



CA FINAL – Nov. 19
SUBJECT- Elective (Economics Law)

Test Code – FNJ 7309

(Date :)

(Marks - 100)

ATTEMPT ANY FOUR CASE STUDIES OUT OF FIVE.

CASE STUDY -1

Albert John, right from his childhood had high dreams and aspirations. His hobbies included travelling, scuba diving, gliding, trekking, and other adventurous sports. To go around the globe was his biggest wish. Therefore, after his schooling, to satisfy his prime interest in travelling, he opted for a two years' Diploma and thereafter, a 18 months' Post Graduate Diploma in Tourism and Travel Industry Management, from the University of Mumbai.

After post-graduation he had a lot of options like to become a travel agent or join any immigration and customs services, travel agencies, airline catering or laundry services, etc. Initially, however, he got a chance to join a reputed travel agency where he gathered on-hand experience and continued with the job for about two years but his innermost desire was to do his own business and therefore, he opened up a proprietary travel agency under the name of 'John Travel Agents' in Mumbai. Within a period of about five years he could earn substantially from his business. He used to arrange foreign currency also through his contacts for needy tourists who did not want to use banking channels for this purpose.

In the meantime, he got married to Neelima George and was comfortably settled in his 2BHK flat in Mumbai. Keeping in view the future expansion of his travel agency business, he decided to form a private limited company by the name 'John and George Travel Agency Pvt. Ltd. having its registered office in Mumbai. After, it was got registered with ROC, Mumbai with the authorised capital of Rs. 10 lacs, Albert wrapped up its business conducted so far under 'John Travel Agents'.

His business was flourishing. By now he had seen most of the touring destinations of Europe and East Asia by taking his clients around. One of such clients was Chimanbhai Patel, a leading and famous exporter of Mumbai. He was a rich and dynamic businessman dealing in gold, diamonds and precious as well as semi- precious stones. He had three companies *i.e.* Shining Gold Jewellery Pvt. Ltd., which dealt in gold jewellery; Red Star Pvt. Ltd. which dealt in diamonds and jewellery studded with diamonds; and Blue Sapphire Pvt. Ltd. which dealt in precious and semi-precious stones. He was the owner of two palatial bungalows situated at Bandra and Juhu.

Once he took Chimanbhai, his wife and both of their married daughters as well as sons-in-law to Europe for a family vacation trip. He arranged for them Royal Caribbean's cruise liner 'Harmony of the Seas' which was like a five star hotel at sea, for a 'seven night' cruise starting from Barcelona. While on board, Chimanbhai proposed him a business deal which required him to deliver gold biscuits worth Rs. one crore to one of his close friends on his next visit to Hong Kong and for accomplishing this job he would get some hefty commission. After some hesitation he agreed to do the assigned work and the deal was done. Albert managed to somehow pass on the tainted wealth as

directed by Chimanbhai. In return he got rich kickbacks in the form of commission; and also admired this new way of earning quick money. The bond between Albert and Patel grew intense and he accomplished many such assignments including converting of Indian currency representing black money into foreign currency and delivering it outside India to a safe haven.

This way slowly and gradually Albert entered into money laundering activities. Time passed on. He was a rich person now. He purchased a new 3BHK flat in the same locality and rented out his old flat. He also acquired properties in Uttrakhand and Rajasthan and at the same time invested additional funds in purchasing gold jewellery and diamonds including buying a rust coloured Mahindra XUV500. Though the current line of activity helped him in fulfilling his high dreams and aspirations but in actuality he was converting proceeds of crime to make them appear as legitimate money. He was a changed person now keeping the moral ethics at bay.

Once, while travelling in a Vayu Airways flight from Hong Kong to Mumbai he was impressed by the hospitality provided by Neetu Bhatia, a member of the cabin crew. An idea clicked him. Albert knew very well that flight attendants had access to secure venues at airports. At times, they did not require baggage screening. The cabin crews underwent minimum security check and therefore, needle of suspicion and surveillance was also minimal in their case. Thinking so, Albert befriended her and through his mesmerizing talks he could gather that she was a resident of Vile Parle, Mumbai and a regular employee on this route. He developed a story which reflected his persona as that of a business tycoon. Neetu was highly impressed by the sweet talks and manners exhibited by Albert and they exchanged mobile numbers.

A few days later, Chimanbhai sent requisite Indian currency to Albert for conversion into around one lac US Dollars and its deliverance to his business associate in Hong Kong. This time Albert thought of Neetu, called her and they met at a high profile restaurant 'Green Tea Day' in Worli. Albert disclosed her about delivering of USD one lac in exchange for handsome commission to one of his known and trusted business associates who would get the money lifted from the Hong Kong International Airport itself. Initially, Neetu was a little bit hesitant but the desire to earn some quick cash without putting in much effort prevailed over her good senses and she relented. Both of them, however, knew that it was a criminal conspiracy.

Albert had drawn a very simple *modus operandi* for her. He wrapped the stacks of dollars in aluminium foils and carbon sheets to dodge x-ray machine at the Mumbai airport. After placing them in her suitcase he put her make-up kit and clothes over them. At the security check, as he had anticipated, the foils were passed off as chocolates. After landing at Hong Kong Airport, Albert's local conduit picked up the cash from there. As promised, Neetu got the commission for deliverance. Not being caught in her first operation, Neetu's confidence level rose to a considerable extent. A few other consignments, delivered through her, were a no glitch operation but in the seventh one Albert's luck ran out and this operation was spoiled by Enforcement of Directorate (ED) officials who caught her before the plane could take off from the Chhatrapati Shivaji International Airport, Mumbai.

After being caught, Neetu got frightened and spilled the beans. She was taken under custody by Directorate of Enforcement Officers and her thorough investigation revealed the involvement of Albert. Her offence of carrying foreign currency on the behest of Albert was considered to be a Scheduled Offence falling in Part A of the Schedule to the PML Act (*i.e.* criminal conspiracy involving Section 120B of the IPC). After following due procedures including filing a complaint before the jurisdictional Magistrate for taking cognizance of the scheduled offence, her residence was also searched and gold jewellery worth Rs. 21 lacs was recovered and Dy. Director duly authorised by the Director took steps to provisionally attach the recovered jewellery in the presence of two independent witnesses.

Simultaneously, following due procedures, a search team headed by Dy. Director raided the house of Albert. By the time the officers of ED entered his house, Albert was almost ready to go on a trip to Dubai as a part of routine job but with a special mission. The officers could smell a rat and took him to his rust coloured Mahindra XUV500. Immediate search of his car gave way to the recovery of 24 kgs. of gold which was going to be smuggled out of India through various conduits. It transpired from Albert that the gold belonged to Chimanbhai Patel, a famous exporter of Mumbai.

