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Further, in the Elective Papers which are Case Study based, the solutions have been worked out on the basis of certain assumptions/views derived from the facts given in the question or language used in the question. It may be possible to work out the solution to the case studies in a different manner based on the assumption made or view taken.

PAPER 6D: ECONOMIC LAWS

NOTE: *The question paper comprises of **five** case study questions. The candidates are required to answer any **four** case study questions out of **five**.*

CASE STUDY - 1

Part-A:

TJSB Sahakari Bank Ltd. (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Unimetal Castings Ltd. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default in repayment of loan facilities granted to the Corporate Debtor to the extent of ₹ 6,38,78,417/- including interest of ₹ 2,07,95,568/-, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The Petition reveals that the following credit facilities were sanctioned on 25-02-2013 to the Corporate Debtor by SVC Bank consortium wherein the Petitioner Bank is the consortium member:

Sr. No.	*Facility*	*By TJSB (Petitioner Bank)*	*By SVC Bank*
1.	*CC Limit*	*60,00,000*	*3,90,00,000*
2.	*OBD Limit*	*-*	*1,00,00,000*
3.	*Term Loan 1*	*45,50,000*	*1,63,80,000*
4.	*Term Loan 2*	*90,00,000*	*75,55,000*
5.	*Term Loan 3*	*1,11,50,000*	*36,90,000*
6.	*Term Loan 4*	*50,00,000*	*1,77,81,000*
7.	*Term Loan 5*	*1,50,00,000*	*-*
	TOTAL	*5,10,00,000*	*9,44,06,000*

The Petitioner on 04-08-20I5 issued recall notice to the Corporate Debtor under the provisions of Multistate Co-Operative Societies Act, 2002 and further issued SARFAESI notice on 29-03-2016.

The Corporate Debtor submitted that:

(a) It is a medium enterprise as defined under the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act').

(b) The declaration of the account of the Corporate Debtor as Non-Performing Asset ('NPA') w.e.f. 30-06-2015 is illegal, void and non-est as the same is in contravention of Regulations and Circulars issued by the Government, Reserve Bank of India, etc.

(c) The claim of ₹ 6,38,78,417 as claimed in the Petition is not due and payable by the Corporate Debtor.

(d) The Corporate Debtor being a medium enterprise is statutorily recognised as extremely important for the national economy and certain rights are provided under section 9 & 10 of MSMED Act.

(e) The Corporate Debtor is entitled to request the consortium members including the Petitioner herein for restructuring the credit facilities as provided under RBI guidelines such as "Prudential guideline on restructuring of advances by banks" and "Guidelines for rehabilitation of sick, micro and small enterprises". The Central government has also notified the "Framework for revival and rehabilitation- of micro, small and medium enterprises". Despite the request of the Corporate Debtor in the year 2014 and 2015 the Petitioner or any other Financial Institution has not made any attempts to restructure the facilities granted to the Corporate Debtor.

(f) Consequent to the meeting of the District Level Sick Unit Rehabilitation Committee held on 15-03-2016 under the chairmanship of the District Collector of Kolhapur and the meeting convened by the Joint Director of Industries, Pune, the petitioner by necessary implications agreed to undertake the exercise of getting the requisite Eco- Techno viability report of the Corporate Debtor in order to assist the eligibility/entitlement for the purpose of availing the rehabilitation program but the petitioner failed to do that.

(g) The issue of SARFAESI notice dated 29-03-2016 by the petitioner under section 13(2) of the SARFAESI Act, 2002 shows their high handedness in exploiting its dominant position vis-a-vis the Corporate Debtor.

The Corporate Debtor further contended that, the claim of the Petitioner is barred under Article 137 of the Limitation Act, 1963 since whilst the date of alleged default was on 30-06-2015 i.e. the date on which the account was declared as Non-Performing Asset (NPA). The cause of action (i.e. the actual default) would have arisen much prior to the date of NPA. Hence, the period of limitation would run starting even prior to 30-06-2015 and since this Petition was filed on 23-08-2018, this Petition is barred by limitation.

For the above contention of the Corporate Debtor, the Petitioner submitted that the loan was shown in the balance sheet of the Corporate Debtor which is an acknowledgement of liability and hence the debt is not barred by limitation. The Corporate Debtor has not disputed the fact that the loan was shown as a liability in the balance sheet of the Corporate Debtor.

The Adjudicating Authority having satisfied with the fact that the Corporate Debtor defaulted in making payment towards the liability to the petitioner, ruled that the petition deserves to be admitted under IBC, 2016.

Another operational creditor, Wonder Bearings Limited, who underwent a corporate insolvency resolution process which got completed on 15-03-2016, filed a petition under IBC 2016 on 10-05-2017 with regard to its dues from Unimetal Castings amounting to ₹1,50,80,000.

The Petitioner "TJSB Sahakari Bank Limited" seeks your view on the various provisions of the Insolvency and Bankruptcy Code, 2016 with regard to above matter.

Part-B:

In another independent development various appeals were filed by the appellants/suppliers against the orders passed by the Hon'ble Competition Appellate Tribunal (hereinafter referred to as COMPAT) before the Hon'ble Supreme Court of India. The COMPAT, by the said judgment, has upheld the findings of the Competition Commission of India (for short, CCI) that the appellants/suppliers of Liquefied Petroleum Gas (LPG) Cylinders to the Indian Oil Corporation Ltd. (for short, IOCL) had indulged in cartelization, thereby influencing and rigging the prices, thus, violating the provisions of Section 3(3)(d) of the Competition Act, 2002 (for short, the Act).

These suppliers have filed the instant appeals on the ground that there was no cartelization and they have not contravened the provisions of the Act. For the sake of convenience these suppliers will be referred to as the appellants hereinafter. We may point out at the outset that all these appellants are manufacturing gas cylinders of a particular specification having capacity of 14.2 kg which are needed for use by the three oil companies in India, namely, IOCL, Bharat Petroleum Corporation Ltd. (BPCL) and Hindustan Petroleum Corporation Ltd. (HPCL) [all are public sector companies]. It is also a matter of record that apart from the aforesaid three companies there are no other buyers for these cylinders manufactured by the appellants. Insofar as IOCL is concerned, it is a leading market player in LPG as its market share is 48%. Thus, in case a particular manufacturer is not able to supply its cylinders to the aforesaid three companies, there is no other market for these cylinders and it may force that company to exit from its operations. The technical bid of the subject tender was opened on 3-3-2010 and the price bids of 50 qualified bidders were opened on 23-3-2010. According to the Director General, there was a similar pattern in the bids by all the 50 bidders who submitted price bids for various States. The bids of a large number of parties were exactly identical or near to identical for different States. The Director General had observed that there were strong indications of some sort of agreement and understanding amongst the bidders to manipulate the process of bidding.

As per the Director Generals report, the process of bidding followed by the IOCL in the tender was as under: -

- *The bidders would submit their quotations with the bid documents.*
- *The existing bidders, who were existing suppliers, were required to submit the price bids and technical bids.*
- *The bidders were to quote for supplies in different States of India in keeping with their installed capacity.*

- *After price bids were opened the bidders were arranged according to the rates in the categories of L-1, L-2 and L-3.*
- *The rates for the supplies in different States were approved after negotiations with L-I bidder. In case the L-1 bidder could not supply a required number of cylinders in a particular State, the orders of supplies went to L-2 and also L-3 bidder or likewise depending upon the requirement in that State as per fixed formula provided in the bid documents.*

The Director General after analyzing the bids came to the conclusion that there was not only a similarity of pattern in the price bids submitted by the 50 bidders for making supply to the IOCL but the bids of large number of parties were exactly identical or near to identical in different States. It was also found that bidders, who belonged to same group, might have submitted identical rates.

The similarity of the rates was found even in case of bidders whose factories and offices were not located at one and the same place in the States and where they were required to supply was far off from their factories located in different place.

The D.G. had found further that though the factors like market conditions and small number of companies were different, there was large scale collusion amongst the bidding parties. He also arrived at a finding to the effect that the LPG Cylinder Manufacturers had formed an Association in the name of Indian LPG Cylinders Manufacturers Association and the members were interacting through this Association and were using the same as a platform. The date for submitting the bids in the case of the concerned tender was 3-3-2010 and just two days prior to it, two meetings were held on 1st and 2nd March, 2010 in Hotel Sahara Star in Mumbai. As many as 19 parties took part and discussed the tender and, in all probability, prices were fixed there in collusion with each other. The D.G reported that the bidders had agreed for allocation of territories, e.g., the bidders who quoted the bids for Western India had not generally quoted for Eastern India and that largely the bidders who quoted the lowest in the group in Northern India, had not quoted generally in Southern India. The D.G. also concluded that this behaviour created entry barrier and that there was no accrual of benefits of consumers nor were there any plus factors like improved production or distribution of the goods or the provision of services.

