

Attempt any four Case Studies out of five. Each Case Study carries 25 Marks.

Case Study 1

(A) A Corporate Insolvency Resolution process, under the Insolvency and Bankruptcy Code 2016 was initiated by M/s Anand Limited as a Corporate Debtor. The company was in default to its creditors and the assets were insufficient to meet the liabilities of the company.

Attempts to resolve the insolvency of the corporate debtors failed and in the last, it was decided to go for liquidation of the company. The balance sheet and additional information of Anand Ltd. are given below:

Key Financial Information:

Data	Amount (` In crore)	Data	Amount (` In crore)
Equity Share Capital	10,590	Land & Building	15,500
Preference Share Capital	3,700	Fixtures & Fittings	2,400
Term Loan	1,600	Stocks In Trade	690
Working Capital Loan	1,300	Debtors	500
Unsecured Financial Creditors	1,100	Other current Assets	570
Government dues	500	Cash	110
Workman dues	290	Accumulated Losses	2,150
Employee Liability	340		
Operational Creditors	<u>2,500</u>		
	21,920		21,920

Additional Information:

Creditors

- (1) Term loan is secured against fixed charge on land & building and fixtures & fittings. SBI with an ` 700 crore term loan outstanding has first charge on the assets and ICICI with ` 500 crore outstanding has second charge on the assets and HDFC with ` 400 crore outstanding has third charge on the assets.

- (2) Working capital loan is provided by Canara Bank and secured against a floating charge on debtors and stock in trade of the company.
- (3) Unsecured financial creditors include a Director Mr. Ravindra who owns 5% of the share capital of M/s Anand Limited with an outstanding loan due to him of ` 60 crores.

Other Liabilities:

- (1) Workman dues represents amount payable for the period of 24 months preceding the liquidation commencement date.
- (2) Employee liability includes ` 15 crore is outstanding for employees for a period of 12 months.
- (3) Last three years of tax assessment pending total demand raised by the department is ` 400 crore which is accepted by the company. This has not been included in the balance sheet, but reflected as a contingent liability only.

Fixed Assets & Other Assets:

- (1) Land & Building realized 60% of book value and there would be a cost of ` 180 crore in realizing the assets.
- (2) Fixtures & fittings would realize 40% of book value, net of any realization cost. Stock, debtors & other current assets would realize 55% of book value.

Other information:

- (1) Based on the amount realized & distributed, the cost of liquidation is computed to be ` 150 crores.
- (2) The pending insolvency period cost was ` 85 crore, mainly including interim funding, remuneration of the IP and other such costs as permitted under the Code.
- (3) The secured creditors have decided to relinquish their security interest to the liquidation estate and receive proceeds from the sale of the liquidation assets by the liquidator as per provisions laid under the Insolvency and Bankruptcy Code, 2016.

You are required to find out following with reference to the relevant provisions laid under the Insolvency and Bankruptcy Code, 2016:

Multiple Choice questions (MCQs):**(2 x 5 = 10 Marks)**

1. Whether IBC is applicable to person resident outside India:
 - (a) No, IBC is not applicable to a person resident outside India.
 - (b) Yes, IBC is applicable to a person resident outside India.
 - (c) IBC is applicable to a person outside India with the prior approval of the Board.
 - (d) IBC is applicable to person resident outside India as well as to foreign persons.

2. Which of the following is a related party?
 - (a) A person controlling more than 30% of voting rights in Corporate Debtor.
 - (b) A person controlling more than 20% of voting rights in Corporate Debtor.
 - (c) A person controlling more than 25% of voting rights in Corporate Debtor.
 - (d) A person controlling more than 10% of voting rights in Corporate Debtor.

3. Can Civil Court enter into the matters of IBC?
 - (a) Yes
 - (b) No
 - (c) With approval of IBBI
 - (d) With approval of AA

4. Who shall declare a moratorium:
 - (a) Insolvency Professional
 - (b) Insolvency Professional Agency
 - (c) Adjudicating Authority
 - (d) Insolvency and Bankruptcy Board of India

5. Who shall receive the notice of meeting of committee of creditors:
 - (a) Only the members of committee of creditors.
 - (b) Members of committee of creditors, members of suspended Board of Directors and operational creditors in case their aggregate dues is not less than ten percent of debt.
 - (c) Members of the committee of creditors, operational creditors in case their aggregate dues is not less than ten percent of debt and special invitees.
 - (d) Members of the committee of creditors and special invitees.

