
	(d) Ignore actual depreciation charged and IR process and liquidation costs.	

Filing of a Writ Petition

It is further revealed that MEMS had issued a crossed account payee cheque of ₹ 50 lakhs to the supplier in the year 2022 which was bounced and the party has filed a case under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act, 1881) and the proceedings are in progress against MEMS and its directors namely Mr. Manish and Mr. Sushil. On declaration of moratorium immediately on admission of CIRP application on 15.05.2023, Mr. Manish and Mr. Sushil, the directors of MEMS, filed a writ petition before the Supreme Court for granting stay

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on the ongoing proceedings against the company and the directors under Section 138 of the NI Act, 1881.

Mr. Rajan

Mr. Rajan, aged 46 years, is a civil engineer and the brother-in-law of Mr. Sushil. He is working as a registered real estate agent since January-2023 and the consultant for construction and layout division of Loyal Steel Limited (LSL), a listed company in Mumbai. He has adopted a business model in real estate business to make significant cash transactions on each deal and routed the money through different bank accounts.

Insider Trading and Investing the Tainted Money by Mr. Rajan.

The brother of Mr. Rajan is a CFO in LSL and, therefore, Mr. Rajan had access to its financial and other confidential information. Abusing such confidential information, he started insider trading since August-2023 earning huge money for which he has been held guilty under the Securities and Exchange Board of India Act, 1992 (SEBI Act) in October-2023. Investing such tainted money, he acquired a house (the property) in England in the month of September-2023 in the name of his son settled there, the equivalent value of which in India would be ₹1.50 crore.

In India, he owns no immovable property except one flat in Delhi the present fair market value of which is ₹1.50 crore approximately and it was purchased legitimately by him in the month of January, 2020 out of the sale proceeds of his farm land.

Provisional Attachment by the Enforcement Directorate.

His sister, Mrs. Rajani, a physiotherapist, is living in this house under a valid rent agreement. Getting information of the offence committed by him under the SEBI Act, 1992 for insider trading and the modus operandi of mobilisation of cash money, the Director of Enforcement Directorate, being satisfied with the circumstances, by order, provisionally attached his flat in Delhi and asked his sister to vacate the premises and in exercise of the authority delegated by general order of the Central Government, arrested Mr. Rajan even if there was no FIR registered or arrest warrant obtained against him. Mr. Rajan has challenged the order of provisional attachment of the flat acquired legitimately having no connection with the alleged proceeds of crime and his arrest made without following the due procedure of law before the appropriate authority.

Based on the above information you are requested to answer the following questions as contained in Part A and B.

PART - A

4.1 Whether the application filed by the directors of MEMS for granting stay on the proceedings going on against them under Section 138 of the Negotiable Instruments Act, 1881 (the NI

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Act, 1881), after declaration of moratorium under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), will be tenable?

(A) Application will be tenable due to operation of moratorium under Section 14 of the IBC, 2016 encompassing the cases under the NI Act, 1881.

(B) Application will not be tenable as the moratorium under Section 14 of the IBC, 2016 would not apply to criminal proceedings undergoing under section 138 of the NI Act, 1881.

(C) Application will not be tenable as it is not made before the NCLT.

(D) Application will not be tenable as the moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 in relation to Section 138 of the NI Act, 1881 will operate only against MEMS (Corporate Debtor) and not against its erstwhile directors namely Mr. Manish and Mr. Sushil.

4.2 Whether the application for initiating CIRP filed by the Exporter before the NCLT will be admissible in absence of sans the certificate from financial institution / bank in India?

(A) The application sans the certificate from financial institution / bank in India shall not be admissible as this is a mandatory pre-requirement to triggering the insolvency process under the IBC, 2016.

(B) The application sans the certificate from financial institution / bank in India shall be admissible as this is not a condition precedent to triggering the insolvency process under the IBC, 2016.

(C) The application filed by the Exporter being an overseas operational creditor shall not be admissible.

(D) The admissibility of application sans the certificate from financial institution / bank in India is subject to discretionary powers of the NCLT.

4.3 MEMS has applied to the NCLT to take exit from CIRP. Which of the following shall be the outcome of their application?

(A) The application will be rejected as the prescribed exit route is not applicable to the Resolution Applicant under the IBC, 2016.

(B) The application will be rejected as the CoC has been constituted.