Ultimately, the D.G. came to the conclusion that there was a cartel like behaviour on the part of the bidders and that the factors necessary for the formation of cartel existed in the instant case. It was also found that, there was certainly a ground to hold concerted action on the part of the bidders. The D.G. had also noted that the rates quoted for the year 2009-10 and in years previous to that were also identical in some cases. Thus, he came to the conclusion that the bids for the year 2010-11 had been manipulated by 50 participating bidders. It was thereafter that the CCI decided to supply the D.G,s investigation report to the concerned parties and invite their objections.

The Director General seeks your advice in light of Petition filed before the Hon'ble Supreme Court of India against the order passed by the Hon'ble Competition Appellate Tribunal.

Answer the following questions:

1.1 TJSB Sahakari Bank would like your views on, which of the following will not be considered as insolvency resolution costs under the Code:

(A) The amount of any interim finance and the costs incurred in raising such finance;

(B) The fees payable to any person acting as a resolution professional;

(C) Any payment of fees for the services of an insolvency professional to any person other than the insolvency professional;

(D) Any costs incurred at the expense of the Government to facilitate the insolvency resolution process. ***(2 Marks)***

1.2 When can the Committee of Creditors of Unimetal Castings Ltd. take the decision to liquidate the Company?

(A) by simple majority any time during the resolution process but not before the confirmation of the resolution plan and preparation of the information memorandum;

(B) by 2/3rd majority any time during the resolution process but before the confirmation of the resolution plan and preparation of the information memorandum;

(C) by 2/3rd majority any time during the resolution process but not before the confirmation of the resolution plan and preparation of the information memorandum;

(D) by 3/4th majority any time during the resolution process but before the confirmation of the resolution plan and preparation of the information memorandum. ***(2 Marks)***

1.3 Is Wonder Bearings Ltd. eligible to initiate insolvency resolution process against Unimetal Castings Ltd.?

(A) Not eligible, since requirement is to have completed the resolution process 24 months preceding the date of application;

(B) Eligible, there is no bar for a company who underwent insolvency resolution process to initiate proceedings as long as the other requirements (existence of debt etc.) under IBC 2016 is met;

(C) Eligible, since requirement is to have completed the resolution process 12 months preceding the date of making of the application;

(D) Not eligible, prior consent of the Adjudicating Authority is required for filing an application for insolvency process by Wonder Bearings Ltd., since it has itself undergone an insolvency process. ***(2 Marks)***

1.4 Which of the following is not the objective of the Competition Act, 2002?

(A) Promote practices having adverse effect on Competition;

(B) Sustain competition in market;

(C) Protect the interest of consumers;

(D) *Ensure freedom of trade for Indian and foreign players in markets in India.* ***(2 Marks)***

1.5 *An Association of manufacturers of die cast products will not be considered as a cartel if the objective of the association is to :*

(A) *limit the distribution of die cast material only to petroleum industry in view of the huge demand and higher realization;*

(B) *regulate the production of die cast products to ensure optimal sale prices;*

(C) *represent the industry issues on a collective basis to the Government;*

(D) *monitor and regulate the number of dealers in each state/city.* ***(2 Marks)***

1.6 *Analyze and answer the following questions in the context of the case study:*

(i) *Evaluate the position taken by the Adjudicating Authority that the petition deserves to be admitted having satisfied with the fact that Unimetal Castings Ltd. has defaulted in making payment towards the liability to the petitioner.* ***(4 Marks)***

(ii) *In light of the provisions of the Competition Act 2002, whether there was any collusive agreement between the participating bidders which directly or indirectly resulted in bid rigging of the tender floated by IOCL?* ***(3 Marks)***

(iii) *Unimetal Castings Ltd. seeks your views regarding the impact of the clarifications issued by Ministry of Corporate Affairs (MCA) regarding approval of resolution plans under section 30 and 31 of Insolvency & Bankruptcy Code, 2016 vide general circular (GC) dated 25th October, 2017.* ***(4 Marks)***

(iv) *TJSB Sahakari Bank Ltd. seeks your advice on the time-limit for completion of the Corporate Insolvency Resolution Process as per the IBC, 2016.* ***(4 Marks)***

ANSWER TO CASE STUDY 1

1.1 (C)

1.2 (B)

1.3 (C)

1.4 (A)

1.5 (C)

1.6 (i)

Given situation is based on the case law, B.K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates, of Supreme Court, Civil Appeal No.23988 of 2017, dated 11.10.2018, in which principle was laid down that the Limitation Act, 1963 is applicable to applications filed under Sections 7 and 9 of the Insolvency and Bankruptcy Code, 2016(Code) from the inception of the Code .i.e. from 28th May, 2016.

In the given case study, the Corporate Debtor, Unimetal Castings Ltd. contended as under:

(i) Claim of the Petitioner, TJSB Sahakari Bank Ltd. is barred under Article 137 of the Limitation Act, 1963.

(ii) Whilst the date of alleged default was 30.6.2015 (i.e. the date on which the account was declared as Non Performing Assets (NPA)) and the cause of action (i.e. actual default) arises much prior to the date of NPA.

(iii) The period of limitation would have started even prior to 30.06.2015 and as the petition was filed on 23.08.2018, so it is barred by limitation.

As per the facts given in the case study, acknowledgement of liability in the Balance Sheet of the Corporate Debtor reflects that default has already occurred i.e on 30.6.2015 and the application for initiation of Corporate Insolvency Resolution process was filed on 23.08.2018.

Where the liability is shown in the balance sheet, it is a clear acknowledgement of debt by the Corporate Debtor as was held in Bajan Singh Sharma Vs Wimpy International Limited, 185(2011) DLT 428 and in many other judgements.

In the light of the aforesaid ruling, the limitation period of 3 years will begin from the date of coming of Code into enforcement i.e from 28th May 2016.

Therefore, the position taken by the Adjudicating Authority is correct and the petition deserves to be admitted since the application filed under Section 7 of the Code is within the limitation period and the Corporate Debtor has defaulted in making payment towards the liability of the petitioner.

1.6(ii)

As per Section 3(3) of the Competition Act, 2002 the identical bid price is not possible unless there is some sort of prior and collective understanding. Further the contact and meeting between the members of IOCL and Association, before submission of bids is also valid evidence of the existence of an understanding among the parties.

In the case study as per given facts, it was found that there was large scale collusion amongst the bidding parties. LPG Cylinder manufacturers formed an association, Indian LPG Cylinder manufacturers Association and the members of IOCL were interacting through this association. Two days before the date of bids i.e. on 1st& 2nd March, 2010 two meetings were held and 19 parties took part and discussed the tender and prices were fixed there in collusion with each other. This resulted in bid rigging of the tender floated by IOCL.

In view of the above, it can be concluded that there was collusive agreements between the participating bidders which directly or indirectly resulted in bid rigging of the tender floated by IOCL.

1.6 (iii)

Impact of Clarification Issued by MCA:

Vide General Circular IBC/01/2017 dated 25th October, 2017, Ministry of Corporate Affairs issued a clarification regarding approval of resolution plans under Section 30 and 31 of

Insolvency and Bankruptcy Code, 2016. The said clarification is sought in view of the requirement under Section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

The matter has been examined in the Ministry in the light of provisions of Sections 30 and 31 of the Code which provide a detailed procedure from the time of receipt of resolution plan by the resolution professional to its approval by the Adjudicating Authority and there is no requirement for obtaining approval of shareholders/members of the corporate debtor during this process.

This clarification clears that the requirement of Section 30(2) (e) of the Code is to ensure that the resolution plan(s) considered and approved by the Committee of Creditors and the Adjudicating Authority is in compliant with the provisions of the applicable laws and therefore is legally implementable.

Section 31(1) of the Code further provides that a resolution plan approved by the Adjudicating Authority shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

1.6 (iv)

As per Section 12 of the Insolvency and Bankruptcy Code, 2016, the Corporate Insolvency Resolution Process (CIRP) shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

The Resolution Professional shall file an application to the Adjudicating Authority to extend the period of the Corporate Insolvency Resolution Process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the Committee of Creditors by a vote of sixty- six per cent of the voting shares.

On receipt of an application, if the Adjudicating Authority is satisfied that the subject matter of the case is such that CIRP cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days.

Provided that any extension of the period of CIRP shall not be granted more than once. Accordingly, in the said case, time limit for competition of CIRP, will be:

01	Petition for initiation of corporate insolvency resolution was filed on 23.08.2018
02	Insolvency resolution process will be commenced within 14 days i.e, latest by 01.09.2018
03	Insolvency resolution process will be completed by 180th day from insolvency commencement date (date of admission of the application) i.e., latest by 28.02.2019.
04	Further may extend till 29.05.2019.

