



**CA FINAL**  
**Test Code – JKN-ECO-22**  
**(Date: 25-09-2020)**

**(Marks - 100)**

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

### **Case Study 1**

The present information has been filed by India Glycols Ltd. ('the Informant') against Indian Sugar Mills Association ("Opposite Party-1"/ OP-1/ ISMA), National Federation of Cooperative Sugar Factories Ltd. ("Opposite Party-2"/ OP-2/ NFCSF), Indian Oil Corporation Ltd. ("Opposite Party-3"/ OP-3/ IOCL), Hindustan Petroleum Corporation Ltd. ("Opposite Party-4"/ OP-4/ HPCL) and Bharat Petroleum Corporation Ltd. ("Opposite Party-5"/ OP-5/ BPCL) (collectively, "the OPs") alleging contravention of the provisions of the Act.

As per the Informant, OP-1 and OP-2 hold the entire market for sugar mills in India and supply ethanol to chemical industries and to OP-3 to OP-5. It has been alleged that OP-1 is forcing the PSU OMCs to purchase ethanol at an artificially higher price and the same amounts to violation of Section 4 of the Act. It has also been alleged that the role of OP-2 is equally anti-competitive since it has colluded with OP-1 in artificially raising the price of ethanol in contravention of the provisions of Section 3 (3) (a) of the Act.

The Informant is also aggrieved at the mandatory Ethanol Blending Programme (EBP) promulgated by the Ministry of Petroleum and Natural Gas ('MoPNG') vide its notification dated 02.01.2013 whereby the OMCs were directed to sell only petrol blended with ethanol with percentage of ethanol upto 10%. It is alleged that such a programme has created anti-competitive conditions in the market for supply of ethanol by encouraging members of OP-1 and OP-2 to rig bids and to artificially increase the prices of ethanol. Thus, while seeking discontinuance of such a programme, the Informant has sought that joint tender mechanism of PSU OMCs be scrapped and the same be replaced by independent tendering by all the OMCs including private OMCs for procurement of ethanol at market-driven prices so that proper competition amongst all the OMCs is ensured and the Informant and other buyers of ethanol are also benefited by fair competition in the market for sale and purchase of ethanol.

Another sister concern of Hindustan Petroleum, Poor Ltd., now is in default in repayment of mainly on account of the General slowdown in construction activities resulting in low capacity utilization and inadequate cash generation for timely repayment of dues to all concerned. Repeated follow-up by the Financial Institutions with the corporate debtor, 'Poor' Ltd., for submitting its specific plan of action for repayment of dues did not evoke any meaningful response. Therefore, after a joint lenders' meeting, all the financial creditors unanimously decided to apply under the provisions of the Insolvency and Bankruptcy Code, 2016 to the National Company Law Tribunal (NCLT) for starting the process of insolvency resolution in respect of corporate debtor, 'Poor' Ltd'. Financial Creditors filed an application before NCLT which was admitted by NCLT on 20th May, 2018 and orders issued for commencement of a moratorium period of 180 days, appointment of Mr. Ram, an Interim Resolution Professional and for his making a public announcement inviting claims from all concerned. With the advent of the public announcement the following creditors were identified:

- (1) Financial debts owed to unsecured creditors (D1)-` 10 crores.
- (2) Workmen's dues for the period of 24 months preceding the liquidation commencement date (D2)-` 30 crores.
- (3) Debts owed to a secured creditor who has relinquished his security (D3)-` 60 crores.
- (4) Debts owed to the Central Government (D4)-34 Crores.
- (5) Debts owed to a secured creditor for an amount unpaid following the enforcement of security interest (D5)-` 52 Crores.

Mr. Ram who has been appointed as Interim Resolution Professional wants to know the functional responsibilities of Insolvency Professional Agency (IPA).

Mr. Ram, in the last financial year, has given some legal opinions on financial matters to 'Poor' Ltd. and has charged fees.

Smart was the statutory auditor of the corporate debtor. Mr. Shantanu is the whole time member of the Competition Commission of India and has been identified as a relative of Mr. Dull, present Managing Director of 'Poor' Ltd. Mr. Dull is not dear on the provisions of Insolvency and Bankruptcy Code, 2016 (IBC) and requested Company Secretary to advise him on the vital objectives which are intended to be achieved with the Code and also whether the initiation of insolvency resolution process can be done by creditors only or by debtor also.

