



CA FINAL
SUBJECT- ELECTIVE PAPER (ECONOMIC
LAWS)

Test Code –
(Date :)

(Marks - 100)

NOTE: There are five case study questions in the question paper. Candidates are required to answer all the questions of any four case study questions.

CASE STUDY 1

Delta Corporation, a government corporation purchases Aluminium Phosphide Tablets (APT) on bulk basis through a formal tender process for the past several years. The main market of APT in India was that of the institutional sales and a majority of buyers were Government agencies. The number of private buyers was insignificant.

APT is manufactured only by 4 companies in the country, namely M/s. Easy, M/s. Samurai, M/s. Multicrop and, M/s. Agro Chemicals. Sometime during the year 2018, Mr. Rohit the Chairman and Managing Director of Delta Corporation, as part of his review of the operations, analysed the purchase of APT over the last several years, and noted a trend that the four manufacturers of APT had formed a cartel by entering into an anticompetitive agreement amongst themselves and on that basis they had been submitting their bids for last eight years by quoting identical rates in the tenders invited by the Delta Corporation for the purchase of APT. Based on the above, Mr. Rohit wrote a complaint to the Competition Commission of India (CCI) on February 4, 2018 and the CCI assigned the complaint to the Director General (DG) for investigation.

Based on the investigation carried out, the DG noted the following:

- Right from the year 2009, upto the year 2016, all the four parties used to quote identical rates, excepting for the year 2014. In 2009, Rs. 245 was the rate quoted by these four parties and in the year 2012 it was Rs. 310 (though the tender was scrapped in this year). In November, 2012, though the tenders were invited, all the parties had abstained from quoting. In 2014, M/s. Samurai had quoted the price which was much below the price of other competitors. In 2015, all the parties abstained from quoting, while in 2016 only the three appellants, barring Agro Chemicals, participated and quoted uniform rate of 388, which was ultimately brought down to Rs. 386 after negotiations.
- It was also found that the tender documents were usually submitted in-person and the rates were normally filled with hand;
- In respect of the tender floated in March, 2016, the three appellants had quoted identical rates of Rs. 388.
- The DG also analysed the bidding pattern for tenders issued by other corporations during the period from 2014 to 2018 and concluded that the pricing pattern was similar between the parties in such tenders as well, as indicated below :

Corporations	Year	Price Quoted			
		Easy	Samurai	Multicrop	Agro Chemical
A	2014	225	225	-	-
B	2015	260	260	-	-
C	2015	450	-	450	-
C	2016	414	414	-	-
Delta	2016	388	388	388	-
B	2016	399	-	-	399
D	2016	-	-	399	399
B	2017	419	-	-	410
C	2017	421	421	421	-
B	2018	-	415	-	415

Based on the investigation carried out above, the DG concluded that:

- The pricing pattern definitely showed the practice of quoting identical pricing by all the parties.
- The explanation given by the parties (rise in price was mostly attributed to increase in price by China) for the common pricing was unconvincing since it was noticed that even during the period when the Phosphorous prices had fallen, no reflection thereof was seen in the high prices quoted by the parties.
- Examination of the cost structure of each company reflected that there was nothing common between the parties as far as the said cost structure was concerned and, therefore, quoting of identical prices by all the parties was unnatural.
- Joint boycotting by the parties, at times, showed their concerted action, which happened again in March, 2018 when the Delta Corporation had issued e-tender, which was closed on July 25, 2018.

On the basis of the aforesaid findings, the DG framed an opinion that the appellants had contravened the provisions of Sections 3(3)(a), 3(3)(b) and 3(3)(d) read with Section 3(1) of the Competition Act, 2002.

The CCI called for the responses of the parties for the above observations of the DG and the responses of the parties are as under:

- In so far as tender of 2018 is concerned, it was contended that inquiry in respect of boycotting the said tender by the appellants was without jurisdiction in as much as the Delta Corporation in its complaint dated February 04, 2018 did not mention about the said tender.
- On the merits, increase in the price over a period of time, particularly between years 2016 and 2018, was sought to be justified on the ground that the "price of yellow phosphorous, which was to be procured from China, had increased". It was further submitted that merely because there was identical prices quoted by the parties, it would not mean that there was any bid rigging or formation of cartel by the parties. Submission in this behalf was that the market forces brought the situation where the prices became so competitive and it had led to the aforesaid trend.

- It was further submitted that, notwithstanding the same price quoted by the parties, each time the tender was evaluated by a Committee of Officers of the Delta Corporation and no such suspicion was raised by the Committee. On the contrary, this aspect was specifically gone into and the Committee was satisfied that quoting of identical price was not due to any cartelisation.

The CCI rejected each of the responses provided by the parties and concluded 'that the parties had entered into an agreement or understanding, and indulged in anti-competitive activities while submitting their bids in response to the tenders issued by the Delta Corporation.