Amendment of Section 12(3) of IBC(Amendment) Act, 2019

Section 12(3) of the IBC was amended by way of the Insolvency and Bankruptcy (Amendment) Act, 2019 and two provisos were added:

Proviso 1 states that a CIRP must mandatorily be completed within 330 days from the insolvency commencement date, including any extension of the period of the CIRP granted and the time taken in legal proceedings in relation to the resolution process.

Proviso 2 states that, when the CIRP of a Corporate Debtor (CD) has been pending for over 330 days, it must be completed within 90 days from the date of the amendment.

Thus, the overall timeline for completing a CIRP now stands at 330 days from the date of insolvency commencement date.

CASE STUDY - 2

Visio India Private Limited (Visio) is an upcoming watch manufacturing company and is based in Vishakapatnam. The Company was started during the year 2008 by Mr. Srinivas Kumar and his wife, Ms. Kruthi who is a Chartered Accountant.

In order to meet their expanding operations in Delhi, Visio had in the month of January 2014 pre-booked a commercial office unit of approximately 1200 sq. ft. with JV Realty Limited, a leading developer in that area in their "SAPPHIRE COURT" Greater Noida project launched then by paying an amount of ₹ 25,00,000 as booking amount (50% of the total consideration) but no Builder- Buyer agreement was entered into between the parties except that an allotment letter was issued by the developer mentioning the unit details. This project was being developed over an area of approximately 15,000 square meters and having over 100 office units in its plan outlay.

Visio had paid almost 90% of the entire cost of the property based upon percentage of completion (progress) of the stage of construction as of April 2017 but the developer had failed to provide, neither possession nor had completed the project and was also not responding to their complaints on one pretext or the other.

The legal counsel of Visio, Mr. Aswin Nakshatra, in the month of May, 2017 informed Ms. Kruthi about Real Estate (Regulation and Development) Act, 2016 (for short "the RERA"). He further informed that RERA was enacted by the Parliament as Act 16 of 2016 in the year 2016 and by May 1, 2017, all 92 provisions of the Real Estate (Regulation and Development) Act, 2016 (RERA or the Act) were brought into force. The Act has introduced new obligations on real estate developers and in cases of default, prescribes penal liabilities and Visio can contemplate bringing a legal suit against the developers under RERA.

JV Realty on the other hand is of the view that RERA is not applicable to this project as the same was launched and construction commenced much before the RERA came into force.

One of the group companies of JV Realty, Good Looking Homes Private Limited (GLHPL) was into construction of high rise apartment complexes and commenced a large project "Kailash Giri Views" in Vizag.

GLHPL took all the approvals under RERA and came up with the marketing strategy including a brochure of 94 pages consisting of various pictures showing the following features included in the project:

(a) Balcony at each floor

(b) Drawing room to be constructed with designed tiles at floor.

(c) Italic Marble at bedroom.

(d) Granite at kitchen.

(e) Swimming pool at the top floor.

(f) All rooms to be Centrally Air-conditioned.

(g) All floors and lifts will have CCTV camera.

(h) Open parking slot for one car.

(i) Ground covering Net for Cricket and Football.

(j) Handover of the apartments within 36 months from date of agreement.

It was also mentioned in the marketing brochure that the building will have 9 floors with elevators and stair case and the total number of flats to be constructed would be 218 as approved by RERA.

For the purpose of various projects, JV Realty had obtained several loans from banks and financial institutions and there were certain allegations that some of the loan funds were siphoned off by the promoters of JV Realty for other purposes. In five different cases, banks and financial institutions had granted credit facilities against hypothecation/charge over certain assets. In each of these cases, JV Realty was charged under certain provisions of the PMLA (for offences under paragraph 2 of Part A of the Schedule) and orders were passed for attachment of properties charged to banks and financial institutions affecting their vested rights under other statutes such as Recovery of Debts and Bankruptcy Act (RDBA), Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (SARFAESI) and Insolvency and Bankruptcy Code (IBC).

The Adjudicating Authority is of the view that:

- *The provisions of PMLA prevail over RDBA, SARFAESI and IBC*
- *It is not only a "tainted property" that is to say a property acquired or obtained, directly or indirectly, from proceeds of criminal, activity constituting a scheduled offence which can be attached, but also any other asset or property of equivalent value of the offender of money-laundering which has a link or nexus with the offence (or offender) of money-laundering.*

- *If the "tainted property" is not traceable, or cannot be reached, or to the extent found is deficient, any other asset of the person accused or charged under PMLA can be attached provided it is near or equivalent in value, the order of confiscation being restricted to take over by the government of illicit gains of crime.*
- *An order of attachment under PMLA is not illegal only because a secured creditor has a prior secured interest in the property, within the meaning of the expressions used in RDBA and SARFAESI. Similarly, mere issuance of an order of attachment under PMLA does not render illegal a prior charge of a secured creditor, the claim of the latter for release from PM LA attachment being dependent on its bonafides.*
- *In case of secured creditor pursuing enforcement of "security interest" in the property sought to be attached under PMLA, such secured creditor having initiated action for enforcement prior to the order of attachment under PMLA, the directions of such attachment under PMLA shall be valid and operative subject to satisfaction of the charge of such third party and restricted to such part of the value of the property as is in excess of the claim of the said third party.*
- *If the order confirming the attachment has attained finality or if the order of confiscation has been passed or if the trial of a case under Section 4 of the PMLA has commenced, the claim of a party asserting to have acted bonafide or having legitimate interest in the nature mentioned above will be inquired into and adjudicated upon only by the special court.*

During the course of Kailash Giri View project, it was observed that whilst the construction was for 9 floors, the total flats constructed were 225 due to efficient realignment of the blocks and square feet area of the individual apartments. It was also observed that due to unavoidable reasons, the swimming pool could only be made at the ground floor only and would be allowed to those occupants only who will specifically pay for the swimming pool facility. On completion of 34 months, GLHPL sent an email to all allottees that due to unforeseen circumstances the project is getting delayed by 6 months as the structure is almost complete and the work related to interior, plastering, plumbing etc., will be completed very soon.

Answer the following questions:

2.1 Which of the following is not a condition to be fulfilled for attachment of the property of JV Realty Ltd. for alleged offences under the PMLA?

(A) Approval of the Special Court for the attachment;

(B) Submission of report to a Magistrate under Section 173 of the Code of Criminal Procedures;

(C) Filing of complaint for taking cognizance of the scheduled offence;

(D) None of the options. ***(2 Marks)***

2.2 What is the punishment which Mr. Bala Ganesh, the Managing Director of JV Realty Ltd. is liable for under the PMLA ?

(A) No punishment, since the offence was not performed personally by him;

(B) Minimum of 3 years and maximum of 7 years, with fine;

(C) Minimum of 3 years and maximum of 10 years, without fine;

(D) Minimum of 3 years and maximum of 10 years, with fine. ***(2 Marks)***

2.3 On receipt of a complaint under the PMLA, if the Adjudicating Authority has reasons to believe that JV Realty Ltd. has committed an offence under section 3 or is in possession of proceeds of crime, it may serve notice within not less than ----------days calling upon them to indicate the source of their income, earnings or assets etc.

(A) 15 days

(B) 60 days

(C) 30 days

(D) 7 days ***(2 Marks)***

2.4 JV Realty Ltd. has decided to charge an amount of ₹ 5,00,000 on Visio for an open car parking. Ms. Kruthi is of the view that JV Realty Ltd. cannot charge this amount since this is not mentioned in the original agreement.

(A) Yes, this cannot be charged since this is not mentioned in the original agreement between Visio and JV Realty Ltd.;

(B) Yes, this cannot be charged since JV Realty Ltd. cannot charge for open car parking under RERA;

(C) No, this can be charged since the requirement for non-charging for open car park under RERA is only for residential complexes and is not applicable for commercial office space;

(D) This is purely based on mutual agreement between both parties. ***(2 Marks)***

2.5 As per RERA, what is the maximum amount of advance or application fee which can be collected by GLHPL from its customers?

(A) 15% of cost of apartment on entering into a Sale Deed;

(B) 10% of cost of apartment on entering into a written agreement to sell;

(C) 10% of cost of apartment on entering into a Sale Deed which is duly registered;

(D) 10% of cost of apartment on entering into a written agreement to sell which is duly registered. ***(2 Marks)***

2.6 Analyze and answer the following questions in the context of the case study:

(i) In the light of the given case study, evaluate if Visio can initiate legal proceedings

against JV Realty Ltd. for their resultant rights towards delay in completion or whether the contention of the developer that RERA is not applicable to the Project is correct. ***(4 Marks)***

(ii) *Discuss the provisions of powers of Director to impose fine under the PMLA, 2002.* ***(5 Marks)***

(iii) *Based on the provisions of the PMLA, analyse with reasons, the contentions of the Adjudicating Authority with regard to the following:*

(a) *Whether the provisions of RDBA, SARFAESI and IBC prevail over PMLA ?*

(b) *Whether interest created in a property prior to event of money laundering leading up to the attachment of property, takes priority over the attachment?*

(c) *Whether a mere nexus between the attached property where it did not qualify as "proceeds of crime" under the PMLA and the party accused of money laundering was sufficient for the attachment to take place?* ***(6 Marks)***

ANSWERS TO CASE STUDY 2

2.1 (A)

2.2 (B)

2.3 (C)

2.4 (B)

2.5 (D)

2.6(i)

Whether Visio can initiate proceedings against JV Reality ?

