



SUGGESTED SOLUTION

FINAL Nov. 2019 EXAM

SUBJECT- Elective (Economics Law)

Test Code – FNJ 7309

BRANCH - () (Date :)

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CASE STUDY -1

1. (b)

[Hint: Based on Section 2 (1) (u) of the Prevention of Money-Laundering Act, 2002]

2. (b);

[Hint: Refer Section 8 of the Prevention of Money-Laundering Act, 2002].

3. (b);

[Hint: Refer section 8 (4) of the Prevention of Money-Laundering Act, 2002].

4. (d);

[Hint: Based on Section 2 (1) (d) of the Prevention of Money-Laundering Act, 2002]

5. (c);

[Hint: Refer Section 5 (5) of the Prevention of Money-Laundering Act, 2002].

ANSWER -1

According to section 8 of the Prevention of Money Laundering Act, 2002, on receipt of a complaint or applications, if the Adjudicating Authority has reason to believe that any person has committed an offence of money laundering or is in possession of proceeds of crime, he may serve a notice of not less than thirty days.

Such person shall be called upon to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property so or, seized or frozen.

However, where a notice specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person. Where if, such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

The Adjudicating Authority shall, after hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued, are involved in money-laundering. Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

According to the above stated provisions, following are the answers:

- (a) Since in the given case, Alberts holds the property jointly in his and his wife's name i.e. Neelima George. As per the above law, such notice shall be served to all persons holding such property. So accordingly, Neelima will also be served the notice, and being heard. Taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued, are involved in money-laundering, then in such case Neelima will also be liable for holding of the joint property.
- (b) If property is claimed by a person, other than whom the notice has been issued therein, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(10 MARKS)

ANSWER -2

(i) Person resident in India

Section 2(v) of FEMA, 1999 defines the term "person resident in India". According to Section 2(v) (iii), all business units in India will be "resident in India" even though these units are owned or controlled by a person resident outside India.

Similarly all business units outside India will be 'resident in India' provided the business units are either owned or controlled by a person resident in India [Section 2(v) (iv)].

It is necessary to determine the residential status of the person (i.e., Chiman bhai) who owns or controls the business units in outside India.

(ii) Blue Sapphire Pvt. Ltd., being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines 'person' under clause (vii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vii). Accordingly Blue Sapphire Pvt. Ltd. unit in Mumbai, being a branch of a company would be a 'person'.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Blue Sapphire Pvt. Ltd unit in Mumbai is owned or controlled by a person resident outside India, and hence it, would be a 'person resident in India.'

However, Dubai Branch though not owned, is controlled by Blue Sapphire Pvt. Ltd. unit in Mumbai which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Dubai Branch is a person resident in India.

CASE STUDY -2

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (a) [Hint: The matter relates to concerns of an individual consumer regarding non-delivery of booked vehicle in the given time]
2. (b) [Hint: The allegations essentially relate to abuse of dominance by a car manufacturing company, directly or through its authorized dealer]
3. (c) [Hint: The tried to portray his issue as an issue of consumer exploitation to draw the attention of the competition authority]
4. c, d, a, b [Hint: To examine a case under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct]
5. b, a, d, c [Hint: To examine a case under section 3 (4) of the Competition Act, 2002, first it is to be seen whether the alleged two entities are in a vertical chain and whether they have entered into any agreement as defined under the Competition Act, 2002. Then it is to be seen whether such agreement is anti-competitive and it has appreciable adverse effect on competition]

II. ANSWERS TO DESCRIPTIVE QUESTIONS

1. Even though the concerns raised by Mr. Nazir cannot be redressed by the competition authority as it essentially relates to grievances of an individual consumer of a passenger car manufactured by XMC Pvt. Ltd, however if the matter is placed before the competition authority it will be examined in terms of section 4 of the Competition Act, 2002. It is so because the allegations of Mr. Nazir essentially relate to abuse of dominance by XMC Pvt. Ltd, directly or through its authorized dealer M/s Ratan Lal & Sons.

To examine the matter under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct.

Enterprise: Yes, XMC Pvt. Ltd. is an enterprise in terms of Section 2 (h) of the Act.

Relevant Product Market: The market for passenger car [section 2 (t)]

Relevant Geographic Market: whole of India [see section 2 (s)]

Relevant Market: the market for passenger car in India [section 2 (r)]

Assessment of Dominance of XMC Pvt. Ltd.: Appear to be dominant in the market for passenger car in India as it has highest market share and financial strength besides its brand name and dependence of the consumer on it.