Prosper Extractors Limited (PEL) is one of the key operational creditors of Multicrop and was the sole supplier of Phosphorous to Multicrop for the manufacture of the APT. The arrangement between PEL and Multicrop was formally documented through a blanket Purchase Order on an annual basis with weekly supply schedule and a 30 days credit period. Due to the financial issues including losses of Multicrop, there was a significant backlog in the payment by Multicrop and in line with the terms of the purchase order, the matter was referred to an Arbitral Tribunal with claims and counter claims by both parties. The Arbitral Tribunal delivered its award in favour PEL for the entire balance payable (including receivables assigned to the bank without recourse basis) by Multicrop and rejected the cross claims of Multicrop. Multicrop proceeded to file a petition under the Arbitration and Conciliation Act, 1996 challenging the award of the Arbitral Tribunal. Based on the opinion of CFO that the object of IBC, 2016 is also to hold promoters personally financially liable for default of the firms they control, an application was then filed by PEL under Section 9 of the IBC, 2016 as the sole operational creditor of Multicrop. The NCLT, based on the application; admitted the same since there is a clear evidence of a demand and the appropriate notice has been submitted by PEL as per the IBC, 2016.

Answer the following questions :

1. Which of the following is not part of the objectives for introduction of the IBC, 2016?
 - (A) Avoiding destruction of value.
 - (B) Hold Promoters personally financially liable for default of the firms that they control as opined by CFO in the case study.
 - (C) Improve handling of conflicts between creditors and debtor through process of negotiation.
 - (D) Clear allocation of losses during downturn. **(2 Marks)**
2. Which of the following is not covered under the definition of a financial debt under IBC, 2016?
 - (A) Interest on Unsecured debentures issued by a corporate debtor.
 - (B) Market value of a derivative taken to hedge foreign currency fluctuations of an ECB loan.
 - (C) Amount raised from an allottee of an apartment under a real estate project.
 - (D) Receivables assigned to a Bank on without recourse basis. **(2 Marks)**

3. The IRP appointed for Multicrop is seeking your views on the constitution of the Committee of Creditors of Multicrop. Multicrop does not have any financial debt other than a loan obtained from Mr. Ajay Jhawar, son of the Mr. Vijay Jhawar, the Managing Director of Multicrop. Considering the above, identify the appropriate constitution of the Committee of Creditors out of the following :
- (A) Mr. Ajay Jhawar, 18 largest operational creditors, and 1 representative of all workmen.
 - (B) 18 largest operational creditors, 1 representative of workmen and 1 representative of employees.
 - (C) Only Mr. Ajay Jhawar since he is the only financial creditor.
 - (D) 18 largest operational creditors, 1 representative of workmen and 1 representative of employees and the resolution professional. **(2 Marks)**
4. Which of the following are not factors which need to be considered for determining the relevant product market under the Competition Act, 2002 ?
- (A) Existence of specialised producers
 - (B) Market structure and size of market
 - (C) Consumer preferences
 - (D) Actual end use of the products **(2 Marks)**
5. When evaluating whether the arrangement between the parties involved shall be presumed to be anti-competitive and likely to have an appreciable adverse effect on competition, which of the following are not factors to be considered by the Director General ?
- (A) Limit and control the use of technology used by all parties in manufacturing APT.
 - (B) Allocate the supply of APT in India between the parties and limit new entrants.
 - (C) Collectively determine the purchase price of the key raw material (phosphorous) from the vendors.
 - (D) Joint venture between the parties to share distribution channels and logistics services to reduce cost. **(2 Marks)**

Answer the following questions in the context of the provisions relating to Competition Act, 2002.

- (i) Analyse whether the CCI can consider the tender called for in March, 2009 and negotiations finalised in July, 2009 for examination under Section 3, which became operational only on 20th May, 2009. **(3 Marks)**
- (ii) Whether CCI was barred from investigating the matter pertaining to the tender floated by Delta Corporation in March, 2018 on the basis that this was not a subject matter contained in the complaint submitted by Delta Corporation on 4 February, 2018. **(3 Marks)**
- (iii) Analyse based on the facts of the case, regarding the conclusion of CCI that the appellants had entered into an agreement to indulge in collusive bidding by forming a cartel, resulting into contravention of Section 3 of the Act. **(5 Marks)**

Examine/advise regarding the below questions relating to the Insolvency and Bankruptcy Code, 2016:

What is your view with regard to the stand taken by NCLT in admitting the application of PEL for initiating insolvency proceedings against Multicorp? **(4 Marks)**

CASE STUDY 2

APPRAY is the Karta of a Hindu Undivided family (HUF) also consisting of his wife LAXMI DEVI, 3 sons, SUBHASH, GIRISH and RAJESH. The eldest son SUBHASH runs a Sugar Mill taken over from his father APPRAY.

RAJESH, the third son of APPRAY, always feels ignored by his family, looking for some fast easy money, joins hands with MOHANLAL, who is a Real Estate Agent, who promises to pay RAJESH, a commission in cash if he helps MOHANLAL to buy 25 Acres of Land and hold the land in his name on behalf of one of his customers MANORANJAN 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 RAO. Subsequently, Rajesh entered into several similar agreements in his name on behalf of others.