According to Section 18 of the Real Estate (Regulation and Development) Act, 2016 (the Act),

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

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.

(2) 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.

In the case study, Visio had paid almost 90% of the entire cost of the property. The developer had failed to provide neither possession nor had completed the project.

Hence, Visio can initiate legal proceeding against JV Realty Ltd.

Whether the contention of the developer that RERA is not applicable to the project is correct ?

As per Section 3 of the Act, RERA applies to projects that are ongoing on the date of commencement of the Act and completion certificate has not been issued within a period of three months from the date of commencement of the Act. In the given case study, completion certificate of the project was not granted till April 2017 (even after RERA was formulated).

Hence, the contention of JV Realty Ltd. that RERA is not applicable to them, is incorrect.

2.6 (ii)

Powers of director to impose fine under the PMLA, 2002

Section 13 of the Prevention of Money Laundering Act, 2002, deals with the powers of the Director to impose fine, which is as follows:

1. **Inquiry from Director:** The Director may, either of his own motion or on an application made by any authority, officer or person, may make such inquiry or cause such inquiry to be made, with regard to the obligations of the reporting entity.
2. **Audit of records on direction of director:** If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, audited by an accountant (i.e. Chartered Accountant) from amongst a panel of accountants, maintained by the Central Government for this purpose.
3. **Bearing of expenses:** The expenses of, and incidental to, any audit specified above shall be borne by the Central Government.
4. **Failure in compliance with the obligations:** If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations, then, he may-

(a) issue a warning in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

5. **Forwarding of copy of order:** The Director shall forward a copy of the order passed above to every banking company, financial institution or intermediary or person who is a party to the proceedings.

2.6 (iii)

(a) Whether the provisions of RDBA, SARFAESI and IBC prevail over PMLA?

Section 71 of Prevention of Money Laundering Act, 2002, which deals with the overriding effect of the act, provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Thus, it can be construed that the provisions of Prevention of Money Laundering Act, 2002, shall prevail over RBDA, SARFAESI and IBC, till the time nothing inconsistent therewith is contained in any other law for the time being in force.

(b) Whether interest created in a property prior to attachment of property, takes priority over attachment?

As per Section 5(4) of the Prevention of Money Laundering Act, 2002, nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under Section 5(1) from such enjoyment.

"Person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Accordingly, an order of attachment under money laundering Act is not said to be illegal merely because a person interested (i.e., third party) had a prior interest in such property and further issuance of an order of attachment under PML Act cannot, by itself, render illegal the prior statutory right of a person interested in attached property.

Therefore, interest created in a property prior to attachment of property, takes priority over attachment.

(c) Whether mere nexus between the attached property whether it qualify as a proceeds of crime and the party accused of money laundering, is sufficient for the attachment of property?

According to Section 5 of the Prevention of Money Laundering Act, 2002, where the Director or any other officer for the purposes of this section, has reason to believe, 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.

Hence, it is necessary that the attached property should qualify as 'proceeds of crime'.

However, mere nexus between the attached property whether it qualify as a proceeds of crime/not, the party accused of money laundering, is sufficient for the attachment of such property to take place.

CASE STUDY - 3

The eastern part of India is very well known for the production of tea and it is exported world over. However, the large amount of pendency of the payments by tea mills to tea producers has been a cause of worry and it was decided that a common platform is an essential requirement to provide solution to this problem. Accordingly, the Eastern Produce Co-operative Society was formed to ensure the timely collection of sale proceeds from mills. The Society developed a charter, in form of memorandum for its members, to regulate and control supply, price, term of sales collection of sale proceeds and recovery if required. This memorandum is binding on all the members of the Society.

The Society extends the support to growers, by giving them offer to sell their entire farm produce to Society at mutually agreed price; which the Society will further sale to mills. But the farmers who avail this facility have to necessarily sell the entire farm produce to the Society, and the farmer cannot sell any portion of his farm produce directly in the open market.

Further, in order to trade with the mills, deal with regulatory authorities, and financial institution, the Society decided to promote a Company named Eastern Limited. The extracts from latest audited financial statements of Eastern Limited are as follows;

Sr. No.	*Particular*	*Amount (in ₹ crore)*
1.	*Proceed (Net of taxes) from sale*	*3,500*
2.	*Operating assets*	*700*
3.	*Paid-up share capital*	*490*
4.	*Net profit*	*100*

With passage of time, Eastern Limited became the big hit, for the role it plays as an intermediary and in incredible transformation in process of sale of tea by farmers.

Mr. Gaurav who is CEO of Eastern limited, heard about forward integration as method of expansion and growth strategy. Mr. Gaurav prepared a proposal, which was duly approved by Board of Directors and then by the members of Eastern Limited company to takeover Eastern Tea Limited, by acquiring controlling stake from open market. Eastern Tea Limited is in the business of running tea mills, with a global presence. Mr. Gaurav's wife, Ms. Sheetal, was residing in Singapore and Mr. Gaurav wanted to send an amount of USD 20,000 per month to her for her maintenance. However, the CFO of Eastern Limited mentioned to him that this is not in accordance with FEMA.

Around 60% of sales by Eastern Tea Limited constitute exports of tea majorly to Iran. One year back, Eastern Tea Limited opened one branch office in Iran, as Iran starts buying tea from India, in order to settle trade balance; because Iran is blocked from the global financial system; including using U.S. dollars to transact its oil sales. On such branch office, during last financial year, an amount of ₹ 150 crore were incurred as expenditure for the Branch through the EEFC account maintained by Eastern Tea Limited.

For last financial year, the turnover of Eastern Tea Limited was recorded at ₹ 1,200 crore, which was ₹ 110 crore more than year earlier to last financial year; whereas operating assets as on reporting date were ₹ 280 crore. The paid- up share capital was ₹ 130 crore. After acquisition both the entities were not merged, and both kept their respective separate identity.

For the purpose of enhancing its global sales, Eastern Tea Limited decided to pay commission for exports of tea under the Rupee State Credit Route at 6% of invoice value. Further, Eastern Tea also decided to send a gift hamper to its 20 top distributors totaling to a value of USD 1,00,000 (INR 70 lakh).

Eastern Tea Limited has strong domestic Network or tie-up with retail shops and stores through which they sale their tea under brand name 'leaf' which constitute around 40% of sale. Such retail shops and stores are provided with instruction not to charge the price more then what is suggested by Eastern Tea Limited although lower prices can be charged and specific jurisdiction is given to each retailer for resale.

According to Mr. Saurabh, who is head of marketing at Eastern Limited, also now look after marketing at Eastern Tea Limited, in order to acquire substantial market share (in term of new customers), Eastern Tea Limited has to sell tea at the prices lower than cost. Ignoring the resistance from the governing body of Eastern Tea Limited, the new pricing policy implemented. Resultantly price decreased from ₹ 150 per kilogram to ₹ 130 per kilogram. But in order to restrict loss, on account of selling tea at price lower than cost, Eastern Tea Limited asked all the shopkeepers and stores, not to sell more than 5 kg of leaf tea to a customer.

The Eastern Produce Co-operative Society promoted another company named South Limited, whose object clause includes; provide weather research and forecast reports, other necessary

technical knowledge or guidance to members of parent's society apart from conducting market research for Eastern Limited.

In one market research conducted by South Limited, it was found that North Limited, which holds major market share (around 30%) in retail packed tea under brand name 'Taste' (Price of which is ₹ 150 per kilogram). For latest financial year, the turnover of North Limited is recorded at 3,000 crore whereas operating assets are of ₹ 570 crore and paid-up share capital is ₹365 crore. Since acquisition of Eastern Tea limited by Eastern Limited, remains largely successful, hence showing trust in un-organic growth, a bear-hug letter was sent to senior management of North Limited.

Since North Limited is already undisputed market leader, they refuse the bear hug offer. Eastern Limited with help of South Limited performs a hostile acquisition and both the companies acquire around 25.5% stake in voting rights each; by tender notice over the stock exchange. Post acquisitions of North Limited, Eastern Limited got the dominance over the market. Hence Eastern Limited decided to re-price their product which is renamed also 'Taste leaf' with a new price of ₹ 155 per Kilogram and to support the price rise, Eastern Limited also started restricting supply in the end market.

Eastern Limited also entered in memorandum of understanding with West offshore Limited, which is $ 21 million (assets base) company for transfer of technology.

