aglasem.com

FOR CA FINAL EXAM PREPARATION

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

EXAM	YEAR	TYPE
CA Final	2023	Question Paper

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

Final New Syllabus
Paper - 6 D
Economic Laws

MAY 2023

Roll No. .....

Total No. of Case Study Questions – 5

Total No. of Printed Pages – **31**

Time Allowed – **4** Hours

Maximum Marks – **100**

KFY

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

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

Answers in respect of Multiple-Choice Questions (MCQs) are to be marked on the OMR answer sheet as given on the Cover Page of the descriptive type answer book.

Answer to MCQs, if written inside the descriptive type answer book will not be evaluated.

Candidate should answer the Case Study Questions as selected by them in totality i.e., MCQ as well as descriptive Question of the same Case Study Question.

Candidate are not permitted to answer MCQs of one Case Study Question and the descriptive questions of another Case Study Question and vice-versa.

Candidates may use calculator.

KFY

P.T.O.

© The Institute of Chartered Accountants of India

KFY **Marks**

CASE STUDY-1 :

You are a Chartered Accountant with waxing eloquence, computer savvy, possessing excellent communication skills, having proven , hard core experience of two decades and is a much sought after professional. You are known for your sharp intellectual acumen and your expertise on the technical aspects of various economic laws in force in India has given you a deep recognition, not only by domestic companies spread across India, but also by foreign companies who want to set up business in India.

You have been approached by ABC Limited (the Company), a pharmaceutical, listed entity from Mumbai, one of the key companies closely monitored by the Equity Analysts, Mutual Funds and Investors to know from you the current state of affairs, compliance standards and regulatory assessment hygiene and sort out / clarify certain matters concerning the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), the Prevention of Money Laundering Act, 2002 (PMLA, 2002) and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI, 2002) which may potentially have an impact on the Company. You viewed this assignment as an another opportunity to deal with and come out successfully in terms of your advise. You are of the opinion that as the complexities of the businesses increases, the amount of time spent by the Management and the Professionals in cracking up the law codes also increases. Going forward, the Executive Management of the Company has very high expectations from you regarding the expert advises that you are going to provide given the timing as well as the multiple challenges impacting the organization.

About ABC Limited

ABC Limited is a professionally managed, widely held, profit making, dividend paying company engaged in developing and manufacturing differentiated pharmaceutical products in house which it commercializes with multinational pharma companies. Various Financial Institutional Investors are holding about 25% of the overall equity of the Company. Benchmarked to international Standards, the Company's facilities are approved by various International Regulatory Agencies.

KFY

© The Institute of Chartered Accountants of India

Marks

The Senior Management of the Company has provided you the necessary data and other inputs including its subsidiaries, cases against Senior Employees and Key Managerial Personnel in the following paragraphs for your perusal and the issues raised, clarifications sought are summarized in Part A and Part B thereafter. You are requested to go through the following contents carefully and provide your inputs accordingly based on your understanding of your requirements, issues if any and clarifications sought. Please make relevant assumptions as may be required to explain your answer so as to provide a holistic and relevant feedback. Your responses would be very vital for the Company and hence, your best advice is anticipated.

(1) Inputs relating to the Prevention of Money Laundering Act, 2002 (PMLA, 2002).

(A) One of the Key Managerial Personnel of the Company, namely Mr. 'H' obtained 5 Kg of smuggled gold and pledged with a Bank for securing a loan of ₹ 1 crore in connection with his sister's marriage. The bank manager knew that the gold pledged with the bank is a tainted property and released the loan amount to him at an excessive rate of interest. Mr. 'H' used a part of the loan amount for buying diamond jewellery and gifted the same to his sister. On receiving confidential information from a relative of Mr. 'H' that Mr. 'H' indulged in smuggling activities for acquiring gold and the subsequent purchase of diamond jewellery, the said gold and the diamond jewelry was provisionally attached by the Director and confirmed by the Adjudicating Authority. Subsequently, on completion of the trial, the Special Court passed an order confiscating the gold in the Bank's custody and the jewellery with the sister of Mr. 'H'.

(B) Mr. R, a Foreign Director of the Company is of the opinion that money laundering is a highly sophisticated act to cover up or camouflage the identity / origin of illegally obtained earnings so that they appear to have been derived from lawful sources. He further opines that money laundering is a process used by offenders to wash their 'tainted' money

© The Institute of Chartered Accountants of India

Marks

to make it clean by dealing with any property or assets of any description, whether corporeal or incorporeal, moveable or immovable, tangible or intangible used in the commission of a Scheduled Offence under the PMLA, 2002. He further believes that money laundering can be carried out by any third person on behalf of an individual and includes a person who exercises ultimate effective control over a juridical person. Mr. R wants to understand from you the veracity of his above opinion. Mr. R also wants to understand the meaning and definition of 'Proceeds of Crime" and "Scheduled Offences" under the PMLA, 2002.

(C) Ms. 'Z', another Senior Employee of the Company, with an intent to deceive the general public, personated herself as a public servant and misguided the position and gained monetary benefits. She was arrested for the said cognizable and non-bailable offence for a term of imprisonment of 2 years. She approached the Special Court constituted under the PMLA, 2002 seeking bail.

(2) **Inputs relating to the SARFAESI Act, 2002.**

(A) MNO Limited is a subsidiary of ABC Limited. An 'Asset Reconstruction Company' (ARC) took over the management of the affairs of the said MNO Limited in order to realize its secured assets. On the other hand, the borrower company being aggrieved by its measures, requested the said ARC not to appoint any manager or administrator for the said purpose. The ARC, nevertheless, rejected the proposal and communicated its decision of rejection of the request to MNO Limited. Now, as a remedial measure, MNO Limited wants to approach the Debt Recovery Tribunal (DRT) against the order of the ARC.