In due course of time, RAJESH also formed a Company XYZ Pvt Ltd, primarily for a Hotel business, but the source of funding was secret drug dealings. The Company accepted illegal monies in cash as legitimate business transactions with fake income and receipts. The monies were then deposited into the Company's Bank accounts as clean money. He kept fraudulent records, which did not demonstrate the current state of his businesses. Monies in the Bank Accounts of XYZ Pvt Ltd were also often transferred as legitimate business transactions, to the Bank Accounts of RDX Pvt Ltd, which is also in the similar businesses like XYZ Pvt Ltd. Original source of money is thus disguised.

The Company XYZ Pvt Ltd also mobilized funds from various investors, but were never utilized for which they were collected. The Funds were transferred to bank accounts of some group companies, which were mainly paper companies, from where they were systematically siphoned off and were used for purchase of various properties in India.

RAJESH has also held some properties purchased in the name of his wife SUGUNA from his known income from legal sources.

MAHESH is a friend of GIRISH, the Second son of APPRAY is a Company Secretary of a listed Public Limited Company ABC Ltd. MAHESH gives Rs. 5 lacs loan to GIRISH, who in his turn gives loan of Rs. 5 Lacs to his friend RAGHU for investment in the shares of ABC Ltd. RAGHU trades in shares of ABC Ltd on behalf of MAHESH.

MAHESH also ensures that some money is passed on to various legitimate Companies to buy the shares of ABC Ltd so that it results in increase in the price of shares. Intention is to show higher valuation of shares before proposing to the investors or to discourage the shareholders from applying to the buyback scheme.

RAGHAV is the brother in law of SUBHASH, employed in UAE and a non resident Indian. RAGHAV purchased some properties in Mumbai for Rs. 75 Lacs. He paid RS. 40 Lacs through his NRE Account, Rs. 10 Lacs through direct transfer from his salaries account in UAE to the sellers account as advance through normal banking channels, complying with all the procedural requirements, but balance Rs. 25 Lacs payment was made through some unknown sources.

RAGHAV also invested in Equity shares of various Listed Companies in India in the name of his wife DIVYA, who is a Resident in India and himself as joint holders from an account not disclosed to tax authorities in India. RAGHAV also purchased a Flat in Mumbai in the name of DIVYA and himself as joint holders from his NRE Account.

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

Since all of his children are well settled, due to the old age and deteriorating health conditions of APPRAY and LAXMI DEVI, the family decided to sell off the loss making Sugar Mill. Later after much negotiations, the Sugar Mill was sold to a person well known to the real estate agent MOHANLAL, but unknown to the APPRAY Family, at a reasonable price.

Multiple Choice questions (MCQs)

1. Purchase of properties in Mumbai by RAGHAV for Rs. 75 Lacs:

- (a) Is a Fully valid transaction
- (b) Is valid to the extent of Rs.40 lacs
- (c) Fully invalid transaction and to be considered as "Benami"
- (d) May be Benami to the extent of Rs. 25 lacs, since through some unknown sources.

(2 Marks)

2. Which one of the following transaction is NOT Benami done by RAJESH?

- (a) Transaction in respect of a property, where the person providing the consideration to Rajesh is not traceable.
- (b) An arrangement by Rajesh in respect of a property made in a fictitious name.
- (c) Property held by Rajesh in the name of his spouse and consideration paid out of known legal sources.
- (d) A transaction by Rajesh in respect of a property where the owner is unaware of or denies knowledge of the ownership.

(2 Marks)

3. Share Trading by Raghu on behalf of Mahesh is:

- (a) Valid transaction since he is not at all connected with ABC Ltd.
- (b) Can be proved as Benami trading in stock markets by Mahesh, the Company Secretary, who has insider price sensitive information.
- (c) The transaction is not at all to be considered as Benami.
- (d) Valid transaction if Girish does the share trading on behalf of Mahesh, out of the loan of Rs. 5 Lacs given by Mahesh

(2 Marks)

4. Which one among the following statement is correct as per PBPT Act?

- (a) Resale of the benami property from Rajesh to one of the real owners is a valid transaction.
- (b) Resale of the Benami property from Rajesh to a person acting on behalf of real owner is a valid transaction

- (c) The Benami Act prohibits sale of a benami property by Rajesh to a third person
- (d) PBPT Act prohibits resale of the Benami property from the Benamidar to the real owner or to any person acting on his behalf. Such transactions would be considered as null and void.

(2 Marks)

5. In respect of transactions done by XYZ Company above, crime money injected into the formal financial system is layered, moved or spread over various transactions in different accounts. This step in money laundering is referred to as:

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

(2 Marks)

Descriptive questions

1. In the context of various property dealings in the above case study, critically analyze the statement “the provisions of the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act) need not necessarily apply only to persons, who try to hide their properties, but may also sometimes apply to genuine properties acquired out of disclosed funds” **(5 Marks)**
2. In case of confiscation of properties of Rajesh in the above example, how “Fair market value” in relation to a property is defined under Sec 2(16) of the PBPT Act? Also interpret the Rule 3 of Prohibition of Benami Transactions Rules, 2016 when the price is not ascertainable? **(5 Marks)**
3. With reference to various transactions by XYZ Co Private Ltd in the above example, what are the provisions relating to attachment of property involved in money laundering under Section 5 of the Prevention of Money laundering Act 2002? **(5 Marks)**

CASE STUDY 3

Teddy Bear Technology Private Limited (TBTP), is one of India's fastest growing start-up companies. TBTP was incorporated in the year 2015 by two promoters Mr. Sudhir Shankar and Mr. Ajay Vinod, who were college mates at IIT Bombay and completed their masters in the United States of America (USA). Both Mr. Sudhir Shankar and Mr. Ajay Vinod worked in the USA for more than 10 years.