From the search of Albert's residence, various incriminating documents were also recovered. In one of the almirahs, there was a hidden bottom drawer but the hawk eyes of ED officers were able to detect it. Albert was asked to open it but he did not oblige giving lame excuse that the keys were misplaced. This compelled the officers to break open it. When opened forcibly, this secret drawer contained five silver pouches where narcotic drugs were securely kept. On further enquiry it was found that he had two lockers in two different banks. A search of the lockers gave way to the recovery of fixed deposits receipts worth Rs. 1.25 crores, hard cash Rs. 50 lacs and property papers showing properties in Uttarakhand and Rajasthan. In both the properties his name was not registered as the owner. The title documents of residential property at Uttarakhand contained the name of Raj Karan, his driver and the property in Rajasthan was a farm house which was in the name of Sanju who was the husband of the full time maid-servant Rani working at his house. Both the properties seemed to be benami properties. Recovery of a green diary from one of the lockers confirmed the name of Chimanbhai Patel and the various transactions Albert had with him. Time was up for both of them.

Since dealing in drugs was a Scheduled offence under the PML Act, the ED Officers, filed a complaint before the jurisdictional Magistrate for taking cognizance of the scheduled offence. Thereafter, following the property attachment procedures, the Dy. Director duly authorised by the Director provisionally attached and seized all the movable and immovable properties as well as records. Identification marks were placed and an inventory was made in respect of seized property and records. This was done in the presence of two independent witnesses.

At the time when Albert revealed the involvement of Chimanbhai, immediately, a search team under the supervision of duly authorised Dy. Director was sent to the palatial bungalow of Chimanbhai Patel situated at Bandra. It was found that the bungalow was spread over 5000 sq.ft. approximately. A search of the basement of his bungalow revealed presence of narcotic drugs and psychotropic substances. In between the wooden partitions used in the basement, they also found counterfeit Indian currency valuing Rs. 40 crores. It was a Scheduled offence falling in Part A of the Schedule to the

PML Act where amount involved had no consideration. It was alleged by the Dy. Director that Chimanbhai Patel possessed proceeds of crime but tried to project the same as untainted property and therefore he was guilty of offence of money-laundering under Section 3 of the PML Act.

The other - Jal Tarang Mahal residence - a 7 BHK villa of Chimanbhai Patel at Juhu was also raided concurrently by the ED officials. It was really a humongous, palatial sea-facing bungalow covering approximately 25,000 sq.ft. area and fully done up with imported and handpicked interiors. The building had basement, ground floor and a first floor. In a two-day long search, the officials seized, *inter-alia*, thirty diamond rings worth Rs. 30 crores; fifty watches worth Rs. five crores; the choicest of rare paintings by M. F. Hussain, Hebbbar, Tyeb Mehta and Amrita Shergil valuing approximately Rs. 21.5 crores which were displayed in a special air-tight hall so that moisture in the air could not damage them; high end and antique jewellery valued at Rs. 46 crores; high end cars which included Rolls Royce Ghost, Mercedes Benz, Porsche Panamera, Ford Mustang, Toyota Fortuner and Innova. The total attachment and seizure of diamonds, gold, precious and semi-precious stones and other movable and immovable assets stood at Rs. 6562 crores. His various companies were also searched and a number of incriminating documents, files, computers, etc. were seized.

The intensive search revealed that Chimanbhai used to bring his own black money from about twenty shell companies based at Hong Kong and Dubai into the accounts of his three main companies in India as foreign direct investment. He subsequently diverted these funds into the accounts of various shell companies describing transfers as unsecured loans from where the funds were siphoned off through various means including cash withdrawals.

An investigation was also conducted under FEMA, 1999 for alleged violations of Sections 3 and 4 of FEMA for dealing in and acquiring and holding foreign exchange in his account with United Royal Bank of Switzerland whose value in Indian currency was approximately Rs. 3,600 crores.

Being a Scheduled offence falling in Part A, it was required of authorised ED Officers, to file a complaint before the jurisdictional Magistrate for taking cognizance of the offence which was done immediately. Thereafter, following the provisions of Section 17, the ED Officers seized all the movable and immovable properties as well as records in the presence of two independent witnesses. As in the case of Albert, identification marks were placed and an inventory of the seized property was also made.

All of them were arrested by the authorised ED Officers, since ED officers, on the basis of material in their possession, had reason to believe that they were guilty of an offence punishable under PML Act. Immediately after their arrest, the officers forwarded a copy of the order along with the material in their possession to the Adjudicating Authority in a sealed envelope, in the prescribed manner. Further, the guilty persons were, within 24 hours, taken to the jurisdictional Magistrate.

As we have noted earlier, keeping in view Section 5 (1), in all the above cases, the ED Officers, through written orders provisionally attached the properties because it was suspected that they were derived from the proceeds of crime. The ED Officers knew that the maximum period of attachment would be limited to 180 days from the date of the order.

Thereafter, the ED Officers forwarded the copies of the orders provisionally attaching the properties of Neetu, Albert and Chimanbhai Patel along with the various documents in his possession to the Adjudicating Authority in a sealed envelope.

The ED Officers also filed complaints stating the facts of such provisional attachments before the Adjudicating Authority within thirty days of such attachments.

The Adjudicating Authority served on Neetu, Albert and Chimanbhai Patel notices to explain in not less than 30 days their source of income, earning or assets out of which they had acquired the attached property.

The attachment of the properties was confirmed by the Adjudicating Authority bearing in mind that such properties were involved in money laundering being obtained through the proceeds of crime. However, such confirmation was made only after considering the replies of the aggrieved persons as well as after hearing them.

In terms of confirmation order passed by the Adjudicating Authority, the ED Officers, forthwith took the possession of the attached properties.

The trial of the above money laundering offences is being done by the jurisdictional Special Court. The Central Government in consultation with the Chief Justice of the High Court is empowered to designate one or more Courts of Sessions as Special Court or Special Courts for trial of offence of money laundering .

Under Section 4, if Neetu, Albert and Chimanbhai Patel are found to have committed the offence of money- laundering, then they shall be punishable with rigorous imprisonment which shall be minimum three years and maximum seven years and shall also be liable to fine. In case it is proved that the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.

On conclusion of a trial, if the Jurisdictional Special Court finds that the offence of money-laundering has been committed, it shall order that the properties involved in the money laundering shall stand confiscated to the Central Government.

If on conclusion of a trial, the Special Court finds that the offence of money laundering has not taken place, it shall order release of such property to the person entitled to receive it.

Required (MCQ of 2 marks each)

Select the most appropriate answer from the options given for each question:

1. Whether the 2BHK flat owned by Albert but rented out can be considered to have been derived from the proceeds of crime:
 - (a) Yes it can be considered because Albert, the owner, is involved in money laundering activities;
 - (b) No, it cannot be considered because Albert did not purchase it from funds obtained through money laundering activities;
 - (c) No, it cannot be considered because Albert has rented it out;
 - (d) None of the above.