**Multiple Choice questions:****(2 Marks each for 5 questions) Total 10 Marks**

1. The management of the affairs of 'Poor' Ltd., the corporate debtor undergoing corporate insolvency resolution process vests in the\_\_\_\_\_.
  - (a) Mr. Ram, Interim Resolution Professional
  - (b) Board of Directors
  - (c) Committee of Creditors
  - (d) Insolvency and Bankruptcy Board of India
  
2. Any agreement under the Competition Act, 2002 shall be presumed to have an appreciable adverse effect on competition, which:
  - (a) directly or indirectly determines purchase or sale prices.
  - (b) limits or controls production, supply, markets, technical development, investment or provision of services.
  - (c) directly or indirectly results in bid rigging or collusive bidding.
  - (d) All of the above (2 Marks)
  
3. The NCLT rejected the resolution plan for want of compliance with the Insolvency and Bankruptcy Code, accordingly the proceeds from the sale of liquidation shall be distributed in the following order of priority, what will be the first priority :
  - (a) D2- D1-D3-D4 & D5 (ranked equally).
  - (b) D2 & D4 (ranked equally).
  - (c) D2 & D5 (ranked equally).
  - (d) D3 & D2 (ranked equally).
  
4. Mr. Ram who has been appointed as the resolution professional can take the following actions without the approval of the Committee of Creditors:
  - (a) Undertake transactions with Mr. Shantanu.
  - (b) Make changes in the appointment of Smart, the statutory auditor.
  - (c) File applications for avoidance of preferential or undervalued transactions.
  - (d) Record any change in the ownership interest of 'Poor' Ltd.

5. The Competition Commission of India, if on receipt of an information under section 19 from a consumers' association for alleged contravention of section 3 (1) by the opposite party, is of the opinion that there exists a prima facie case, it shall direct the to cause an investigation into the matter.
- (a) President of the association giving information;
  - (b) Director General appointed under section 16;
  - (c) Representative of the opposite party;
  - (d) Managing Director.

### Descriptive questions

(Total 15 Marks)

- Q.1** Whether the process of mandatory EBP notified by MoPNG as well as procurement of ethanol by the OMCs at fixed notified prices contravene any provision of the Act? (5 Marks)
- Q.2** Whether OP-1 has abused its dominant position in the market for supply of ethanol to the PSU OMCs in violation of the provisions of Section 4 of the Act? (5 Marks)
- Q 3** Answer the following based on the facts given in the question with reference to the provisions of the Insolvency and Bankruptcy Code, 2016 (Code):
- (A) Advise Mr. Ram on the functional responsibilities of Insolvency Professional Agencies (IPA). (2 Marks)
  - (B) Advise Mr. Ram on the Eligibility of an insolvency Professional to be appointed as a Resolution Professional (2 Marks)
  - (C) Advise 'Poor' Ltd. whether the initiation of insolvency resolution process can be done by creditor only or by corporate debtor also. (1 Marks)

### Case Study 2

Sharma's were a famous business class family living in Delhi. Mr. Sharma was involved in diversified businesses like property, shares, money lending, hotels etc. He had three children, one daughter and two sons named Anand and Tushar . His daughter Anahika was the eldest one and after completing her graduation went to London to pursue her ACCA. After completion of her course she came back to Delhi and got engaged to Dheeraj. Dheeraj was a Pune based Civil Engineer

involved in construction business.

Anahika's wedding was fixed for April 17; 2017. Shopping of jewellery and clothes was also in full swing. Payment for both jewellery and clothes were made mostly in cash. During these preparations one of the jeweler from whom some jewellery was purchased in cash was raided by the Income Tax Department over cash sale of Gold and jewellery and deposition of high amounts of cash in banks in different accounts during the period of demonetization.

During this raid information/details pertaining to Sharma family's cash purchase also revealed. This information worked as evidence against Sharma's as the Department was already keeping an eye on Mr. Sharma. Mr. Sharma too had done cash purchases of gold and jewellery during the period of demonetization and was also involved in deposition of cash in bank during that period. Apart from that the Department was also having a tip about Mr. Sharma's some other business transactions.

After that jeweler, a raid was also conducted at Mr. Sharma's house on 23<sup>rd</sup> March. As they were preparing for Anahika's marriage a lot of cash and jewellery was lying in the house. Besides cash in Indian currency around 25000 US \$ were also found. Cash amounting to ` 2550000/-, jewellery worth ` 5 crores, flats and some fixed deposit receipts were seized. A diary consisting of many details of Mr. Sharma's various cash transaction was also found.

In May 2017 Anand got admission in a management school in US and for the purpose Mr. Sharma remitted 20000 US \$ as his admission fee to the institute. In August 2017 Anand went to USA for pursuing his studies. Mr. Sharma gave him 2000 US \$ for his petty expenses. Mr. Sharma opened a foreign currency account with a bank in USA for making remittances to Anand to meet his different expenses there under Reserve bank of India's Liberised Remittance Scheme and further a sum of US \$ 50000 was deposited in the same.

