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CA FINAL

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Answers

Case Study 1

Multiple Choice Questions

1. (a)
2. (d)
3. (d)
4. (c)
5. (b)

Descriptive Answers

Q.1

It needs no emphasis that a policy or pricing strategy of the Government cannot be examined in abstract by the Commission unless the same falls within the framework of the Act. The Commission observes that policy formulation is the prerogative of the Government. It is in its domain to effect a change in the extant policy by shifting the focus or changing the economic policies. No doubt, such changes could result in adversely affecting some of the existing interests, yet the same cannot be a ground to challenge them before the Commission. It is not for the Commission to consider the relative merits of different economic policies or the pricing mechanisms of the Government and decide as to whether a more wise or a better alternative can be evolved. The Commission is of the considered opinion that formulation of policies falls in the domain of the Executive and the Commission is not the appropriate forum to sit in appeal over such decisions unless such policies contravene any provision of the Act and can be examined within the existing regulatory framework.

Q.2

The primary activities of ISMA are to provide a platform to its constituent members to discuss matters of common interest relating to the sugar industry besides making representations to the government authorities and agencies to espouse the cause of its members in respect of the matters of policy and procedures governing the sugar industry. Since ISMA is not undertaking any activity which is economic or commercial activity pertaining to production and supply of ethanol, allegations made

by the Informant in this regard do not survive. As a result, question of ISMA being dominant in such a market does not arise. The argument of the Informant that ISMA is involved in business of 'provision of services' to its members to bring it within the scope of 'enterprise' is disingenuous. It needs no further analysis as the allegations made by the Informant are in respect of production and supply of ethanol and not in respect of the alleged services provided by ISMA to its members. It would indeed be a subversion of law if ISMA is held to be an 'enterprise' for providing its platform to the members as 'services' and to hold it guilty for altogether different activity i.e. production and supply of ethanol. (3 Marks)

In view of the above, the Commission is of the considered opinion that ISMA cannot be considered to be an 'enterprise' within the meaning of the term as defined in Section 2 (h) of the Act and as such, the issue of abuse of dominant position by ISMA in respect of production and supply of ethanol does not arise.(2 Marks)

Q.3

(A) Functional responsibilities of Insolvency Professional Agencies (IPA):

It will perform three key functions:

(i) Regulatory functions

- drafting detailed standards and codes of conduct through bye laws, that are made public and are binding on all members

(ii) Executive functions

- monitoring, inspecting and investigating members on a regular basis
- gathering information on their performance, with the over-arching objective of preventing frivolous behaviour, and
- malfeasance in the conduct of IP duties

(iii) Quasi-judicial functions

- addressing grievances of aggrieved parties, hearing complaints against members and taking suitable actions

(B) **Eligibility of an insolvency Professional to be appointed as a Resolution Professional:** As per Regulation 3 of the Insolvency and Bankruptcy (Insolvency Resolution process for Corporate Persons) Regulation, 2016, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are

independent of the corporate debtor:-

- (a) He is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company.
 - (b) He is not a related party of the corporate debtor.
 - (c) He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years.
 - (d) He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm in the last three financial years.
- (C) As per Section 6 of the IBC, 2016, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter (Chapter II of part II). Therefore, Insolvency resolution process can be initiated by creditor as well as by the corporate debtor.

Case Study 2

Multiple Choice Questions

1. (d)
2. (a)
3. (a)
4. (a)
5. (a)

Descriptive Answers

Q.1

As a Real Estate Regulatory Authority While checking any application for registration provisions of Section 4 of the Real Estate Regulatory Act (RERA) must be kept in mind. The different provisions of the Section 4 are as under-

- (1)** This section provides that every promoter shall make an application to the Authority for registration of the project in such form, manner, within such time and accompanied by such fee as may be prescribed. (1 Mark)
- (2)** The promoter shall enclose the following documents along with the application referred to in sub-section(1), namely-
 - (a)** a brief details of his enterprise including its name, registered address ,type of enterprise(proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of promoter:
 - (b)** a brief detail of the project launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
 - (c)** an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases.
 - (d)** The sanctioned plan, layout plan and specification of the proposed project of the phase thereof, and the whole project as sanctioned by the competent authority.
 - (e)** The plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy.
 - (f)** The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
 - (g)** Proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
 - (h)** The number , type and the carpet area of apartment for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the appurtenant , if any;