(C) The application will be rejected as it is not moved through Resolution Professional.

(D) The application will be rejected as the CoC has already approved their initial resolution plan.

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4.4 The direction to Mrs. Rajani to vacate the flat provisionally attached by the order of the Director shall be -

(A) Valid, because no person can enjoy the property after provisionally attached.

(B) Not valid, because the person interested in the attached property can continue the enjoyment of the provisionally attached property.

(C) Valid, if confirmed by the Adjudicating Authority.

(D) Valid, if confirmed by the Special Court.

4.5 The Director, exercising the authority conferred by the general order of the Central Government, has arrested Mr. Rajan in absence of the FIR and / or arrest warrant. Which of the following shall decide the validity of his action:

(A) Valid. The Director may arrest Mr. Rajan, if he has reason to believe (reason to be recorded in writing) that he has been guilty of an offence of insider trading which is a scheduled offence punishable under the Prevention of Money Laundering Act, 2002 (PMLA) irrespective whether the offence is cognizable or non- cognizable and whether the FIR is lodged or not or arrest warrant is obtained or not.

(B) Invalid. The Director may arrest Mr. Rajan if FIR is lodged and arrest warrant is obtained for the offence of insider trading under SEBI Act which is a scheduled offence under the PMLA and non-cognizable in nature.

(C) Valid. The Director may arrest Mr. Rajan, if he has reason to believe (reason to be recorded in writing) that he has been guilty of a cognizable offence of insider trading which is a scheduled offence punishable under the PMLA irrespective whether the FIR is lodged and arrest warrant is obtained or not.

(D) Invalid. The Director cannot arrest Mr. Rajan under the PMLA as he is guilty under the SEBI Act, 1992. ***(2 x 5 = 10 Marks)***

Answer the following questions

PART - B

4.6. Examine, whether the NCLT has jurisdiction to assess the resolution plan itself disregarding the due approval of the CoC thereto and directing to submit the revised resolution plan for approval of CoC referring to the relevant provisions of the IBC, 2016. Can the NCLT undo the subsequent decision of the CoC disapproving the revised resolution plan and going for liquidation? ***(5 Marks)***

4.7 Strong Bank Limited (Secured Financial Creditor) and the Exporter (Secured Operational Creditor) do not want to relinquish their security interest to the liquidation estate and have

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proposed to the Liquidator that they themselves will realise their security interest. Referring to the provisions of the IBC, 2016, you are requested to:

(i) Examine the validity of the proposals of both the secured creditors.

(ii) Compute the funds / proceeds available with the Liquidator.

(iii) Distribution of funds / proceeds, if any, arising out of the above proposal. ***(5 Marks)***

4.8 (i) The Director, by order, provisionally attached the flat of Mr. Rajan in Delhi which has not been acquired by the proceeds of crime and hence he has challenged the order. Critically examine, whether this order of the Director is valid under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA Act)?

(ii) What shall be the validity period of the order by which the property is so provisionally attached? ***(5 Marks)***

ANSWERS TO CASE STUDY 4

4.1 (D)

4.2 (B)

4.3 (A)

4.4 (B)

4.5 (A), and (C)

Reasoning for option (A) and (C)-

Explanation to Section 45 The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be **deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences** notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.

Arrest of person- Section 19(1)

If the **Director**, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government **by general or special order,** has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) **that any**

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person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Answer 4.6

Given issue can be dealt under section 30 and 31 of the Insolvency and Bankruptcy Code, 2016.

1. A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.
2. The resolution professional shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in section 30 (2).
3. The committee of creditors may approve a resolution plan by a vote of not less than 66% of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.
4. The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.
5. Further section 32 of the Code says that if the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30 it shall by order approve the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

According to above provisions, that if the Adjudicating Authority (NCLT) is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30 it shall by order approve the resolution plan.

Relevant Judgements: In **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors.**, the **Supreme Court** held that the role of CoC is akin to that of a protagonist, giving finality to the process (subject to approval by the AA), who takes the key decisions in its commercial wisdom and the consequences thereof. The AA has limited jurisdiction in the matter of approval of a resolution plan**.** Within its limited jurisdiction, if the AA finds any shortcoming in the resolution plan vis - à -vis the specified parameters, it would only send the resolution plan back to the CoC for re –submission.