Answer the following questions:

3.1 The CFO of Eastern Tea Limited seeks your views on whether the gifts sent to distributors requires to be included in the export declaration

(A) Yes, since the aggregate value of the gifts to all distributors is more than the prescribed limit;

(B) No, since no amounts are received from the distributors for the products;

(C) No, 'since the individual value of the gifts to each distributor is less than the prescribed limit;

(D) Yes, any item exported should be included in the declaration, unless it will be returned back to India. ***(2 Marks)***

3.2 How much can Gaurav remit to his wife living in Singapore for her maintenance every year?

(A) A maximum of USD 2,50,000 with the approval of the Reserve Bank of India;

(B) A maximum of USD 2,50,000 under the liberalized remittance scheme;

(C) Any amount subject to the approval of the Central Government;

(D) Any amount subject as long as he can prove that the amount has been earned by him legitimately in India. ***(2 Marks)***

3.3. Evaluate if the commission paid by Eastern Tea Limited is in accordance with FEMA

(A) Yes, it is a current account transaction and can be freely remitted;

(B) Yes, it is below the limit of 10% of invoice of exports of tea under Rupee State Credit Route;

(C) No, it cannot be remitted until and unless the export proceeds are received;

(D) No, payment of commission for such exports is prohibited. ***(2 Marks)***

3.4 Takeover (acquisition) of Eastern Tea limited by Eastern limited, will be considered as combination if

(A) Assets of enterprise created after merger is equal to ₹ 2,000 crore;

(B) Turnover of enterprise created after merger is equal to ₹ 6,000 crore;

(C) Turnover of enterprise created after merger is more than ₹ 6,000 crore;

(D) Assets of enterprise created after merger is more than ₹ 6,000 crore. ***(2 Marks)***

3.5 The decision of Eastern Tea Limited not to sell more than 5 kg of tea per customer purchase can be categorized as

(A) Exclusive supply agreement;

(B) Exclusive distribution agreement;

(C) Refusal to deal;

(D) None of the options ***(2 Marks)***

3.6 Analyze and answer the following questions in the context of the case study:

(i) In your view, explain with reasons if Eastern Produce Co-operative Society can be considered as 'Cartel'? ***(3 Marks)***

(ii) Does Eastern Limited hold dominance over the market, and if yes identify the circumstances where it abuses its dominant position? ***(4 Marks)***

(iii) Explain briefly the applicability of the Competition Act to the combinations described in the case study and the regulatory aspects thereof. ***(5 Marks)***

(iv) Evaluate if Eastern Limited is in compliance with the provisions of FEMA with regard to the expenditure incurred for maintaining a branch abroad. ***(3 Marks)***

ANSWERS TO CASE STUDY 3

3.1 (A)

3.2 (B)

3.3 (B)

3.4 (C)

3.5 (D)

3.6(I)

Whether Eastern Produce Co-operative Society can be considered as 'Cartel' ?

As per **Section 2 (c)** of the Competition Act 2002, the term "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

From the above, it may be noted that the term 'cartel' has been given inclusive meaning. Although, Eastern Produce Cooperative Society was formed to ensure the timely collection of sale proceeds from mills, it also developed a charter, in the form of a memorandum for its members, to regulate and control the supply, price, term of sale, collection of sale proceeds and also recovery, if required. This charter, in the form of a memorandum, was binding on all the members of the Society.

Hence, Eastern Produce Cooperative Society is a 'Cartel' within the meaning of Section 2 (c) of the Competition Act, 2002.

3.6(ii)

Whether Eastern Limited holds dominance over the market?

Yes, Eastern Limited holds dominance over the market because as per Explanation (a) to Section 4 of the Competition Act, 2002, "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

Circumstances where dominant position is abused

(a) Predatory Pricing after the acquisition of Eastern Tea Limited – Eastern Limited acquired a substantial network of the retailers after the takeover of Eastern Tea Limited and due to such takeover, it tried to penetrate the market using predatory pricing [refer Section 4(2)(a)(ii) of the Competition Act, 2002]. Eastern Tea Limited reduced the price of the leaf tea from ₹ 150 to ₹ 130 per kilogram which was lower than the cost incurred, whereas other players in the market like North Limited were selling leaf tea at ₹ 150 per kilogram.

As per Explanation (b) to Section 4 of the Competition Act, 2002, the term "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

(b) Increasing the price after the acquisition of North Limited – After the hostile acquisition of North Limited by Eastern Limited with the help of another group company South Limited, Eastern Limited raised the price of its tea leaf 'Taste leaf' from ₹ 130 to ₹ 155 per kilogram, even though North Limited was originally selling its tea leaf 'Taste' at ₹ 150 per

kilogram. According to Section 4 (2) (b) (i) of the Competition Act, 2002, there shall be an abuse of dominant position under Section 4 (1), if an enterprise or a group limits or restricts the production of goods or market therefor through unfair or discriminatory price.

(c) Cap on quantity

In order to restrict loss, on account of selling tea at price lower than cost, Eastern Tea Limited asked all the shopkeepers and stores, not to sell more than 5 kg of leaf tea to a customer. That would also be considered as abuse of dominance.

3.6(iii)

Provisions of the Competition Act, 2002 to "Combination"

In the context of Eastern Limited, the regulatory aspects of 'combination' as mentioned in Section 5 of the Competition Act, 2002 are given as under:

Sr. No	Nature of Combination	Facts of the case	Criteria for considering 'Combination'	Whether 'Combination' or not
1	Acquisition by single acquirer but different goods [Section 5 (a) (i) (A)]	Eastern Limited acquired Eastern Tea Limited	Joint Asset over ₹ 2,000 crores **or** Turnover over ₹ 6,000 crores	**No. It is not a combination.** *Hint:* Joint turnover is ₹ 4,700crores (3,500+1,200) which is less than ₹ 6,000 crores. The joint assets base of ₹ 980 crores (700+280) which is less than ₹ 2,000 crores.
2	Acquisition by a group with similar goods [Section 5 (b) (ii) (A)]	Eastern Limited acquired North Limited with the help of another group company South Limited	Group assets over ₹ 8,000 crores **or** turnover over ₹ 24,000 crores	**No. It is not a combination.** *Hint:* Joint asset base of the 'group' is only ₹ 1,550 crores (980+570) and aggregate turnover is also ₹ 7,700 crores. (4700+3000)
3	MOU for transfer of technology	Eastern Limited enters into an MOU with West Offshore Limited for	No criterion prescribed for considering the transfer of technology as	**Not Applicable.**

		transfer of technology.	'combination'.	

Note – Limits are quoted in section 5 of the Competition Act 2002 and further modified through notification number S.O. 675(E) dated 4th March 2016

Regulation of Combinations

According to Section 6 (1) of the Act, no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

Further Section 6 (2) of the act says, any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission in the specified form along with a requisite fee, disclosing the details of the proposed combination, within thirty days of:

(a) **Approval of the proposal** relating to merger or amalgamation by the Board of Directors of the enterprises concerned with such merger or amalgamation;

(b) **Execution** of any agreement or other document for acquisition or acquiring of control.

Further Section 6 (2A) of the Act provides, no combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders under Section 31, whichever is earlier.

3.6(iv)

Whether eastern limited is in compliance of FEMA, 1999 for expenditure incurred on maintenance of its branch office abroad ?

Eastern Tea Limited opened one branch office in Iran, and on such branch office, during last financial year, an amount of ₹ 150 crore were incurred as expenditure for the branch through the EEFC account maintained by Eastern Tea Limited.

As per Foreign Exchange Management Act, 1999, no branch can be opened in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China**,** Iran**,** Nepal, Bhutan, Macau or Hong Kong without prior permission of the Reserve Bank.

As the case study does not reflect anywhere about the prior permission of the RBI, the expenditure by Eastern Tea Limited is not in compliance under FEMA, 1999.

CASE STUDY - 4

Mr. Zebra is a real estate mogul who has developed and constructed several apartment complexes in Mumbai through his real estate company, Delight Homes Private Limited (DHPL) which was into the business of construction of residential premises. In May 2019, Zebra proposed to start a new residential project named "Delight Morning Dews". The project plan

constituted 50 apartments with a mix of both 3 BHK and 2 BHK apartments. DHPL ensured that the sanction plan etc. was approved appropriately under RERA.

DHPL devised the advertisement and marketing content for the project so it can be splashed across the national and local newspapers and television channels. Mr. Zebra was of the view that the project need not be highlighted in the website of the regulatory authority since the same does not get a lot of views from the prospective customers and it is more efficient to reach the customer directly through social media/television platforms. Further, to ensure more customers are attracted, DHPL started the commercial marketing before applying for the registration of the project under RERA.