Mr. Sharma had asked Dheeraj to look for a land upon which he wanted to construct a small residential tower with all the modern amenities and facilities. Dheeraj contacted some property dealers of Pune for the land. One of the dealers told him

about a land situated in nearby areas of Pune. After having a meeting with the land owner deal of the land was finalized for ` 1.5 crore. Mr. Sharma decided to pay ` One crore through cheque and balance in cash. To arrange for the said transaction of ` 1.5 crore Mr. Sharma decided to sell one of his inherited properties.

Since it was intended that the said land will be used for building a residential tower consisting of 12 units and the area of land was more than 500 square meters a registration under The Real Estate (Regulation and Development) Act, 2016 was necessary. Dheeraj and Anand were given the full charge of the land and construction upon it. On 1<sup>st</sup> July 2017, an online application was submitted to MAHA RERA for project registration along with all the necessary documents. The project was named as DEVALAYA and Mr. Sharma and Dheeraj were named as the Promoters.

On 14<sup>th</sup> July the project got its registration and after that the marketing of the project started. Due to unique project buyers took a great interest in the project and all the 12 units were sold out within few months of publication of the advertisement. The construction work started on a promised date i.e.1<sup>st</sup> August 2017 and it was promised that by 31<sup>st</sup> December 2017, 80%of construction work will be completed. All the formalities related to agreement of sale with prospective buyers were duly fulfilled. The selling price of each flat was fixed at ` One crore and a legitimate signing amount was received from the prospective buyers.

Project completion period was 06 months with a grace period of one month. Buyers were required to pay the amounts as per the stages of completion of the project .As promised by the promoters by 31<sup>st</sup> December project was 80% complete and all the buyers except one Mr. Abhijit, paid the amount dues as per schedule. Flats were ready for possession by 15<sup>th</sup> February 2018.All the buyers paid the full amount towards their flats ,but Mr. Abhijit for one or other reason did not pay more than 60% i.e. 60 lacs towards his flat.

The promoters of the Devalaya got completion certificate and occupancy certificate in due time and handed over the possession to the buyers along with all the

necessary documents related to the title and ownership of the flats; except Mr. Abhijit, as he had not made full payment towards his flat, despite sending him reminders for payment. When Mr. Abhijit came to know about the possession of the flats he contacted Dheeraj and demanded for possession. Dheeraj asked Mr. Abhijit to pay the balance amount together with interest for delay period to get the possession. Mr. Abhijit rejected Dheeraj's demand of paying the interest saying that he is ready to pay the balance amount but not the interest as he is legally not bound to do so. Dheeraj tried to convince him to pay the interest but he continuously refused so after due discussion with Mr. Sharma, Dheeraj handed over the possession to Mr. Abhijit also when he released the full and final payment towards the flat purchased by him.

**Multiple Choice questions:****(2 Marks each for 5 questions) Total 10 Marks**

1. How much foreign exchange in the form of coins can be held by a resident individual in India?
  - (a) 2,000 US \$
  - (b) 5,000 US \$
  - (c) None of the above
  - (d) Without any limit
  
2. Suppose in the given case if any real estate project was under construction/on going on the date of commencement of RERA (for which occupancy /completion certificate was not received) by which date that project should have get its RERA registration?
  - (a) By 1st August 2016
  - (b) By 29th July 2017
  - (c) By 1st May 2017
  - (d) By 29th July 2016
  
3. With reference to the RERA; which of the following sentence/s are correct?
  - (a) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, establish an Authority
  - (b) The appropriate Government of two or more states or Union territories can not establish one single Authority, even if it deems fit
  - (c) The appropriate Government may not establish more than one Authority in a state or Union territory, even if it deems fit
  - (d) The appropriate Government shall establish authority after 1year from the

date of enforcement of the Act.

4. Disputes related to real estate projects covered by the vicinity of RERA can be heard in which of the following hierarchy-
- (a) RERA Authority→Appellate Tribunal→High Court
  - (b) RERA Authority→Central Advisory Council→Appellate Tribunal
  - (c) Central Advisory Council→RERA Authority→Appellate Tribunal→High Court
  - (d) RERA Authority→Central Advisory Council→Appellate Tribunal→High Court
5. For any contravention of FEMA Regulations under section 13 of the Act, where the sum involved is quantifiable, the quantum of penalty would be\_\_\_\_\_.
- (a) three times of sum involved
  - (b) rupees two lacs only
  - (c) upto Rupees five thousand per day of the offence in continue
  - (d) Both (a) and (c) above

### Descriptive questions

(Total 15 Marks)

- Q.1** In the given case of a housing project in Pune City State Which key factor required to be checked before granting any registration.
- (5 Marks)**
- Q.2** A raid was conducted at Mr. Sharma's residence in relation to cash purchase of jewellery.
- During the raid some documents were found and seized by the authorities. Supposing you are an authority who is examining the case under the respective Act. Examine in the given situations your power regarding seizing of those documents and papers.
- (5 Marks)**
- Q.3** Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether there are any restriction in respect of the following:
- (i) Drawal or Foreign Exchange for payments due on account of Amortization of loans in the ordinary course of business.