Post that they came back to India in 2015 (and continue to stay in India) to serve the country and established TBTP to develop technology and software relating to aviation technology and machine learning. TBTP has around 300 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.

The details of export sales and realization of export proceeds by TBTP during the last 3 financial years is as under :

Particulars	2015-16	2016-17	2017-18	Average
Export Turnover (USO)	500,000	2,500,000	4,500,000	2,500,000
Realisation of Export Proceeds (USD)	300,000	2,000,000	3,000,000	1,600,000

One of the export invoices amounting to USD 200,000 raised by TBTPPL 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). Out of the export proceeds received by TBTPPL, the Company lent an amount of USD 500,000 in foreign currency to one of its key Indian vendors to enable them to create / maintain core working capital. The Management convinced the Board of Directors to approve the loan since the vendor was providing, critical services for business continuity of TBTPPL. Further, this loan has been guaranteed by the holding company of the vendor, which is located in Mauritius.

In order to expand its operations, TBTPPL was intending to lease a commercial property in India in Mumbai for a period of 5 years at an upfront lease premium of Rs. 5 crores, TBTPPL 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 TBTPPL used a counterfeit government stamp paper for the purpose of registering the lease deed and this was informed by the agency to Mr. Ajay Vinod 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 TBTPPL as part of its invoice for agency fee / commission. The invoice was settled by TBTPPL to the agency in cash without deduction of tax, even though the CFO of TBTPPL was of the view that the same is not in accordance with the applicable statutory requirements.

For the purpose of enhancing its capabilities, TBTPPL engaged the services of two reputed organizations to train the employees of TBTPPL. For this purpose, TBTPPL 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, TBTPPL sold a commercial plot owned by it in India to a friend of Mr. Ajay Vinod 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, TBTPPL paid an amount of USD 30,000 as commission to the agent. TBTPPL 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. Siddarth Shankar, brother of Sudhir Shankar who works as a CFO in a listed entity in India, provided certain price sensitive information to Mr. Sudhir Shankar about his employer based on which Mr. Sudhir Shankar purchased equity shares of the entity and made a profit of Rs. 2 crores. With these proceeds, he sent Rs. 1 crore to his wife Ms. Anne Shankar (as part of the liberalised remittance scheme) to purchase a small apartment in the USA. He also purchased a very old statue of an Indian king in an amount of Rs. 0.20 crores and sent it to his wife for display in his home in USA. He invested the balance amount of Rs. 0.80 crores in TBTPPL as an equity investment.

During one of the discussions with the customers in USA, Mr. Ajay Vinod indicated to the customer that TBTPPL has capabilities to develop new robotic technology on aviation and accordingly, entered into a contract for an amount of USD 2,000,000. TBTPPL developed the robotic platform in 2 months and delivered to the customer, although the patent and copyright

was owned by another competitor of TBTP. TBTP is of the view that the company rightfully owns the patent for the same, although it has not applied / registered for the same.

The Enforcement Directorate (ED) got wind of the transactions carried out by TBTP and the Directors, through one of the employees of the Company and have issued a notice to the Company and the Directors.

Answer the following questions:

1. Which of the following are not actions that could be taken by the ED on TBTP 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 TBTP or its employees.
 - (D) Impose a monetary penalty on TBTP or its employees. **(2 Marks)**

2. In order to obtain more information from Mr. Sudhir Shankar, the ED wanted to detain Mr. Sudhir Shankar for a period of 3 days to make enquiries and get the relevant information from him. Evaluate if this is appropriate under PMLA, 2002.
 - (A) Yes, the Director is well within his powers to detain Sudhir until all informations are collected.
 - (B) No, maximum period of detention under PMLA is 24 hours before which Sudhir should be presented before the superior ranking office or the magistrate.
 - (C) Yes, however, the Director is required to take the prior approval of his superior ranking officer.
 - (D) No, the Director is not within his rights to detain Sudhir. **(2 Marks)**

3. The Appellate Tribunal has concluded that the Director who searched Mr. Sudhir Shankar and his property indulged in a vexatious search without recording proper reasons in writing and has sought your views on the next course of action :
 - (A) Suspension / Dismissal from service, as may be decided by the central government.
 - (B) Fine which may extend to Rs. 2 lakhs.
 - (C) Imprisonment for a term which may extend to four years and fine which may extend to Rs. 2 lakhs.
 - (D) Imprisonment for a term which may extend to two years or fine which may extend to Rs. 50,000 or both. **(2 Marks)**

4. What is the maximum amount of export receivables which can be written off by TBTP during the financial year 2018-19?
 - (A) With approval of AD - USD 450,000; Without approval of AD – USD 225,000
 - (B) With approval of AD - USD 250,000; Without approval of AD – USD 125,000
 - (C) With approval of AD - USD 300,000; Without approval of AD – USD 150,000
 - (D) With approval of AD - USD 160,000; Without approval of AD – USD 80,000

(2 Marks)

5. Under FEMA, 1999, what is the amount that can be paid by TBTPL for publishing an advertisement in New York Times ?
- (A) USD 10,000
 - (B) USD 100,000
 - (C) USD 250,000, subject to the approval of the Reserve Bank of India.
 - (D) None, all such transactions require approval of the government of India.