Descriptive questions**(Total 15 Marks)**

Q.1 What would have been the constitution of the Committee of Creditors and what would have been the voting share of each of the members of the committee?

(5 Marks)

Q.2 Calculate Total value realized by liquidator along with detail Working.

(5 Marks)

Q.3 Order of Priority with Notes indicating the relevant section of the Code.

(5 Marks)**Case study 2**

Mr. Manish Shah is a civil engineer working in Ahuja constructions as project manager having high aspirations in life. He has high dream about his career and hence left his job and started his own business along with his colleague Mr. Ravi Kumar in the form of private limited company named 'Apna Aashiyana Private Limited'. Both Mr. Manish and Mr. Ravi are the directors of said company.

Mr. Ravi Kumar has tremendous knowledge of Management as he was working as general manager in Ahuja Constructions earlier and hence he has been assigned responsibility of management in 'Apna Aashiyana Private limited'. On behalf of Apna Aashiyana Private Limited, he met various Investors to raise requisite amount for funding initial projects. As house prices are very high, the company is targeting lower income group by selling affordable houses under scheme named 'Apna Makaan'. Due to amazing skill Mr. Ravi Kumar able to attract Investor Mr. Sunder to invest capital of INR 2 crore in Apna Aashiyana Private Limited. Mr. Karan Shekhawat friend of Mr. Sunder also agreed to invest in Apna Aashiyana Private Limited INR 1.5 Cr which he has earned out of Drug Trafficking which is in the Knowledge of Mr. Ravi Kumar.

Enforcement Directorate got the information about Drug trafficking business of Karan Shekhawat and after investigation arrested Mr. Karan Shekhawat and his wife Mrs. Ranjana under the Prevention of Money Laundering Act.

Project 'Apna Makaan' has to be constructed in three phases out of which Phase 1 comprises of 44 apartments in total area of 560 Square Meters.

Land for project 'Apna Makaan' purchased from Mr. Vikram for INR 75 lacs. Mr. Manish Shah on the request from Mr. Vikram, to make payment of INR 75 lacs entirely by account payee cheque in favour of Abhinandan Private Limited; instead of Mr. Vikram. Mr Sanjay, an employee of Abhinandan Private Limited did not like such arrangement and hence made complain of this transaction to concerned authority. After few days, Mr. Vikram received the show cause notice from office of Assistant Commissioner of income tax, to show cause why should provision of Prohibition of Benami Property Transaction Act, 1988 not applied to him.

'Apna Makaan' is targeting lower income segment group and hence under this project, affordable housing will be made and architected in such a manner that there will be fresh air ventilation and rooms will remain largely unaffected by external weather, especially in summers and will also be in accordance to vastu requirements. For expertise on space management, 'New Build Consultancy' an architect firm was hired. New Build Consultancy raised a bill of US \$ 5500 on Apna Aashiyana Private Limited.

Each apartment is designed in identical unit of 1 BHK flat and since said apartments are part of affordable housing scheme, hence sale price of each 1 BHK flat will be kept at INR 15 Lacs which is far less than existing Market Price. The estimated cost as of now of entire project will be about INR 5 crores.

Soil testing, legal aspects in reference to Municipal Corporation of city, agreement with fund provider, maintaining escrow account and selection of vendors etc. had been done in mean time, in order to meet expected project delivery date 15th July 2020.

Hari Om Real Estate Agent is a property advisor. Hence, Hari Om Real Estate Agent was appointed as authorized real estate agent for project 'Apna Makaan', on 18th February, 2020. Hari Om Real Estate Agent has filed an application with authority for registration. However, even after expiry of specified period no communication made by Appropriate authority to Hari Om Real Estate Agent.

Hari Om Real Estate Agent started advising their clients about the affordable houses and within first five days identified 5 clients, who offered advance to book the apartments under Project 'Apna Makaan'. Advance collected was deposited into current account of Apna Aashiyana Private Limited.