2. Adjudicating Authority may serve a notice of not less than on Neetu, Albert and Chimanbhai Patel who are believed to have committed offence of money laundering to explain their source of income, earning or assets out of which they had acquired the attached property.
 - (a) 14 days
 - (b) 30 days
 - (c) 60 days
 - (d) None of the above
3. After provisional order of attachment is confirmed by the Adjudicating Authority, the Director shall forthwith --.
 - (a) confiscate the attached properties;
 - (b) take the possession of the attached properties;
 - (c) seize the attached properties;
 - (d) None of the above
4. Provisional attachment of property of Chimanbhai Patel suspected to be involved in money laundering ensures that he is prohibited to:
 - (a) transfer the attached property;
 - (b) convert the attached property;
 - (c) dispose of the attached property;
 - (d) All of the above
5. A complaint with the Adjudicating Authority is to be filed within a period of ____ days by the Director who provisionally attaches the property involved in money laundering.
 - (a) 15
 - (b) 20
 - (c) 30
 - (d) 60

Required (Descriptive Questions)

1. As per the facts, Albert through laundered money purchased 3 BHK. Suppose if the said flat is purchased by him jointly on his and his wife's name, Neelima Goerge. Examine in the light of the Prevention of Money Laundering Act 2002, the following situations:
 - (a) Will Neelima be also liable for holding of the such joint property.
 - (b) If property is claimed by a person, other than whom the notice has been issued. Discuss the legal position of the person claiming the property.

(10 MARKS)

2. (i) Chiman bhai is a person resident in India. He has different business units as to manufacturing & designing of jewellery in Hongkong which is owned by him. How will you determine whether a particular business units of Chiman bhai is a 'person resident in India' under the Foreign Exchange Management Act, 1999?

(ii) Suppose if 'Blue Sapphire Pvt. Ltd.' is a Singapore based company having several business units all over the world. It has a unit for cutting & manufacturing precious and semi-precious stones in the form to be used for the jewellery with its Headquarters in Mumbai. It has a Branch in Dubai which is controlled by the Headquarters in Mumbai. What would be the residential status under the FEMA, 1999 of units of Blue Sapphire Pvt. Ltd in Mumbai and that of Dubai branch?

(5 MARKS)

CASE STUDY -2

During March 2017, XMC Pvt. Ltd., a car manufacturing company, launched its TXI model of car with a lot of advertisements and promotions in all types of media platforms, *inter alia*, highlighting the Ex-showroom price of the said car model in Mumbai as Rs. 6.25 lacs.

Mr. Nazir, a prospective buyer of the said model, visited an authorised dealer of XMC Pvt. Ltd. i.e. M/s Ratan Lal & Sons located at Bandra, Mumbai and after due consultation/ discussion with the representatives of M/s Ratan Lal & Sons, booked a vehicle of the aforesaid model on 11th May, 2017 on payment of Rs. 100,000/-. M/s Ratan Lal & Sons in turn provided the money receipt for the aforesaid transaction with serial number ABC/1010 as well as booking reference number 218/ 2017 to Mr. Nazir. He was assured by the representatives of M/s Ratan Lal & Sons that the booked vehicle will be delivered within three months from the date of booking i.e. by 10th August, 2017. However, the representative of M/s Ratan Lal & Sons have stated to Mr. Nazir that as per XMC Pvt. Ltd.'s policy, five months' time is given in writing so as to keep some buffer for delays which may arise due to unforeseen exigencies or transportation of vehicle or other logistic problems. Mr. Nazir, *inter alia*, noted the conditions in the booking document that "*the vehicle would be delivered within six months from the date of booking*". Believing the assurance given by the representative of M/s Ratan Lal & Son, Mr. Nazir accepted the terms of the booking and thought that he will get the vehicle within three months from the date of booking as assured by the representatives of M/s Ratan Lal & Son and in worst scenario he will get delivery of the vehicle within six months from the date of booking as per the terms and conditions of booking of the vehicle.

However, within three months of booking of the vehicle, M/s Ratan Lal & Son failed to deliver the vehicle to Mr. Nazir despite repeated request and after 10th August, 2017, Mr. Nazir contacted the representatives of M/s Ratan Lal & Sons many times for delivery of the vehicle and they kept on giving assurances that the delivery of the vehicle will be done within six months from the date of booking as per the conditions of booking. After five months, on 15th February 2018, Mr. Nazir written an e-mail to XMC Pvt. Ltd. highlighting the issue of delay in delivery of the booked vehicle, but did not get any response. Then he wrote an email to the President of XMC Pvt. Ltd. and got the reply that his grievances will be looked into by the sales team of the Company and the concerned dealer.

Despite the assurance of the president of XMC Pvt. Ltd., the booked vehicle was not delivered to Mr. Nazir. Rather, through M/s Ratan Lal & Sons, he was informed that due to delay in production of the said model, the Company is not able to deliver the same and he was asked to wait for some more time. Subsequently, he received a letter from XMC Pvt. Ltd wherein, *inter alia*, it was informed that due to unprecedented number of bookings for the said model the delivery of the car will be delayed for two months. Through the said letter, it was also informed that the price of the booked car will be

revised and it will be effective from the date of booking by dealer to the customer.

About the market and the state of competition

As per Mr. Nazir, XMC Pvt. Ltd. is a big player in the car manufacturing market. Its financial strength and brand name is much more compared to other players in the market. Also, it commands largest market share in terms of sales and revenue compared to its competitors and in the last financial year XMC Pvt. Ltd. acquired a loss making car manufacturing company *i.e.* Trisha Ventures Pvt. Ltd. As per Mr. Nazir, XMC Pvt. Ltd. has taken recourse to terms and conditions of the booking documents to enforce price hike and also not honouring the commitment made for the delivery within the given time period despite repeated correspondence. XMC Pvt. Ltd. and its dealer at Mumbai M/s Ratan Lal & Sons started the gimmick of non-delivery due to production delay and started informing that there will be higher price of the vehicle. Mr. Nazir alleged that he and other similarly situated consumers are being not given with delivery of the vehicle in due time and the delay tactics done by XMC Pvt. Ltd. is to increase the price of the vehicle and to exploit the consumers by not giving the benefit of initial launch price which is not fair in a competitive market.