DHPL also incorporated a subsidiary, Delight Interiors and Consultancy Private Limited (DICPL) in India for engaging in the business of providing consultancy services on interior designing etc. Mr. Zebra made his only daughter Ms. Rekha as the Managing Director of DICPL. Rekha completed her masters in interior design in the London School of Design and had her own design studio in London, which got her critical acclaim in the art and design society. DICPL became a huge hit based on the proof of concepts it delivered in the London School of Design and got many orders from customers located in the UK.

In the agreement to sale entered into with the allottees, DHPL did not specify the stage-wise time schedule of the completion of the project, including the provisions for civic infrastructure like water sanitation & electricity. Also, DHPL did not include any terms with regard to cancellation of allotment etc. in the agreement. These clauses were not insisted by the allottees since they were more than eager to buy their apartments and DHPL did not see any reason to amend these agreements at a later date.

During the process of construction, DHPL intended to transfer the project to another real estate construction company, Value Homes Private Limited (VHPL) through an assignment agreement. No approval from the allottees or regulator was considered necessary since the agreement made it clear that VHPL will take over all obligations of DHPL and there will not be any difference for the regulator or the allottees in terms of the quality of constructions or timing of delivery.

One of the customers of DICPL was interested in investing in the share capital of DHPL if the same is allowed by the provisions of FEMA. However, Mr. Zebra indicated to him that FEMA prohibits a person resident outside India to make investment in a company involved in real estate business. However, Ms. Rekha believes that the customer can invest as long as the money is paid directly to the bank account of DICPL through the normal banking channel and the FIRC clearly denotes that this is for the purpose of equity investment into DICPL.

DICPL entered into various contracts to provide consultancy services to real estate companies. Due to a downturn in the demand for real estate in the U.K. due to Brexit, some of its customers faced a lot of difficulty in making payments to their suppliers and DICPL had invoices outstanding amounting to GBP 2 million for more than 2 years (which include GSP 5,00,000 outstanding for more than 3 years).

For the purpose of construction, VHPL decided to import certain raw materials such as PVC boards and light fittings from China for a value of USD 10,00,000. VHPL paid an amount of USD 80,000 on receipt of the products and decided to hold back the balance USD 20,000 for a period of 1 year to ensure satisfactory performance of the products. The Authorised Dealer is of the view that this is not in accordance with the requirements of FEMA.

Out of the 50 apartments, VHPL decided to retain the title to 10 of the apartments and entered into a "lease" agreement with the allottees for a period of 99 years. The consideration for the lease was 95% of the consideration for an outright sale (along with stamp duty to be paid by the allottees) and the lease allottees were required to pay ₹ 1,000 per month as rent with maintenance charges at actuals (in line with what was to be paid by the other apartment owners). VHPL was of the view that these agreements are outside the purview of RERA since there is no sale involved.

Answer the following questions:

4.1 A branch set and controlled by DICPL located in the U.K. will be considered as:

(A) Resident in India;

(B) Resident outside India;

(C) Resident in India, if funds are remitted back by the Branch to India on annual basis;

(D) Resident outside India if significant portion of its funds are directly received from its customers located outside India. ***(2 Marks)***

4.2 One of DICPL's customers visits India and during the visit, pays an amount of USD 2,000 which was owed by the customer through cash. Is this a permissible transaction under FEMA ?

(A) Yes, this is money rightfully owed to DICPL and money was received in foreign exchange;

(B) No, unless DICPL had a money changer's license to accept foreign currency;

(C) No, unless DICPL obtain prior approval of the Reserve Bank of India for such transaction;

(D) Yes, as long as DICPL deposits the money in its bank account. ***(2 Marks)***

4.3 An advertisement in the Guardian Newspaper (London edition) by DICPL for an amount of GBP 20,000 requires the permission of:

(A) the Central Government;

(B) the Board of Directors of DICPL;

(C) the Ministry of Finance, Department of Economic Affairs;

(D) the authorized dealer. ***(2 Marks)***

4.4 Evaluate Mr. Zebra's contention that the customer of DICPL cannot invest in DHPL.

(A) The customer can invest in DHPL since DHPL, although a real estate company, is involved in the construction of residential premises only;

(B) The customer cannot invest - Mr. Zebra is right in pointing out that FEMA prohibits investment by a person resident outside India in real estate activities;

(C) The customer can invest with the prior approval of the Reserve Bank of India;

(D) The customer can invest since the FIRC indicates that the money is for investment in equity capital and has come through the normal banking channel. ***(2 Marks)***

4.5 The allottees who obtained the apartments under Lease seek your guidance on whether those apartments would fall within the purview of RERA ?

(A) No, since there is no sale transaction and transfer of title to the allottee and therefore it will not fall under RERA;

(B) Yes, this would be covered under RERA since substantial portion of the consideration is paid and the lessee is also responsible for paying stamp duty, maintenance etc.;

(C) No, since the entire sale consideration is not paid upfront and the lease is for 99 years only;

(D) Yes, since VHPL and DHPL are registered promoters under RERA. ***(2 Marks)***

4.6 Analyze and answer the following questions in the context of the case study:

(i) Evaluate the marketing strategies adopted by DHPL with regard to the provisions of RERA. ***(3 Marks)***

(ii) Evaluate with reasons if DICPL is in compliance with the FEMA provisions with regard to collection of export proceeds. Explain the steps to be taken by DICPL to ensure compliance with FEMA. ***(5 Marks)***

(iii) What is your advice to VHPL with regard to the position taken by the authorized dealer? ***(3 Marks)***

(iv) Advise the allottees of Delight Morning Dew regarding the assignment agreement entered into between DHPL and VHPL in the context of RERA provisions. What are the obligations of DHPL and VHPL under RERA ? ***(4 Marks)***

ANSWERS TO CASE STUDY 4

4.1 (A)

4.2 (B)

4.3 (C)

4.4 (A)

4.5 (C)

4.6(i)

According to Section 3 of the Real Estate (Regulation & Development) Act, 2016 (the Act), no promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any matter any plot, apartment or building, in any real estate project or part of it in any planning area without registering the real estate project with the Real Estate Regulatory Authority established under this Act.

Section 3 of the Act further provides that no registration of the 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 apartments proposed to be developed does not exceed eight inclusive of all phases;

In the given case study, since the number of apartments are more than 8, hence registration was required under RERA. As DHPL has not taken registration under RERA, hence it cannot have opted for commercial marketing of the project.

4.6 (ii)

According to Foreign Exchange Management (Export of Goods and Services) Regulations, 2015:

1. The amount representing the full export value of goods / software/ services exported shall be realized and repatriated to India within nine months or within such period as may be specified by the Reserve Bank of India, in consultation with the Government, from time to time, from the date of export, provided. Further the Reserve Bank of India, or subject to the directions issued by that Bank in this behalf, the authorized dealer may, for a sufficient and reasonable cause, extend the said period. In the present case study, an amount of GBP 2 million is outstanding for more than 2 years (which include GBP 5,00,000 outstanding for more than 3 years) is not in compliance with the FEMA provisions.

Apart from the above compliance, the following steps must be taken by DICPL to ensure compliance with FEMA:

1. DICPL is responsible for ensuring that the full export value of the goods exported are realized through an authorized dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016.
2. In respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realize the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.

3. A person resident in India to whom any amount of foreign exchange is due or has accrued shall, save as otherwise provided under the provisions of the Act, or the rules and regulations made thereunder, or with the general or special permission of the Reserve Bank of India, take all reasonable steps to realize and repatriate to India such foreign exchange, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which has the effect of securing—

   (a) that the receipt by him of the whole or part of that foreign exchange is delayed; or

   (b) that the foreign exchange ceases in whole or in part to be receivable by him.

4. DICPL is also required to apply to RBI for getting the required directions for the purpose of securing the payment for the services performed, since there is a delay in receipt of payment in accordance with the provisions.

4.6(iii)

advise to VHPL regarding the position taken by the authorized dealer

In terms of the FEM Regulations, remittances against imports should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance, etc.

The Authorized Dealer (AD) can consider granting extension of time for settlement of import dues up to a period of six months at a time (maximum up to the period of three years) irrespective of the invoice value for delays on account of disputes about quantity or quality or non-fulfilment of terms of contract; financial difficulties and cases where importer has filed suit against the seller.

While granting extension of time, AD must ensure that:

a. The import transactions covered by the invoices are not under investigation by Directorate of Enforcement / Central Bureau of Investigation or other investigating agencies;

b. While considering extension beyond one year from the date of remittance, the total outstanding of the importer does not exceed USD one million or 10 per cent of the average import remittances during the preceding two financial years, whichever is lower; and

c. Where extension of time has been granted by the AD, the date up to which extension has been granted may be indicated in the 'Remarks' column.

In the given case study, VHPL decides to pay USD 80,000 on receipt of products and hold back USD 20,000 for a period of 1 year to ensure satisfactory performance (total bill amount of raw materials was USD 1,00,000)*.