Application for project approval was moved to Real Estate Regulatory Authority on

24th January, 2020 along with necessary details and prescribed fees, by Apna Aashiyana Private Limited. Project Apna Makaan got nod from Real Estate Regulatory Authority on 24th feb, 2020.

Apna Aashiyana Private Limited began the construction from 26th Feb, 2020. On 24th June, 2020 Company forced to suspend its project due to severe cyclone in the area of construction of 'Apna Makaan'. Due to such suspension company is expecting certain delay in completion of the project.

Multiple Choice questions (MCQs):

(2 x 5 = 10 Marks)

1. How much can be the maximum amount of consultancy charges which can be remitted by Apna Aashiyana Private Limited without RBI approval, presuming it is infrastructure project:
 - (a) US \$1,000
 - (b) US \$ 10,000
 - (c) US \$ 100,000
 - (d) US \$ 10,000,000

2. What is the Maximum amount Promoter can accept for each flat of project 'Apna Makaan' as Advance Money from buyer without entering into agreement for sale in the above case?
 - (a) 2 Lacs
 - (b) 1.5 Lacs
 - (c) 3 Lacs
 - (d) 5 lacs

3. How much Maximum extension can be granted to Apna Aashiyana Private limited for project Apna Makaan for delay occurred due to cyclone
 - (a) 2 years
 - (b) 3 years
 - (c) 1 Year
 - (d) 6 Months

4. What will be the status of Application of Hari Om Real Estate Agent?
 - (a) It will be deemed to be Rejected
 - (b) It will be deemed to be Accepted
 - (c) It will be held in abeyance
 - (d) None of the above

5. In the above situation who has committed offence of Money Laundering?
- (a) Mr. Karan Shekhavat
 - (b) Mr. Ravi Kumar
 - (c) Both i.e. Mr. Karan Shekhavat and Mr. Ravi Kumar
 - (d) None of the above

Descriptive Questions

(Total 15 Marks)

- Q.1** Is act of Apna Aashiyana Private Limited, was offering apartments at prices lower than prices prevailing in market. Examine whether the said situation will be considered as predatory bidding under the Competition Act, 2002. (5 Marks)
- Q.2** Whether Payment made to Abhinandan Private limited instead of Mr. Vikram is a benami Transaction? What is the Quantum of Penalty under Prevention of Benami Property Transactions Act, 1988? (5 Marks)
- Q.3** How bail can be granted to Mr. Karan Shekhawat and his wife Mrs. Ranjana. Kindly Answer In detail Along with Legal Provision. (5 Marks)

Case Study 3

JAYESH has 3 sons, **SUBHASH**, **GIRISH** and **RAJESH**. The eldest son **SUBHASH** runs a Sugar Mill taken over from his father **JAYESH**, as a family business.

RAJESH, the third son of **JAYESH**, always feels ignored by his family, looking for some fast easy money, joins hands with **MOHAN**, a Real Estate Agent, who promises to pay **RAJESH**, a commission in cash, if he helps **MOHAN** to buy 25 Acres of Land and hold the land in his name on behalf of one of his customers **MANU** in good trust and in good faith.

RAJESH agrees and a Purchase Agreement for 25 Acres of Land was registered in the name of **RAJESH** and one **MADHAV**. Subsequently, **RAJESH** entered into several similar agreements in his name on behalf of others.

In due course of time, **RAJESH** also formed a Company **JEEVAN JYOTHI PVT LTD (JJPL)**, primarily for the hotel business, but the source of funding

was secret drug dealings.

Following was his modus operandi reflecting the conduct of business:

- (A) **JJPL** accepted illegal monies in cash as legitimate business transactions with fake income and receipts.
- (B) The monies were then deposited into the Bank accounts of **JJPL** as clean money.
- (C) **RAJESH** also kept fraudulent records, which did not demonstrate the current state of his businesses.
- (D) Monies in the Bank Accounts of **JJPL** were also often transferred as legitimate business transactions, to the Bank Accounts of **RD Pvt. Ltd (RDPL)**, which is also in the similar businesses like **JJPL**. Original source of money was thus disguised.
- (E) **JJPL** also mobilized funds from various investors, but were never utilized for which they were collected. .
- (F) **RAJESH** also created a complex structure of Group Companies, subsidiaries and associate Companies, which were mainly paper /shell companies.
- (G) **JJPL** also took loans from various banks and financial institutions. The Funds were diverted and transferred to bank accounts of group companies, from where they were systematically siphoned off and were used for purchase of various properties in India and abroad.