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Further, in Maharasthra Seamless Limited vs. Padmanabhan Venkatesh & Ors, it was held that the Adjudicating Authority cannot interfere on merits with the commercial decision taken by the Committee of Creditors. The COC should make sure that the corporate debtor needs to keep going as a going concern. It needs to maximise the value of its assets; and that the interests of all stakeholders have been taken care of during the insolvency resolution process.

If the Adjudicating Authority finds the abovementioned parameters have not been taken care of, it may send a resolution plan back to the COC. If the Adjudicating Authority has been satisfied that the COC has taken care of the parameters mentioned then only it has to pass the resolution plan. Further the reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority.

Thus accordingly, we may conclude that NCLT has no jurisdiction to assess the resolution plan itself by disregarding the due approval of the CoC but however, if the Adjudicating Authority finds the specified parameters have not been taken care of, it may send a resolution plan back to the CoC for re-submission of the Resolution Plan to resolution applicant for approval of CoC.

If the Adjudicating Authority has been satisfied that the COC has taken care of the parameters mentioned then only it has to pass the resolution plan. Further the reasons given by the Committee of Creditors while approving a resolution plan may thus be looked at by the Adjudicating Authority.

No, NCLT cannot undo the subsequent decision of the CoC, infact will consider the submitted reasons by the Committee of Creditors while approving a resolution plan.

Answer 4.7

(i) As per section 52 of the Code, a secured creditor in the liquidation proceedings may—

(a) **Relinquish its security interest to the liquidation estate** and receive proceeds from the sale of assets by the liquidator, or

(b) **Realise its security interest** in the manner specified in this section.

Where the secured creditor realises security interest, he shall inform the liquidator of such security interest and identify the asset subject to such security interest to be realised.

Hence, proposals of Strong Bank Limited and the Exporter is valid.

(ii) Computation of funds/ proceeds available for distribution with the liquidator:

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{₹ In Crore}

Asset	Book Value	Realisable Value	Realised / Surplus Value
Land	100	Not Relinquished	45.00
Land and Building	250	110%	275.00
Plant & Machinery excluding Drilling Rigs not relinquished	100-7= 93	70%	65.10
Stocks	200	70%	140.00
Trade Receivables	200	70%	140.00
Total Value Realised			665.10
Cash $ Cash Equivalents			5.90
Total amount of funds/ proceeds available with the liquidator			671.00

(iii) Amount of insolvency resolution process to be included in the liquidation estate - Section 52(8) of the Code

The amount of insolvency resolution process costs, due from secured creditors who realise their security interests in the manner provided in this section, shall be deducted from the proceeds of any realisation by such secured creditors, and they shall transfer such amounts to the liquidator to be included in the liquidation estate.

Hence, distribution of funds/proceeds arising out of the above proposal will be:

In case of Strong Bank Ltd.: (₹ in Crore)

Asset	Book Value	Realisable Value	Realised Value
Land	100	120%	120.00
Less utilized for debts			75.00
Surplus to be tendered to Liquidator			45.00

In case of Exporter: (₹ in Crore)

Asset	Book Value	Realisable Value	Realised Value
Drilling Rigs	7.00	80%	5.60
Debt to be recovered			6.00
Unpaid debt to be paid by Liquidator			**0.40**

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Answer 4.8

Attachment of property involved in money-laundering [Section 5 of the Prevention of Money Laundering Act, 2002]

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

(a) any person is in possession of any proceeds of crime; and

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

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days (180 days) from the date of the order, in such manner as may be prescribed.

Accordingly, following shall be the answers:

(i) Yes, the order of Director for provisional attachment of the flat of Mr. Rajan in Delhi is valid on account of reason to believe on the basis of the material in his possession with respect to the commission of offence related to insider trading and of mobilization of cash.

(ii) The property can be provisionally attached for a period not exceeding one hundred and eighty days (180 days) from the date of the order. This shall be the validity period of the order for provisional attachment.

CASE STUDY - 5

Background

Mahesh Gupta (MG) is an expert in rural development and was part of an NGO working in this field. Saurabh Gupta (SG) is the younger brother of MG and is an engineer by profession who went to the United States around 15 years back. The Gupta's family has its roots in Rajasthan, where Kamal Gupta (KG), father of MG and SG was a school teacher.