As per the above provisions, VHPL can do so. Hence, the contention of AD that VHPL cannot withhold the amount for satisfactory performance is not correct.

*Note: In the given case study, the value of import material from China is given as USD 10,00,000. It is further given that VHPL paid an amount of USD 80,000 on receipt of the products and decided to hold back the balance USD 20,000 for a period of 1 year. The total of these two amounts (80,000 and 20,000) comes to 1,00,000. Hence, the total invoice amount of USD 10,00,000 seems to be a typographical error.

4.6 (iv)

Advise to allottees:

As per the facts given in the case study, the position taken by DHPL and VHPL with regard to transfer of project is incorrect. In terms of Section 15 of the RERA, DHPL shall not transfer or assign his rights and liabilities in respect of the project to VHPL without obtaining the prior written consent of two-thirds allottees of the (except the promoter). Further, prior written approval of the RERA Authority is also mandatory. Hence, the transfer from DHPL to VHPL of the project is not valid in accordance with the RERA.

Therefore, the allottees are advised that in order to enable the transfer effective, steps must be taken by DHPL to get prior consent of two-thirds allottees and also the written approval of the RERA Authority.

Obligations of the promoters: Section 15 of the RERA, 2016 provides for the obligations of promoter in case of transfer of a real estate project to a third party under:

1. The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter and without the prior written approval of the Authority,

   However, such transfer or assignment shall not affect the allotment or sale of the apartments, plots, or building as the case may be in the real estate project made by the erstwhile promoter.₹

2. On the transfer or assignment being permitted by the allottees and the Authority, the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees.

Any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

CASE STUDY - 5

Mr. Rohit Writer is a well-known industrialist based in Pune, India and is the founder director of Good Phones Private Limited (Good Phones), a fixed line and mobile phone manufacturer. Good Phone 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 spends significant time in Philanthropic activities. and social gatherings and because of this, he is quite well known in business circles globally. Mr. Rohit has a penchant for investing his money in buying various real estate property all over India and 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, Ms. 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 major attraction in the global markets due to attractive price range and therefore want 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 5,00,000 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 as brochures, 3D moulds for display in dealer shops etc. The value of the items was approximately INR 4 Crore. He also sent 1 mobile phone to each of his dealers as token of gift and appreciation (total value of INR 0.50 Crore). 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 15th February, 2018, Good Phones made a large sale to one of the dealers Delayed Ringtone Enterprises, for USD 5 million and has received USD 2 million by 15th May, 2018 and did not receive the balance USD 3 million until 15th 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 10th October, 2018 and the balance remained outstanding as at 31st December, 2018.

Based on the success of Good Phones, Mr. Rohit incorporated a new company, Stay Connected Private Limited, (Stay Connected) as 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 Phone 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 dealer. 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 Milan, Italy, unfortunately, he did not win any money in the sweepstakes event.

Mr. Rahul, after gaining experience in India, wanted the business in the U.A.E. (by establishing a subsidiary of Good Phones in the U.A.E.) and therefore decided to move to the U.A:E. along with his wife. For this purpose, he wanted to dispose off some of the properties owned by him in India. Accordingly, Mr. Rahul sold an apartment in Mumbai owned by him to Mr. Stuart Cooper, being an Overseas Citizen of India and a fellow student of his at Stanford University. Mr. Stuart Cooper was planning to come to India in the next couple of months to take up a job and therefore, wanted to secure a place for his stay. The remittance from Mr. Stuart was received in India through banking channels.

Mr. Rahul also sold a villa and his agricultural land in Pondicherry to Mr. Rajesh Subramanium, his professor at Stanford, who was a person of Indian origin. The payment for the villa and agricultural land was paid by Mr. Rajesh (50%) from his FCNR account and the balance in USD traveller cheques, which will be of use to Mr. Rahul when he visits U.A.E.

After obtaining his U.S. visa, Mr. Rahul purchased a ranch (farm house) in Texas for USD 2 million, using USD 1.50 million from RFC account and USD 500,000 sent from his INR account through normal banking channels.

Mr. William Rutherford, one of Mr. Rohit's business acquaintances and a citizen of UAE, is very much interested in Indian culture and practices and therefore stays in India for 8 months (from April, 2018 to November, 2018) to attend an art of living course and to learn/practice yoga. William believes that he has been resident in India for more than the prescribed 182 days and therefore, is a resident in India under FEMA.

Mr. Rohit, in his penchant for purchasing various properties, zeroed in on an exclusive apartment complex in Bangalore having state-of-the art facilities. He purchased two 4-bedroom apartments costing INR 2 crore each, one in the name of Ms. Sonali and one in the name of Mr. Srinivas Rajan, since Mr. Rohit wanted Mr. Srinivas Rajan to feel happy and trusted. Both the apartments were given on rent to a large multinational bank and he received

a rent of INR 0.20 Crore per year for each of the apartment in the bank accounts of Ms. Sonali and Mr. Srinivas Rajan respectively, after 4 years, Mr. Srinivas Rajan transferred the property back in the name of Mr. Rohit at zero consideration. Mr. Rohit also purchased a 3-bedroom apartment in the same complex in his name, jointly with his brother, Mr. Sunil Writer. The property (along with the stamp duty) was paid for by Mr. Rohit and was being used by Mr. Sunil for his stay though the property was pending registration due to Mr. Rohit's travel abroad.

Once the property was transferred back by Mr. Srinivas Rajan, Mr. Rohit wanted to sell the same to Mr. Arjun De Silva, a citizen of Sri Lanka. However, he was advised by Mr. Srinivas Rajan that Mr. Arjun De Silva cannot acquire property in India and therefore Mr. Rohit proposed to lease it to Mr. Arjun De Silva for a period of 20 years for an upfront consideration of INR 1 Crore and an annual rent of INR 8 Lac payable in advance.

During the review of the bank reconciliation statements of Good Phones, Mr. Srinivas Rajan noted that an amount of INR 2 Crore had been received in one of the bank accounts without any details relating to the same. Mr. Srinivas Rajan informed this to Mr. Rohit and Mr. Srinivas Rajan suggested to Mr. Rohit to immediately transfer that money out of the bank of Good Phones to Mr. Rohit's personal bank account, so that the Company's bank account are cleared and there are no reconciling items, which Mr. Rohit agreed to. Out of INR 2 Crore, Mr. Rohit used INR 1.75 Crore for acquiring further 20% stake in Stay Connected from the foreign collaborator and balance INR 0.25 Crore for purchasing a stunning diamond set for his wife, Ms. Anjali Writer, as a gift for her 50th birthday.

The extract of the last audited financial statements of Stay Connected was provided by Mr. Srinivas Rajan to Mr. Rohit to evaluate (FMV) his acquisition as per the provisions of the Prohibition of Benami Property Transactions Act, 1988:

Particulars	*Amount in INR (Crore)*
Immovable property (market value INR 8.00 Crore)	*5.00*
Other fixed assets (net of depreciation of INR 1.00 Crore)	*4.00*
Inventory	*2.00*
Receivables and Loans and Advances	*1.50*
Deferred Advertisement Costs	*0.50*
Advance tax paid	*1.00*
Total Assets	***14.00***
Shareholders' Funds (including 1,000,000 equity shares of INR 10 each, fully paid- up)	*4.00*
Provision for taxation	*0.50*
Loans from Banks	*3.00*

Trade payables (including provision for unascertained liabilities-INR 1 Crore)	*6.50*
Total Liabilities	*14.00*

Other information:

(i) 'Contingent Liabilities - INR 2.00 crore (including INR 0.50 Crore relating to arrears' on cumulative preference shares).

(ii) The Board of Directors has proposed a dividend payout of INR 1 crore to the equity shareholders, which is pending approval of the shareholders.

The Bank, on noting the large transactions on Mr. Rohit's personal bank account, tipped the Income Tax Authorities regarding the same and the Initiating Officer summoned information from Mr. Rohit and Mr. Srinivas Rajan regarding the transactions to start proceedings under the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act, 1988) and investigate the matter under the Foreign Exchange Management Act, 1999 (FEMA,1999).

Mr. Rohit and Mr. Srinivas Rajan reached out to you in order to understand the various violations and implications during the course of various proceedings under the said Act's.