RAJESH led a lavish lifestyle. He also utilized the illegal cash for lavish stays in various hotels and in night clubs in India and abroad. **RAJESH** also held some properties purchased in the name of his wife **SUGUNA** from his known income from legal sources i.e. from his share of income from the Sugar Mill.

MAHESH, a friend of **GIRISH** is the Company Secretary of a listed Public Limited Company **BBC Ltd**.

- (a) **MAHESH** gives Rs. 5 lacs loan to **GIRISH**, who in his turn gives loan of Rs. 5 Lacs to his friend **RAGHU** for investment in the shares of **BBC Ltd**. **RAGHU** trades in shares of **BBC Ltd** on behalf of **MAHESH**.
- (b) **MAHESH** also ensures that some money is passed on to various legitimate Companies to buy the shares of **BBC Ltd** so that it results in increase in the price of shares.
- (c) Intention is to show higher valuation of shares before proposing to the investors or to discourage the shareholders from applying to the buyback scheme.

RAGHAV is the brother in law of **SUBHASH**, employed in UAE and a non

resident Indian.

- (a) **RAGHAV** purchased some properties in Mumbai for Rs. 75 Lacs. He paid Rs. 40 Lacs through his NRE Account, Rs. 10 Lacs through direct transfer from his salaries account in UAE to the sellers account as advance through normal banking channels, complying with all the procedural requirements, but balance Rs. 25 Lacs payment was made through some unknown sources.
- (b) **RAGHAV** also invested in Equity shares of various Listed Companies in India in the name of his wife **DIVYA**, who is a Resident in India and himself as joint holders from an account not disclosed to tax authorities in India.
- (c) **RAGHAV** also purchased a Flat in Mumbai in the name of **DIVYA** and himself as joint holders from his NRE Account.

SUBHASH has a married daughter **MANGALA**, who is a UK resident. **SUBHASH** invested Rs. 1.50 Crores in a Bank Fixed deposit in the name of **MANGALA** without her knowledge. Later during the course of enquiries by Tax officials **MANAGALA** denies ownership of Bank Fixed Deposit.

The Enforcement Directorate (ED) conducted raid operation against **RAJESH** and his associates, after his office obtained some inputs on the purported dubious financial transactions. ED seized incriminating documents, emails and What's App Chats during raids.

Your professional advice is sought, by answering the following:

Multiple Choice questions (MCQs):

(2 x 5 = 10 Marks)

1. Raghav purchased some properties in Mumbai for Rs. 75 Lacs. He paid Rs. 40 Lacs through his NRE Account, Rs. 10 Lacs through direct transfer from his salaries account in UAE to the sellers account as advance through normal banking channels, complying with all the procedural requirements, but balance Rs. 25 Lacs payment was made through some unknown sources. The purchase of properties here :
- (a) Is a Fully valid transaction
- (b) Is valid to the extent of Rs.40 lacs
- (c) Fully invalid transaction under Indian law
- (d) May be Invalid under Indian law to the extent of Rs. 25 lacs, since made through some Unknown sources.

2. Which one of the following transactions of Rajesh is Valid and lawful?
- (a) Transaction in respect of a property, where the person providing the consideration to Rajesh is not traceable.
 - (b) An arrangement by Rajesh in respect of a property made in a fictitious name
 - (c) Property held by Rajesh in the name of his spouse and consideration paid out of known legal sources
 - (d) A transaction by Rajesh in respect of a property where the owner is unaware of or denies knowledge of the ownership
3. Mahesh gives Rs. 5 lacs loan to Girish, who in his turn gives loan of Rs. 5 Lacs to his friend Raghu for investment in the shares of BBC Ltd. Raghu trades in shares of BBC Ltd on behalf of Mahesh. Share Trading by Raghu on behalf of Mahesh is:
- (a) Valid transaction since he is not at all connected with BBC Ltd
 - (b) Can be proved as unlawful trading in stock markets by Mahesh, the Company Secretary, who has insider price sensitive information
 - (c) The transaction is not at all to be considered unlawful or invalid
 - (d) Valid transaction if Girish does the share trading on behalf of Mahesh, out of the loan of Rs. 5 Lacs given by Mahesh
4. JJPL also took loans from various banks and financial institutions. The Funds were diverted and transferred to bank accounts of group companies, from where they were systematically siphoned off and were used for purchase of various properties in India and abroad. Proceeds of crime is projected or attempted to be projected as untainted property. Which one among the following statement is correct?
- (a) Such offenses are non-cognizable
 - (b) Such offenses are always bailable
 - (c) Such offenses are cognizable and always non-bailable
 - (d) Such offenses are cognizable and non bailable, however bailable only subject to certain conditions
5. Monies in the Bank Accounts of JJPL were also often transferred as legitimate business transactions, to the Bank Accounts of RDPL, which is also in the similar businesses like JJPL. In respect of transactions done by JJPL, the crime money injected into the formal financial system is layered, moved or spread over various transactions in different accounts. This step under the relevant law is referred to as:

- (a) Smurfing
- (b) Integration
- (c) Layering
- (d) Placement

Descriptive Questions

(Total 15 Marks)

Q.1 Also citing the incidence/s in the aforesaid case, name the relevant applicable Act and critically analyze the statement “the provisions of the Act need not necessarily applicable only to persons , who try to hide their properties , but may also sometimes apply to genuine properties acquired out of disclosed funds”

(5 Marks)

Q.2 Rajesh formed a Company JJPL, primarily for the hotel business, but the source of funding was secret drug dealings.

(A) Is secret drug dealings and then disguising that original source of money a predicate offence? Is there any difference between a Scheduled Offence and a Predicate Offence”?

(2 Marks)

(B) Who investigates predicate offences?

(1 Mark)

(C)What are the possible actions that can be taken against Rajesh or JJPL or other concerned persons in the above case for their offences?

(2 Marks)

Q.3 The Enforcement Directorate (ED) conducted raid operation against Rajesh and his associates, after it obtained some inputs on the purported dubious financial transactions.

(A) What are the rights of Rajesh and his associates, being searched during search?

(3 Marks)

(B) What are the rights of Rajesh during his arrest, in case arrested?

(2 Marks)

Case Study 4

Mr. M R Gulati is renowned and influential real estate agent. Mr. M R Gulati has over 30 year of experience in real estate business and enjoys good reputation, also due to standing of his father Late Mr. Rattan Mal Gulati, in education sector. Mr. Rattan Mal Gulati was managing trustee of Easy Key Educational Trust, along with other family members as stated below;

SN	Name	Relation to Mr. Rattan Mal Gulati	Status
1	Mr. Rattan Mal Gulati	Self	Managing Trustee

2	Mrs. Shashi Kala	Wife	Member Secretary
3	Mr. M R Gulati	Elder Son	Member Trustee
4	Mr. O P Gulati	Younger Son	Member Trustee
5	Mrs. Rita Gulati	Daughter-in-law (wife of Mr. M R Gulati)	Member Trustee
6	Mrs. Radha Gulati	Daughter-in-law (wife of Mr. O P Gulati)	Member Trustee
7	Mr. Alok	Grand-Son (Son of Mrs. Rita & Mr. M R Gulati)	Member Trustee

Easy Key Educational Trust runs group of agriculture colleges. Rita and Radha are cousin from Mohanty family with political background, which supports the businesses of Gulati Family, where ever possible.

Post to death of Mr. Rattan Mal Gulati last year, Ms. Alka admitted as member trustee to Easy Key Education Trust and Mr. M R Gulati took charge as managing trustee. Ms. Alka is daughter of Mrs. Radha & Mr. O P Gulati; she is studying Agriculture Economics and Business Administration in one of dual degree programme of Kansas State University, Manhattan, United States. Mr. O P Gulati remitted US \$ 260,000 to Ms. Alka through authorised person for tuition fee and personal expenditure.