(B) DEF Limited, another subsidiary of ABC Limited, issued 9% Optionally Convertible Debentures for ₹ 15 crore on 01.04.2021 (interest payable half yearly on 30th September and 31st of March).Mr. OP was appointed as a Debenture Trustee to the issue and the security

© The Institute of Chartered Accountants of India

Marks

interest was created in his favor. The Company failed to pay interest for two consecutive tenures (i.e. on 31.03.2022 and on 30.09.2022) and going forward, Mr. OP issued notice to the Company to make good the outstanding interest immediately. On the other hand, the debenture holders decided to enforce the security interest as per the SARFAESI Act, 2002.

In the meanwhile, Mr. OP issued another notice demanding full payment of interest within 60 days of the issue of notice. DEF Limited replied to the second notice within 20 days stating that it was facing a severe cash crunch situation and hence the default.

Whereas, the debenture holders felt that the default was willful and good amount of profits are being generated by the Company in its operations. Subsequently, Mr. OP reverted back to the Company stating that the reasons given by the Company is not justifiable and the Company's representation was rejected by him.

(3) Inputs relating to the Insolvency and Bankruptcy Code, 2016

(A) After the Insolvency and Resolution process in respect of ABC Limited (the Company) had commenced, the Adjudicating Authority declared a moratorium. One of the Promoters of the Company, namely Mr.'A' has provided a 'Promoter- Guarantee' to the corporate borrowings of the Company by mortgaging his house property – a posh bungalow valued at ₹ 75 crore situated at Nagpur. However, during the effective period of moratorium, the Resolution Professional initiated recovery proceedings against the house property of the Promoter – guarantor. Aggrieved by this motive, Mr. 'A' vehemently contended that the action of the recovery proceedings against his mortgaged property by the Resolution Professional is a breach of moratorium conditions violating the provisions of the IBC Code, 2016 and hence invalid.

Besides the above, during the same effective period of moratorium, the Resolution Professional also desired to sell the unencumbered

© The Institute of Chartered Accountants of India

KFY

Marks

inventory of finished goods of the Corporate Debtor to an extent of 15% of the total claims admitted. This action of the Resolution Professional was also strongly objected by Mr. 'A'. as invalid and against the law.

(B) As per the latest audited Balance Sheet of one of the wholly owned subsidiaries of ABC Limited namely RST Limited, which is engaged in the business of producing auto ancillary products, the turnover of the company was ₹ 200 crore and the investment in Plant and Machinery was ₹ 35 crore. The Turnover and investment in Plant and Machinery never crossed beyond ₹ 200 crore and ₹ 35 crore respectively.

Due to sudden fall in the demand for the products by auto companies, RST Limited started facing financial difficulties and liquidity crisis. In view of this, the Company defaulted in the repayment of term loans and servicing of the interest. The CFO of the Company evaluated many options for rescuing the business and discussed on multiple occasions with the lenders.

In one of the consortium meeting with the Bankers, the lenders decided to take action against the Company under the SARFAESI Act, 2002. At the meeting, one of the lenders holding 30% share in the consortium suggested that in the present circumstances, it would be apt to proceed under the provisions of the IBC, 2016 (Code) since the code is one of the effective tools for the resolution of the debt. However, due to the difference of opinion amongst the lenders, a few of the lenders decided to move ahead under the SARFAESI Act, 2002 and the others decided to file an application under the Code.

The CFO of RST Limited intervened and informed that once the proceedings are initiated under both the laws, the SARFAESI Act, 2002 being an old law would prevail over the IBC Code, 2016.

KFY

© The Institute of Chartered Accountants of India

Marks

Under the circumstances, the MD of RST Limited pleaded with the lenders that the Company may be provided one more opportunity to submit a resolution plan for revival of the Company and to consider the Pre-Packaged Insolvency Resolution Plan (PPIRP). But, one of the lenders informed that PPIRP is at the nascent stage and it may take years to complete the process. In response, the MD clarified that the process of filing an application for PPIRP is very simple wherein it requires minimum documents for submission and as such is not time consuming.

Part – A

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

1.1 With reference to the inputs given in para (1) (B) relating to the Prevention of Money Laundering Act, 2002 (the Act) above, a person on whose behalf a transaction is being conducted is known as :

(A) Client.

(B) Intermediary.

(C) Beneficial Owner.

(D) Authorized Dealer.

1.2 With reference to the inputs given in para (1)(B) relating to the Prevention of Money Laundering Act, 2002 (the Act) above, state which among the following is false in the context of "proceeds of crime" under the Act:

(A) Any property acquired on account of criminal activities.

(B) Criminal activity should relate to a Scheduled Offence.

(C) All intangible properties are outside the purview of the Act.

(D) Property derived indirectly by any person on account of criminal activities and held outside the Country.

© The Institute of Chartered Accountants of India

KFY **Marks**

1.3 With reference to the inputs given in para (1) (C) relating to the Prevention of Money Laundering Act, 2002 (the Act) above, the correct legal position for Ms. Z would be :

(A) She, being a women can get bail from the Special Court.

(B) She will not get bail as the offence is not bailable.

(C) Since the offence is not covered under the PMLA, 2002, her application is liable to be rejected.

(D) She will be warned severely and levied a fine.

1.4 With reference to the inputs given in para (2) relating to the SARFAESI Act, 2002 above, advise the correct steps that DEF Limited can take :

(A) Prefer an appeal to the Debt Recovery Tribunal (DRT) against the rejection by Mr. OP of the Company's representation.

(B) Ignore the notice sent by Mr. OP since it is not legally binding on DEF Limited.

(C) Communicate back to Mr. OP that the representation of DEF Limited cannot be legally rejected and doing so will enable to file an appeal with the DRT. After so communicating, if the representation is still rejected by Mr. OP, then an appeal is to be filed.

(D) DEF Limited cannot prefer an appeal to the DRT against the rejection by Mr. OP of the Company's representation.

