



J.K. SHAH[®]
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SUGGESTED SOLUTION

FINAL MAY 2019 EXAM

SUBJECT- ECONOMIC LAW

Test Code - FNJ 7089

BRANCH - () (Date :)

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Answer 1:

(A)

Section 25 of the Prevention of Money Laundering Act, 2002 empowers the Central Government to establish an Appellate Tribunal to hear appeal against order of the Adjudicating Authority and other authorities under the Act. (1 marks)

Section 26 deals with the right and time frame to make an appeal to the Appellate Tribunal. **Any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal within a period of 45 days from the date on which a copy of the order is received by him.** The appeal shall be in such form and be accompanied by such fee as may be prescribed. The Appellate Tribunal may extend the period if it is satisfied that there was sufficient cause for not filing it within the period of 45 days. **(2 marks)**

The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against. (1 mark)

The Act also provides further appeal. According to **Section 42 any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within 60 days from the date of communication of the order of the Appellate Tribunal.**

In the light of the provisions of the Act explained above the **company is advised to prefer an appeal to Appellate Tribunal in the first instance. (1 mark)**

(B)

Yes. As per section 14 of the FCRA, Central Government may cancel the certificate, after carrying out an inquiry, on the following grounds –

- (a) the holder of the certificate has made an incorrect/ false statement in the application for the grant of registration or renewal
- (b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof
- (c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate
- (d) the holder of the certificate has violated any of the provisions of this Act or rules or order made thereunder.
- (e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

In any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate. **(5 marks)**

Answer 2:

(A)

As per the arbitration and Conciliation Act, an agreement must be in writing There is however no requirement for the same to be in writing in one document. There is also no particular form or temple for an arbitration agreement. The communication over email of

the term of services is a proper valid agreement in writing contained in correspondence between the parties. **(4 marks)**

(B)

Section 1 of the Insolvency and Bankruptcy Code, 2016 specifies of the extent, commencement and applicability of the Code. According to this, it extends to the whole of India and shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of any company incorporated under the Companies Act, 2013 or under any previous law.

In view of this, the IBC Code, 2016 applies to the **corporate debtor** incorporated under the Companies Act, 2013 or under any previous laws. **(2 marks)**

As per the definition of the Creditor given in section 3 (10) of the Insolvency and Bankruptcy Code, 2016, it means **any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder.** So, **Standard International Ltd. is a creditor** under the purview of the Code. **(1 mark)**

As per the facts given in question, Standard International Ltd., is a **foreign trade creditor**. He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India. **(1 mark)**

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority. Being a foreign trade creditor, **Standard International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor.** Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution as defined under the section 3 (14) of the code. So, Petition under section 9 of the Code is not permissible. **(2 marks)**

Answer 3:

(A)

No. As per Section 4(e) of the Foreign Contribution Regulation Act, 2010 and Rule 6 of Foreign Contribution Regulation Rules, 2011, even the persons prohibited under section 3, i.e. **persons not permitted to accept foreign contribution, are allowed to accept foreign contribution from their relatives.** However, in terms of Rule 6 of Foreign Contribution Regulation Rules, 2011, **any person receiving foreign contribution in excess of one lakh rupees or equivalent thereto in a financial year from any of his relatives shall inform the Central Government in prescribed Form within thirty days** from the date of receipt of such contribution. **(4 marks)**

(B)

There are two basic types of arbitration agreement :

- (i) Arbitration clause** - a clause contained within a principal contract. The parties undertake to submit disputes in relation to or in connection with the principal contract that may arise in future to arbitration.
- (ii) Submission agreement** – an agreement to refer disputes that already exist to arbitration. Such an agreement is entered into after the disputes have arisen. **(2 marks)**

In first case, the agreement already carries the term that all disputes shall be arbitrated in Delhi at the time of entering into joint venture agreement. This would be an arbitration clause as it is contained in the principal contract (JVA) and no disputes have arisen till yet. It concerns future disputes that may arise. **(1 mark)**

In the second case, the Principal contract (JVA) does not have any term relating to arbitration. Disputes arose between the parties concerning quality of supplied goods in 2017. To resolve this dispute, parties later entered into an agreement "That all disputes including quality of goods supplied by Ronnie and Coleman Company Limited to Arnold Food Processors Limited shall be submitted to arbitration. The parties hereby agree to abide by the decision of the arbitrator." Such an agreement that is made after the disputes have arisen would be called a submission agreement. **(3 marks)**

Answer 4:

(A)

Sub – section (4) of section 13 of SARFAESI Act, 2002, provides that **if the borrower fails to discharge his liability in full within the 60 days, the secured creditor may take recourse to one or more of the following measures to recover his secured debt :**

- (i) Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;
- (ii) Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset :
Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt :
Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;
- (iii) Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor.
- (iv) Require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

In the instant case, the Bank may take the above mentioned procedure to enforce its security interest in case Popular Limited has failed to discharge its liabilities within the time limit specified. **(5 marks)**

(B)

On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

After the expiry of **ten days**, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

(5 marks)

Answer 5:

(A)

Cancellation of Certificate of Registration (Section 4 of the securitisation & reconstruction of financial assets & enforcement of Security Interest Act, 2002)

As per the section 4 of the Securitisation & Reconstruction of Financial Assets & Enforcement of security Interest Act, 2002, Reserve Bank may cancel a certificate of registration granted to a securitization company or a reconstruction company, if such company –

- (i) ceases to carry on the business of securitisation or asset reconstruction; or
- (ii) ceases to receive or hold any investment from a qualified institutional buyer; or
- (iii) has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
- (iv) at any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub – section (3) of section 3; or
- (v) fails to –
 - (a) comply with any direction issue by the Reserve Bank under the provisions of this Act; or
 - (b) maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or
 - (c) submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
 - (d) obtain prior approval of the Reserve Bank required under sub – section (6) of section 3.

(5 marks)

(B)

Section 4 of the Prevention of Money Laundering Act, 2002 provides for the punishment for Money – Laundering. **Whoever commits the offence of money – laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.** But where 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 10 years instead of 7 years.**

(3 marks)

Paragraph 2 of Part A of Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 Whereby, embezzlement of opium by cultivator (section 19) is covered under paragraph 2 of Part A.

(1 mark)

In the present case, Sohan Lal, a farmer, who was involved in embezzlement of opium cultivated by him shall be **liable for the rigorous imprisonment for a term which may extend to 10 years and shall also be liable to fine.**

(1 mark)