Concerns raised

As per Mr. Nazir, XMC Pvt. Ltd. has abused its powers to fix the price of the vehicle. It has initially priced attractively and launched with heavy advertisements and promotions to lure the customers and take maximum bookings by taking interest free amount of Rs. 100,000/- as booking amount. By doing this XMC Pvt. Ltd. has been able to not only generate huge amounts of cash which is interest free but also create buzz in the market because of publicity in the media regarding heavy bookings of the said vehicle. It is stated that XMC Pvt. Ltd. has arbitrarily increased the price of the vehicle to encash on the market demand. Not only that, the Company has also not passed on the benefit of recent GST reduction on the passenger cars by Government to the consumers in the said car model. However, it has passed on the benefit of the GST reduction on its other car models to the customers which are not in such demand. Most of the other car manufacturers have duly passed on the GST reduction to the customers. As per Mr. Nazir, XMC Pvt. Ltd. has indulged in unfair practices in connivance with its dealers by manipulating its delivery policy and price policy. After seeing huge response because of attractive initial offer price, it not only delayed in giving delivery of the booked car but also increased the price which is nearly two times of the offer price at the time of booking. It has not honored the commitment of delivery and price to the buyer who had booked on the very first day and first hour of the launch. Mr. Nazir stated that it is not just an individual issue but it involves the larger interests of car buyers, who do not have any recourse to effective mechanism against the abuse of dominant position by such auto manufacturers for imposing anti-competitive terms on the buyers.

Based on the above submissions Mr. Nazir alleged that the aforesaid conduct of XMC Pvt. Ltd. is not in tandem with the provisions of the Competition Act, 2002 and it has acted in a manner which can be termed as anti-competitive.

I. Objective Type Questions (2 marks each)

Select the most appropriate answer from the options given for each question:

1. Which of the following is the appropriate authority for redressal of the grievances of Mr. Nazir?
 - (a) District Consumer Redressal Forum
 - (b) Competition Commission of India
 - (c) Car Manufacturers Association of India
 - (d) Both (a) and (b)
2. Under which provisions of the Competition Act, 2002, the grievances of Mr. Nazir can be examined?
 - (a) Prohibition of horizontal anti-competitive agreement under section 3(3) of the Competition Act, 2002
 - (b) Prohibition of abuse of dominant position under section 4 of the Competition Act, 2002
 - (c) Prohibition of vertical anti-competitive agreement under section 3(4) of the Competition Act, 2002
 - (d) Regulation of combination under section 6 of the Competition Act, 2002
3. Mr. Nazir stated that "it is not just an individual issue but it involves the larger interests of car buyers, who do not have any recourse to effective mechanism against the abuse of dominant position by such auto manufacturers for imposing anti-competitive terms on the buyers". What would be his prime intention in stating so?
 - (a) The car manufacturer's conduct towards him is exploitative
 - (b) The car manufacturer is imposing anti-competitive terms on him.
 - (c) The conduct of car manufacturer is not conducive to the market as it affects larger consumers' interest.
 - (d) All the above
4. Let, Mr. Nazir approached the Competition Commission India for his grievances and you are the person in the Commission to take a decision in the matter and according to you the matter pertains to abuse of dominance. What would be your sequence of analysis of the matter?
 - (a) XMC Pvt. Ltd. is dominant or not
 - (b) Whether the alleged conduct is abusive under section 4 of the Competition Act, 2002
 - (c) Whether XMC Pvt. Ltd. falls under the definition of enterprise as defined under the Competition Act, 2002
 - (d) Define the relevant market where XMC Pvt. Ltd. is operating
5. Let Mr. Nazir approached the Competition Commission India for his grievances and you are the person in the Commission to take a decision in the matter and according to you the matter pertains to vertical restraint under section 3(4) of the Competition Act, 2002. What would be your sequence of analysis of the matter?

- (a) Whether XMC Pvt. Ltd. and M/s Ratan Lal & Sons have entered into an agreement
- (b) Whether XMC Pvt. Ltd. and M/s Ratan Lal & Sons are placed at vertical level.
- (c) Whether there is any appreciable adverse effect on competition because of anti-competitive agreement between XMC Pvt. Ltd. and M/s Ratan Lal & Sons.
- (d) Whether XMC Pvt. Ltd. and M/s Ratan Lal & Sons have agreed on some issues which are anti- competitive in terms of section 3(4) of the Competition Act, 2002.

Descriptive Questions

1. Do you think that the concerns raised by Mr. Nazir can be examined through the provisions of the Competition Act, 2002? If yes, explain the steps through which the matter can be examined. **(7 MARKS)**
2. What is relevant market? State the provisions of the Competition Act, 2002 to delineate the relevant market. Delineate the relevant market in the instant case. **(8 MARKS)**

CASE STUDY -3

Ronit Chawla was a Fellow Chartered Accountant (FCA) practicing in the field of corporate and economic laws. He represented his clients before Company Law Board (CLB) and thereafter in National Company Law Tribunal (NCLT). After coming into force of Insolvency and Bankruptcy Code, 2016 w.e.f. 28 May, 2016, he learnt about the Limited Insolvency Examination (LIE) for becoming Insolvency Professional (IP). Since he had about eleven years of experience as practicing CA, he attempted the very first examination of LIE conducted by Insolvency and Bankruptcy Board of India (IBBI) in December 2016 and successfully cleared it. He then enrolled himself with a reputed Insolvency Professional Agency (IPA) and got registered with IBBI by fulfilling the requisite formalities including payment of non-refundable application fee of Rs. ten thousand.

His father Roopesh Chawla, a resident of Green Park, New Delhi, was recently posted as Chief Manager in Bank of India, Delhi which was a full-fledged Foreign Exchange (FX) branch though Roopesh, being unable to get a chance to work in a FX branch, had very little knowledge of rules relating to Foreign Exchange. Therefore, he used to consult his son Ronit in the matters of foreign exchange from time to time. His mother Rukmani Chawla was a senior teacher in Kendriya Vidyalaya, New Delhi, taking commerce classes.

Rajnish Sinha, a close friend of Roopesh, was heading a Delhi branch of Punjab National Bank (PNB) and knew that Roopesh's son Ronit besides being a Chartered Accountant was also an Insolvency Professional. Rajnish, on behalf of PNB, wanted to initiate corporate insolvency resolution process (CIRP) before NCLT in the case of its customer Manohar Masale Pvt. Ltd. (MMPL) of Delhi which had defaulted in repaying the dues of the bank totaling approximately Rs. 23.00 lacs. Accordingly, PNB being financial creditor, while making an insolvency resolution application to NCLT proposed the name of Ronit as Interim Resolution Professional (IRP). MMPL was sanctioned cash credit limit of Rs. 10.00 lacs against hypothecation of stock of raw material and finished goods and another bill discounting limit of Rs. 5.00 lacs against actionable claims. MMPL was registered with an authorised capital of Rs. 25.00 lacs but its paid up capital was to the tune of Rs. 10.00 lacs.