- (i) The number and area of garage for sale in the project;
- (j) The names and address of his real estate agents, if any, for the proposed project;
- (k) The names and address of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project; (2 Marks)
- (l) A declaration, supported by an affidavit, which shall be signed by the promoter or any person authorized by the promoter, stating :--
 - (A) that he has a legal title to the land on which development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;
 - (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including anyrights, title, interest or name of any party in or over such land along with details;
 - (C) the time period within which he undertakes to complete the project of phase thereof, as the case may be;
 - (D) that 70% of the amount realized for the real estate project from the allottees , from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction andthe land cost and shall be used only for the purpose;

The promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

The amounts from the separate account shall be withdrawn by the promoter after it is certified by an architect, an engineer, and a chartered accountant in practice that the withdrawal is in proportion to the percentage of the project.

The promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amount collected for a particular project have been utilized for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

- (E) that he shall take all the pending approvals on time, from the competent authorities;
- (F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and
- (G) such other information and documents as may be prescribed. (2 Marks)

Q.2

As an Authority acting under the provisions of the Prohibition of Benami Property Transaction Act, 1988, the Act has provided with power to impound documents as per the provisions of Section 22 of the Act. This Section provides for as under-

Where any books of accounts or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of the books of accounts or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain the books of accounts or other documents for a period not exceeding three months (3 months) from the date of order of attachment made by the adjudicating Authority.

Provided that the period for retention of the books of accounts or other documents maybe extended beyond a period of three months from the date of order of attachment made by the Adjudicating Authority where the authority records in writing the reasons for extending the same. (2 Marks)

Where the Authority impounding and retaining the books of accounts or other documents, under the aforesaid is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen (15) days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.

The period of retention of the books of accounts or other documents shall in no case exceed a period of thirty (30) days from the date of conclusion of all the proceedings under this Act. The person, from whom the books of accounts or other documents were impounded, shall be entitled to obtain copies thereof. On the expiry of the period specified, the books of accounts or other documents shall be returned to the person from whom such books of accounts or other documents shall be returned to the person from whom such books of accounts or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits their release to any other person. (3 Marks)

Q.3

- (i) **Amortization of Loan:** As per provisions of Sec. 6(2), the Reserve bank shall not impose any restriction on the drawal of foreign exchange for drawl of foreign exchange for payment due on account of amortization of loan in the ordinary course of business. Hence this transaction is permissible without any restrictions. (1 Mark)
- (ii) **Person resident in USA returning permanently to India:** When the person returns of India permanently, he becomes a resident in India. Sec. 6(4) provides that a person resident in India may hold, own transfer or invest in foreign currency, foreign security, etc. if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. Hence, the person who returned to India permanently can continue to hold the foreign security acquired by him when he was resident in U.S.A. (2 Marks)
- (iii) **Investment in shares of Indian company by non-resident:** Reserve Bank issued Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. In accordance with these regulations a person resident outside India is prohibited from making investment in India, in any form, in any Company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage in agricultural or plantation actives. Hence, it is not possible for a person resident outside India to invest in the shares of a plantation company as such investment is prohibited. (2 Marks)

Case Study 3**Multiple Choice Questions**

1. (d)
2. (d)
3. (b)
4. (b)
5. (a)

Descriptive Answers**Q.1**

The property so purchased in the name of Mrs. Kalyani, whether a 'Benami Property' or not, will depend upon the facts/motive/intention of Mr. Manish Jain for purchasing property in such a way.

The property **would be considered** as benami property-

- If the intention to purchase property was only to save stamp duty; and
- It was intended not to give any ownership benefit to his wife.

Additionally, it is also to be proved in case of benami property that the owner of the property was not aware of, or, denied knowledge of such ownership.