Assessment of the alleged conduct of XMC Pvt. Ltd.: Not appear to be abusive. Delay in giving delivery of a product to a consumer or not passing the benefit of tax reduction to consumer or increasing the price cannot said to be anti-competitive in terms of section 4 of the Competition Act, 2002.

(7 Marks)

2. As per section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Further, the term 'relevant product market' has been defined in section 2(t) of the Act as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. And, the term 'relevant geographic market' has been defined in section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

In order to determine the 'relevant product market', the Commission, in terms of the factors contained in section 19(7) of the Act, is required to have due regard to all or any of the following factors viz. physical characteristics or end- use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products. Similarly in order to determine the 'relevant geographic market', the Commission, in terms of the factors contained in section 19(6) of the Act, is required to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after - sales services.

As stated above, as per the provisions of the Competition Act, 2002 the relevant market comprises of the relevant product market and relevant geographic market. In the instant matter, the relevant product market may be considered as the 'market for passenger car'. It may be noted that the allegations of Mr. Nazir pertains to purchase and after sale service of a passenger car which cannot be substitutable with other type of vehicle in terms of price, end use, characteristics, etc. The relevant geographic market in this matter may be considered as 'India' because the condition of competition in passenger car market in India is homogeneous throughout India. A consumer can buy a passenger car from any part of India with similar competitive condition. Thus, the market for passenger car in India may be considered as the relevant market in this case.

(8 Marks)

CASE STUDY -3

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (b) [Hint: Refer Regulation 15 of the FEM (Export of Goods and Services), Regulations, 2000]
2. (c) [Hint: Refer Section 5 (7) of the Code]
3. (c) [Hint: Refer Section 5 (25) read with section 28 of the Code]
4. (d) [Hint: Refer Regulation 3 of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]
5. (d) [Hint: section 61(3) of the IBC]

II. ANSWERS TO DESCRIPTIVE TYPE QUESTIONS

1. (i) According to section 33 of the Insolvency and Bankruptcy Code, 2016, where the Adjudicating Authority before the expiry of the insolvency resolution process period does not receive a resolution plan as approved by the committee of creditors, it shall—
 - (a) **pass an order** requiring the corporate debtor to be liquidated as per the relevant provisions
 - (b) **issue a public announcement** stating that the corporate debtor is in liquidation; and
 - (c) **require such order** to be sent to the authority with which the corporate debtor is registered.

According to section 12 of the Insolvency and Bankruptcy Code, 2016, the corporate insolvency resolution process (CIRP) shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

As per the facts, Ronit, presented the approved resolution plan, before NCLT after the prescribed period for the completion of CIRP i.e, after 180 days of insolvency commencement date.

According to the above stated provisions, NCLT, shall pass an order requiring the corporate debtor (MMPL) to be liquidated. It shall issue a public announcement of its liquidation and send such order to the Registrar of companies.

- (ii) As per Section 33(3) of the Insolvency and Bankruptcy Code, 2016, where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred above. Accordingly, the employees and the stakeholders of MMPL, whose interests are affected by contravention in compliances of the resolution plan, may make an application to NCLT for initiation of liquidation. On receipt of an application, if the Adjudicating

Authority determines that the MMPL has contravened the provisions of the resolution plan, it shall pass a liquidation order.

(iii) As per section 33(7) of the Insolvency and Bankruptcy Code, 2016, the order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor.

However, where the business of the corporate debtor when continued during the liquidation process by the liquidator, it shall not be deemed to be notice of discharge to the officers, employees and workmen of the corporate debtor.

So the Conduct of business of MMPL during liquidation process by the liquidator is tenable and shall not be deemed to be notice of discharge to the officers, employees and workmen of the MMPL.

(10 MARKS)

2. As per section 69 of the Code, on or after the insolvency commencement date, where the directors of the MMPL—

(a) has made transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;

(b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such directors of MMPL, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

However, directors of MMPL, shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.

(5 MARKS)

CASE STUDY -4

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (A)

2. (B)

3. (C)

4. (B)

5. (C)

II. ANSWERS TO DESCRIPTIVE TYPE QUESTIONS

(i)

1. Expected date of completion of construction- 31st March, 2020 -This condition is valid.
2. Expected date of handover- 31st May 2020, subject to a grace period of 4 months. -This condition is valid.
3. According to Section 13, a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

Hence, the condition in the agreement for sale for booking advance amount to be paid prior to entering into agreement to sale @20% of total cost of apartment is not valid.

4. Section 2(n) of RERA, 2016 defines 'common areas' to include 'open parking areas', thus open parking areas cannot be sold to the allottees.

Hence, the condition in the agreement for sale for open car parking cost Rs. 2,00,000 is not valid.