On 21st birthday of Ms. Alka, both the parent Mrs. Radha & Mr. O P Gulati, decided to visit to Ms. Alka in States, to congratulate her and on same day there is 25th Wedding Anniversary of Mrs. Radha & Mr. O P Gulati. While passing by streets in Manhattan Mrs. Radha, find Jewelry showroom which offers latest design and exciting offers. Mr. O P Gulati agrees to buy gold for Mrs. Radha, who was fond of jewelry and from investment prospective. Price offered by Gold smith is US\$ 45 per gram, which is cheaper than prevailing prices of gold in India. Therefore, Mr. O P Gulati apart from purchase of 70 grams of gold ornaments (jewelry) and 20 grams gold in form of gold coins; he also purchased latest gizmo device, which is not yet launched in India. On arrival to India, both Mrs. Radha & Mr. O P Gulati, pass through green channel; without making any disclosure/declaration to custom authority.

Mr. Pandey, a child-hood friend of Mr. M R Gulati approached him, and explained about financial crisis in his business and make a proposal to Mr. M R Gulati for sale of his ancestral land situated in Vikas-Khand (which now declared as an Industrial town, with tax holiday) at price below the market prevailed prices of similar land. Mr. M R Gulati, with intention to develop elite corporate plaza named 'G Square' where Board Meetings, Trade Conferences,

Conventions, Workshops can be held, plans to buy land from Mr. Pandey. After negotiation, price for land settled at INRs 4 crore, out of which he paid INRs 1 crore in cash and balance INRs 3 crore in form of account payee cheque. Said cash of INRs 1 crore later deposited in joint personal account of Mrs. and Mr. Pandey in parts by Mr. Pandey. Mr. M R Gulati asked Mr. Pandey to register the plot in favour of Mr. Alok, and wish that his son should join his business.

To arrange fund for purchase of land situated in Vikas-Khand, Mr. M R Gulati sold one of his earlier acquired property for INRs 5 Crore. After making payment of INRs 4 crore with residual amount of INRs 1 crore, Mr. M R Gulati start a housing project named 'Paradise' which comprises 6 flats (1 building of 3 floors with 2 flat at each floor) in 650 Square Meters.

Advance equal to 25% of estimated (due to escalation clause) price collected from customer who booked the flats, and 20% of these advance amounts used to complete one of already existing ongoing project by Mr. M R Gulati and remaining amount kept in separate bank account. Project Paradise is not registered with Real Estate Regulatory Authority yet. Looking into the high demands among buyers, Mr. M R Gulati decided to enlarge the project by 4 flats, resultantly increase the floors from 3 to 5. Installment also collected as and when become due, and duly accounted for in books of accounts and acknowledgment is also provided to allottees. Mr. Rahman, who is friend to family of Mr. M R Gulati, is also qualified lawyer by qualification but hotelier by profession, told Mr. M R Gulati about registration requirements of project under Real Estate (Regulation and Development) Act, 2016; and Mr. M R Gulati applied for same. In mean time Mr. M R Gulati using his influence took permission from Municipal Corporation of city for increase of floor.

Mr. Alok who is fickle minded young-star, graduated from top notch B-School willing to start his business of solar panels, he asked his father to help him with funds in establishing the business. Mr. M R Gulati helped the son to establish the business in form of private company with name 'Power Sun Private Limited' by allowing him to use the Vikas-Khand land, in order to avail tax benefit. Mr. Alok raised a loan from financial institution at relatively high interest rate. Due to his capricious nature, no experience in business of solar panel and stiff economic conditions; business went into losses. Situation of debt trap arises in second year of operation. Liquidity and solvency position of business of Mr. Alok is this much bad that he is unable to pay-off trade creditor, despite multiple month long reminders from vendors. One of unpaid

operational creditor sent the demand notice under IBC, 2016 to Power Sun Private Limited on 15th November, 2019.

Ms. Alka came back to India after completing her academic programme; she joined the governing body of group of agriculture colleges operated by Easy Key Educational Trust. She planned for strategic restructuring of the business. She decided to attain dominance in market and beat the competition by acquisition of the only another agriculture college operational in state. New programmes are also launched which are research based and featuring industry immersion as unique selling point. She ensured that all the group agriculture colleges of group must be accredited from ICAR. Down the line having aspiration, that these affiliated colleges either must emerge as autonomous colleges or become research based universities. Due to monopoly in agriculture courses, all fees apart from tuitions fee doubled from upcoming academic year.