(2 Marks)

The property **would not be considered** as benami property-

- If the intention was to give ownership rights to Mrs. Kalyani i.e. gifting of property to her; and
- his wife was fully aware of purchase of property in her name by her husband.

(2 Marks)

In this case, as per the facts, the payment of lesser stamp duty is consequential to purchase of property in the name of a woman. Hence, the property purchased on the name of Mrs. Kalyani is not a Benami Property.

(1 Mark)

Q.2

Section 5 of the Prevention of Money Laundering Act, 2002(PMLA) deals with the provision of attachment of property involved in money laundering.

As per Section 5(1) of the PMLA, Where the Director or any other officer not below the rank of Deputy Director authorised by the Director, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that

- any person is in possession of any proceeds of crime; and
- such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

It may be noted that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173

of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country.

(2 Marks)

Further, notwithstanding anything contained in above , any property of any person may be attached , if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of Section of the PMLA has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately, the non-attachment of the property is likely to frustrate any proceeding under the Act.

For the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under Section 5 of PMLA is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.;

Section 5(2) states that the Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(2 Marks)

Section 5(3) provides that every order of attachment made under sub-section(1) shall cease to have effect after the expiry of the period specified in sub-section(1) or on the date of an order made under sub-section (3) of section 8, whichever is earlier.

As per Section 5(4) of PMLA, nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

It may be noted that person interested, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Section 5(5) states that the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

(1 Mark)

Q.3

Offence of money-Laundering and Punishment for money-Laundering are specified under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 respectively.

Section 3 of the Prevention of Money Laundering Act, 2002 provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

It may be further noted that proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property

According to Section 4 of the Prevention of Money Laundering Act, 2002, whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

It may be noted that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule to the PMLA, shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine.

(3 Marks)

The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus appeal can be filed before High Court on any question of law or fact. High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

(2 Marks)

Case Study 4**Multiple Choice Questions**

1. (b)
2. (b)
3. (b)
4. (b)
5. (b)

Descriptive Answers**Q.1**

- (a) In order to categorise the home-buyers as ‘financial creditors’, Section 5 (8) of the Insolvency and Bankruptcy Code, 2016, which defines the term ‘financial debt’, was amended by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 w.e.f. 06-06-2018. The amendment involved inserting Explanation (i) in Clause (f) of Section 5(8) as under: (2 Marks)

Explanation (i) - ‘any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing’.

By inserting above-mentioned Explanation (i) in Section 5 (8) (f), the law makes it clear that the ‘financial debt’ includes any amount which is raised from an allottee under a real estate project. Further, such amount shall be deemed to be an amount having the commercial effect of a borrowing. The phrase ‘commercial effect of a borrowing’ means that the borrower has borrowed money for the purpose of business activities. (2 Marks)

The payment made by Aayush to SCPL for purchasing an apartment and office space is, therefore, a ‘financial debt’ and accordingly, Aayush is a ‘financial creditor’. (1 Mark)

- (b) According to Section 5 (20) of the Insolvency and Bankruptcy Code, 2016, the term ‘operational creditor’ means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. (1 Mark)

Further, according to Section 5 (21) the term ‘operational debt’ means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force

and payable to the Central Government, any State Government or any local authority. (2 Marks)

In order to categorise, Aayush as 'operational creditor' also, in addition to 'financial creditor', he should have made provision of goods, for example, supply of construction material to SCPL and the payment for which remains unpaid. Or else, he should have made provision of certain services but the company, till date, has not honoured the invoice raised by him. Another limb of operational debt is 'employment dues' i.e. Aayush was/is in the employment of the company but his employment dues are still pending. (2 Marks)

Q.2

As required by Section 9 (3) of the Insolvency and Bankruptcy Code, 2016, Aayush by having developed a customized software for SCPL, provided a service to SCPL. Thus, he acts as an operational creditor. So, by section 9 of the IBC, operational creditor will be regulated for initiation of CIRP against Corporate Debtor. As per sub-section 9(3), Aayush as an 'operational creditor' might have furnished the following documents along with the application for CIRP: (2 Marks)