Around 10 years back, MU got his posting as an advisor in the PM office and was given a furnished accommodation from the office itself. Only two months were remaining for his retirement. Post retirement, MG proposed to settle at Noida, (Uttar Pradesh) as both of his sons were working at Noida. In view of his proposal, MG booked an apartment in 'Spring Valley Homes' (SVH) in Greater Noida for his entire family to live in after his retirement.

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Spring Valley Homes' (SVH) Project

SVH project is fashionably developed based on western style of architecture with lush green gardens and a landscape capable of enthralling and amusing anyone, irrespective of any age. There were nearly 30 amenities made available to resident allottees for a perfect community living. The project was started on time and the construction also took place as per the time schedule mentioned in the building plans as furnished to the RERA Authorities.

Ultimate Construction Limited (UCL)

Ultimate Construction Limited (UCL), the developer of the SVH project, is known for quality construction and timely delivery. After completion of construction activities and provisioning of all civic infrastructure such as water, drainage, sanitization, electricity, roads etc., UCL obtained an occupancy certificate on August 31, 2022 from the competent authorities on behalf of SVH permitting the ultimate occupation of the building. The same was informed to all the allottees (MG being one of the allottees) immediately on the same day for taking the physical possession of the property by means of a formal letter followed with an e-mail & SMS.

Extension of MGs Retirement

MG attained the superannuation age on August 14, 2022 and he was supposed to retire on the last working day of August, 2022. But on August 10, 2022, his tenure was extended by another six months because some of the projects for which he was an advisor, were on the verge of completion. As his service period got extended, MG decided to take physical possession of the apartment on November 30, 2022.

Completion Certificate

UCL got the Completion Certificate on November 16, 2022 for SVH. An association of allottees was formed in the month of July, 2022 which was registered on September 5, 2022 as a resident society. Documents including the building plans, possession of common areas including park and landscapes, were handed over to such resident society on December 15, 2022. Local laws are silent on the provisions relating to handing over the possession of documents and common areas.

Goyal Family

MG was married to Shreya Goyal (SG), a qualified Chartered Accountant. Goyal family is a joint family with persons of four generations and is presently staying at Gurugram, but has its roots in Jammu. The father of SG, Ajay Goyal (AG) was also a Chartered Accountant who later turned into a statesman. He migrated to Gurugram in the early 80s. Goyal family inherited the undivided estate from their lineal ascendants which in their testaments was transferred in the favour of the undivided family. Uncle of AG is acting as the Karta of the undivided family but substantial financial control were in the hands of AG.

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Farm House

AG bought a farmhouse in Jammu during the winters of 2022 in his personal name, where he proposed to establish his party office. The entire family continued to stay in their house situated in Gurugram and have never visited the farmhouse since its purchase. The fair market value of the property as of the date of registration was ₹ 3 crore. The large portion of the purchase consideration to acquire this property was paid out of the funds realized from such impartial estate of the undivided family.

Since, AG is a public figure, holding immovable property of such a huge value might create unnecessary issues, so he transferred the farmhouse property to the pool of the impartial estate of the undivided family.

Vijay Auto Ancillary Limited (VAAL)

Sister of MG, Bhavya is married to Swapnil. Swapnil is a promoter of Vijay Auto Ancillary Limited (VAAL) which is engaged in the business of manufacturing automobile parts and is art exclusive supplier to the country's largest four wheeler manufacturer. The demand for four wheelers declined sharply in the last 5 years. The last couple of years were the worst for the industry, which affected the business of many auto part suppliers and VAAL is one amongst thein.

Initiation of Corporate Insolvency Resolution Process

In the later part of 2021, on account of failure to serve the debt, a Corporate Insolvency Resolution Process (CIRP) was initiated against VAAL by the Adjudicating Authority on an application from the concerned financial creditors. Swapnil is keen to revive the business and is eagerly waiting for a resolution plan from the resolution professional but in the first meeting of the Committee. of Creditors (CoC), the Interim Resolution Professional (IRP) was appointed as the Resolution Professional who intimated the Adjudicating Authority of the decision of the CoC to liquidate VAAL with 66% of voting share of the financial creditors. Swapnil challenged such a decision of the financial creditors by writing a letter to the Adjudicating Authority.

Star Shipping Limited (SSL)

Bhavya is a management consultant in Star Shipping Limited (SSL) which is an associate company of Multi Syndicate Limited (MSL) which holds 25% of the voting rights in SSL (25% stake was acquired on April 10, 2020) and so it is having a right to appoint 4 out of total 10 directors on the Board of SSL. The management and daily affairs of the SSL are purely independent. SSL is contributing a major portion to the group profits.