- (ii) A person, who is resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by the companies in U.S.A.?
- (III) A person resident outside India proposes to invest in the shares of an Indian company engaged in plantation activities.

**(5 Marks)**

### **Case Study 3**

Mr. Manish Jain, running a reputed jewellery shop titled as M/s. Kamlesh Jewelers in Kandivali at Mumbai. He has two daughters Reshma and Renu and also has three sons Amit, Tushar and Sanjay. Due to Long business history he has gained name in the industry and customers from far and near came to his shop to purchase gold ornaments, gold coins and other items made of gold and silver. He then thought of expanding his business and thereby purchased a new shop at bandra in Mumbai. The payment of ` 4 crore was made by cheque and title deeds of the property were registered in his name after making payment of appropriate stamp duty.

The eldest son Mr. Amit managed the jewellery shop in Kandivali while the second son Mr. Tushar helped him in new shop opened at Bandra. The youngest son Sanjay was undergoing a two-year jewellery designing course from Manchester Metropolitan University, UK.

Mr. Manish Jain was desirous of purchasing a residential property in Oberoi Towers, in a high-end area of Bandra, Mumbai. For this purpose, he engaged a property dealer and within a month was able to finalise a house on ground floor. It was registered in his name and payment towards purchase consideration, stamp duty etc. to the extent of ` 7.20 crore was made by cheque. After purchasing the property he felt content and happy that he was the owner of a property which was situated in a prime area of Bandra. He spent some funds in renovating the Property, furnished it properly and thereafter gave it on lease to a nationalized bank for the purpose of Guest House where bank's officials visiting Mumbai could be accommodated.

During the course of the years, he accumulated lots of funds which he wanted to invest safely with a view to earn higher returns. He, therefore, consulted his close friend Mr. Ramesh Gupta who was a practicing lawyer. He advised him to purchase properties in UP or Rajasthan because investment in properties was a safe bet and over a period of time it would give higher returns also. Mr. Ramesh Gupta also told Mr. Manish regarding existence of the Benami Transactions (Prohibition) Act, 1988 which was

recently renamed as the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act). The re-naming of the Act was done by enacting the Benami Transactions (Prohibition) Amendment Act, 2016 with effect from 1st November, 2016. He also apprised him of that benami transaction provisions were attracted to any property, shares, debentures, fixed deposits and bank accounts if they were held by one person for another who actually paid for the transaction. Anyway, he purchased a plot in Bangalore for ` 65 lacs in the name of his wife Mrs. Kalyani by paying lesser amount of stamp duty as a relaxation was given to the women.

Mr. Manish Jain also interested to expand real estate and construction business. In order to build a land bank in various parts of India that were likely to see commercial development and anticipating a future upward trend in land prices in various parts India . Mr. Manish Jain hired the services of Mr. Mahesh to assist in the process of acquisition of lands.

Manish Jain issued a detailed offer letter to Mr. Mahesh for purchase of around 30 acres of land at the maximum price of ` 10, 00,000/- per acre in different parts of India within a period not exceeding five years. The said offer was accepted by Mr. Mahesh by a letter of acceptance. Upon exchange of offer and acceptance, a legally binding and valid contract came to be force between Manish Jain and Mr. Mahesh.

Mr. Mahesh received from Manish Jain a sum of ` 2 Crore as a loan/advance for the purchase of lands as specified in the contract between the parties. Mr. Mahesh purchased various movable and immovable properties with the funds received from Manish Jain. Since all the funds could not be directly invested in land as required by the contract, investments were made by Mr. Mahesh by himself or through his company in purchase of immovable property, including land, built-up residential and commercial buildings, etc. and Investment in fixed deposits in name of Mr. Mahesh and PQR Limited(95% shareholding by Mr. Mahesh) also investment in movable property including bank balance and few vehicles.

In the meantime Director of Enforcement initiated *suo moto* proceedings under the Prevention of Money Laundering Act, 2002(PMLA) and registered a complaint under Sections 3 and 4 of the PMLA against such property of Mr. Mahesh under the Prevention of Money Laundering Act, 2002.

