CA FINAL
Test Code – JK-ECO-22
(Date: 08-10-2020)

(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 independence with the Corporate Debtor.

(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 23rd 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 1st 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 14th 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.1st August 2017 and it was promised that by 31st 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 31st 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 15th 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

Intec Star Private Limited (ISPL) was incorporated by two promoters Mr. Satya Waghela and Mr. Sanjay Kumar, who were completed their MBA in the United States of America (USA). Both Mr. Satya Waghela and Mr. Sanjay Kumar worked in the USA for more than 6 years.

Post that they came back to India in 2015 (and continue to stay in India) to serve the country and established ISPL to develop technology and software relating to aviation technology and machine learning. ISPL has around 250 employees in India and has several clientele in US and the company is also looking at rapid expansion over the next 3 years. The Company is registered with the Software Technology Parks but is not a status holder exporter.

One of the export invoices amounting to USD 400,000 raised by ISPL in the financial year 2016-17 was outstanding for more than one year as of 31st March, 2018 and the Company's auditors insisted on the Company taking action for recovery. However, even after the best efforts, no amounts could be recovered and therefore, during the financial year 2018-19, the Company wrote off the entire amount of USD 200,000 without obtaining the approval from the Authorised Dealer (AD).

In order to expand its operations, ISPL was intending to lease a commercial property in India in Mumbai for a period of 5 years at an upfront lease premium of ₹ 5 crores. ISPL was in great urgency to complete the transaction soonest in view of the great demand for the property and therefore, M/s. Do Correct Consultants, the agency assisting ISPL used a counterfeit government stamp paper for the purpose of registering the lease deed and this was informed by the agency to Mr. Sanjay Kumar at the time of transaction to minimise the cost of stamp duty. The funds for acquiring the stamp papers was paid by the agency and was in-turn billed by the agency on ISPL as part of its invoice for agency fee / commission. The invoice was settled by ISPL to the agency in cash without deduction of tax, even though the CFO of ISPL was of the view that the same is not in accordance with the applicable statutory requirements.

For the purpose of enhancing its capabilities, ISPL engaged the services of two reputed organizations to train the employees of ISPL. For this purpose, ISPL paid an amount of USD 500,000 to one company and USD 1,500,000 to the second company. For the purpose of investing money into the business, ISPL sold a commercial plot owned by it in India to a friend of Mr. Sanjay Kumar who was a Non-resident Indian in the USA, through an agent based in Chicago, USA for an amount of USD 500,000. In accordance with the terms of the agreement with the agent, ISPL paid an amount of USD 30,000 as commission to the agent. ISPL also published an advertisement costing USD 100,000 in the New York Times weekend edition calling for employees to join its proposed office in New York.

Mr. Rohit one of the friend of Satya Waghela is a well known industrialist based in Pune, India and is the founder director of M/s. Good Phones Private Limited (Good Phones), a fixed line and mobile phone manufacturer. Good Phones is one of the largest telephone companies in India and its products are much sought after in India and abroad. Mr. Rohit visits various countries as part of his business travels and during these visits he spend significant amount of time in Philanthropic activities and social gatherings and because of this, he is quite well known in the business circles globally. Mr. Rohit has a penchant for investing his money in buying various real estate property all over India and has passed this trait on to his son, Mr. Rahul Writer as well. Mr. Rahul completed his MBA from Stanford University and is assisting Mr. Rohit in his business. Mr. Rohit also has a daughter, Mr. Sonali Writer, who studies Art in Italy and has opened her own Art Studio in Milan. Mr. Rohit is very proud of Sonali and supports her financially for her stay in Italy as well as expenses towards maintaining the studio.

The marketing department of Good Phones introduced various new models in the last couple of months with new technology such as 2 selfie cameras, faster processor and sleeker look. Good Phones expect these phones to be a major attraction in the global markets due to the attractive price range and therefore wanted to promote these phones extensively on a global basis. For the purpose of advertisements, Good Phones engaged the services of Mr. David Smith, a prominent baseball player and Ms. Emma Drew, a Miss Universe winner and agreed to pay a “guaranteed” fee of USD 500,000 each plus 10% bonus based on the sales of the new models in year 1.

Mr. Rohit sent 5 sample mobile phones and 5 fixed line phones to his dealers abroad (numbering 1000 dealers), clearly marked as not for sale and other promotional material such a brouchers, 3D moulds for display in dealer shops etc. The value of the items were approximately INR 4 crore. He also sent 1 mobile phone to each of his dealers as a token of gift and appreciation (total value of INR 0.50 Crores). Mr. Srinivas Rajan, the CFO of Good Phones indicated him that since these products have been sent free of cost and not for sale, these need not be included in the export declaration to be filed by Good Phones.