1.5 With reference to the inputs given in para (3)(B) relating to IBC, 2016, one of the lenders of RST Limited informed that since Pre-Packaged Insolvency Process (PPIRP) is at the nascent stage, it may take years to complete the process. Whether their apprehension is correct and what is the timeline for completion of the PPIRP ?

(A) No. The timeline for completion of PPIRP is 60 days from the commencement date.

KFY

© The Institute of Chartered Accountants of India

Marks

(B) No. The timeline for completion of PPIRP is 90 days from the commencement date.

(C) No. The timeline for completion of PPIRP is 120 days from the commencement date.

(D) No. The timeline for completion of PPIRP is 180 days from the commencement date.

Part – B

1.6 With reference to inputs given in para (1) (A) on the Prevention of Money Laundering Act, 2002 above, critically examine the following:

(i) Can the financing bank claim restoration of the pledged gold ? 2

(ii) Can the Special Court restore the diamond jewellery to the sister of Mr. 'H' ?' 2

1.7 With reference to the inputs given in para (2) relating to the SARFAESI Act, 2002 above, analyze and advise whether MNO Limited would succeed in approaching the Debt Recovery Tribunal against the order of the Asset Reconstruction Company ? 3

1.8 With reference to the inputs given in para (3) (A) relating to IBC, 2016 above, examine the following :

(i) Whether the action of the recovery proceedings by the Resolution Professional against the mortgaged properties of the Promoter – Guarantor valid in law ? 2

(ii) When does the moratorium period cease to have effect ? 1

(iii) What is the legal position regarding disposing off the inventory of finished goods of the Corporate Debtor other than in the ordinary course of business during the effective period of moratorium ? 1

© The Institute of Chartered Accountants of India

KFY **Marks**

1.9. With reference to the inputs given in para 3 (B) above on IBC, 2016, examine the legal position whether RST Limited is eligible for filing an application under Pre-Packaged Insolvency Resolution Process (PPIRP) as enshrined in the IBC, 2016 ? Will your answer differ, if RST Limited is classified as a Non-Performing Asset (NPA) in the books of the bankers for the last five years ? **4**

CASE STUDY-2 :

Kamal and Chintu are friends since their childhood. For business purposes, Kamal went to New York, USA and settled there for the past 9 years. Chintu started a real estate business in India by incorporating a Company called "**New Heights Private Limited**" (NHPL), with himself and his son Amar as the first directors of the company and subscribers to the Memorandum of Association of the Company.

Kamal was in possession of a plot of land having an area of approximately 7,000 square meters in his native place Bhilwara, Rajasthan which was acquired by him when he was staying in India. The land is situated on the outskirts of the city. With a view to develop a smart city, the Housing Board wanted to acquire this land. Eventually, Kamal sold this land through an agent based in the US for ₹30 crore (equivalent to $ 3,525,000) to the Housing Board. Kamal paid a commission of $ 80,000 to an agent in USA. The State Government on behalf of the Housing Board, then called out for tenders from various real estate companies for acquiring the land on a long term lease and develop a township on the same.

NHPL entered into agreements with the local suppliers near Bhilwara that all the material and man power requirements relating to any infrastructure projects shall be supplied only to their company and not to any other parties. NHPL's bid for the project was selected as it was the most cost-effective amongst all and was offered the contract to develop the township by taking the land on a long term lease.

KFY

© The Institute of Chartered Accountants of India

One of the real estate companies, that participated in the tender filed a complaint with the Competition Commission of India (CCI) that the aforesaid agreements entered into by NHPL with the local suppliers was anti-competitive in nature, as in view of this type of agreements with the local suppliers, the cost of developing township for NHPL will be much lower in comparison to other builders and as a result of which it could offer the lowest bid amongst all. Had they been in the same position as NHPL was, they could also have offered such a low bid and could have got the contract.

The Competition Commission of India (CCI) after following the procedure prescribed in the Competition Act, 2002, concluded that the agreements entered into by NHPL is anti-competitive in nature and shall be null and void and NHPL shall be responsible to bear the bidding costs. CCI also ordered that the bidding shall take place again with the participation of NHPL but subject to compliance of certain conditions as stipulated by the CCI.

Again, the bid for the project was awarded to NHPL in the bidding that took place again but this time with no objections against it. Finally, when the contract was offered, Chintu, in order to raise more funds for the Company, converted the constitution of the Company from a Private Limited Company to a Public Limited Company and also proposed an Initial Public Offering (IPO) in such a way that the Promoters stake, post listing, would be 50% of the total equity.

In the meanwhile, Chintu approached Kamal to invest substantially in his company and also to become a director in it and in compliance with the Companies Act, 2013, he requested Kamal to make a deposit of ₹1 lakh prior to his election as a director. On his election as a Director in NHPL at the general meeting of the company the said deposit of ₹ 1 lakh made by Kamal was refunded to him. He also acquired a 10% stake in NHPL through private placement. Kamal, then made three visits to India in the course of the project as a non-whole time director for the Company's work and was paid remuneration for the same along with reimbursement of the cost of travel and accommodation in accordance with the agreement made with Kamal.

© The Institute of Chartered Accountants of India

KFY **Marks**

Amar, being a civil engineer, went to USA as business travel by drawing $ 85,000 to study the modern technologies that can be used in development of the township. Already, during the year he had drawn $ 115,000 and his father remitted a further $ 25,000 to him for his maintenance expenses abroad.

Amar made a contract worth $ 2,100,000 with a consultancy firm in USA on behalf of NHPL that can provide consultancy services for the project of the township and remitted an amount of $ 1,100,000 on account of NHPL from India as part payment. By the end of the year, Amar returned to India and was having $ 10,500 left with him as an unspent foreign exchange.

The project of development of township included 2 commercial buildings, 1 residential building, 1 school, and 1 recreation center. The project was to be developed in phases and so phase-wise registration was obtained with the Authority as per the provisions of the RERA, 2002. The brochures and pamphlets of the project was issued and circulated by the promoter, Chintu.