(2 Marks)

Advise the Board of Directors of TBTPL on the compliance with FEMA, 1999 with regard to the below transactions :

- a. Payments made by TBTPL for consultancy services
- b. Payment of commission
- c. Loan provided in foreign currency to vendor in India and the validity of the guarantee provided by the vendor's holding company.

(7 Marks)

Examine / advise regarding the below questions relating to the Prevention of Money Laundering Act, 2002 :

- (i) The Enforcement Directorate has sought your advice on identifying all the offences committed by the parties under the PMLA, 2002 described in the case study. Identify :
 - (a) the offences along with explanations,
 - (b) the parties involved, and
 - (c) the proceeds of crime.
- (ii) The Enforcement Directorate is proposing to perform a search of M/s. Do Correct Consultants premises in connection with the investigation of TBTPL's transactions. This has been challenged by M/s Do Correct consultants. Evaluate the appropriateness of the position taken by M/s. Do Correct Consultants.

(3 Marks)

CASE STUDY 4

Decor Design Constructions Private Limited (Decor Constructions) is a reputed construction company based in Pune, India and specialises in construction mid-sized apartments (approximately 20 apartments in each project). Decor Constructions was founded by 2 brothers, Mr. Ravi Rao and Mr. Giri Rao, and are the Directors of Decor Constructions. Mr. Ravi Rao studied civil engineering in the UK and worked extensively in the UK in various infrastructure and construction companies before moving back to India to establish Decor Constructions. During the year 2014, Decor Constructions commenced a new project called as Decor Dream Home, which comprises of 30 apartments, each having a super built-up area of 1,800 square feet and carpet area of 1,500 square feet. All the 30 apartments were sold by Decor Constructions within a period of 3 months and they entered into a sale agreement with the allottees in the month of November, 2014. The following were the key features of the sale agreement:

- The apartments were sold to the allottees at a square feet rate of ` 5,000 per square feet and the total consideration for each of the apartments were calculated based on the super built-up area.
- The application fee to be paid prior to entering into the sale agreement was fixed as 8% of the total consideration.
- The entire amount of consideration should be paid by the allottee within 6 months from the sale agreement, irrespective of the date / stage of completion of the construction. This is to facilitate the speedy completion of construction. Decor Constructions has already factored in a discount in the per square feet rate to compensate the allottees for the upfront payment.
- Free open car parking to the allottees who pay the entire consideration at the time of sale agreement. For other allottees, the open car parking will be allotted on payment of ` 200,000.
- The apartment will be handed over to the allottees within 30 months from the date of the agreement i.e. by 31st May, 2017.

All the 30 allottees made the payment to Decor Constructions in accordance with the agreement (10 of the allottees paid the full amount on the date of the sale agreement thereby getting a free open car park) and an amount of ` 2,700 lakhs was received by Decor Constructions. During the month of August 2016, Decor Constructions sent an e-mail to all the 30 allottees that the Promoter has filed the required forms for approval from the Municipal Corporation for water, sewerage and electricity connections and this is taking substantial time to complete, which is not in the control of the Promoter and therefore, the date of handing over will get slightly delayed to 31st December, 2017. None of the allottees responded to the communication. In the meanwhile, with the introduction of Maharashtra Real, Estate (Regulation and Development) Act with effect from 1st May, 2017, Decor Constructions registered the project under the RERA and as part of the registration stated the expected date of completion as 30th June, 2018.

Although Mr. Ravi Rao has been in India for more than three years, his ultimate aim is to settle down in Switzerland, which is the home country of his spouse, Ms. Anne Rao. Therefore, Ravi wanted to buy a colonial villa in Switzerland for an amount of EUR 2 million. Mr. Giri Rao is of the view that the FEMA rules does not allow Mr. Ravi Rao to invest in immovable property outside India when he is resident in India.

Ms. Anne Rao (spouse of Mr. Ravi Rao) who is a citizen of USA, wants to purchase an immovable property (apartment) in India jointly along with Mr. Ravi Rao. For this purpose, Ms. Anne Rao is proposing to take a housing loan in her personal name from Bank of Bengaluru, a bank operating in India. However, considering the fact that she is a citizen of USA, the Bank has included a pre-condition that the loan be guaranteed by Decor Constructions. Based on such request, Decor Constructions has provided the required guarantee in favour of Bank of Bengaluru. Ms. Anne Rao is also interested in investing USD 200,000 in a Special Purpose Vehicle (in the form of an unincorporated joint venture) which is engaging in the business of providing managed farm to its investees and provide the land after a period of 20 years. Ms. Anne Rao before attempting further transactions approached the consultant to advise on the transactions which are not capital account transactions.

