

MOCK TEST PAPER
FINAL (New) GROUP – II
PAPER – 6D: ECONOMIC LAWS

Question Paper comprise of five case study questions. The candidates are requested to answer any four case study questions out of five.

Time Allowed – 4 Hours

Maximum Marks – 100

Case Study 1

Mr. Aman Chawla belongs to Delhi based business family and has ancestral roots in Kharar, a Town in the Sahibzada Ajit Singh Nagar (Mohali) district in the state of Punjab (around 15 KMs away from Chandigarh). Chawla family owns the chain of restaurants, snacks points, and Ice-Cream parlours across the nation. Few of these are owned properties, but a large number are leased properties. The holding company is Chawla Snacks and Refreshment Limited (CSRL). Mr. Aman is an electrical engineer, joined an MNC in the role of system engineer after college. But Mr. Aman is inspired by constructing the buildings, towers, landscapes, hence decided to quit the job to pursue his passion.

Despite the Chawla family owning a major stake in the business, the business model is unlike to autocratic monarchy. It is managed professionally and listed on the stock exchange. Family members (father, grand-mother and elder brother of Mr. Aman) are part of the Board of Directors, whereas few other family members are also engaged with CSRL but in form of employment (or in a professional capacity).

Mr. Aman joined his brother-in-law, Mr. Vivek, in his construction business. Mr. Aman assists Mr. Vivek in ongoing projects, and one among them is Rishi Enclave whose centre of attraction is state of art yoga centre which will be one of its type in the world apart from the common area which is turned into with mesmerising landscapes. The project is located near Jolly Grant Airport on out-skirt of the holy town of Rishikesh. Rishi Enclave (Project) consists of 120 units of 2BHKs, 3BHKs (Flats and Floors), and Independent Houses or Villas in totality. The project is registered under the RERA. All 120 units' subscribed/booked by allottees except 2 Flats kept by Mr. Vivek (promoter). Mr. Tirlochan Negi booked 3 floors one in his own name, another one in the name of his daughter in law and the third one in name of his company. Mr. Dabral also booked a flat and a villa (both in his name). Rest all allottee booked one unit each. Soon allottees form a residential association. Considering the latest NGT decisions and amendments in policy about the environment (applicable for civil construction in hill or foothill area concerning the height of the building), certain structural changes relating to the height and common area landscape is required in sanctioned plan of the project. Mr. Vivek is of opinion since the alteration in sanctioned plan enforced by changes in policy matter hence the approval of allottees is not required.

Mr. Aman recently visited Kharar after a long time to meet his friends Mr. Onkar Singh and Mr. Dipan Ahuja of early childhood. They all admitted that the town has developed substantially especially the townships and Skyscrapers as tri-city (Mohali, Chandigarh, and Panchkula) turns into metropolitan and hub of service entities. The lifestyle of people also improves. Mr. Onkar is settled in Canada and holding a Canadian passport and citizenship as his family migrate there when he was in school only. In Canada, he own a transport business. Currently, he is on a visit to India to attend the marriage of a relative. Mr. Dipan Ahuja is a supplier of construction materials and planning to venture into the solar panel business under make in India drive, considering the enhancing role of solar energy for household and commercial uses. Mr. Dipan believes Mr. Aman (considering his electrical engineering background) should join him in his solar panel venture.

The ancestral property of Mr. Onkar' family has been unoccupied for a long, hence turned into a mud house. Mr. Onkar offered Mr. Aman to develop residential apartments on such property after the name of his grand-father 'Satnam Apartments'. A chunk of land on the backside of such property is also available for sale at a

reasonable price because it has no connectivity. Mr. Aman found it a good idea to develop the residential apartments as backside land can be acquired at a cheaper rate than prevailing in the market. Mr. Onkar talked to his father [property inherited, hence registered in his name in land revenue records after the death of grandfather (who was resident in India) of Mr. Onkar] and ready to transfer (sale) the property for INRs 2.5 Crore. The Father of Mr. Onkar is a resident outside India who never registered as OCI. Mr. Aman after communicating with Mr. Vivek agreed to deal.

Mr. Aman heard about the importance of keeping capital low to generate more wealth and attain high ROI (Return on Investment). He decided to borrow money from a private investor from the States (US) based on showing growth prospect in his business to his investor. The investor was a good friend of Mr. Dipan and originally from Mohali named Mr. Tarun and settled in Philadelphia (Pennsylvania, US). Mr. Tarun agreed to invest US\$1 Million in the said real estate project.

The money got transferred from an overseas branch in Philadelphia of some Indian bank (through banking channel) to the Kharar branch (Mohali, India). The Branch Manager in India, is the friend of an elder brother of Mr. Aman and was excited to get one project in Mohali and thus approved the investment without any opinion from any Finance Professional.

CSRL witnessed the bad jolts (of financial turbulence) as revenue vanished and reserves are socked to meet maintenance costs of properties & employee cost due to lock-down and afterword restrictions. The financial cost and lease rentals not only erode the working capital but also forces the CSRL to land into a debt trap situation wherefrom meeting financial obligations seems near to impossible. The only way left to management is restructuring of business hence Board decided to shut a few points and parlours (to reduce lease rental obligation, and free-up one-two owned properties so that sale proceed can be infused as working capital)

One of the properties sold by CSRL, acquired by Ms. Vijeta in name of her mother-in-law (as she is a senior citizen female – to bear less registration cost in form of stamp duty), consideration for which is paid out of the known sources of the Ms. Vijeta.

