



**J.K. SHAH<sup>®</sup>**

**TEST SERIES**

Evaluate Learn Succeed

**SUGGESTED SOLUTION**

**CA FINAL**

**SUBJECT- ELECTIVE PAPER (ECONOMIC LAWS)**

**Test Code -**

**BRANCH - () (Date :)**

Head Office :Shraddha, 3<sup>rd</sup> Floor, Near Chinai College, Andheri (E), Mumbai –  
69.Tel : (022) 26836666

## **ANSWER TO CASE STUDY 1**

**1.1 (B)**

**1.2 (D)**

**1.3 (B)**

**1.4 (B)**

**1.5 (D)**

### **Descriptive Answers**

(i) According to **Section 36** of the **Competition Act, 2002**, the Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning, subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, any public record or document or copy of such of record or document from any office.

The Commission may also direct any person:

- (a) to produce before the Director General or the Secretary or an Officer authorized by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;
- (b) to furnish to the Director General or the Secretary or any other Officer authorized by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

Hence, CCI can also consider the tender called for in March, 2009.

### **Alternate Solution**

The bid was called in March 2009 and negotiations finalized in July, 2009 by which date, Section 3 of the Competition Act, 2002 had already been activated. Therefore, the principle of retro-activity shall become applicable as the process of finalization of the tender was still on. Therefore, the inquiry into the tender of March, 2009 by the CCI is covered by Section 3 of the Act in as much as the tender process, though initiated prior to the date when Section 3

became operational, continued much beyond May 20, 2009, the date on which the provisions of Section 3 of the Act were enforced.

In the light of the above, it can be concluded that CCI can consider the tender called for.

- (ii) **According to Section 19 of the Competition Act, 2002**, the Commission is empowered to inquire into any alleged contravention of the provisions contained in Section 3(1) or Section 4(1) either on its own motion or on:—
- (a) receipt of any information in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
  - (b) a reference made to it by the Central Government or a State Government or a Statutory Authority.

As per the situation given and provisions of the Act, CCI is empowered to inquire into any alleged contravention of the provisions contained in Section 3(1) or Section 4(1) on its own motion also. **Hence, CCI can also investigate the matter pertaining to the tender floated by Delta Corporation in March, 2018** (though it was not the subject matter contained in the complaint submitted by Delta Corporation on 4<sup>th</sup> February, 2018).

- (iii) **"Bid Rigging"** means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.

As per the facts of the case study, there seems to be collusive bid rigging by forming cartel due to the following reasons:

1. All the parties (namely M/s Easy, M/s Samurai, M/s Multicrop and M/s Agro Chemicals) quoted identical rates from 2009 to 2014.
2. In tender floated in March 2016, the three applicants quoted identical prices.
3. If we see the bidding patterns for other corporations also (i.e. A, B, C and D) we see that participating applicants quoted identical prices always.

Further, the response given by the parties (namely M/s Easy, M/s Samurai, M/s Multicrop and M/s Agro Chemicals) did not support that there was no cartelization, on the following grounds:

1. CCI is empowered to inquire into any alleged contravention of the provisions contained in Section 3(1) or Section 4(1) on its own motion also. Hence, **CCI can also investigate the matter pertaining to the tender floated by Delta Corporation in March, 2018** (though it was not the subject matter contained in the complaint submitted by Delta Corporation on 4<sup>th</sup> February, 2018).
2. The said parties pleaded that the price rise of APT was due to increase of price of yellow phosphorous, which was to be procured from China, had increased. However, all the

parties quoted identical prices which has resulted in adversely affecting/ manipulating the process of bidding.

### **Initiation of Insolvency resolution by PEL (operational creditor) against Multicrop.**

According to Section 8 of the IBC, 2016, following requirements are to be met for initiation of corporate insolvency resolution process by operational creditor, i.e. by PEL against the corporate debtor, Multicrop:

- (1)** On the occurrence of default, an operational creditor shall first **send a demand notice and a copy of invoice** to the corporate debtor.
- (2)** The corporate debtor shall, **within a period of ten days of the receipt of the demand notice or copy of the invoice** bring to the notice of the operational creditor about **existence of a dispute about debt**, if any, record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute; Where corporate debtor might have already paid the unpaid operational debt, there in such situation, corporate debtor will inform within 10 days send an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or sends an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor. **[Section 8]**

According to **Section 9** of the IBC, an application for initiation of corporate insolvency resolution process by operational creditor may be filed, if no reply is received or payment or notice of the dispute under Section 8(2) from the corporate debtor within ten days from the date of delivery of the notice or invoice demanding payment, operational creditor can file application before Adjudicating Authority (NCLT) for initiating a corporate insolvency resolution process.