**Multiple Choice Questions****(2 x 5 = 10 Marks)**

1. In the case of alleged property after the conclusion of trial for the scheduled offence the attachment of property becomes final. The Adjudicating Authority after giving an opportunity of being heard to the person concerned, made an order confiscating such property. After an order of confiscation what will happen to the attached properties after conclusion of trial for the scheduled offence?
  - (a) The order of attachment of property will become final
  - (b) The Property will be released and equivalent amount of cash will be obtained
  - (c) The attachment of the property and net income, if any, shall cease to have effect.
  - (d) All the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances.
  
2. In what circumstances a letter of request to contracting state u/s 57 cannot be issued?
  - (a) examine facts and circumstances of the case
  - (b) forward all the evidence so taken or collected to the Special Court issuing such letter of request
  - (c) take such steps as the Special Court may specify in such letter of request
  - (d) None of the above
  
3. Benami Property is -
  - (a) any property which is not the subject matter of a benami transaction.
  - (b) any property which is the subject matter of a benami transaction and also includes the proceeds from such property.
  - (c) any property which is not the subject matter of a benami transaction and also does not include the proceeds from such property.
  - (d) None of the above
  
4. A person who finances the deal in respect of benami property:
  - (a) is not the beneficial owner of the property
  - (b) is the beneficial owner of the property
  - (c) is not the possessor of the property
  - (d) None of the above

5. Beneficial Owner is -

- (a) a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar.
- (b) a person, who is benamidar and holds the property.
- (c) Both (a) and (b)
- (d) person who is valid legal holder of the property.

### Descriptive Questions

(Total 15 Marks)

**Q.1** Can the property purchased by Mr. Manish Jain in the name of his wife Mrs. Kalyani be considered as 'Benami Property'? Justify.

(5 Marks)

**Q.2** Discuss the power of Director of Enforcement related to property of Mahesh involved in money laundering under PMLA and also specify the Procedure to exercise such Power.

(5 Marks)

**Q.3** Explain the extent of punishment can be levied on Mahesh under PMLA and also specify what is the time limit to file appeal against such punishment.

(5 Marks)

### Case Study 4

In the year 2001, Rajdeep and Amit formed Simara Constructions Private Limited (SCPL) having registered office in Karol Bagh, New Delhi. The company provided spacious and plush homes with well-designed landscapes, gymnasiums along with multi-tiered security and recreational spaces involving more than one lac sq. ft. in Faridabad and Gurugram. Their construction business was flourishing day-by-day. 'SCPL' was now a brand which could attract persons from all walks of life i.e. professors, advocates, engineers, professionals, businessmen, government employees holding responsible positions, etc. Expanding business required Rajdeep and Amit to appoint Sanjana and her husband Ram, both architects by profession, as directors in the company. Sanjana was the younger sister of Amit.

Time was passing on. It was in the month of July, 2015, that the SCPL launched yet another project in Greater Noida whose completion date was given as June, 2018. This project involved construction of residential units, office spaces and a mall. The modus

operandi was to invest around R 1200 crore for developing the township at Greater Noida under 'committed returns plan'.

The 'committed returns plan' required the home-buyers to pay 80% percent of the total sale consideration up-front at the time of execution of the MOU and the promoters of SCPL would undertake to pay 12% of the 'advance money' so received each month to the investors as 'committed returns' from the date of execution of the MOU till the time actual physical possession of residential units/office space, etc., was to be handed over to the buyer. The home-buyers also had the option to choose the construction-linked payment plan and possession-linked payment plan.

In comparison to construction and possession linked payment plan, the 'committed returns plan' proved to be an attractive one for the home-buyers belonging to different strata of society. Like many others, Aayush, by profession a computer engineer and working for a reputed MNC engaged in developing customized software, was also interested in this plan and applied for a residential unit as well as an office space. Aayush, who always wanted to be a self-employed person in the long run, kept some future plans in mind while applying for the office space.

Under the 'committed returns plan', Aayush was required to make a payment of Rupees 80.00 lacs (i.e. 80% of the cost of R 1.00 crore for a 4BHK apartment and an office space in the mall). He discussed the matter with his father Ramashankar who arranged R 65.00 lacs by raising loan against his fixed deposits. Remaining Rs 15.00 lacs were arranged by Aayush as gold loan by pledging the jewelry of his wife Meera. According to the MOU entered by Aayush with the company, he would be paid Rs 80,000 per month through NEFT from October, 2015 onwards till the handing over of the fully constructed property. The difference of Rs 20.00 lacs (i.e. Rs 1.00 crore minus Rs 80.00 lacs) would be paid by Aayush when he will be having the possession of the apartment as well as office space.