Multiple Choice Questions

(2 x 5 = 10 Marks)

1. What will be amount of penalty, in regard to excess remittances in USD to United States done by Mr. O P Gulati:
 - (a) USD 260,000
 - (b) USD 200,000
 - (c) USD 60,000
 - (d) USD 30,000

2. If the price of each flat is INRs 50 lakhs, then how much will be maximum amount of advance to book flat
 - (a) INRs 1,50,000
 - (b) INRs 5,00,000
 - (c) INRs 6,00,000
 - (d) INRs 6,50,000

3. Out of the following acts of Mr. M R Gulati, which can be held as offence under Real Estate (Regulation and Development) Act, 2016
 - i. Not applied for registration of the project at earlier stage (prior to extension of floors)
 - ii. Receive the advance and installments without/prior registration of Project.
 - iii. Use 20% of Fund for completion of other already on- going existing project
 - (a) Only ii
 - (b) Both i and ii

- (c) Both i and iii
- (d) Both ii and iii

4. In how many days 'Power Sun Private Limited' need to respond demand notice of operational creditor served on 15th November 2019
- (a) latest by 22nd November 2019
 - (b) latest by 23rd November 2019
 - (c) Latest by 25th November 2019
 - (d) latest by 15th December 2019
5. Can Mr. Alok be held as Benamidar under Prohibition of Benami Property Transactions Act, 1988?
- (a) Yes, because consideration paid by Mr. M R Gulati, but property registered in his name
 - (b) Yes, because he is party to transaction
 - (c) No, because he is son of Mr. M R Gulati, who paid the consideration
 - (d) No, because he didn't participate in negotiation of price and payment there-of.

Descriptive Questions

(Total 15 Marks)

Q.1 Is the act of Mrs. Radha & Mr. O P Gulati, on arrival to India, without making any disclosure and pass through green channel along with the article purchased from Manhattan, United States, constitute an offence under the Prevention of Money Laundering Act, 2002.

(5 Marks)

Q.2 'Power Sun Private Limited' find it difficult to run the operations further and it is already defaulting in making payment to both financial and operational creditors. So, if 'Power Sun Private Limited' wants to initiate insolvency resolution process, examine whether it can initiate the process?

(6 Marks)

Q.3 Ms. Alka is highly passionate about implementing the strategies, that she learned during her business administration classes. Is any of her actions or implication of strategies adopted by her is in contravention to provisions of the Competition Act, 2002? Advise

(4 Marks)

Case Study 5

ABC Limited is a company engaged in the business of cement exports and it is also specialized in the area of Enterprise Resource Planning (ERP) implementation offering their services to domestic and overseas customers.

Enforcement Directorate under Foreign Exchange Management Act (FEMA) carried out the investigation against the ABC Limited. The investigation also centered around the details of the Promoters and their shareholdings; how many subsidiaries companies were formed by the appellants in India and abroad for doing business; details of the share transactions between the promoters of the Company and Non-Resident Indian(NRI) and the details of loans raised by the ABC Limited for their business purpose etc.

The investigation carried out by Enforcement Directorate has clearly made out a case against ABC Limited of violation of Section 8 and Section 42 of Foreign Exchange Management Act as well as Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.

A complaint has been made by the Enforcement Directorate before Special Director. Special Director allowed the complaint and held that ABC Limited has contravened the provisions of FEMA as prayed in the complaint and accordingly imposed a penalty of ` 5 crores on the Company.

ABC Limited felt aggrieved by the aforementioned order of Special Director and contemplates to file an appeal.

ABC Ltd has Subsidiary M/s Jooly Private Limited is a company incorporated on 01.01.2005 under the provisions of Companies Act, 1956, having its registered office at Mumbai. The Authorised Share Capital of the company is ` 100, 00, 00,000/- and Paid up Share Capital of the company is ` 99, 00, 00,000/-.

M/s Jemmy Private Limited (Operational Creditor) is a company incorporated on 01.01.2006 under the provisions of Companies Act, 1956 having its registered office at Kolkata.

M/s Jooly Private Limited approached M/s Jemmy Private Limited for purchase of inputs for his production. It was specifically agreed that upon procuring the inputs by

M/s Jooly Private Limited and raising of invoices by M/s Jemmy Private Limited, the entire payment for such invoices shall be made in a timely manner. As per the arrangement, the M/s Jooly Private Limited placed various purchase orders for supply of inputs. M/s Jemmy Private Limited supplied the goods as per the orders placed by M/s Jooly Private Limited and raised invoices against the said supply.