Initially started as a registered partnership concern (Manohar Masale & Co.) by two brothers, namely, Ram Manohar and Shyam Manohar, it did profitable business and keeping an eye on future business growth, it was converted into a private limited company with Ram, Shyam and Shyam's elder son Shivam as directors. Shyam's younger son Dwapam, an alumnus of IIFT, Delhi and also a law graduate, did not have any interest in the family business and was more inclined to continue with his current employment in a German MNC having its office in Gurugram.

MMPL's factory in Okhla Industrial Area was located on the one-fourth portion of the plot which was co-owned by the brothers. However, the bank had created an equitable mortgage on the plot as well as factory building while sanctioning the working capital limits to the company. The elder brother Ram Manohar was the anchoring person who steered the company to newer heights due to his sheer business acumen and inherent managerial skills but one day, all of a sudden, he had a massive heart attack resulting in his untimely death. Since he was not married, the business of 'masale making' was now run by Shyam and his son Shivam.

However, the father-son duo could not manage the business properly because of the lack of foresight, faulty inter- personal relations and poor organisational skills. Their authoritative style of leadership resulted in demotivation of workers which led to labour unrest and all sort of other conflicts. The paternalistic approach towards them which Ram always displayed was missing altogether. Needless to say, the output started declining and wastage of raw material turned north. Since there was no vigorous follow-up as well, the debtors to the tune of around Rs. 12.00 lacs were long overdue. Consequently, the company started suffering losses and also defaulted on dues from the bank.

When PNB, even after repeated reminders to MMPL, could not realise its dues and the liability touched the height of around Rs. 23.00 lacs (including normal and overdue interest), Rajnish Sinha, on behalf of PNB, decided to file corporate insolvency resolution application duly supported by ledger extracts and other specified evidences (*services of Information Utility could not be used as by the time application was filed there was no IU registered with IBBI*) with Adjudicating Authority i.e. NCLT, New Delhi for initiating CIRP against MMPL.

NCLT considered the corporate insolvency resolution application along with the proposed name of Ronit as Interim Resolution Professional (IRP). Within next 10 days of receipt of application (which was lesser than the statutory period of 14 days) NCLT ascertained that there existed default because the defaulted amount was much more than the minimum required of Rs. one lac. Since the CIRP application was complete in all respects, NCLT admitted it and within the statutory period of next seven days after admission, it conveyed its order of commencement of CIRP to the financial creditor (i.e. PNB) and the corporate debtor (i.e. MMPL).

The order of NCLT confirmed the proposed appointment of Ronit as IRP for 30 days, for Ronit had a clean record without any disciplinary proceedings pending against him. It was also stated in the order that a moratorium period of 180 days had become applicable during which all suits and legal proceedings, etc. against MMPL (i.e. corporate debtor) were to be held in abeyance so as to give time to the ailing company to resolve its status. MMPL was also barred from transferring or disposing of any of its assets or any legal rights therein. However, the supply of specified essential goods and services to the MMPL as mentioned in

the order, were not to be interrupted during moratorium period.

In the meantime, Ronit's father Roopesh faced a peculiar problem related to the foreign exchange matter at his branch. His FX officer brought to his knowledge that one of their exporter customers who had received an advance of USD 75,000 from an importer based at California, USA against export of ready-made jeans had not shipped the requisite items worth USD 2,00,000 by utilizing the advance so received. The exporter, not willing to ship the goods, wanted to refund the advance to the importer along with interest for which permission of Roopesh was required. Roopesh did not allow the refund immediately and in turn, advised the FX officer to gather more knowledge about FX provisions whether refund along with interest was permissible. At the same time he also discussed the matter with his son Ronit who advised him to refer FEM (Export of Goods and Services) Regulations, 2015. A scrutiny of the relevant banking records revealed that 14 months had already expired since advance of USD 75,000 was received. Further, he came to know that if goods were not shipped within one year of receipt of advance, such advance could not be refunded without the permission of the RBI. Accordingly, he advised the customer to seek permission of RBI through his branch.

After his appointment as IRP, Ronit assumed full control of the affairs of MMPL. Since powers of the board of directors stood suspended he was empowered to exercise such powers. Accordingly, he took immediate custody and control of all the assets of the MMPL including its business records.

Following the orders of NCLT, Ronit took steps to make a public announcement within three days from the date of his appointment regarding the initiation of CIRP against MMPL.

Public announcement, included the following aspects:

- Name and address of the corporate debtor (i.e. MMPL) and its registration/incorporating authority.
- His details as IRP and the fact that he would be vested with the management of the corporate debtor and be responsible for receiving claims.
- Penalties for false or misleading claims.
- The last date for the submission of the claims.
- The date on which the CIRP would end.

After the expiry of last date for submission of claims, a Committee of Creditors was constituted which included PNB and five trade creditors who had cumulative dues of Rs. 3.00 lacs. Within seven days of its constitution, the first meeting of the committee was called. In the meantime, Ronit electronically submitted an Information Memorandum to the creditors after they had given an undertaking regarding maintaining of confidentiality. This Information Memorandum contained details of assets and liabilities of the MMPL with their estimated values, audited financial statements for the last two financial years and provisional financial statements for the current financial year made just eight days earlier from the date of the application, a list of creditors and the amounts claimed by them which were duly admitted and other prescribed information.

In the meeting of the Committee of Creditors it was resolved to let Ronit continue as full-fledged Resolution Professional (RP) since he was eligible to be appointed as an independent director and was not a related party of the MMPL and such decision was conveyed to the NCLT as well as MMPL. As RP, Ronit assumed all those powers which were conferred on him as IRP. He was required to manage the operations of the MMPL during the CIRP period.

Based on the Information Memorandum, Rajnish on behalf of PNB as resolution applicant undertook to prepare a resolution plan as per the provisions of the Code for onward submission to Ronit. Before finalizing the resolution plan, he along with his two officers took up the matter with Shyam and his son Shivam regarding the revival of MMPL and repayment of long outstanding dues or face liquidation if they were not inclined to revive the company. The fear psychosis of liquidation made them think frantically to save their company from imminent death. Having woken up from their slumber they started exploring ways to bring in short term finance and also to rope in some professional who would help the company in its revival.

Shyam saw a ray of hope in his younger son Dwapam and persuaded him to participate in the management of the affairs of the company at least for the first three months to which he ultimately agreed. In the meantime Shyam, with a view to raise short term finance, consulted his elder sister Rama Devi to lend at least Rs. 5.00 lacs for a short period of about one year and also convinced his daughter Ria, her husband Dushyant as well as Dwapam to invest at least Rs. 3.00 lacs each in the share capital of the company. Shivam who had invested funds in the share market agreed to sell his securities to raise Rs. 3.00 lacs against which he was to be allotted shares in the MMPL. As per the advice of the bankers, Shyam also started inter-acting with long overdue debtors for recovery who eventually agreed to pay 50% of Rs. 12.00 lacs in the current month and remaining amount in the next month. Out of the raised amount, the operational creditors were to be paid fully while dues of PNB were to be satisfied to the extent of Rs. 12.00 lacs. Further, Rs. 2.50 lacs were to be allocated towards insolvency resolution process costs including fee of RP and remaining amount was to be utilized as working capital. Since both the directors of MMPL had consented to repay Rs. 12.00 lacs in one lump sum, Rajnish on behalf of PNB assured them that he would take up the matter of waiving of overdue interest up to Rs. 2.00 lacs with his Dy. General Manager and would also seek permission to revive MMPL's limits which were currently frozen.