Everything seemed to be fine in the first year of launching the project as the SCPL paid the 'committed returns' to the home- buyers without any default but stopped the same thereafter without assigning any reason. Similar to the others, Aayush also noticed the default but comforted himself by assuming that the 'committed returns' would start soon after sometime.

There was, however, no ray of hope and the default continued unhindered. Further, Aayush learned from certain other home-buyers that no construction activities were in sight at the earmarked plot. He made up his mind to visit the site personally and found the unthinkable revelations true. Aayush got extremely worried at the changed scenario. He contacted the officials of the company but received no reply. At a later date, when Aayush confronted the company officials, he was informed that the possession would be given within the next two years; but the time passed without anything concrete to happen.

Sensing dark clouds looming large over his head, he discussed the worrying matter with his uncle's lawyer, Vansh Agarwal. His uncle, Rajinder Kumar, was an exporter, exporting readymade leather bags of various sizes to South Africa, catering to latest fashion trends.

Vansh informed Aayush that due to some significant amendments in Insolvency and Bankruptcy Code, 2016 (IBC, 2016) home-buyers were also the financial creditors of the builders and developers. The premise of this amendment was based on an important fact that the home-buyers were also a reckoning force as other financial creditors; but they were being left high and dry when it came to playing a role in the decision-making process relating to initiation of insolvency resolution process against the defaulting builder/developer. Accordingly, he could also be referred to as a financial creditor and could initiate insolvency proceedings against the company as it had failed to pay back monthly 'committed returns' to him including non-delivery of apartment and office space at the stipulated time. The other investors could also sail in the same boat as they had the similar fate.

Vansh further clarified that 'debt' in this case was disbursed against the consideration for 'time value of money' which is the main ingredient that is required to be satisfied in order for an arrangement to qualify as financial debt and for the lender to qualify as a financial creditor under the scheme of IBC. This acted as silver lining for Aayush.

In the meantime, Aayush came across a public announcement through which claims from 'Financial Creditors' as well as other creditors of SCPL were invited. On further enquiry, he gathered that the company had defaulted in repayment of a term loan of Rs 100 crore which was obtained from National Bank of India. Accordingly, the Hon'ble National Company Law Tribunal (NCLT), Delhi, on the application of National Bank

of India, had ordered the commencement of Corporate Insolvency Resolution Process (CIRP) against SCPL. As mentioned in the public announcement, Aayush submitted his claim along with proof thereof in 'Form C' through the specified e-mail.

**Multiple Choice questions:**

**(2 Marks each for 5 questions) Total 10 Marks**

1. In the given case study, National Bank of India filed an application for corporate insolvency resolution process (CIRP) with National Company Law Tribunal, Delhi against SCPL for default in repayment of term loan. If everything was in perfect order, from which date the corporate insolvency resolution process would have commenced?
  - (a) From the date of submission of the application.
  - (b) From the date of admission of the application.
  - (c) From the date of ascertaining the existence of default by the NCLT.
  - (d) From the date of appointment of Insolvency Resolution Professional (IRP).
  
2. Suppose Sanjana had given a loan of R 15,00,000 to SCPL which remained outstanding when Corporate Insolvency Resolution Process was ordered. As financial creditor whether she could be a part of Committee of Creditors (CoC) after she submitted her claim in 'Form C'.
  - (a) Yes, she could be a part of Committee of Creditors (CoC) as she had given loan to SCPL which was more than R 5,00,000.
  - (b) No, she being a director of SCPL, could not be a part of Committee of Creditors (CoC).
  - (c) Yes, she could be a part of Committee of Creditors (CoC), if Interim Resolution Professional (IRP) permitted her despite the fact that she was a director of SCPL.
  - (d) Yes, she could be a part of Committee of Creditors (CoC), if Interim Resolution Professional (IRP) sought permission of minimum 75% of the shareholders of the company carrying voting rights.
  
3. In the case study, SCPL had demanded advance payment of 80% of the project cost from the intending home-buyers. After coming into force of Real Estate

(Regulation and Development), Act, 2016 (RERA), maximum how much advance money can be demanded by a builder.

- (a) Not more than 5% (b) Not more than 10%  
(c) Not more than 15% (d) Not more than 20%

4. Suppose the application for Corporate Insolvency Resolution Process against SCPL filed by National Bank of India with the National Company Law Tribunal, Delhi is adjudged as incomplete in respect of certain matters. It was intimated to National Bank of India through notice issued on 24th October 2018. The said notice was received by National Bank of India on 26th October, 2018. The time period within which the defects must be rectified by National Bank of India, so that insolvency process may be started by the National Company Law Tribunal, Delhi.