The development of township attracted many a businessmen nearby the location of the project and within a short period of time, 80 % of the units were sold and allotted.

One of the allottees, Hemu, required certain modifications in the layout plan of his allotted unit, as per the agreement of sale which was done but even then, he was not satisfied completely with the modifications made and felt that it was not in accordance with the agreement and proposed to claim a refund of the amount paid till date along with interest.

For some of the units allocated in the project, the promoter – Chintu had taken ₹6.25 crore by cash from various allottees, which was not disclosed anywhere. Chintu bought a property as a joint owner with his mother Parvati for ₹16.25 crore and paid ₹10 crore through account payee cheque and ₹6.25 crore through cash money which he had obtained from various allottees.

The Initiating Officer issued notice to Chintu and his mother Parvati to show cause as to why the aforementioned property should not be considered as a Benami property. The Initiating Officer then passed an order provisionally

© The Institute of Chartered Accountants of India

Marks

attaching the property with the prior approval of the Approving Authority. On receipt of reference from the Initiating Officer, the Adjudicating Authority issued notice to Parvati to furnish the necessary papers of the agreement within 30 days from the date of this notice.

After taking into account, all the materials furnished, the Adjudicating Authority passed an order holding the property to be a Benami property. The Adjudicating Authority after giving Parvati an opportunity of being heard made an order for confiscating the Benami property.

Answer the following MCQ's :

2×5 =10

2.1 As per the provisions of the Competition Act, 2002, the agreement entered into by NHPL with the local suppliers near Bhilwara will be termed as :

(A) Tie-in Arrangement.

(B) Exclusive Supply Agreement.

(C) Refusal to Deal.

(D) Exclusive Distribution Agreement.

2.2 As per the provisions of the Foreign Exchange Management Act, 1999, the deposit made by Kamal with the company for his nomination as a director and the refund made to him will amount to:

(A) Current Account transaction requiring prior approval of RBI.

(B) Current Account transaction not requiring prior approval of RBI.

(C) Permissible Capital Account Transaction.

(D) Non- Permissible Capital Account Transaction.

2.3 How much amount of additional remittance can be made to Amar without the prior approval of RBI as per the provisions of the FEMA, 1999 ?

(A) $ 2,50,000. (B) $ 50,000.

(C) $ 25,000. (D) Nil.

© The Institute of Chartered Accountants of India

Marks

2.4 Whether the property held in the name of Parvati will be considered as a benami transaction if the registry of the property was done by Parvati at a value of ₹ 11 crore only, as per provisions of the Prohibition of Benami Property Transactions Act (PBPT Act), 1988 ?

(A) Yes, a Benami Transaction.

(B) Not a Benami Transaction.

(C) Partially a Benami Transaction.

(D) Not Applicable as the provisions of the PBPT Act is not applicable to this transaction.

2.5 Within what period and how much amount of unspent foreign exchange represented in the form of foreign currency notes, shall be returned by Amar to the authorized dealer as per the provisions of the FEMA, 1999 ?

(A) $ 10,000 within 180 days of his return.

(B) $ 8,500 within 180 days of his return.

(C) $ 10,000 within 90 days of his return.

(D) $ 8,500 within 90 days of his return.

2.6 (A) What procedure could have been followed by the Competition Commission of India on receipt of the complaint from one of the real estate companies to conclude that the agreements entered into by NHPL was anti-competitive in nature as per the provisions of the Competition Act, 2002 ? 3

(B) Whether the payment of commission amount to an agent in USA by Kamal and remittance by NHPL for consultancy services to a consultancy firm in USA would require prior approval of RBI as per the provisions of the FEMA, 1999 ? 2

© The Institute of Chartered Accountants of India

Marks

2.7 (A) Whether payments made to Kamal on his visit to India for the company's work require any permission of the RBI as per the provisions of the FEMA, 1999 ? 2

(B) Whether holding of and selling of the immovable property by Kamal is valid as per the provisions of the FEMA, 1999 and whether Kamal can repatriate the sale proceeds of the immovable property outside India ? 2

2.8 (A) Whether Hemu can claim a refund of the amount paid for the unit allocated to him as per the provisions of the Real Estate (Regulation & Development) Act (RERA), 2016 ? 3

(B) What is the option available with Chintu and Parvati against the confiscating order of the property passed by the Adjudicating Authority and also describe the procedure to be followed by Chintu and Parvati for the same as per the provisions of the PBPT Act, 1988 ? 3

CASE STUDY-3 :

Unique Rubber Factory Ltd. (URF) is a listed entity. It produces tyres and tubes for all types of vehicles, whether it be the commercial vehicles or light motor vehicles. The Registered Office of the Company is at Nariman Point, Mumbai, whereas the factory is at Nagpur. The tyres of the URF are in great demand covering the States of Maharashtra, Karnataka, Andhra Pradesh, Kerala, Tamil Nadu and Goa. In these areas, the Company's market share is more than 40% of the relevant geographical area. Rest of the market share is shared by small companies in the private sector. URF is not having any group companies.

From the audited Balance Sheet as at 31st March, 2022 some of the financial data were as under:

(₹ in Crore)

© The Institute of Chartered Accountants of India

KFY **Marks**

Turnover	5000
Cost of Plant and Machineries	1000
Cost of the Other Assets	200
Accumulated Depreciation on Plant and Machinery and other Assets (up to 31.03.2022)	200
Value of Trade Mark of 'URF'	160
Value of Patents	165
Value of Goodwill associated with the brand name of URF	175

At the meeting of the Board of Directors of URF held on 25th April, 2022, the Board of Directors discussed to further expand the area of marketing network in the States of Gujarat, Madhya Pradesh, Chhattisgarh and Odisha.