Based on the experience he gathered while working with two MNCs, Dwapam assumed the role of a leader to set the company on rails. He took note of the prevailing situation from which the ailing MMPL was passing through. He observed that the current as well as liquid ratios were much far away from the standard norms of 2:1 and 1:1 respectively. The turnover ratios were also unhealthy and at the same time the operating ratio was very high - not a good sign for any business. An investment of about Rs. 5.00 lacs was tied up in raw material like whole red chillies, coriander seeds, turmeric, black pepper, dry mango, etc.

Since currently the business of spices was run in a traditional manner, Dwapam decided to take the following short, medium and long term measures:

Short term measures:

- to understand the needs and wants of customers in the target market;
- to apply the principles of scientific management;
- to set standards for raw material, wastage, working conditions, etc.;
- to conduct time and motion studies;
- to provide financial incentives and to adopt social security plans for the workers;
- to secure registration with FSSAI immediately;
- to appoint an Administrative Officer and, if need be, to appoint another one in future;
- to devise competitive pricing strategy;
- to create a corporate brand identity by assigning the product a brand name 'Manohar Uttam Masale' which would help in building a brand image;
- to design an attractive package and label by using a graphic design of spices combining green, yellow and red colours for different varieties of masale;
- to promote the masale by advertising initially in leading newspapers and depending upon income generation in future, to advertise on FM radio, TV as well as cinema halls;
- to adopt sales promotion measures like free gift offers, contests, free sample distribution, etc.
- to select the similar channels of distribution as used by the competitors;
- to conduct SWOT analysis of MMPL and important competitors;
- to create an effective Website of the company;
- to take decisions regarding various activities under physical distribution of masale like order processing, transportation, warehousing and inventory control;
- to adopt strict credit policy by reducing debtors' days with a regular follow-up;
- to use an accounting software;
- to submit various Government Returns within the prescribed time limits so that avoidable hefty penalties are not levied.

Medium and Long Term Measures:

- to stop heavy expenditure on repairs and maintenance by installing new machines and grinders;
- to establish direct contacts with the cultivators for obtaining raw material which would help in avoiding middlemen and their high commissions;
- to develop the remaining three-fourth portion of the plot and rent out some of the developed portion to a commercial establishment;
- to renovate the factory building.
- to manufacture more types of different spices like Rajma Masala, Pindi Chana Masala, Shahi Paneer Masala, Dal Makhni Masala, Mushroom Matar Masala, etc;
- to diversify MMPL's operations by manufacturing Jams and Ketchups;
- To explore offshore markets.

Rajnish prepared a resolution plan containing the above strategies and submitted it to Ronit for his consideration. Later on, a meeting of committee of creditors was called by Ronit and the resolution plan was presented for its approval. The plan was duly approved by full majority. Thereafter, Ronit submitted the approved resolution plan to the NCLT for its approval.

Since the resolution plan was approved by the committee of creditors much before the statutory period of 180 days and also met the prescribed requirements, NCLT approved it and passed an order to this effect. Now the plan was binding on the MMPL and its

employees, members, PNB and operational creditors as well as other stakeholders involved in the resolution plan.

I. Objective Type Questions (2 marks each)

Select the most appropriate answer from the options given for each question:

1. If the goods against which an advance payment is received from a foreign buyer are not shipped within one year and there exists no agreement regarding timing of shipment, the advance payment:
 - (a) shall be refunded within reasonable time without prior approval of Reserve Bank.
 - (b) Shall be refunded within one year from the date of receipt of advance payment without the prior approval of Reserve Bank
 - (c) Shall be refunded within one year from the date of receipt of advance payment with the prior approval of Reserve Bank
 - (d) Shall be refunded after one year from the date of receipt of advance payment on the basis of reasonable cause.
2. PNB through an assignment agreement, assigned here the debt to the X trust. X trust filed the petition for initiation of corporate Insolvency resolution process (CIRP) against MMPL. State the correct statement with respect to the competency of the X trust in the filing of the petition in the above situation-
 - (a) X Trust is not a competent applicant as per section 6 of the IBC
 - (b) X Trust is being authorized by the PNB to file an application
 - (c) X Trust in the capacity of financial creditor can file a valid petition.
 - (d) None of the above
3. As per the Insolvency & Bankruptcy Code, 2016, resolution plan is prepared by ----- is submitted to -----
----- for examination and submission to- for approval.
 - (a) Committee of Creditors, Adjudicating Authority, Resolution Professional
 - (b) Resolution applicant, committee of creditors, Adjudicating Authority
 - (c) Resolution applicant, Resolution Professional, Committee of Creditors
 - (d) Committee of Creditors, Resolution Professional, Adjudicating Authority
4. Ronit, being an Insolvency Professional can be appointed as Resolution Professional, if:
 - (a) he is eligible to be appointed as an independent director under section 149 of the Companies Act, 2013
 - (b) he is not a related party of the corporate debtor
 - (c) only (a)
 - (d) Both (a) and (b)
5. MMPL finds material irregularity in exercise of the powers of the Ronit during the corporate insolvency resolution period. Remedy available to MMPL-
 - (a) File a complaint to the adjudicating authority
 - (b) Complain to the committee of creditor's
 - (c) Complaint filed before the IBBI
 - (d) File an appeal against the order of adjudicating authority against the approval of resolution plan.

II. Descriptive Questions

1. Suppose the resolution plan prepared by Rajneesh was delayed in approval by committee of creditors. Ronit, further presented the said resolution plan, before NCLT after 180 days of insolvency commencement date.

Answer the following-

- What step shall be taken by NCLT on such presented resolution plan.
- What, if MMPL contravened the resolution plan which effected its employees and stake holders.
- What consequences be there where liquidator continued the business of MMPL during liquidation process.

(10 MARKS)

2. What course of action can be taken by NCLT against the directors of the MMPL for transactions defrauding creditors?

(5 MARKS)

CASE STUDY - 4

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

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

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

registered by RERA on 10th July 2018 after scrutiny of the information provided by the promoter.