5. As per section 19(7) of RERA, 2016, the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid.

Hence, the condition about any delay in payment of dues by the allottees will be liable for interest on such delayed payments, is valid.

6. The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

Hence, the condition for return of booking amount shall not be entertained for any reason whatsoever is not valid.

7. The builder has to provide five-year warranty for any structural defects in the building. They are liable to pay equal rate of interest in case of default or delays as home buyers.

Hence, the condition that Winner Group shall be liable for any deficiency in quality of construction for a period of 3 years from the date handing over the apartments is not valid.

(4 MARKS)

(ii) Adherence to sanctioned plans and project specifications by the promoter (Section 14)

- (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the

competent authorities.

- (2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—
 - (i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person.

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

- (ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottees, 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, etc., 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.

- (3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

In the instant case, the proposal of Winner for reduction of the size of swimming pool and the same to be compensated by providing a Jacuzzi and spa inside the club house was accepted by majority (45 of the 80) of the allottees and accordingly, Winner proceeded with the construction based on the amended plan.

According to the above provisions, the promoter shall not make any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Hence, approval by majority (45 of 80) is not valid.

(4 MARKS)

- (iii)** As per section 2(k) of the Real Estate (Regulation & Development) Act, 2016 "carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Accordingly, Sale of property will be on carpet area, not super built area. Therefore, the homebuyer will have to pay only for the carpet area, that is the area within walls, and the builder cannot charge for the super built-up area.

Therefore, the explanations provided by Mr. Vijay Nair on the reduction of the carpet area was invalid. So, home buyers/ customers are liable to pay only for the carpet area, that is the area within walls.

(3 MARKS)

- (iv)** As given in the question that on 30th March, 2019, meeting was organized by the company with all the allottees. During the meeting, Mr. Vijay Nair provided a status update on the project and of the construction activities to be completed and the other information mentioned in the sale agreement. As per the Section 11 of Real Estate (Regulation & Development) Act, 2016, it is the duty of the promoter, to alter a project plan, structural design and specifications of the plot, apartment or a building, the promoter has to get the consent of minimum two-third allottees (buyers) after the necessary disclosures.

Since in the given case no approval of 2/3rd of the allottees was taken w.r.t. to delay and the increase in labour costs i.e., as to the updation of the status of the said project. This act of Mr. Vijay Nair is not in compliance with the Law.

(4 MARKS)

CASE STUDY - 5

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

- 1.** (c) [As per regulation of FEMA (Export of goods and services) regulation 2016]
- 2.** (d) [Hint: Section 4 (2), proviso to (D) of clause (I) of the RERA, 2016]
- 3.** (c) [Hint: Refer section 3]
- 4.** (d) [Hint: Refer Part C of the Schedule to the Prevention of Money Laundering Act,

- 2002]
5. (c) [Hint: Section 11 (4) read with section 89 of the RERA, 2016]

II. ANSWERS TO DESCRIPTIVE TYPE QUESTIONS

1.

(a) As per section 13 (1) of the FEMA, 1999, If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable.

Any Adjudicating Authority adjudging any contravention to above provisions, may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

According to the above provisions, Mr. Mehta will be penalized thrice of the extra amount (USD, 20,000) remitted above the prescribed limit (USD 2, 50,000). Hence liable to pay a penalty of USD 60,000 to the Government.

(b) The second issue is related to sections 13(1A), 13(1C) & 37A of the FEMA Act, 1999 read with Regulation 5 of the FEM(Acquisition & transfer of immovable property outside India)Regulation , 2015.

As per section 13(1A), if any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be liable to a penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, of the foreign exchange, foreign security or immovable property.

13(1C) of FEMA says that if any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be, in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.

According to Section 37A of the FEMA, upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

As per regulation 5 of the FEM (Acquisition & transfer of immovable property outside India) Regulation, 2015, a person resident in India may acquire immovable property outside India jointly with a relative who is a person outside India. Provided there is no outflow of funds from India.

Since in the given case, Mr. Mehta remitted Foreign exchange to Sorav in excess to the limit prescribed under the FEMA. Sorav partially used USD 20,000 for medical treatment and rest USD 50,000 to purchase property outside India jointly with Mr. Mehta. So Both Mr. Mehta and his son Sorav will be liable under sections 13(1), 13(1A), 13(1C) of the FEMA, 1999.

(10 MARKS)

2. According to provision of Section 15 (1)

- (1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorized in this behalf by the Central Government in such manner as may be prescribed."
- (2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

As per the above mention provision Mr. Mehta will submit the application to the concerned authority for compounding of the offences committed in contravention to the FEMA Act.

(5 MARKS)