Hari Kishan, the Vice President (Production) appraised the Board that the present capacity of the Company in producing more tyres to cater the needs of these new areas / States is insufficient and suggested to acquire companies operating in those areas. In this regard, Hari Kishan suggested the names of the following three companies for their acquisition:

i. Yes Tyres Pvt. Ltd. – Gujarat.
ii. Shiv Tyres Pvt. Ltd.;- Madhya Pradesh and
iii. Kwality Tyres Pvt. Ltd.- Odisha..

URF offered its proposal to acquire these companies and offered 10% premium over the valuation of assets of these three companies. The URF agreed to keep the existing employees and will offer shares of URF to the existing shareholders of these companies towards the purchase consideration. The promoters of all the three companies agreed for merger.

The figures of Turnover and Value of Assets of all the above three companies for the year ended on 31st March, 2022 were as under:

KFY

© The Institute of Chartered Accountants of India

Marks

(₹ in Crore)

Particulars	Yes Tyres Pvt. Ltd	Shiv Tyres Pvt. Ltd	Kwality Tyres Pvt. Ltd	Total
Turnover	900	600	500	2000
Value of Assets	200	150	100	450

On 10th June, 2022 all the three private limited companies and URF passed a Board Resolution, approving the merger of these private limited companies with the URF. Subsequently, the URF submitted the Board Approved Resolution of merger of all the three companies with URF to the Competition Commission of India (CCI) on 30th June, 2022.

The CCI was of the opinion that the combination is likely to have an appreciable adverse effect on competition, but such adverse effect can be eliminated by suitable modification to such combination. The CCI, advised to do certain modifications to the parties to the combination and issued an order on 31st August, 2022.

The parties to the combination accepted the modifications proposed by the CCI and resubmitted the proposal on 20th September, 2022. The CCI on 7th October, 2022 approved the combination.

Hari Kishan's friend Ram Mohan is in the business of Real Estate. Ram Mohan incorporated a private limited company in the name of RM Buildcon Pvt. Ltd. (RMB) in the year 2010. RMB had constructed a residential complex in CBD Belapur area, named as "RMB Estate", bookings of which were made in January 2012 and construction of the flats were started thereafter in August, 2012. In the RMB Estate, there were 8 wings, each having 10 floors. All the flats were booked and the possession was scheduled to be handed over in December 2015. The promoter obtained the Completion Certificate in February 2016.

However, the possession was delayed and the actual possession started in a phased manner to the allottees only from December, 2016 onwards. Some of the allottees complained with the Real Estate Regulatory Authority, Mumbai (RERA

© The Institute of Chartered Accountants of India

Marks

Authority) that possession of the flats are being delayed by the promoter and the project has not been registered with the RERA Authority.

However, Ram Mohan (the Promoter) believed that since RMB has already obtained the completion certificate of 'RMB Estate' even before the RERA Act, 2002 came into force, only registration of 'RMB Estate' is required now and that RMB will not be liable for any penalty for non registration of the project before the commencement of the project in August, 2012.

In April 2017, RMB undertook to construct a residential project in Panvel, Navi Mumbai and obtained necessary permission from the local authority for use of the land for residential purposes. The salient features of this project were as under:

Name of the Real Estate Project: "RMB Heights".

Number of Wings: 10 Wings, which will be constructed in two Phases.

Phase I: Consisting of Wing A to Wing E.

Phase II: Consisting of Wing F to Wing J.

Number of Flats in each Wings: 20 Flats (Total 200 flats).

Cost of each Flat: Rupees 70 lakhs.

Expected date of possession: April 2020.

The Promoter got the registration of Phase I of RMB Heights with the RERA Authority. In Phase I there were 100 flats to be constructed for which advertisements were made by the promoter in leading newspapers of Mumbai and in prominent cities/ places of Maharashtra. But on account of good reputation of the builder in the market, the promoter received more enquiries / bookings from the prospective buyers. As a result, the promoter was forced to accept the bookings for all the 200 flats of Phase I and II.

There was no change in the construction plan, layout, carpet area, price etc., between Phase I and II. Everything was similar. So, the promoter was in this belief that since everything is similar to Phase I, there is no need to have separate registration for Phase II.

© The Institute of Chartered Accountants of India

Marks

Ram Mohan approached Hari Kishan, for booking of the flats in RMB Heights for the URF employees and told that one Wing (Wing E) shall be exclusively earmarked for the employees of the URF and has offered a discount of 5% from the cost of a flat to the URF employees. The other terms and conditions would remain same as of other flats.

All the applications earmarked for the public (i.e., Wing - A to Wing – D, consisting of 80 flats) and Wing – E for URF employees (consisting of 20 flats) were booked. The Promoter received the same amount as booking amount from all the allottees, without first entering into a written agreement for sale. After receiving the booking amount, the sale agreement of the flats were prepared after a month's time and were executed with the respective allottees and registered with the Office of Registrar, Mumbai.

The possession of flats as promised by the Promoter was to be given in April 2020. However, due to world-wide spread of COVID-19, the speed of the project went slow and the builder gave the new expected date of possession in December 2020.

The Promoter obtained the occupancy certificate from the competent Authority and thereafter gave possession of the flats in RMB Heights in the month of December, 2020. The Promoter enabled the formation of a society of the allottees of the RMB Heights and also executed a registered conveyance deed of the flats in favour of the allottees.

Harshita, one of the allottee in the 'RMB Heights' did not turn up for taking possession of her flat in December 2020 as she was in Paris on her office work. She informed the Promoter that since she is out of India and will come back only in the first week of February 2021, but the Promoter insisted to take the possession in time either personally or through an authorised person holding a Power of Attorney to take possession.