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

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

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

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

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

Mr. Arun Nair attended one of the real estate conclaves held in Bangalore, in which he met one Mr. Henry Stewart, who runs an interior designing warehouse in Dubai UAE and showed quite a few exhibits to Arun. Arun was impressed by the designs and the prices quoted by Mr. Henry. Mr. Henry was also amenable to receive funds in cash in

India through an intermediary and then provide the material to Arun from UAE. Based on the same, Arun arranged for making cash payment to the extent of INR 200 lakhs (Out of the INR 400 lakhs received by M/s Wonderful Interiors) to an intermediary in Delhi, and the material was received from Henry in a month.

During his visit to India, Henry noted that his UAE passport got expired and he did not realise the same. Since he did not want to leave India immediately, he got in touch with a travel agent, Mr. Anil Kumar, who helped him get a forged passport, for which Mr. Henry paid INR 2 lakhs in cash.

Out of the balance INR 200 lakhs cash available with Wonderful Interiors, Arun used cash amounting to INR 25 lakhs to pay amounts to various intermediaries to facilitate timely and smooth registration process of these apartments of Winner Shikhar, which was paid by the

intermediaries to the officials of the Sub- Registrar. With Henry's help, Arun transferred the balance amount of INR 175 lakhs to an intermediary in Delhi and invested the amount to incorporate a shell company in the Cayman Islands. The funds were then transferred back by the Shell Company to the bank account of Winner. For this purpose, Mr. Arun raised export invoices in the books of Winner on the Shell Company for providing professional services relating to real estate business. Based on these invoices, Winner claimed export incentives under the relevant laws in India and received INR 20 lakhs as export incentive.

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

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

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

Answer the following questions: (2 MARKS EACH)

1. As per RERA, Winner is required to enable the formation of the association of allottees of Winner Shikaram within-months.
 - (A) 3 months of the majority of the allottees having booked their apartment.
 - (B) 3 months of the receipt of occupancy certificate.
 - (C) 3 months of the majority of the allottees registering their apartments with the sub- registrar.
 - (D) 3 months of all the allottees making the full payment for the apartments.
2. After registering the apartments in the name of the allottees, Winner informed the allottees that they need to pay the water and electricity charges to the concerned departments for their apartments. Evaluate.
 - (A) The registration of the apartments denote that the allottees are now the legal owners of the apartments and hence, need to bear the water and electricity charges.
 - (B) The promoter is liable for making payment for the water and electricity charges until the physical possession is transferred to the allottees.
 - (C) This is dependent on the terms of the agreement of sale between Winner and the allottees.
 - (D) This amount need to be paid equally by Winner and the allottees, since the registration is completed and only transfer of physical possession is pending.
3. Which of the following are not circumstances which need to be considered by the Director of Enforcement for performing search of the offices of Winner and other parties mentioned in the case study?
 - (A) Possession of any property related to crime
 - (B) Possession of any records relating to money laundering
 - (C) Possession of records relating to RERA compliance by Winner
 - (D) Possession of any proceeds of crime involved in money laundering.
4. Ms. Anusha Nair brought gold jewellery worth INR 15 lakhs from Dubai through the green channel. Is this an offence under the PMLA 2002 ?
 - (A) Yes, because she came through the green channel and evaded duty of customs.
 - (B) No, whilst it is an offence, it is not actionable under the PMLA 2002.
 - (C) No, she did not pay any cash for the purchase.
 - (D) Yes, since purchase of gold from gulf countries requires specific consent as per the agreement entered with foreign countries as per Section 56 of PMLA 2002.
5. Of the below, which of the practices are not common schemes of money laundering?
 - (A) Bribery and Corruption
 - (B) False declarations under Customs act
 - (C) Usage of false trade Marks/copyrights
 - (D) Possession of foreign currency over and above permitted limit

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

- (i)** Examine the appropriateness of the conditions mentioned in the agreement to sale, in the context of the provisions of RERA 2016. **(4 Marks)**
- (ii)** What are the provisions in RERA 2016 relating to the changes in design of the construction from the sanctioned plans ? Analyse if the changes made by Winner are appropriate in this context. **(4 Marks)**
- (iii)** What would be your advice if the customers of Winner reach out to you for your views with regard to the validity of the explanations provided by Mr. Vijay Nair on the reduction of carpet area? **(3 Marks)**
- (iv)** Evaluate the statements made by Mr. Vijay Nair in the meeting with the allottees on 30th March 2019 regarding the delay and the increase in labour costs in the context of provisions of RERA 2016. **(4 Marks)**

CASE STUDY – 5

Mr. Manohar Mehta, renowned builder of Mumbai, owns a reputed building construction company known as “Sri Ram Building Construction and Real Estate”. Due to his vast business empire, he is known as the “King of the Property World”.

On the personal front, Mr. Mehta in his family has an elderly mother, wife, and three children. His father, Mr. Sri Ram Mehta, had recently expired after prolonged sickness. Mr. Manohar Mehta’s mother, Mrs. Rama Devi, is a religious lady always dedicating her time in worship and holy works. Wife, Urvashi, is a home maker and a socialite. She is mostly involved in all the social activities and runs her own NGO named “AAWAZ”. Mr. Mehta regularly give financial contribution to his wife’s NGO. These minor donations gave Mr. Mehta a Noble man tag in the social circle and better business prospects.

Sonia, eldest daughter of Mr. Mehta, is married and well settled with her husband in Australia. She has recently started her own import export business in Australia with the help of her father. Mr. Mehta would transfer the amount to his daughter and she regularize the amount in the books of accounts of her business.

Recently, a project was started by Mr. Mehta in Marol area of Mumbai. The project was named as “Shubh Apartment”. Under this project a 5 storey building comprising of 2 flats (2 BHK) at each floor were constructed. The actual construction cost of each flat was Rs. 50 lakh. The flat was sold at Rs. 60 Lakh. The advance booking charges of Rs. 6 lakh for each flat was collected from the buyers by cheque. Proper receipt was issued to all the buyers for the advance payment. Out of the 10 flats, 4 flats were sold at an increased price of Rs. 62 Lakh. Rs. 2 lakh each was taken in cash from the 4 buyers. Therefore, he earned in total Rs. 8 Lakh for these 4 flats. This amount of Rs. 8 lakh was send to Sonia via an independent agent. Sonia utilized this amount in her business and taken into record via some entry in her books of accounts.

Mr. Manohar Mehta has two sons, Rohit and Sorav. Sorav is the youngest son. He is pursuing his graduation from one of the best universities of Chicago. For his education, Mr. Mehta remitted foreign exchange of USD 2,00,000 through authorized person. During course of his studies, Sorav was caught with the seasonal influenza, so there he required an emergency medical treatment. Mr. Mehta transmitted additional amount of USD 70,000 for treatment through authorized person who was well known to him for hassle free transfer.