As per the facts stated in the case study, PEL had not served demand notice and a copy of invoice to the Multicrop. In fact it directly went to the Arbitral tribunal, for settlement of the claim as per the term of agreement. Award was passed in the favour of PEL. However, the award of the Arbitral Tribunal was challenged by the Multicrop. Whereas PEL also filed an application before the NCLT for initiation of CIRP against Multicrop.

According to the above provision, due to prima facie non-compliance of serving of demand notice and a copy of invoice to the Multicrop by the operational creditor (PEL) and of further no notice of dispute about debt regarding the pendency of the suit in appeal before Appellate Arbitration by the Corporate Debtor (Multicrop). **Therefore NCLT stand as regard the admission of application of PEL on initiation of CIRP against Multicrop, is not appropriate.**

### **ANSWER TO CASE STUDY 2**

**2.1 (d)**

**2.2 (c)**

**2.3 (b)**

**2.4 (d)**

**2.5 (c)**

**Descriptive questions**

**Answer1**

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

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

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

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

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

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

In the above case study, in one of the cases, SUBHASH invested Rs. 1.50 Crores in a Bank Fixed deposit in the name of his married daughter, MANGALA, who is a UK Resident, without her knowledge. Later during the course of enquiries by Tax officials MANAGALA denies ownership of Bank Fixed Deposit. Here, the transaction is Benami, though the FD is generated using disclosed funds in a genuine transaction.

## Answer 2

As per the provisions of Section 2(16) of the Prohibition of Benami Property Transactions Act 1988, "fair market value", in relation to a property, means—

- (i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
- (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as prescribed in Rule 3 of Prohibition of Benami Transactions Rules, 2016

### Determination of price in certain cases under Rule 3 of Prohibition of Benami Transactions Rules, 2016

3. (1) For the purposes of sub-clause(ii) of clause (16) of the section 2 of the Act, the price shall be determined in the following manner, namely:—
  - (a) the price of unquoted equity shares shall be the higher of,—
    - (I) its cost of acquisition;
    - (II) the fair market value of such equity shares determined, on the date of transaction, by a merchant banker or an accountant as per the Discounted Free Cash Flow method; and
    - (III) the value, on the date of transaction, of such equity shares as determined in the following manner, namely:—

The fair market value of unquoted equity shares =  $(A+B - L) \times (PV)/(PE)$  where,

A= book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by,-

- (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and
- (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B= the price that the bullion, jewellery, precious stone, artistic work, shares, securities and immovable property would ordinarily fetch on sale in the open market on the date of transaction;

L= book value of liabilities, but not including the following amounts, namely:—

- (i) the paid-up capital in respect of equity shares;
- (ii) the amount set apart for payment of dividends on preference shares and equity shares;
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
- (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet; PV= the paid up value of such equity shares;

The above provisions of Section 2(16) of the Act Read with Rule 3 is applicable, in case of confiscation of properties of RAJESH.

### **Answer 3**

**Attachment of property involved in money-laundering under Section 5 of the Prevention of Money laundering Act 2002?.**

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

- (a) any person is in possession of any proceeds of crime; and
- (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

**Provided** that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

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

**Provided also** that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

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

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

**(4)** Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

*Explanation.*—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

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

### **ANSWER TO CASE STUDY 3**

**3.1 (C)**

**3.2 (B)**

**3.3 (D)**

**3.4 (C)**

**3.5 (D)**

### **Descriptive Answers**

As per Schedule III, the following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India:

- (i) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
  - (ii) Remittances exceeding USD 1,00,00,000 per project for any consultancy services in respect of infrastructure projects and USD 10,00,000 per project, for other consultancy services procured from outside India.
- a. TBTPPL made a payment of USD 500,000 to one Company and USD 1,500,000 to another Company for training the employees of TBTPPL. Thus, in total, made a payment of USD 2,000,000.

As per the provision of law and facts of case study, **TBTPPL require prior approval** of the Reserve Bank of India to make a payment of USD 200,000 as it exceeds the limit of USD 1,000,000 given under law.

#### **Alternate Solution**

- a. As per **Schedule III**, the following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India:
- (i) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
  - (ii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

TBTPPL made a payment of USD 500,000 to one Company and USD 1,500,000 to another Company for training the employees of TBTPPL.

Therefore, the prior approval of the RBI is required for the payment of USD 1,500,000 to the second Company. No specific approval of the RBI is required for the payment of USD 500,000 to the first Company.