In the month of June 2017, Decor Constructions sent another e-mail to the 30 allottees that the construction of the super structure of Decor Dream Home is almost complete and what is left is only to complete the interior plastering, flooring, plumbing etc. and this will get completed by 31st March, 2018 and the slight extension of the timeline is only on account of

labour shortage at Pune due to the extensive construction spree happening in the city. Decor Dream Home also suggested to the allottees that they were ready to handover the apartment in the month of December, 2017 (before receiving the occupancy certificate) to the allottees for them to get the interior/furnishing work done so that the allottees can occupy the apartments in March/April, 2018 as soon as occupancy certificate is received.

All the 30 allottees were not happy on account of the further delay in completion and filed a complaint against Decor Constructions under the Maharashtra RERA provisions. Out of the 30 allottees, 25 allottees sought cancellation of the sale agreement and refund of the amounts paid by the allottees along with interest at 21% p.a. The balance 5 allottees wanted to be compensated by Decor Constructions for the delay in completion-but do not want to cancel the sale agreement.

Decor Constructions has submitted before the RERA authorities the following:

- Notwithstanding the registration of the project under RERA as per the requirements of Section 3 of the RERA, the sections relating to compensation for delay etc. do not apply to the project since the date of commencement of project / date of sale agreement is prior to the date when RERA came into effect.
- Even otherwise, the date of completion stated in the RERA registration is 30th June 2018 and therefore, the date of handover finally indicated allottees is 31st March 2018, which is well within the timelines and therefore, there is no non-compliance with the RERA requirements.
- The Company had already informed the reasons for the delay of the project upto 31st December, 2017 in August, 2016 itself and there was no response / issue raised by the allottees at that time. Further, Decor Constructions has also agreed to provide the apartments for interior work during December, 2017 and therefore, it is effectively agreed to handover the apartment as per the revised timelines communicated in August, 2016.
- Even presuming the applicability of the RERA provisions, there is no unanimity in the decisions of the allottees on the way forward (since 25 have opted for cancellation and 5 have opted for compensation) and therefore, this cannot be anyway given effect to under RERA.

Accordingly, Decor Constructions has submitted that they are not liable for any compensation to be paid under RERA and have re-iterated that they will handover the apartments to the allottees by the revised timelines indicated in the e-mail sent in June, 2017.

Answer the following questions:

1. What is your view regarding the terms of the agreement relating to the open car parking arrangement with the allottees ?
 - (A) Decor Constructions is free to stipulate any terms and conditions in this regard, since this is a transaction between a willing buyer and a willing seller.
 - (B) Decor Constructions is required to provide open car parking for all allottees on equitable terms and there cannot be a discrimination based on payment schedule.
 - (C) Open parking areas cannot be sold for consideration since they are to be considered as common area of the Project.
 - (D) Open parking is part of internal development works and is part of overall project costs which can be charged by the Promoter equally to all allottees.

(2 Marks)

2. One of the allottees of Decor Dream Home have-reached out to you for your advice on whether the 'collection of the entire consideration by Decor Constructions without regard to the stage of constructions is appropriate.
- (A) Appropriate. The terms/timing of payment are governed by the sale agreement between the promoter and allottee.
 - (B) Not appropriate. The timing of payment should be in line with the stage wise completion / construction schedule.
 - (C) Appropriate, since the necessary discount has already been factored into the consideration by Decor Constructions.
 - (D) Appropriate, provided Decor Constructions has obtained the approval of the terms at the time of registration of the Project under RERA. **(2 Marks)**
3. Advice of the consultant to Ms. Anne Rao for the transaction which do not fall under the definition of a capital account transaction under FEMA, 2002 will be:
- (A) Transactions which alter the assets and liabilities of non-residents in India.
 - (B) Transactions which alter the assets and liabilities (including contingent liabilities) of residents outside India.
 - (C) Transactions relating to transfer of a security by a branch in India of a company resident outside India.
 - (D) Transactions which alter the assets and liabilities (including contingent liabilities) of non-residents in India. **(2 Marks)**
4. Mr. Vishy Rao, brother of Mr. Ravi Rao, is a resident of Singapore and he owns an immovable property in Chennai which he inherited from his father, who was a resident of India. Can Mr. Vishy Rao continue to hold the property?
- (A) No, he cannot hold transfer or invest in India, since he is resident outside India.
 - (B) Yes, he can continue to hold in India, since he is a person of Indian Origin and the property is located in India.
 - (C) Yes, he can continue to hold the property, since this was inherited from a person who was resident in India.
 - (D) Yes, he can continue to hold the property, since his brother (Mr. Ravi Rao) uses the property whenever he travels to Chennai. **(2 Marks)**
5. Decor Constructions is in the process of entering into certain business transactions with international agencies and in this context Mr. Girl Rao seeks your views on the maximum amount that can be paid by Decor Constructions under the Liberalised Remittance Scheme and how much he can pay in his own individual capacity under the Scheme, per year ?
- (A) Decor Constructions - USD 250,000; Individually - USD 250,000.
 - (B) Decor Constructions - USD Nil; Individually - USD 250,000.
 - (C) Decor Constructions - No limit for specified objects; Individually - USD 200,000.
 - (D) Decor Constructions - USD 500,000 (USD 250,000 for each director); Individually - USD Nil, since the same is considered under Decor Constructions' limit.