Rohit, the elder son, after successful completion of his M.B.A. Finance degree, is now actively supporting his father in his real estate business. To give a start to his career, Mr. Mehta handed over the project

“Royal Aashiana” to be constructed in Kharghar. The said project was proposed to be developed in 1000 sq. mts. Rohit was working on the project under guidance of Mr. Mehta. He marketed about the said project and invited persons to purchase the flats in the Royal Ashiana. It was an ongoing project, Rohit without registration of the project made an agreement to sell some of the flats.

As per Mr. Mehta’s regular morning routine, he one day read his favorite column “Property for Sale” in the newspaper. He came across one advertisement regarding the sale of the residential plot in Panvel district of Maharashtra. He discussed about the advertisement with his manager, Mr. Shyam Pareekh. He asked his manager to visit the actual site of the mentioned property.

Mr. Pareekh called the land owner, Mr. R. Thakker, and took the appointment for the visit. He went to Panvel to meet the owner and see the property. It was a 10,000 square feet plot near the city area. Mr. Thakker quoted a price of Rs. 1crore for selling his property. After two rounds of meeting the final negotiation with the land owner was done and deal was locked for Rs. 90 Lakh. On mutual consensus between them, down payment of Rs. 20 lakh was made to Mr. Thakker in cash. Further, a payment of Rs. 70 Lakh was done by cheque and the property was registered in the name of his (Mr. Mehta) mother. Being a sacred woman, she was not interested in all such types of transactions or arrangements made on her name by Mr. Mehta.

After few months, Mr. Manohar Mehta from his sources came to know that an agricultural land is on sale by a farmer, Mr. Bhima Singh. The farmer’s 5 acres of agricultural land was located in Thane district of Mumbai. Mr. Manohar Mehta thought it would be a great deal to buy the agricultural land around the lush green vicinity of the Thane district. He further thought that he can resale this property after converting it to farm houses to the potential buyers.

After the detail discussion with his management regarding the purchase of land, Mr. Manohar Mehta went to Thane to see the agricultural land. The land was just 500 meters away from the highway. After visiting the land Mr. Mehta became keen to buy the property. They had a talk with the farmer, Mr. Bhima Singh. The farmer being illiterate hardly knew about the legal sale/purchase of the land. Mr. Manohar Mehta and Mr. Pareekh negotiated and finalized the deal in Rs. 80 Lakh.

Since Mr. Manohar Mehta required funds for purchasing the Thane property, he decided to sell his Panvel plot which was in the name of his mother. He retransferred the Panvel property (Which was in the name of his mother) to himself and then sold the Panvel plot for Rs. 1.10 Crore. He took partial amount by cheque and rest by cash. This way he safeguarded himself from showing the capital gain on financial record. Mr. Mehta received Rs. 80 Lakh in cheque and rest Rs. 30 Lakh in cash.

Whereas, Mr. Mehta induced Bhima Singh, and paid him Rs. 50 Lakh through cheque and Rs. 30 lakh through cash.

Mr. Manohar Mehta was still having Rs. 30 Lakh out of sale of 1.10 Crore panvel property, at his disposal. Mr. Mehta decided to deposit Rs. 2,000 each to his wife, two sons and mother, saving accounts every month. He would continue deposition of Rs. 2000 each per month for next couple of years.

During one of the corporate parties while having a discussion, Mr. Mehta's friend advised him to invest the remaining amount in the shell company outside India. Mr. Mehta liked the suggestion and decided to send Rs. 10 Lakh to invest in the shell company in Singapore via Hawala. He learned about Mr. Varun Das who runs a business of hawala under the veil of running a financial company. Mr. Mehta contacted Varun Das who agreed to transfer the fund via Hawala on 1% commission basis. In this way Mr. Mehta managed to circulate the amount in the shell company outside India.

Mr. Manohar Mehta also donated Rs. 50,000 in cash to his wife's NGO "AAWAZ".

After few months, Mr. Mehta decided to buy a new car, worth Rs. 50 Lakh. He did the down payment of Rs. 5 Lakh via cheque. For the remaining Rs. 45 lakh he took 3 years auto loan, so that he can deposit the monthly installment in the bank. Hence in this way the remaining Rs. 10 Lakh, which he gained from the sale of the Panvel property, was utilized..

Due to frequent transactions of hefty amount and his conduct of other financial activities in a year, Mr. Mehta bank accounts and his family members account of transactions were in the scrutiny of the Income Tax Department.

On further investigation it was discovered that Mr. Mehta, Mr. Thakkar, Rohit and Sonia being guilty for different offences punishable under the different Acts.

I. Multiple Choice Questions (2 MARKS EACH)

1. Sonia ordered exports of goods from India for her business. The amount (export value) of good shall be released and repatriated to India within period -
 - a. 3 Months from date of export
 - b. 6 Months from date of export
 - c. 9 Months from date of export
 - d. 9 Months from date of invoice covering such export

2. Amount released for the real estate project from allottees in separate account can be withdrawn by promoter after it is certified by-
 - a. Cost accountant and an Architect
 - b. Engineer, and a Chartered Accountant
 - c. an Architect and an Engineer
 - d. Engineer, an Architect, and a Chartered Accountant in practice

3. "Who according to the Provision of Prevention of Money Laundering Act is/ are held to be liable in dealing of Panvel property-
 - a. Mr. Manohar Mehta
 - b. Mr. Thakkar
 - c. Both (a) and (b)
 - d. Mr. Shyam Pareekh

4. Who among the following is liable for an offence of money laundering as per the Part C of the Schedule given in the Prevention of money laundering Act-
 - a. Mr. Mehta
 - b. Mr. Thakkar
 - c. Mr. Atul
 - d. Ms. Sonia

5. Mr. Mehta files an application for initiation of voluntary liquidation proceeding of his Real Estate construction company. Mr. X, a home buyer of a flat in one of the project of Mr. Mehta claimed for the re-fund of paid amount or demanded for handover of possession of flat. Which amongst following is not incorrect statement
 - a. X cannot claim the amount due to pending of Insolvency process
 - b. X can file a suit for the default committed by Mr. Mehta under the Insolvency & Bankruptcy code
 - c. X's right & interest is protected after execution of an agreement to sale till the conveyance of the flat
 - d. None of the above

II. Descriptive Question

1. What would be the consequences in the following given situations:
 - (a) Where if Mr. Mehta remitted Foreign Exchange USD 2,00,000 and USD 70,000 as educational and medical expenses to Sorav .

- (b) Sorav used USD 20,000 out of the remitted medical expenses (i.e., USD 70,000) and used remaining amount to purchase immovable property jointly with Mr. Mehta in Chicago.

(10 MARKS)

2. What remedy is available to Mr. Mehta, in case he want to compound for the commission of illegal remittance to Sorav under FEMA Act 1999?

(5 MARKS)