Somewhere in the month of January, 2022 some of the flat owners of Wing – A, observed some structural defects. Some flat owners also doubted on the title deeds of the land on which the project is developed/ constructed. They informed the same to the Officials of the Society. The Secretary of the Society advised

© The Institute of Chartered Accountants of India

KFY **Marks**

them to lodge complaint with the Promoter. The Promoter assured them that he will to look into the matter, but he never turned up to RMB Heights to see the defects nor called any engineer/ workmen to get it repaired.

Part – A

On the basis of the above inputs given in the case study, you are required to answer the following MCQs : **2×5 =10**

3.1 In how many days the URF shall be required to give notice to the Competition Commission of India, disclosing the details of the proposal relating to the prospective merger of three companies with the URF:

(A) Within 7 days of the approval of the proposal relating to the merger by the Board of Directors of URF

(B) Within 15 days of the approval of proposal relating to the merger by the Board of Directors of URF

(C) Within 30 days of the approval of proposal relating to the merger by the Board of Directors of URF

(D) Within 60 days of the of the approval of proposal relating to the merger by the Board of Directors of URF.

3.2 On which day, the combination of URF and the prospective merger of all the three companies shall come into effect:

(A) After the elapse of 210 days from the day (30th June, 2022) on which the URF has given the notice to the CCI.

(B) On 31st August, 2022 when the CCI passed an order for modification of the combination.

(C) On 20th September, 2022 when the modified proposal of combination was filed by the URF.

(D) On 7th October, 2022 when the CCI approved the modified proposal of combination.

KFY

© The Institute of Chartered Accountants of India

Marks

3.3 Any acquisition between the URF and the three private limited companies, whose shares are being acquired, should jointly have, in India:

(A) The assets of the value of more than rupees 2,000 crore or turnover more than rupees 6,000 crore.

(B) The assets of the value of more than rupees 8,000 crore or turnover more than rupees 24,000 crore.

(C) The assets of the value of more than rupees 2,000 crore or turnover more than rupees 8,000 crore.

(D) The assets of the value of more than rupees 6,000 crore or turnover more than rupees 24,000 crore.

3.4 The Promoter of the RMB Estate did not get the project registered with the RERA Authority. For this non-compliance, the Promoter shall be:

(A) Liable for a penalty which may extend up to 5% of the cost of RMB Estate.

(B) Liable to a penalty which may extend up to 10% of the cost of the RMB Estate.

(C) The Promoter shall be punishable with imprisonment for a term which may extend up to three years or with fine.

(D) The Promoter is not liable for any penalty.

3.5 The Promoter shall not accept more than _____ towards the booking amount of the flats in RMB Heights, from the employees of URF, without first entering into a written agreement for sale:

(A) ₹ 6,50,000.

(B) ₹ 6,56,000.

(C) ₹ 6,65,000.

(D) ₹ 7,00,000.

© The Institute of Chartered Accountants of India

KFY

Marks

Part – B

Answer the following questions :

3.6 In what manner the 'Value of Assets' for 'Combination' is determined, as per the Competition Act, 2002 ? **1**

3.7 What shall be the 'Value of Assets' of URF for calculation of 'Combination', as on 31st March, 2022 under the Competition Act, 2002 ? **3**

3.8 The possession of the flats in RMB Heights, which was scheduled to be given in April, 2020 was extended to December, 2020. In the light of the provisions of the RERA, 2016, state whether RMB can extend the date of possession ? **2**

3.9 What are the rights of the allottees of RMB Heights: **5**

(i) When some structural defects were brought to the notice of the Promoter ?

(ii) If any loss is caused due to defective title of the land on which the RMB Heights project is developed/ constructed ?

(iii) Examine whether the flat owners are entitled to get the defect rectified from the Promoters without any changes ?

3.10 Harshita, one of the allottee in the RMB Heights, did not take possession of the flat in December, 2020. What is the time line, within which the allottee shall take the possession of the flat after obtaining of the occupancy certificate by the Promoter ? **1**

3.11 The construction plan of Phase I was much similar to the construction Plan of Phase II of RMB Heights. Whether registration with RERA Authority is mandatory for Phase II plan and what are its legal consequences for non-registration ? **3**

KFY

© The Institute of Chartered Accountants of India

KFY **Marks**

CASE STUDY-4 :

Sanjay Trading Private Ltd. (STPL) is engaged in the business of whole sale distributorship of Rice and Grains, in Grain Mandi, Kota. In order to increase the business, the company requires some additional working capital finance. The company approached its banker- Star Bank of Kota (the Bank) for increase of the Cash Credit Limits from the existing ₹ 2.35 crore to ₹ 3.90 crore and offered the Bank, three immovable properties (which are in the name of Sanjay, the Managing Director and Guarantor of the Company) which were purchased through a registered sale deed dated 22.11.2019) as mortgage for securing the said cash credit limit. Star Bank of Kota after securing the equitable mortgage of the property, sanctioned a cash credit limit of ₹ 3.90 crore to the Company.

The Star Bank of Kota also got the registration of the mortgage of the properties with the "Central Registry of Securitization Asset Reconstruction and Security Interest of India" (CERSAI) under the provisions of the SARFAESI Act, 2002.

In view of wafer thin margins and tough competition in the market, the business of the Company was adversely affected and STPL had to face the brunt of liquidity crisis and encountered default in repayments / servicing of cash credit and subsequently, the bank account was classified as NPA in the books of Star Bank of Kota. A recall notice was sent to the Company but no response was given. The bank issued a notice under Section 13(2) of the SARFAESI, Act, 2002 to the Company mentioning therein that the Bank shall take possession of the secured assets and will also take over the management of the Company.

Under the circumstances, Sanjay wanted to take recourse under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) though he is under the apprehension that the provisions of the IBC, 2016 may not be applicable in his case.

Nevertheless, after receipt of the notice, the Company applied for the initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 10 of the Insolvency and Bankruptcy Code(IBC), 2016. The CIRP application was admitted by the Adjudicating Authority, moratorium was declared and an Interim Resolution Professional (IRP) was appointed.