- b. TBTPPL made a payment of USD 30,000 as commission to agent abroad for selling a commercial plot owned by it in India to a Non- resident Indian in USA.

As per facts of case and provision of law, TBTPPL can make a remittance of USD 25,000 or five percent of the inward remittance from sale of commercial plot, without RBI approval.

Thus, **TBTPL have to take prior approval of RBI** to make a payment of USD 30,000 as commission to agent abroad (as it exceeds the limit of USD 25,000 or 5% of USD 500,000, whichever is higher).

As per FEMA provisions, a resident cannot lend to another resident in foreign currency. However, Loan and guarantee can be extended to an overseas entity only if there is already an existing equity / CCPS ( Compulsorily Convertible Preference Shares) participation by way of direct investment.

In the given case study, TBTPL lent an amount of USD 500,000 in foreign currency to one of its vendor. This loan was guaranteed by the holding Company of the vendor, which is located in Mauritius.

**As per the facts of the case study and the provision enumerated above,**

**TBTPL cannot give loan to its vendor**

(i) In the given case study, Enforcement Directorate identified following offences committed by the parties under the PMLA, 2002-

**(a) Offences with Explanation:** (1) Use of counterfeit government stamp paper for the purpose of registering the lease deed to minimise the cost of stamp duty- offence under Part A of the Schedule , (2) invoice for agency fees /commission for acquiring the stamp papers, settled in cash without deduction of tax by TBTPL- Offence under Part C of the Schedule (3) Use of patent and copyright owned by another competitor of TBTPL -- offence under Part A of the Schedule (4) Providing of price sensitive information to Mr. Sudhir Shankar of an employee on the basis of which he purchased equity shares of the entity- offence under Part A of the Schedule (5) sending to Rs. 1 Crore out of proceeds from purchase of an equity shares to Ms Anne Shankar- offence under Part A of the Schedule.

**(b) Parties Involved:** Offence pertaining to use of counterfeit government stamp paper- TBTPL, Mr. Ajay Vinod, Agency M/s DoCorrect Consultants, CFO of TBTPL.

Invoice for agency fees /commission for acquiring the stamp papers- Agency M/s DoCorrect Consultants, TBTPL, CFO of TBTPL.

Use of patent and copyright owned by another competitor by TBTPL: TBTPL, Mr. Ajay Vinod.

Purchase of equity shares of an entity on the price sensitive information: Mr. Siddarth Shanker & Mr. Sudhir Shankar

Out of proceeds obtained above, sent certain amount to Ms. Anne- Mr. Siddarth Shanker, Mr. Sudhir Shankar, Ms. Anne Shanker.

**(c) Proceeds of Crime:** Rs. 5 Crore (Lease premium), USD 2,000,000 (for development of Robotic Platform under the patent & copyright owned by another), & Rs. 2 Crore (obtained by the purchase of equity shares).

(ii) According to **Section 17** of the Prevention of Money Laundering Act, 2002, where the Director or any other officer not below the rank of Deputy Director authorized by him for the purposes of this Section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

- (i) has committed any act which constitutes money-laundering, or
- (ii) is in possession of any proceeds of crime involved in money-laundering, or
- (iii) is in possession of any records relating to money-laundering, or
- (iv) is in possession of any property related to crime,

then, subject to the rules made in this behalf, he may authorize any officer subordinate to him to—

enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

Thus, the **Enforcement Directorate can perform a search** of M/s Do Correct Consultants' premises in connection with the investigation of TBTP's connection.

Hence, the **position taken by M/s Do Correct Consultants is not appropriate based on the above legal provisions.**

#### **ANSWER TO CASE STUDY 4**

**4.1 (C)**

**4.2 (A)**

**4.3 (D)**

**4.4 (C)**

**4.5 (B)**

#### **Descriptive Answers**

(i) The project was commenced in November, 2014 and was in progress on the effective date of coming into force of RERA, 2016 i.e. on 1<sup>st</sup> May, 2017. As per Section 3(1) of RERA, 2016, the promoter shall make an application to the Authority for registration of the project that is ongoing on the date of commencement of this Act and for which completion certificate has not been issued within a period of three months from the date of commencement of this Act.

Accordingly, **the provisions of RERA are said to be applicable** to the Décor Dream Home Project as no completion certificate has been issued within a period of three months from the date of commencement of this Act i.e., uptill July end 2017.

#### **Return of amount and compensation (Section 18)**

This Section provides for the return of amount and compensation.