(2 Marks)

Answer the following questions in the context of the provisions relating to Real Estate Regulation Act, 2016 (RERA):

- (i) Analyse whether the provisions of RERA (which came into effect from 1st May, 2017) are applicable to the Decor Dream Home project and if Decor Constructions is liable for obligations under RERA. **(3 Marks)**
- (ii) Analyse based on the facts of the case, regarding each of the averments of Decor Constructions with regard to its obligations under RERA for the alleged delay in handover of the apartments to the allottees and whether it is liable for payment of compensation under RERA. **(6 Marks)**

Examine / advise regarding the below questions relating to the Foreign Exchange Management Act, 1999 :

- (i) How would you advise Mr. Ravi Rao with regard to his aim of acquiring a colonial villa in Switzerland when he is a resident in India. **(2 Marks)**
- (ii) Evaluate the implications of the transactions proposed to be entered into by Ms. Anne Rao, including the consequential / related transactions. **(4 Marks)**

CASE STUDY 5

Mr. Bhanu Pratap Taneja is a leading real estate developer based in Delhi. In the last decade, his company Garvit Bhoomi Developers Pvt. Limited having registered office in Bhikaji Cama Place, New Delhi, had successfully developed four housing projects – two in Gurgaon and one each in Jaipur and Lucknow. They had a robust management team. Having been the name behind developing more than five thousand luxurious apartments with modern amenities, they had the reputation of delivering the projects well within the promised time.

In the beginning of the year 2015, they launched another project in Indirapuram, UP by the name Omega Capetown Residency in which 1000 residential units consisting of 2BHK and 3BHK apartments were to be developed. They were to be completed in all respects by January 2018 and delivered to the consumers by that date. This project was being carried on smoothly when the Real Estate (Regulation and Development) Act, 2016 came to be enacted w.e.f. 1st May, 2016. Section 3, which was enacted later w.e.f. 1st May 2017. Since Omega Capetown Residency consisted of 1,000 residential units, it was required to be registered and so the company submitted the requisite documents with concerned authorities.

As the application for registration was found to be complete in all respects, the Omega Capetown Residency Project was granted registration by RERA (UP) within the statutory period and was provided with a registration number including a log-in ID for assessing the website of the Authority and to create webpage.

In the meantime, Mr. Taneja was approached by some of the influential developers that an understanding had been reached among them to control the price of apartments to be built by them. However, because of legal tangles such understanding could not be brought into writing and it was also not intended to be enforced by legal proceedings. Mr. Taneja did not agree to the proposal because even though the understanding was not in writing and it was not intended to be enforceable by legal proceedings, it was still illegal as per the Competition Act, 2002. This revelation made by Mr. Taneja discouraged the intending developers and they desisted from being a party to this proposal.

Mr. Taneja's son Garvit, who was a commerce graduate and holder of law degree, had a college friend Rohit whose father Mr. Dev Kumar dealt in sale, purchase and renting of properties under the title 'Dev Property Dealers' from the Yusuf Sarai market. Since Rohit had joined his father's business, it was thought prudent to convert the existing proprietary business into a registered partnership firm titled as 'Dev & Sons Property Dealers'. Because of the enactment of Real Estate Act, Rohit consulted his friend Garvit regarding its implications in case of real estate agents. Accordingly, the firm was got registered as real estate agent with the help of Garvit's legal advisor.

Further, Garvit made a proposal to Rohit and his father that they could associate themselves with his Omega Capetown Residency, a registered RERA project in Indirapuram for facilitating sale of apartments which they readily accepted. Garvit also cautioned them that as per the Act, since their firm was now a registered real estate agent they were not supposed to facilitate sale/purchase of any plot, apartment or building in a real estate project being sold by the promoter in any planning area, if such project was not registered with RERA of the concerned State.

In addition, Garvit's legal advisor told them that as required by Section 10, a registered real estate agent would maintain and preserve proper books of accounts and other necessary documents. Further, such agent would not involve himself in any unfair trade practice like making a false statement regarding services to be provided by him. He would also not permit the publication of any advertisement whether in any newspaper or otherwise of services that were not intended to be offered. Besides, the agent would also have to help the intending buyers in getting the required information and documents to which they were entitled, at the time of booking of any property.