KFY **P.T.O.**

© The Institute of Chartered Accountants of India

KFY **Marks**

The IRP collated the claims from the creditors. Star Bank of Kota submitted its claim as the financial creditor. Apart from Star Bank of Kota, some other operational creditors also lodged the claim. The Committee of Creditors was constituted in which there was a single financial creditor i.e. Star Bank of Kota.

Meanwhile the notice period under Section 13(2) of the SARFAESI Act, 2002 had expired and Star Bank of Kota started to take possession of the secured assets which were mortgaged by Sanjay in his capacity as a personal guarantor.

Sanjay vehemently objected to this action of the bank in view of the fact that since the Company is under moratorium all the legal proceedings against the Company are put on hold by the Adjudicating Authority and therefore, the decision of the Bank to take possession of the mortgaged properties is invalid. He filed a case with the Honorable National Company Law Tribunal (NCLT) pleading that since the moratorium is under way, the enforcement of security interest under the SARFAESI Act, 2002 against the Company be stopped altogether.

Meanwhile, the Enforcement Directorate (ED), on the basis of some solid information that the Company on the guise of dealing in Rice and Grains, is dealing with the prohibited drugs which is an offence, the ED along with its team, in the early hours of morning, raided the office of the Company and at the residence of Sanjay and found huge quantity of poppy straw at the office of the Company as well as at in the godown of Sanjay. The ED ordered a provisional attachment of the office premises and the residence of Sanjay. Both these properties were already under mortgage with Star Bank of Kota.

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

4.1 Sanjay claims that the provisions of the Insolvency and Bankruptcy Code (IBC), 2016 are not applicable in his case. Which of the following statement is correct ?

(A) The claim of Sanjay is correct as the provisions of the IBC, 2016 is not applicable to a Private Limited Company.

KFY

© The Institute of Chartered Accountants of India

Marks

(B) The claim of Sanjay is correct as the provisions of the IBC, 2016 is applicable only on a Public Limited Company.

(C) The claim of Sanjay is correct as the as the provisions of the IBC, 2016 is not applicable on the personal guarantor to Corporate Debtors.

(D) The claim of Sanjay is incorrect as the as the provisions of the IBC, 2016 is applicable to any company, limited liability partnership and personal guarantor to Corporate Debtor.

4.2 Who is the Adjudicating Authority in the case of Sanjay being the personal guarantor as per provisions of the IBC, 2016:

(A) The National Company Law Tribunal.

(B) The Debt Recovery Tribunal.

(C) The District Court.

(D) The High Court.

4.3 Keeping of Poppy Straw by Sanjay is an offence under which Act:

(A) The Indian Penal Code, 1860.

(B) The Narcotic Drugs and Psychotropic Substances Act, 1985.

(C) The Unlawful Activities (Prevention) Act, 1967.

(D) The Protection of Plant Varieties and Farmers' Rights Act, 2001.

4.4 Who among the following in the case study shall not be entitled to exercise any right of enforcement of securities by registration with CERSAI under the SARFAESI Act, 2002:

(A) Star Bank of Kota, being Secured Creditors.

(B) Operational Creditors being Unsecured Creditors.

(C) Both Star Bank of Kota and Unsecured Operational Creditors.

(D) Both Star Bank of Kota and the Operational Creditors.

© The Institute of Chartered Accountants of India

KFY **Marks**

4.5 Which among the following Act, overrides the other laws based on the facts facts given in the case study:

(A) The Insolvency and Bankruptcy Code, 2016.

(B) The Prevention of Money Laundering Act, 2002

(C) The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(D) The Recovery of Debts and Bankruptcy Act, 1993.

4.6 After the expiry of the notice issued under Section 13(2) by Star Bank of Kota, how it may proceed to take the possession of the security interest under the SARFAESI Act, 2002 ? **8**

4.7 Whether moratorium declared by the Adjudicating Authority is also applicable on Sanjay, the personal guarantor ? Examine the statement in the light of the provisions contained in the IBC, 2016. **7**

CASE STUDY-5 :

Ramesh has 3 sons, Mahesh, Naresh, and Suresh. The eldest son, Mahesh, runs a Rice Mill taken over from his father Ramesh, as a family business. Suresh, the third son of Ramesh, always feels ignored by his family and looking for some fast easy money, joins hands with Himesh, a real estate agent, who promises to pay Suresh, a commission in cash, if he helps Himesh to buy 45 acres of land and hold the land in his name on behalf of one of his customers, Sonu, in good trust and in good faith.

Suresh agrees and a purchase agreement for 45 Acres of land was registered in the name of Suresh. Subsequently, Suresh entered into several similar agreements in his name on behalf of others. In due course of time, Suresh also formed a company, called Ramesh Suresh Private Limited (RSPL), with the objects of running a hotel business, but the source of funding for the business was through secret drug peddling / dealings. RSPL was involved in the following activities:

KFY

© The Institute of Chartered Accountants of India

Marks

(A) RSPL accepted illegal monies by cash as legitimate business transactions supported with fake income and receipts.

(B) The monies were then deposited into the bank accounts of RSPL as clean money.

(C) Suresh also kept fraudulent records, which did not demonstrate the current state of affairs of his business.

(D) Monies in the bank accounts of RSPL were also often transferred as legitimate business transactions, to the bank accounts of GG Private Limited (GGPL), which is also in a similar business like RSPL. Original source of money was, thus, disguised.

(E) RSPL also mobilized funds from various investors but were never utilized for the purpose for which they were collected.

(F) Suresh also created a complex structure of group companies, subsidiaries, and associate companies, which were mainly paper /shell companies.

(G) RSPL also took loans from various banks and financial institutions. The funds were diverted and transferred to bank accounts of group companies, from where they were systematically siphoned off and were used for the purchase of various properties in India and abroad.