If the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

However, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

If the Promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

According to the relevant provisions, Décor Constructions will not be liable under RERA for handover of the apartments to the allottees as it was within the expected date of completion i.e., 30<sup>th</sup> June, 2018. Therefore, **Decor Constructions shall not be liable for payment of compensation.**

### **Alternate Solution**

**Analysis of each of Averments of Décor Constructions with regard to its obligations under RERA for the alleged delay in handing over the apartments to the allottees:**

**AVERTMENT (1):** Even though, the date of completion stated in RERA registration is 30<sup>th</sup> June, 2018 and therefore, the date of handover finally indicated to the allottees is 31<sup>st</sup> March, 2018 which is well within the timelines and therefore, there is no non-compliance with the RERA requirements

As per **Section 18**, if the promoter fails to complete or is unable to give possession of an apartment, plot or building, in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

On a plain reading of this provision, it becomes clear that date of completion referred to in this provision is the date specified in the agreement. The word “therein” refers to the “agreement” and not the date of completion revised by the Promoters unilaterally while registering the project. Hence, the submission of Décor Constructions that as till the date of completion mentioned in the registration certificate is not crossed, **there is no delay in not valid.**

**AVERTMENT – 2:** The Company had already informed the reasons for the delay of the project upto 31<sup>st</sup> December, 2017 in August, 2016 itself and there was no response / issues raised by the Allottees at that time. Further, Décor 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.

From the facts of the case, it appears that Décor Constructions is of the view that since the complainants did not object to the extended time, hence, the complainants by their conduct agreed to extend the period of delivery of the possession of the flats. This is not acceptable because a party cannot take unilateral decision and impose it upon the other party. The parties have decided to withdraw from the project since the flats were not delivered on time and no where have they agreed to the new dates as unilaterally declared by the Company. The handover of the apartments prior to obtaining the occupancy certificate is mere paper possession and possession without such certificate is illegal and cannot be permitted in law. **Therefore, this offer has been rejected by the complainants and have exercised their right to claim back their money.**

**AVERTMENT – 3:** 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.

Section 18 offers two options to the allottees – one is for return of the amounts, or compensation, if the allottees decide not to withdraw from the project. **It is not necessary for unanimity in the decision of the allottees and the promoter is liable to refund / compensate the allottees based on the option that they choose.**

- (i) As per FEMA, 1999 under **Section 6(4)**, a person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

The **RBI vide A.P. (DIR Series) Circular No. 90 dated 9<sup>th</sup> January, 2014** has issued a clarification on Section 6(4) of the Act. According to which a person resident in India may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to extant FEMA provisions.

**Accordingly, Mr. Ravi Rao aim of acquiring a colonial villa in Switzerland when he is resident in India is possible and in compliance with the above provision.**

- (ii) In the given case, Ms. Anne Rao proposed for two types of investments in India:
  - (i) Purchase of immovable property in India Jointly with Mr. Ravi Rao

(ii) Investing USD 2,00,000 in special purpose vehicle

**W.r.t. part (i)** of the transaction proposed by Ms Anne Rao, according to **Section 6(3)**, the Reserve Bank may, by regulations, prohibit, restrict or **regulate the giving of a guarantee** or surety in respect of any debt, obligation or other liability incurred by a person resident outside India.

Therefore, proposed transaction as to purchase of immovable property to be entered by Ms. Anne Rao, is valid on the guarantee of Décor Construction.

**W.r.t. part (ii)** of the transaction proposed, investments (or financial commitment) in JV/WOS abroad by Indian parties through the medium of a Special Purpose Vehicle (SPV) **are also permitted** under the Automatic Route if the Indian party is not appearing in the Reserve Bank's caution list or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the Reserve Bank/any other Credit Information Company as approved by the Reserve Bank.

As in the given case, investment in a Special Purpose Vehicle in the form of an unincorporated joint venture, is invalid in line with the above provision.

#### **Alternate Solution to Part (ii)**

As per the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000, the person resident outside India **is prohibited** from making investments in India in any form, in any Company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes **to engage in agricultural or plantation activities.**

**Accordingly, Ms. Anne Rao cannot invest in the aforesaid business since managed farm business is included under prescribed business of agricultural and plantation activities.**

#### **ANSWER TO CASE STUDY 5**

**5.1 (a)**

**5.2(b)**

**5.3(d)**

**5.4(d)**

**5.5(a)**

**1 (i)**

(a) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, exercised the following rights:

(i) Obtained the information relating to sanctioned plans, layout plans along with the

specifications as approved by the competent authority.