The invoices were duly acknowledged by M/s Jooly Private Limited and an amount as part payments were also made. But thereafter, inspite of various requests made and reminders sent by M/s Jemmy Private Limited, the M/s Jooly Private Limited had neither responded nor repaid the remaining claim.

On failure to pay the outstanding dues by the M/s Jooly Private Limited, the M/s Jemmy Private Limited sent a demand notice dated 01.01.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire outstanding payments of ` 10,00,000/- (Rupees Ten Lakhs), failing which the M/s Jemmy Private Limited shall initiate the Corporate Insolvency Resolution process against the M/s Jooly Private Limited.

Despite the demand notice, the M/s Jooly Private Limited did not pay the amount demanded, neither raised any notice of dispute nor replied to the said notice. As a next action M/s Jemmy Private Limited filed an application before National Company Law Tribunal (NCLT), seeking to unfold the process of Corporate Insolvency Resolution Process (CIRP).

Multiple Choice Questions

(2 x 5 = 10 Marks)

1. Which of the following is a capital account transaction under Foreign Exchange Management Act, 1999?
 - (a) Investment in shares of company in India.
 - (b) Payment of export commission.
 - (c) Payment towards consultancy services.
 - (d) None of the above

2. Mr. X is deputed to India by his company to develop a strategic software for a period of five years from 1st January, 2015. He is paid salary to his Indian bank account. On 1st May, 2017 he wants to remit his entire salaries ended till 30 th April, 2017 to his home country USA. Mr. X can _.

- (a) remit the salary after payment of applicable taxes and contribution to applicable social security schemes
- (b) cannot remit any amount as salary is credited to his bank account in India
- (c) remit gross salary before taxes and can make payment of taxes at the year end
- (d) remit salary only upon completion of assignment after payment of taxes and filing of Income tax return
3. Mr. X migrated to UK 20 year ago. He later on acquired UK citizenship. He inherited 50 acres of agricultural land in Maharashtra which has an inbuilt Farm House. Mr. Kale intends to gift or sell this property to his only son who has UK citizenship, but settled in India. Mr. X —.
- (a) can gift this property to his son but cannot sale it
- (b) can neither gift nor sale this property to his son
- (c) can sale this property to his son but cannot gift it
- (d) can do both, gift as well as sale this property to his son
4. In the above situation what is the earliest date upto which M/s. Jemmy Private Limited can file an application to NCLT?
- (a) 01.01.2019 (b) 11.01.2019
- (c) 15.01.2019 (d) 20.01.2019
5. Which of the following are not functions of Insolvency Professional Agencies (IPAs)?
- (a) Monitoring, Inspecting and Investigating members.
- (b) Recommending Insolvency Professionals to Committee of Creditors.
- (c) Drafting detailed standards and code of conduct for insolvency professionals.
- (d) Addressing grievances, hearing complaints and taking suitable action.

Descriptive Questions

(Total 15 Marks)

- Q.1 (a)** Who can make application before the Adjudicating Authority on behalf of Operational Creditor and where to file such application to initiate the Corporate Insolvency process in the given case and also state the documents needs to be attached with such application under Insolvency and Bankruptcy Code, 2016. (3 Marks)

(b) Who can appoint Interim Resolution Professional in case Resolution Professional is not appointed by the Operational Creditor? State the moratorium as envisaged under the provisions of Section 14(1) to (4) of the Insolvency and Bankruptcy Code, 2016 in relation to the Corporate Debtor.

(3 Marks)

Q.2 As in the above case as ABC Ltd is under Investigation, state the procedure of Adjudication and Appeal under Foreign Exchange Management Act, 1999.

(3 Marks)

Q.3 (a) State the Duty of persons to realise foreign exchange due and Manner of Repatriation as well as Period for surrender of realised foreign exchange under Foreign Exchange Management (Realization, Repatriation and Surrender of Foreign Exchange) Regulations, 2015.

(4 Marks)

(b) Consequence of contravention of provisions of Foreign Exchange Management Act, 1999 and Rules and Regulation made thereunder by a company.

(2 Marks)