Suresh led a lavish lifestyle. He also utilized the illegal cash for lavish stays in various hotels and entertained himself in night clubs in India and abroad. Suresh also held some properties in the name of his wife, Rama, which was bought from his known legal sources i.e. from his share of income from the Rice Mill.

Kamal, a friend of Naresh, is the Company Secretary of a listed public limited company, called KKC Limited. Kamal gave a loan of ₹ 7 lakh to Naresh, who in turn, gave the said amount to his other friend, Manu, for investment in the shares of KKC Limited. Manu traded in shares of KKC Limited on behalf of Kamal. Kamal also ensured that some money is passed on to various legitimate companies to buy the shares of KKC Limited, in order to inflate the price of the shares. The intention was to show a higher valuation of shares before proposing to the investors.

© The Institute of Chartered Accountants of India

KFY

Marks

Ketan, is the brother-in-law of Mahesh, who is employed in UAE and is a non-resident Indian. Ketan purchased some properties in Mumbai in the name of his wife for ₹ 91 lakh. He paid ₹ 61 lakh through his NRE Account, ₹ 3 lakh through direct transfer from his salary account in UAE to the seller's account as advance through normal banking channels, complying with all the procedural requirements, but balance ₹ 27 lakh payment was made through some unknown sources.

Ketan also invested in equity shares of various listed companies in India in the name of his wife Jaya, who is a resident in India and himself, as joint holders, from an account that is not disclosed to tax authorities in India. Ketan also purchased a flat in Mumbai in the name of Jaya and himself, as joint holders, from his NRE Account.

Mahesh has a married daughter, Tina, who is a UK resident. Mahesh invested ₹ 1.80 crore in a bank fixed deposit in the name of Tina, without her knowledge. Later, during the course of inquiries by tax officials, Tina denied ownership of the said bank fixed deposit made in her name.

The Enforcement Directorate (ED) conducted raid operations against Suresh and his associates after his office obtained some inputs on the purported dubious financial transactions. ED seized incriminating documents, emails, and whatsapp chats during the raid.

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

5.1 As per the provisions of the Prohibition of Benami Property Transactions Act (PBPT Act), 1988, the purchase of properties by Ketan in the name of his wife in Mumbai for ₹ 91 lakh :

(A) Can be considered as a valid transaction for ₹ 91 lakh.

(B) Can be considered as a valid transaction to the extent of ₹ 61 lakhs only.

(C) Can be considered as a Benami transaction under the relevant law to an extent of ₹ 91 lakh.

(D) Can be considered as Benami transaction under the relevant law to an extent of ₹ 27 lakh.

KFY

© The Institute of Chartered Accountants of India

Marks

5.2 Which one of the following transaction if undertaken by Suresh can be considered valid and lawful as per the provisions of the PBPT Act, 1988 ?

(A) Transaction in respect of a property where the person providing the consideration to Suresh is not traceable.

(B) An arrangement by Suresh in respect of a property made in a fictitious name.

(C) Property held by Suresh in the name of his spouse and consideration paid out of known legal sources.

(D) A transaction by Suresh in respect of a property where the owner is unaware of or denies knowledge of the ownership.

5.3 As per the provisions of the Prevention of Money Laundering Act (PMLA), 2002, share trading by Manu on behalf of Kamal :

(A) Is a valid transaction, since he is not at all connected with KKC Limited.

(B) Can be considered as an unlawful transaction as trading is indirectly done in the stock market by Kamal, the Company Secretary, who has insider price- sensitive information.

(C) Cannot be considered as an unlawful or an invalid transaction as per relevant provisions.

(D) Is a valid transaction, if Naresh does share trading on behalf of Kamal, out of the loan of ₹ 7 lakh given by Kamal.

© The Institute of Chartered Accountants of India

Marks

5.4 RSPL also took loans from various banks and financial institutions. The funds were diverted and transferred to bank accounts of group companies, from where they were systematically siphoned off and were used for the purchase of various properties in India and abroad. RSPL claimed such proceeds of crime to be untainted property. Which one among the following statements is correct as per the provisions of the PMLA, 2002 ?

(A) Such offences are non-cognizable.

(B) Such offences are always bailable.

(C) Such offences are cognizable and always non-bailable.

(D) Such offences are cognizable and non-bailable but a person can be bailed subject to certain conditions.

5.5 Monies in the bank accounts of RSPL were also often transferred as legitimate business transactions, to the bank accounts of GGPL, which is also in a similar business like RSPL. In respect of the transactions done by RSPL, the crime money injected into the formal financial system is moved or spread over various transactions in different accounts. This step, under the PMLA, 2002 is referred to as:

(A) Smurfing.

(B) Integration.

(C) Layering.

(D) Placement.

© The Institute of Chartered Accountants of India

KFY

Marks

5.6 Critically analyze the statement "the provisions of the Act need not necessarily apply only to persons, who try to hide their properties, but may also sometimes apply to genuine properties acquired out of disclosed funds". Also, cite the relevant incidence/s in the aforesaid case and the name of the relevant applicable Act. **5**

5.7 Suresh formed a company, RSPL, primarily in the hotel business, but the source of funding was secret drug peddling/dealings. Answer the following as per the provisions of the PMLA, 2002. **5**

(i) Is secret drug peddling/dealings and then disguising the original source of money for business, a predicate offence ? Is there any difference between a Scheduled Offence and a Predicate Offence ?

(ii) Who investigates predicate offences ?

(iii) What are the possible actions that can be taken against Suresh or RSPL or other concerned persons in the above case, for the alleged offences ?

5.8 The Enforcement Directorate (ED) conducted raid operations against Suresh and his associates after it obtained some inputs on the purported dubious financial transactions. Answer the following as per the provisions of the PMLA, 2002. **5**

(i) What are the rights of Suresh and his associates, being searched during the raid operations ?

(ii) What are the rights of Suresh in case of his arrest ?

KFY

© The Institute of Chartered Accountants of India