- (a) latest by 31st October, 2018  
(b) latest by 2nd November, 2018  
(c) latest by 5th November, 2018  
(d) latest by 10th November, 2018

5. In the given case study, Aayush, as 'financial creditor', could also move an application for corporate insolvency resolution process because non-payment of debt by SCPL was much more than the minimum amount stipulated for triggering a default against the company. Indicate that minimum amount by choosing the correct option:

- (a) ₹ 50,000 (b) ₹ 1,00,00,000  
(c) ₹ 10,00,000 (d) ₹ 20,00,000

### Descriptive questions

(Total 15 Marks)

Q.1 In this case study Aayush, who is a home-buyer, has been categorized as a 'financial creditor'. You are required to answer the following:

- (a) Mention the provisions which enable a 'home-buyer' to be considered as a 'financial creditor'.

(5 Marks)



(b) 'Identify when a 'financial creditor' can also be categorised as an 'operational creditor'?

(5 Marks)

**Q.2** In the given case study, suppose Aayush having developed a customized software for SCPL. Despite repeated reminders, SCPL did not settle his invoice of `5,00,000 raised in this respect. Ultimately, Aayush proceeded to file application for initiating Corporate Insolvency Resolution Process (CIRP) against SCPL with the National Company Law Tribunal (NCLT), Delhi. What could have been the documents which Aayush might have furnished along with application filed for initiating Corporate Insolvency Resolution Process (CIRP)?

(5 Marks)

### Case Study 5

Ramandeep and his two sons, Harikesh and Sidharth are the promoters of SUBHADRA DRINK LTD (SDL). Ramandeep is the Chief Managing Director (CMD) of the Company.

Harikesh looks after finance and marketing; Sidharth takes care of production and human resources.

Production unit is located in Patna, Bihar. The business of the Company is manufacturing and selling of mineral water. The company was formed with a small investment of Rs 45 Lacs initially as a private limited company, however, later converted into an unlisted Limited Liability Company. The promoters, through their hard work and business competence ensured that SDL is profitable.

Harikesh is an ambitious as well as a shrewd business man. He always tried to beat the competition through flexibility in pricing of his products. Sometimes he even sold some of the products at prices below the costs. He always looked for new avenues for business development, diversification and expansion, for which Sidharth ably assisted him by providing him with the required feasibility reports, analysis and technical information.

Years passed. Board of Directors of SDL decided to go for public issue and listing of its Equity Shares, mainly for expansion, initially with setting up a new large scale mango juice preparation plant. The public offer was a great success and the required shares were duly allotted.

A new large scale mango juice manufacturing plant was established in Patna, location next to the existing mineral water unit. First year of operation was just breakeven. However, unfortunately, the second year of operation turned out to be negative for the Mango Juice Unit due to bad monsoons and bad weather. There was scarcity in supply of mangoes, mango pulp and some other basic raw materials required for production of mango juice during the year 2017 in Bihar. Consequently, all the mango juice manufacturing units in Bihar, through their trade association, entered into an Understanding for price fixing with the sole purpose of defeating competition during the time of scarcity. However, the said Understanding was not in writing and also not intended to be enforced by legal proceedings.

In due course of time, SDL entered into a joint venture agreement with RAMAN PULP PRIVATE LIMITED (RPPL) of Punjab to ensure continuous supply of mango pulp and some other raw materials to its mango juice manufacturing unit. With this JV and some other continuous supplies arrangements, SDL could gradually reach an advantageous position in Bihar for local sales of Mango Juice within the State. Production and sales of SDL increased by more than 10 times within a short period of time.

SDL also entered into various distribution agreements with different retail distributors within the state of Bihar to sell its products only in the area exclusively identified or allocated to each of them. Different agreements relating to prices, quantities, bids and market sharing with the competitors and other non- competing entities were also entered into by SDL.

SDL enhanced its production efficiency, introduced various cost saving measures, and could substantially increase its market share in the sale of its products over a period of time. Many of the bankers, financial institutions and potential investors approached the Company, offering further financial assistance/ investment. With all the productive

measures, SDL could achieve the position of strength in Bihar market to operate independently of competitive forces. SDL soon also diversified into other segments of businesses in Beverages.

However, the continuing business competition also resulted in the Commission receiving formal information from one of the Trade Associations in Bihar that there is abuse of dominance by SDL by contravening various provisions of the relevant law. The Commission initiated an enquiry and was of the opinion that there exists a prima facie case and directed the Director General (DG) to cause an investigation to be made into the matter and report the findings to the Commission.

After due investigation, the DG submitted his Report to the Commission within the specified period. However, the allegations against SDL of the contravention of the law could not be substantiated during investigation and were found to be mainly because of the business competition. The Report of the DG recommended that there is no contravention, since there is no appreciable adverse effect on competition.