Answer the following questions:

5.1 Out of the below, what are the transactions that require 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 Crore by Mr. Rohit to acquire shares of Stay Connected from the foreign collaborator. ***(2 Marks)***

5.2 Is the use of EUR 5,000 towards purchasing sweepstakes by Mr. Rohit as per the provisions of FEMA, 1999 ?

(A) No, drawl of foreign exchange for purchasing lottery tickets, sweepstakes etc. is prohibited under FEMA, 1999;

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

(C) FEMA, 1999 will not be applicable, since the money was directly obtained by Mr. Rohit from his Italian dealer outside the country;

(D) None of the options. ***(2 Marks)***

5.3 Is the purchase of Ranch in Texas by Mr. Rahul in accordance with the FEMA, 1999 ?

(A) No, Rahul as a citizen of India cannot purchase a Ranch outside India;

(B) Yes, there is no specific limit under FEMA, 1999 with regard to purchase of immoveable property outside India;

(C) No, Rahul can purchase assets outside India only if the purchase is jointly with a relative, who is resident outside India, and there is no outflow of funds;

(D) No, since Rahul has used funds from his INR account for making the payment to the extent of USD 500,000. ***(2 Marks)***

5.4 In case Mr. Rohit is proven guilty of violating the provisions of PBPT Act, 1988, what is the maximum punishment that he is liable for under the PBPT Act, 1988 ?

(A) Rigorous imprisonment for a term of one to seven years, with a fine which may extend to 25% of the fair market value of the property;

(B) Rigorous imprisonment for a term of three to seven years, without fine;

(C) Rigorous imprisonment for a term upto seven years, with fine which may extend to 50% of the fair market value of the property;

(D) Fine which may extend to 25% of the fair market value of the property. ***(2 Marks)***

5.5 Assuming that the transactions relating to the receipt of INR 2 Crore in the bank account of Good Phones and the subsequent transactions are considered as benami transactions, can the Initiating Officer take action against Mr. Srinivas Rajan ?

(A) Yes he is the CFO of Good Phones and therefore responsible for ensuring compliance with the Law;

(B) No, he has not received, held, or acquired the proceeds in his account or benefitted from the same;

(C) Yes, since he abets Mr. Rohit in transferring the money from the bank account of Good Phones to Mr. Rohit's personal account;

(D) No, he is responsible only for Good Phones and he has ensured that the funds are not retained in the books of Good Phones/used by Good Phones for its business.

(2 Marks)

5.6 Answer the following questions in the context of the provisions relating to Foreign Exchange Management Act, 1999 :

(i) Mr. 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. ***(1 Marks)***

(ii) Examine the validity/appropriateness of the sale of immoveable property by Mr. Rahul to Mr. Stuart Cooper and Mr. Rajesh Subramanium. ***(2 Marks)***

5.7 Examine/advise regarding the below questions relating to the Prohibition of Benami Property Transactions Act, 1988 :

(i) Examine the appropriateness/impact of the PBPT Act, 1988 on 3 apartments purchased by Mr. Rohit in Bangalore. How does the transfer back of the apartment by Mr. Srinivas Rajan to Mr. Rohit affect your conclusion? ***(2 Marks)***

(ii) The Initiating Officer, who is probing the transactions relating to the INR 2 Crore received and spent by Mr. Rohit, seeks your advice to identify the benami properties/transaction, the benamidars, the beneficial owner. ***(2 Marks)***

(iii) Explain the provisions of Fair Market Value (FMV) in relation to a property as per section 2(16) of PBPT Act, 1988. ***(2 Marks)***

(iv) What is the process to be followed by the Initiating Officer for attachment of the property under PBPT Act, 1988? ***(2 Marks)***

(v) Discuss the provisions with regards to issue of notice, attachment of property involved in benami transactions and manner of service of notice under PBPT Act, 1988. ***(4 Marks)***

ANSWERS TO CASE STUDY 5

5.1 (C)

5.2 (A)

5.3 (D)

5.4 (A)

5.5 (C)

5.6 (i)

In the light of Regulation 4 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, trade samples of goods, may be exported without furnishing the declaration on the items, sent free of cost. In the given case, sending 5 sample mobile phones and fixed line phones to 1000 dealers is exempted and does not require Good Phones to give declaration for export.

With regard to sending mobile phones to the dealers as gift for a total value of INR 0.50 crore (i.e., 50 lakh), as per the above Regulation, the exemption for sending gifts by an export is available only if the value of the goods is not more than ₹ 5 lakh in value. In the case study, since the value of the goods is more than the exempted limit, they need to be included in the export declaration.

5.6 (ii)

Validity of the Sale of immovable property by Mr. Rahul can be given in the light of Regulation 3 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.

Sale of immovable property to Mr. Stuart Cooper: Mr. Staurt Cooper, being an Overseas Citizen of India is entitled to acquire an apartment in Mumbai owned by Mr. Rahul and funds were received in India through Banking Channels.

Sale of immovable property to Mr. Rajesh Subramanium: Whereas in case of Mr. Rajesh Subramanium, being NRI, he may acquire immovable property in India other than agricultural land/farm house/plantation property. Therefore, Mr. Rajesh Subramanium can acquire Villa but not an agricultural land from Mr. Rahul. Further, payment was made partly from FCNR account and in USD Travellers cheques, which was against the mode of payment prescribed in the said regulation.

Therefore, sale of immovable property by Mr. Rahul to Mr. Stuart Cooper is valid, whereas to Mr, Rajesh Subramanium, the said transaction is invalid.

5.7(i)

In the given case study, Mr. Rohit purchased 3 flats in Bangalore in the name of Ms. Sonali, Mr. Srinivas Rajan, and jointly with his brother Sunil.

Apartment purchased in the name of Ms. Sonali- The property has been purchased by Rohit in the name of his daughter Ms. Sonali, is covered under the exemption given in Section 2(9) of the Prohibition on Benami Property Transaction Act, 1988 (i.e., property purchased in the name of his child). Thus, it is not a benami transaction.

Apartment purchased in the name of Mr. Srinivas Rajan- This is a case of benami transaction as the property is in the name of Srinivas Rajan but the consideration is paid by Rohit.

Apartment purchased jointly in the name of Rohit and his brother Sunil- A property jointly held in the name of brother and they appear as joint owners. Hence, this is not a benami transaction.

Prohibition on retransfer of property by benamidar: As per Section 6 of the Prohibition on Benami Property Transaction Act, 1988, (PBPT, Act) in cases where benamidar re-transfers any benami property held by him to the beneficial owner or any other person acting on his behalf, then such a transaction of a property shall be deemed to be null and void.

In the said above case transaction of transfer back of the apartment by Mr. Srinivas Rajan to Mr. Rohit is void.

5.7(ii)

Advise to the Initiating Officer:

Following are the benami transactions and benamidars:

Transaction	Benami Property/ Benamidar/ beneficial owner
Receipt of INR 2 crore in the bank account of Good Phones	Good Phones is a Benamidar w.r.t said benami transaction of INR 2 crore.

Transfer of INR 2 crore from the bank account of Good Phones to Mr. Rohit's personal bank account	Mr. Rohit is the Beneficial owner
Acquisition of shares of Stay Connected using the benami money	Shares of Stay Connected becomes benami property as per Section 2(8) of PBPT Act. Mr. Rohit is a beneficial owner.
Purchase of Jewellery as gift for Ms. Anjali Writer	The jewellery becomes benami property. Mr. Rohit is a Benficial owner as he purchased jewellery by paying consideration from unknown sources. Ms. Anjali is a Benamidar, as jewellery has been purchased in her name.

5.7 (iii)

According to Section 2(16) of the Prohibition of Benami Property Transaction Act, 1988, fair market value, in relation to a property, means—

(1) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and

(2) where the price referred above is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed in Rule 3 of the Prohibition of Benami Property Transaction Rules, 2016.

As per the said Rule, the price of unquoted equity shares shall be the higher of-

(a) its cost of acquisition;

(b) 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

(c) the value, on the date of transaction, of such equity shares as determined by the formula given in the Rules.

5.7 (iv)

As per Section 24 of the Benami Transactions (Prohibition) Act, 1988, where the Initiating Officer on the basis of material in his possession has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

Where the Initiating Officer is of the opinion that the person in possession of the property held benami, may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as prescribed in *Rule 4 of the Benami Transactions Prohibition Rules, 2016,* for a period not exceeding ninety days from the last day of the month in which the notice is issued.

The Initiating Officer, after making inquiries, pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority; or revoke the provisional attachment of the property with the prior approval of the Approving Authority;

Where the Initiating Officer passes an order continuing the provisional attachment of the property or passes an order provisionally attaching the property, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

5.7 (v)

Notice and attachment of property involved in benami transaction [Section 24 of PBPT, Act, 1988]

Issue of show cause notice: Section 24 (1) states that where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a show cause notice to the person.

A copy of the notice shall also be issued to the beneficial owner if his identity is known. s possession of the property held benami, may alienate the property during the period specified in the notice, may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property for a period not exceeding ninety days from the last day of the month in which the notice is issued.

After Inquiry: Initiating Officer, after making such inquires and calling for such reports or evidence and taking into account all relevant materials, shall, within a period of ninety days from the last day of the month in which the notice is issued —

(a) where the provisional attachment has been made

   (i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority or

   (ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

Section 24 (5) states that where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section as stated above, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

Manner of Service of Notice [Section 25]

A notice under Section 24 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.