Rohit had a friend Tarun whose father Dr. Sreenivas Sharma was a surgeon in a government hospital and was residing in a rented government flat in the hospital campus itself. He had an intense desire to have a luxurious flat of his own. Tarun had joined IBM after doing MBA from IIFT, New Delhi. So, with the combined salary of both, they decided to buy a flat. Tarun contacted Rohit to help him in searching a suitable apartment for his family. In turn, Rohit informed him that one particular 3BHK flat at an ideal location was available in Omega Capetown Residency in Indirapuram as the original allottee had withdrawn from the scheme; otherwise the booking under this project was already full. Dr. Sharma got interested in the information and went to the Omega Capetown Residency along with his family to see the concerned apartment. He liked its strategic location and gathered more information regarding sanctioned plan, layout plan along with the other specifications, etc. He then asked for stage-wise time schedule of completion of the project and also enquired regarding provision of water, sanitation and other amenities. Since, Rohit personally knew Garvit and his father Mr. Taneja - the promoters of the project - Dr. Sharma and his family had a lively and fruitful meeting with them. Subsequently, he and his son jointly entered into an agreement for sale with the promoters of the project and made payment of 75% of the cost of the apartment, while remaining 25% of the cost was to be paid at the time when the apartments were ready for occupation.

A few months after booking the apartment, Dr. Sharma got a notice from the promoters of Omega Capetown Residency that due to unforeseen circumstances they were not in a position to complete the project and needed the allottees' consent for transferring of their majority rights and liabilities to another reputed developer M/s. Sai Developers Pvt. Limited of New Delhi. In case any of the allottees was not agreeable to this proposal he could get his money refunded. Since Dr. Sharma was very much attached to the location of the flat, he accepted the proposal after enquiring with Rohit and his father. He also learnt that 95% of the allottees had already given their written permission. Further, the

Authority had given its written approval to the proposal for transfer and completion of Project by M/s. Sai Developers Pvt. Limited. Dr. Sharma was also assured by Mr. Bhanu Pratap Taneja, the erstwhile promoter with whom he had earlier interacted satisfactorily, that all the pending obligations would be fulfilled by the new developer and in no case the date of completion of the project would be extended; otherwise it would attract penalty. It was also disclosed by Mr. Taneja that the new promoter would rectify any structural defect if it occurred within a period of five years from the date of handing over the possession of the apartments. Dr. Sharma, thus felt relieved.

M/s. Sai Developers completed the project on time and received Completion Certificate from the Competent Authority. As per the agreement for sale, Dr. Sharma made payment of the remaining 25% of the cost. Thereafter, he received Occupancy Certificate and took physical possession of the apartment well before two months since the allottees were supposed to take physical possession within statutory period of two months from the issue of Occupancy Certificate. He was also given other necessary documents and plans, including that of common areas. He also became a member of the RWA formed by the allottees. In the meantime, the promoter executed a registered conveyance deed in favour of each of the allottees along with the undivided proportionate title in the common areas to the RWA.

Multiple Choice Questions

1. Registration of a real estate project shall not be required –
 - (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight.
 - (b) where the area of land proposed to be developed does not exceed five thousand square meters or the number of apartments proposed to be developed does not exceed eighty.
 - (c) where the area of land proposed to be developed does not exceed two hundred fifty square meters or the number of apartments proposed to be developed does not exceed four.
 - (d) where the area of land proposed to be developed does not exceed three hundred square meters or the number of apartments proposed to be developed does not exceed three.

(2 marks)

2. Who is required to submit a copy of duly obtained approvals and commencement certificate for getting the project registered with RERA:
 - (a) Allottee
 - (b) Promoter
 - (c) Real Estate Agent
 - (d) None of the above

(2 marks)

3. A registered real estate agent shall -
 - (a) Facilitate the sale/purchase of any plot, apartment or building, being sold by the promoter in any planning area, which is registered with the Authority;

- (b) maintain and preserve prescribed books of account, records and documents;
- (c) not involve himself in any unfair trade practices
- (d) All of the above.

(2 marks)

4. The promoter is required to rectify any structural defect if it occurs within a period of ----- years from the date of handing over the possession of the apartments to allottees –

- (a) Two years
- (b) Three years
- (c) Four years
- (d) Five years

(2 marks)

5. Registration of on-going project for which completion certificate is yet to be received is mandatory -

- (a) Yes, if the area of land (developed or to be developed) exceeds five hundred square meters or the number of apartments (developed or to be developed) exceeds eight.
- (b) No, irrespective of the area of land or the number of apartments
- (c) Can't say
- (d) None of the above

(2 marks)

II. Descriptive Questions

1. (i) Examine the following given aspects with reference to the allottee in the situation given in the case study :

- (a) Rights exercised by Dr. Sharma as an allottee.
- (b) Duties fulfilled by Dr. Sharma as an allottee.
- (c) Right which was not exercised by him and duty which was not required to be fulfilled by Dr. Sharma.

(ii) The promoters of Omega Capetown Residency transferred majority of rights and liabilities to Sai Developers Pvt Ltd. for the completion of the project. Advise as to the validity of such transfer of a real estate project to a Sai Developer's Pvt Ltd in the case study?

(8 marks)

2. In the given case study Omega Capetown Residency has got itself registered under the Real Estate Regulatory Authority, as it consisted of 1,000 residential units. However, if Omega Capetown Residency consisted of only 250 residential units, then was it necessary to get itself registered under the Real Estate (Regulation and Development) Act, 2016: if yes, name the various important documents and declarations which are required to be submitted by a 'real estate developer' while registering a project with the Real Estate Regulatory Authority (RERA) having only 250 residential units and not 1,000 residential units.

(7 marks)