- a) copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor.
- b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt.
- c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available. [this requirement under (c) is not mandatory w.e.f. 06-06-2018]
- d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
- e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed. (3 Marks)

Case Study 5**Multiple Choice Questions**

1. (d)
2. (b)
3. (c)
4. (c)
5. (b)

Descriptive Answers**Q.1**

(a) No. The role of the Director General is actually to assist the Competition Commission in the effective discharge of its duties. The Director General would be able to act only if so directed by the CCI, but will not have any suo motu powers for initiating investigations. Under Section 16, the Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of the Competition Act, 2002 and for performing such other functions as are, or may be, provided by or under the Act.

(b) Section 28 of the Competition Act, 2002 deals with the provisions relating to division of enterprise enjoying dominant position.

The Commission may, notwithstanding anything contained in any other law for the time being in force, by Order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise or group does not abuse its dominant position. (1 Mark)

The Order of the Commission referred to above may provide for all or any of the following matters, viz.,-

- The transfer or vesting of property, rights, liabilities or obligations;
- The adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
- The creation, allotment, surrender or cancellation of any shares, stocks or securities;

- The formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
- The extent to which, and the circumstances in which, provisions of the Order affecting an enterprise may be altered by the enterprise and the registration thereof;
- Any other matter, which may be necessary to give effect to the division of the enterprise or group. (2 Marks)

(c) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any Memorandum or Articles of Association, an officer of a Company, who ceases to hold office as such in consequence of the division of an enterprise, shall not be entitled to claim any compensation for such cesser. [Section 28 (3) the Competition Act, 2002]. As such, Sidharth is not entitled to claim any compensation.

Q.2

Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services shall be a void agreement if it causes or is likely to cause an appreciable adverse effect on competition in India, including-

Tie in arrangement: includes any agreement, requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods; (1 Mark)

Exclusive supply agreement: includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person. (1 Mark)

Exclusive Distribution agreement: includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods. (1 Mark)

Refusal to deal: includes any agreement, which restricts or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought. (1 Mark)

Resale price maintenance: includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged. (1 Mark)

Q.3

Prohibition of Benami Property Transactions Act 1988 (PBPT Act) is the applicable Act here. The general belief is that the provisions of the PBPT Act apply only to persons, trying to hide their properties and not to genuine properties acquired out of disclosed funds. But that is not true. Even a property acquired using disclosed funds in a genuine transaction may sometimes be treated as Benami.

“Benami Property” under Sec 2 (8) means any property, which is the subject matter of a Benami transaction and also includes the proceeds from such property. Benami Property means property without a name. Here the person, who pays for the property does not buy it under his own name. The person, who finances the deal, is the real owner of the property. The person in whose name the property has been purchased is Benamidar.

As per the provisions of Section 2 (9) a Benami transaction means-

1. A transaction or arrangement where a property is transferred to or held by one person for direct or indirect, immediate or future benefit of another person, who has provided or paid the consideration, except when-
 - (i) An HUF is purchasing a property in the name of a Karta, or any other member from known sources;
 - (ii) A person is holding the property in a fiduciary capacity (e.g. trustee, executor, partner of a partnership firm, director of a company, a depository participant, etc.);
 - (iii) An individual is purchasing a property in the name of his spouse or any child provided the consideration is paid out of the known sources;
 - (iv) Any person is purchasing any property in the name of his brother or sister or lineal ascendant or descendant, where he is one of the joint-owners, provided the consideration is paid out of the known sources; or
1. A transaction or arrangement carried out in a fictitious name; or
2. A transaction or arrangement where the owner of the property is not aware of or denies knowledge of such ownership;

3. A transaction or arrangement, where the person providing the consideration is not traceable or is fictitious. (4 Marks)

Any transaction where possession of any immovable property is taken as a part performance of a contract is not a Benami transaction if the contract is registered and consideration as well as stamp duty has been paid.

Property would include asset of any kind, whether movable or immovable, tangible or intangible, and includes rights or interest as well as proceeds from the property. (1 Mark)