- (II) Demanded to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities.
  - (III) Claimed physical possession of the said apartment.
  - (IV) Obtained the necessary documents and plans, including that of common areas, after getting the physical possession of the apartment from the promoter.
- (b) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, fulfilled the following duties:
- (i) Made necessary payments within the time as specified in the agreement for sale.
  - (ii) Became a member of the RWA formed by the allottees.
  - (iii) Took physical possession of the apartment within a period of two months from the issue of Occupancy Certificate.
  - (iv) Participated towards registration of the conveyance deed of the apartment.
- (c) (i) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, did not exercise the following right:

The right to claim the refund of amount paid along with prescribed rate of interest. It was so because the promoter was able to give possession of the apartment in accordance with the terms of agreement for sale.

(ii) With reference to Section 19 of the Real Estate (Regulation and Development) Act, 2016, Dr. Sharma, as an allottee, was not required to fulfill the following duty:

The duty to pay interest at prescribed rate for delay in making any payment. It was so because he had made the payments in accordance with the terms of agreement for sale.

- (i) As per section 15 of the Real Estate (Regulation and Development) Act, 2016, a promoter is permitted to transfer his majority rights and liabilities in respect of a real estate project to a third party.

The provisions given below are to be adhered to by the promoter for transfer:

- (a) Obtain prior written consent from two-third of allottees. Such consent will not include the consent given by the promoter.
- (b) Also obtain prior written approval of the Authority.

**Note:** It is to be ensured that such transfer shall not affect the allotment or sale of the apartments, plots or buildings, as the case may be, in the real estate project developed by the promoter.

- (i) After obtaining the required consent of both allottees and the Authority, the new promoter shall be required to independently comply with all the pending obligations under the provisions of the Act or the rules and regulations made thereunder.
- (ii) The new promoter is also required to comply with the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees.
- (iii) Further, the new promoter must note that any transfer so permitted shall not result in extension of time to him to complete the real estate project.

**Note:** In case of default, he shall be liable to the consequences for delay, as per the provisions of the Act or the rules and regulations made there under 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 in compliance with the requirements given in the said provisions. Such transfer of a real estate project to a Sai Developer's Pvt Ltd. is valid.

2. According to proviso to section 3 of the Real Estate (Regulation and Development) Act, 2016, projects that are on going on the date of commencement of the Act, and for which the completion certificate has not been issued, the promoter of the project are required to make and application to the concerned Authority for the registration of the said project within a period of 3 months from the date of commencement of the Act.

Further, the section provides that no registration of real estate project shall be required where the area of land proposed to be developed does not exceed 500 square meters or the number of the apartments proposed to be developed does not exceed 8 inclusive of all phases.

Hence, the Act requires registration of on-going projects where completion certificate was yet to be obtained as well as new projects, if the area to be developed exceeded 500 sq. mtrs. or apartments to be built under the project exceeded eight. Thus, registration of Omega Capetown Residency was must with the Real Estate Regulatory Authority of UP (RERA, UP), as consisted of 1,000 residential units.

Further, even if Omega Cape town Residency consisted of only 250 residential units (i.e. more than 8 units), it will be compulsory to get itself registered under the Act. The process of registering a project with the Real Estate Regulatory Authority (RERA) which consists of 1,000 units or 250 units is same which is given under section 4 of the Act.

With reference to Section 4, various important documents and declaration required to be submitted while registering a project with RERA are as under:

- Details of the project such as name, address, type, names and photographs

of the promoters, etc.

- Details of the project which were already launched by the real estate developer in the preceding 5 years and their present status.
- Approvals and commencement certificates obtained from the competent authority for each phase of the project separately.
- Sanctioned layout plan, the development plan for the project and details of basic facilities being made available like drinking water, electricity etc.
- Proforma of allotment letter, agreement for sale and conveyance deed to be signed with the consumers.
- Location of the project with clear demarcation of the land for the project.
- Number, type and carpet areas of units to be sold.
- The details of open areas if any like terraces, balconies etc.
- Details of associated engineers, contractors, architects and intermediaries in the project.
- a declaration, duly supported by an affidavit, stating the following important matters:
  - that the promoter has a legal title to the land and it is free from all encumbrances along with legally valid documents;
  - the time period required for completion of the project;
  - that seventy per cent. of the amount realised from the allottees, from time to time, shall be deposited in a separate escrow account and shall be used only for the purpose of completion of project;
  - that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice; and shall take all the pending approvals on time from the competent authorities; etc.