On 15 February 2018, Good Phones made a large sale to one of the dealers M/s. Delayed Ringtone Enterprise, Germany, for USD 5 million and had received USD 2 million by 15 May 2018 and did not receive the balance USD 3 million until 15 August 2018, i.e. 6 months from the date of sale. After several reminders and threatening calls to stop further shipment, another USD 1 million was received on 10 October 2018 and the balance remained outstanding as at 31 December 2018.
Based on the success of Good Phones, Mr. Rohit incorporated a new company, M/s. Stay Connected Private Limited, (Stay Connected) an Internet service provider and purchased a large consignment of networking equipment for providing internet operations through dedicated broadband lines along with a landline facility. This would then provide Mr. Rohit quite a few synergies with the existing Good Phones business and enable him to become an end to end Telecom Czar. Mr. Rohit held 60% stake in Stay Connected and the balance 40% was held by a foreign collaborator. Along with all the networking equipment, Stay Connected hired transponders from a company in Australia and paid AUD 10 million through its authorized healer. Stay Connected also entered into an agreement with foreign collaborator (holding 40% stake) to pay royalty and technical fees for the support provided by them.

During his visit to Milan to meet Ms. Sonali, Mr. Rohit obtained EUR 10,000 from his Italian dealer for his use during his stay in Italy and instructed the dealer to reduce the sum from the payments to be made by the dealer for the supplies from Good

Phones. Out of such funds, Mr. Rohit used EUR 5,000 towards purchasing sweepstakes tickets in Mila, Italy, unfortunately, he did not win any money in the sweepstakes event.

Multiple Choice questions:

(2 Marks each for 5 questions) Total 10 Marks

1. Predatory pricing arises when an enterprises___________.

(a) prices its product very high

(b) prices its product just below the prevalent market price

(c) prices its product to clear inventory

(d) prices its product below its cost of production with a view to reducing competition or eliminating competitors

2. Out of the below, what are the transactions that requires prior approval of the Government of India ?

(a) Payment of "guaranteed" fee by Good Phones to Mr. David Smith and Ms. Emma Drew.

(b) Payment of Royalty and Technical fees by Stay Connected to the foreign collaborator.

(c) Payment of hiring charges for the transponders by Stay Connected.

(d) Payment of INR 1.75 Crores by Mr. Rohit to acquire shares of Stay Connected from the foreign collaborator

3. Is the use of EUR 5,000 towards purchasing sweepstakes by Mr. Rohit as per the provisions of FEMA, 2002?

(A) No, drawal of foreign exchange for purchasing lottery tickets, sweepstakes, etc. is prohibited under the FEMA 2002

(B) No, Mr. Rohit should have obtained the prior approval of the RBI before purchasing the sweepstakes ticket

(C) FEMA 2002 will not be applicable, since the money was directly obtained by Mr. Rohit from his Italian dealer outside the country

(D) None of the above

4. Under FEMA, 1999, what is the amount that can be paid by ISPL if such transaction is for Membership of P & I Club?

(a) USD 10000

(b) USD 100000

(c) USD 250000 subject to approval of Reserve Bank of India

(d) None, all such transactions to require approval of Government of India

5. Which of the following are not actions that could be taken by the ED on ISPL or its employees, for not complying with its orders under PMLA, 2002?

(a) Issue a warning in writing.

(b) Direct the entity or its employees to directly send reports.

(c) Direct the relevant courts to take civil or criminal proceedings against ISPL or its employees.

(d) Impose a monetary penalty on ISPL or its employees.

Descriptive questions

(Total 15 Marks)

Q.1 (a) Srinivas Rajan reaches out to you to confirm his views regarding inclusion / exclusion of the items sent free of cost to the dealers in the export declaration.

(4 Marks)

(b) Srinivas Rajan reaches out to you and seek your support to evaluate if there is a non- compliance with the FEMA regulations regarding the sale made to M/s Delayed Ringtone and the receipt of the proceeds and if so, the quantum, the consequences and the future course of action that needs to be taken by Good Phones relating to the same.

(4 Marks)

Q.2 Advise the Board of Directors of ISPL on the compliance with FEMA, 1999 with regard to the below transactions:

(a) Payments made by ISPL for consultancy services

(b) Payment of commission

(4 Marks)

Q.3 The Enforcement Directorate is proposing to perform a search of M/s. DoCorrect Consultants premises in connection with the investigation of ISPL's transactions. This has been challenged by M/s DoCorrect consultants. Evaluate the appropriateness of the position taken by M/s. DoCorrect Consultants.

(3 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)