The Commission forwarded copies of the Report to both the parties. After due consideration of the objections and suggestions, the Commission agreed with the recommendations of the DG, closed the matter and passed the appropriate Orders.

Ramandeep has another business Partner, JAYESH who 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.

**Multiple Choice questions:**

**(2 Marks each for 5 questions) Total 10 Marks**

1. Board of Directors of SDL decided to go for public issue and listing of its Equity Shares, for business expansion, initially with setting up a new large scale mango juice preparation plant. The public offer was a great success and the required shares were duly allotted. In the context of above case, which one of the following statement is correct?
  - (a) Shares cannot be considered as “goods”, since nothing has to do with manufacturing, processing, or mining.
  - (b) Shares can be considered as “goods” at the share application stage, since application monies are paid for acquisition of shares.
  - (c) Shares can be considered as “goods” only during their purchase or sale i.e. trading in the Stock market or otherwise.
  - (d) Shares can be considered as “goods” after allotment.
  
2. SDL also entered into a joint venture agreement with RAMAN PULP PRIVATE LIMITED (RPPL) of Punjab to ensure continuous supply of mango pulp and some other raw materials to its mango juice manufacturing unit. Joint Venture agreement between SDL and RPPL:
  - (a) Is an anti-competitive agreement, since resulted in increased turnover for one company, as against others
  - (b) Not to be considered anti- competitive, since it enhanced the production efficiency of SDL
  - (c) Is anti- competitive, since SDL could reach advantageous position in Bihar because of this Agreement
  - (d) The agreement between SDL and RPPL is void and inoperative ab- initio since resulted in more sales to one Company as compared to others in Bihar.
  
3. The continuing business competition also resulted in the Commission receiving formal information from one of the Trade Associations in Bihar that there is abuse of dominance by SDL by contravening various provisions of the relevant law. The composition of the said Commission, which received the formal information herein above, as per the relevant law shall be:

- (a) Chair Person and not less than 2 and not more than other 6 members, to be appointed by the State Government.
  - (b) Commissioner and not less than 3 and not more than 5 members, to be appointed by the Central Government
  - (c) Chair Person and not less than 2 and not more than other 6 members, to be appointed by the Central Government.
  - (d) Chief Executive officer and not less than 3 and not more than 5 members, to be appointed by the State Government
4. All the mango juice manufacturing units in Bihar, through their trade association, entered into an Understanding for price fixing with the sole purpose of defeating competition during the time of scarcity. However, the said Understanding was not in writing and also not intended to be enforced by legal proceedings. The Oral Understanding entered into by Trade Association of Bihar in the aforesaid case:
- (a) Is only an arrangement, not enforceable
  - (b) Can be converted into a written Agreement at a later date and can be enforceable only thereafter.
  - (c) a valid Agreement
  - (d) a valid Agreement only if all the parties involved therein confirm it in writing at a later date.
5. Whether is it a requirement under Prevention of Benami Property Transactions Act, 1988 that Benamidar shall be aware that property is registered in his / her name to categorize a transaction as Benami ?
- (a) Yes, it is necessary.
  - (b) No, it is not necessary
  - (c) Can't say
  - (d) None of the above

**Descriptive questions****(Total 15 Marks)**

- Q.1** The Commission initiated an inquiry and was of the opinion that there exists a prima facie case and directed the Director General to cause an investigation to be made into the matter and report the findings to the Commission.

a. Instead of any directions by the Commission, is there any possibility of a Director General to suo motu initiate investigation in the above case under any of the provisions of the relevant Indian law?

**(1 Mark)**

b. Imagine in the aforesaid case, the Commission passes an Order directing the division of the enterprise, SDL. “The Order of the Commission may provide for any or all the matters on division of enterprise enjoying position of strength as stated under the law”. Enumerate the provisions of the relevant Law on the matters that may be provided for in the Order?

**(3 Marks)**

c. The Articles of Association of SDL provides that the Managing Director and the Directors are entitled to claim compensation to the extent mentioned therein, if there is division of enterprise for any reasons and in case they cease to hold their office(s) in consequence thereof. Is Sidharth, one of the directors of SDL, on cessation of his office entitled to claim compensation, because of the position stated in point (b) above i.e. Commission passing an Order for division of enterprise?

**(1 Mark)**

**Q.2** In the above case, SDL has entered into various types of agreements with various entities. “Any Agreement at different stages or levels of the production chain in different markets for trade in goods or provision of services shall be void, if it causes or is likely to cause an appreciable adverse effect on competition in India”. Identify and enumerates such Agreements.

**(5 Marks)**

**Q.3** Under Benami Property Transactions Act 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)**