SSL is willing to enter the domain of operation of airports alongside the sea port business because the market of domestic travel has been multifold in a previous couple of years and is yielding significant profits to the airport operators. Hence, in the first week of September, it acquired the airport of the prominent city of the country.

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Status of the Ancestral Property

Presently, no one stays at the ancestral house of the Gupta family, which is situated in Rajasthan. SG is staying in New York along with his wife and children. His family has got citizenship in United States. The needs of the family are growing as children are getting older hence, SG decided to buy a more spacious house for his family, for which he required money so he requested his elder brother MG to help him. Considering the needs of his younger brother and his own decision to settle in Noida, MG decided to sell the house despite being sentimentally attached to the ancestral house very much. This is the only immovable property in India in which SG holds interest. As per the will of their father, the property of KG was divided into four equal parts (one part for MG, one for SG, another one for Bhavya, and the last for the trust of school, where he was a teacher). After the sale of the property, the sale proceeds were shared accordingly.

The house was sold to a local person, who converted the building into a resort and leased the same to a travel and tourism company of Nepal for a period of 7 years without the permission from RBI. Since SG was not aware of the Indian laws in force, he decided to take consultancy services from Shyam, a Chartered Accountant in India who advised him that the transfer and remittance of his share in the ancestral immovable property sold can be done only with the approval of Central Government.

In the light of the above inputs, answer the following questions in Part A and Part B:

PART - A

5.1 MG decided to take physical possession of the apartment at SVH on November 30, 2022. Examine and state whether he can legally do so?

(A) Yes, he can take possession at any time as per his convenience, but he needs to inform the same to UCL in writing.

(B) No, he can take possession at any time but before November 16, 2022.

(C) No, he can take possession at any time but before September 30, 2022.

(D) No, he can take possession at any time but before by October 31, 2022.

5.2 Whether the transaction of acquiring the property in the form of a farm house, by AG in his own name, out of the funds utilized from the impartible estate of the undivided family, amount to a 'benami transaction'?

(A) No, because the Prohibition of Benami Property Transactions Act, 1988 does not apply to Jammu and Kashmir. As the property lies in Jammu, it is out of the purview of the Act.

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(B) *Yes, because if the property is purchased out of the funds of the undivided family, it shall be for the benefit of all the members of the undivided family.*

(C) *Yes, because if the property is purchased out of the funds of the undivided family, it shall be registered in the name of the Karta.*

(D) *No, because the purchase of property by a member of HUF from the known sources of the HUF for his own benefit does not amount to a benami transaction.*

5.3 *Whether UCL has validly handed over the relevant documents and the possession of the common area to the resident society of SVH within the required time frame?*

(A) *Yes, because in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees within 4 months from the date of occupancy certificate i.e. December 30, 2022.*

(B) *No, because in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees within 21 days from the date of completion certificate i.e. by December 6, 2022, whereas the builder handed it over only on December 15, 2022.*

(C) *Yes, because in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees within 30 days from the date of completion certificate.*

(D) *No, because in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees within 15 days from the date of completion certificate i.e. by November 30, 2022, whereas, the builder handed it over only on December 15, 2022.*

5.4 *Whether the decision taken by the Committee of Creditors (CoC) of liquidation of VAAL is legally valid?*

(A) *Legally invalid, because the decision of liquidation of VAAL can only be taken by NCLT.*

(B) *Legally invalid, because the decision of liquidation of VAAL can be taken by a CoC only after the resolution plan presented by the resolution professional is rejected.*

(C) *Legally valid, because the decision of liquidation of VAAL is taken by the CoC with a voting share of 66%.*

(D) *Legally invalid, because the decision of liquidation of VAAL is to be taken by the CoC with a voting share of exceeding 66%.*

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5.5 Whether the act of leasing out the resort for a period of 7 years without permission from RBI to the Nepal based travel and tourism company is invalid?

(A) Legally valid.

(B) Yes, because no person of Nepal is allowed to acquire an interest in immovable property in India in the form of lease for a period exceeding five years.

(C) Yes, because no person resident outside India, is allowed to acquire an interest in immovable property in India, whether for lease or otherwise.

(D) Yes, because no person resident outside India, is allowed to acquire an interest in immovable property in India, in any form, in any manner, without the prior permission of RBI, whether for lease or otherwise. ***(2 x 5 = 10 Marks)***

PART - B

5.6 Shyam, a Chartered Accountant advised SG that the transfer and remittance of his share in the ancestral immovable property sold can be done only with the approval of the Central Government. Critically examine the advice in the light of the provisions of the Foreign Exchange Management Act, 1999. ***(5 Marks)***

5.7 As per Section 5 of the Competition Act 2002, if any enterprise or group merge or acquire an interest in another enterprise, which create a resulting entity, with assets or turnover over the threshold limit, it is considered as the formation of a 'combination', which may adversely affect the competition in the relevant market sphere. Examine whether SSL and MSL is a 'group' as per the Competition Act, 2002 for purpose of making an application under the said Section. ***(5 Marks)***

5.8 In the light of the provisions of the Prohibition of Benami Property Transactions Act, 1988 analyze the following:

Whether the property acquired by AG in his own name, by utilizing the funds realized from the undivided estate of the undivided family, and then transferring it to the pool of the impartible estate of the undivided family, can be considered a "benami transaction" if suspicion arises with respect to the purpose and nature of the transaction? Highlight the commonly applicable circumstances which guide, whether a transaction is benami or not. Is there any litmus test to determine whether the transaction is benami or not? ***(5 Marks)***

ANSWERS TO CASE STUDY 5

5.1 (D)

5.2 (B) and (D)

5.3 (C)

5.4 (C)

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5.5 (B)

Answer 5.6

As per Section 6 (5) of the Foreign Exchange Management Act, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

In this case, Mr. Saurabh Gupta can transfer his ancestral immovable property in India.

Remittance of sale proceeds – A person shall not, except with the general or specific permission of the Reserve Bank, remitte outside India the sale proceeds.

Hence, Mr. Saurabh after taking permission of the Reserve Bank can do remittance of his share in the ancestral immovable property.

Hence, the advice of Shyam, a Chartered Accountant to SG that the transfer and remittance of his share in the ancestral immovable property sold can be done only with the approval of the Central Government is not correct in the light of the provisions of the Foreign Exchange Management Act, 1999.

Answer 5.7

As per section 5 of the Competition Act, 2002, "group" means two or more enterprises which, directly or indirectly, are in a position to—

(i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or

(iii) control the management or affairs of the other enterprise;

Condition (i): Not fulfilled

MSL holds 25% of voting rights in SSL:

Condition (ii): Not fulfilled

MSL have a right to appoint 4 out of total 10 directors on the Board of SSL.

Condition (iii): Not fulfilled

The management and daily affairs of the SSL are purely independent.

Since, no condition is satisfied, hence SSL and MSL is not a group as per the Competition Act, 2002.

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Answer 5.8

No, there is no litmus test to decide whether the transaction is benami or not, it's a subjective matter of judgement based upon the facts and circumstances of each case individually. Although a definition is provided in sub-section 9 of section 2 of the Prohibition of Benami Property Transactions Act, 1988, that only covers tripartite benami transactions.

In the present case, till the property was acquired, it was a tripartite transaction, but not a benami transaction, because it got covered in exception point no. (i) of the definition of 'benami transaction' under section 2(9)(A)(b) of the said Act. But the act of transferring the property to a pool of impartible estate of the undivided family is a bipartite transaction, which is nowhere defined as a benami transaction in the entire Act.

In the *Mangathai Ammal (deceased) through LRs and others vs Rajeswari (civil appeal 4805 of 2019),* the apex court held that "While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of the transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct, etc."

While pronouncing judgement in Mangathai Ammal (supra), the apex court made reference to precedence established through its earlier judgements (pronounced in the different cases), and reaffirm that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

1. The source from which the purchase money came;
2. The nature and possession of the property, after the purchase;
3. Motive, if any, for giving the transaction a benami colour;
4. Position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
5. Custody of the title deeds after the sale; and
6. Conduct of the parties concerned in dealing with the property after the sale.

It is worth noting, the apex court said the above indicia are not exhaustive and their efficacy varies according to the facts of each case.

Thus, all these factors are required to be considered in determining whether the transaction undertaken by Mr. Ajay Goyal (AG) is benami or not as these types of transactions are not covered under the definition of 'Benami transaction'.

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