Despite the best efforts made by management at CSRL, still, the bottom line is in deep red, resulting in default in repayment of financial debts and such default continues since the 2nd quarter of Fiscal 2020-21. Management gave assurance to financial creditors that soon it will overcome the solvency issue and they already took corrective measures. On 19th March, 2021, one of the financial creditors moved an application for initiation of corporate insolvency resolution process (CIRP) whose outstanding claim was INRs 120 lakh. On 26th March, 2021, another financial creditor filed an application to NCLT for initiation of CIRP against CSRL in their case amount of default was INRs 35 lakh and such default took place in the 3rd Quarter of fiscal 2020-21.

Multiple Choice Questions (2 Marks each for correct answer)

- 1.1 Regarding the state of art yoga centre and common area situated in Rishi Enclave, which of the following statement is correct;
- (a) Promoter will keep the possession and title both
 - (b) Promoter may handover physical possession of these to the association of allottees or competent authority as per the local laws
 - (c) In absence of any local law promoter shall hand over within thirty days after obtaining the occupancy certificate.
 - (d) In absence of any local law promoter shall hand over within thirty days after obtaining the completion certificate.
- 1.2 State the legal position of mother-in-law of Ms. Vijeta as benamidar in the case study-
- (a) Yes, the mother-in-law of Ms. Vijeta is benamidar
 - (b) No, the mother-in-law of Ms. Vijeta is not benamidar as she is covered under the exceptions stated

- (c) No, mother-in-law of Ms. Vijeta is not benamidar as consideration is paid out of the known source of Ms Vijeta
 - (d) Both b and c above.
- 1.3 Which of the following statements is correct regarding the acquiring, holding, owning and transfer of property, in a case by the father of Mr. Onkar in India-
- (a) Being a person resident outside India he can acquire, hold, own and transfer any immovable property in India, but with RBI permission only
 - (b) Being a person resident outside India he can acquire, hold, own and transfer any immovable property in India, but only in joint ownership with any person resident in India
 - (c) Being a person resident outside India he can acquire, hold, own and transfer any immovable property in India, if inherited by him from the person who was a resident of India
 - (d) Being a person resident outside India he can acquire, hold, own and transfer any immovable property in India, if inherited by him when he himself was resident in India
- 1.4 Whether the application moved on 19th March, 2021 can be admitted by NCLT to initiate CIRP against CSRL-.
- (a) Yes, because CSRL made default in repayment of financial debts
 - (b) Yes, because the amount of default is more than one crore
 - (c) No, because management gave assurance to financial creditors that soon it will overcome the solvency issue and they already took corrective measures
 - (d) No, because an application for initiation of CIRP shall not be filled.
- 1.5 Whether the application moved on 26th March, 2021 can be admitted by NCLT to initiate CIRP against CSRL.
- (a) Yes, because CSRL made default in repayment of financial debts
 - (b) Yes, because the application for initiation of CIRP may be filled by the financial creditor as a period of suspension of section 7 is over.
 - (c) No, because the amount of default is less than one crore
 - (d) No, because default occurred during a period of suspension.

Descriptive Questions

- 1.6 Mr. Vivek is of opinion since the alteration in sanctioned plan enforced by changes in policy matter hence the approval of allottees is not required. Are the changes in sanctioned plan minor in nature? Evaluate the opinion of Mr. Vivek in the context of the provision contained in the RERA 2016? Support your answer with appropriate reason. **(6 Marks)**
- 1.7 What would be your opinion related to the repatriation of funds in India as an Investment of US\$1 million into the real estate project in Kharar (Mohali, India)? **(5 Marks)**
- 1.8 Can the father of Mr. Onkar repatriate the sale proceed of ancestral property inherited by him to Canada from India? Elucidate in the light of the relevant provision of the applicable law, the mentioned legal issue. **(4 Marks)**

Case Study 2

Mr. David Pinto is a Goa-based businessman. He holds an Indian passport and usually resides in India, but occasionally used to visits other countries of the world for business and vacations. During the preceding financial year, he was out of India for 42 days. Mr. Pinto owns beach restaurants with water-sports facilities, resorts, spa centres, and floating restaurants apart from a fleet of boats and ferries in form of Travel Thrill Private Limited (TTPL). TTPL had a global turnover of INRs 2735 crore in the immediately preceding year with an asset base of worth INRs 960 crore in India. Mr. Pinto has marketing tie-ups with travel agents and leading tour and travel companies all across the globe. Mr. Pinto recently launched a web-based portal 'Fun Holidays' offering a wide variety of travel packages including stay and food. Fun Holidays become a big hit and buzz.

Singapore-based Thanjai Tours & Travels Pte Ltd. (TTTPL) targets TTPL to acquire and ready for a hostile one. Mr. Pinto along with other Board members of TTPL decided to attempt the reverse acquisition of TTTPL to defend the threat of their hostile acquisition. Finally, TTPL acquired control over TTTPL. Thanjai Tours & Travels Pte Ltd. had a turnover of US\$ 3400 million in the immediately preceding year with an asset base of US\$ 1200 million across the globe including assets worth INRs 80 crore in India.

TTPL received notice from the deputy commissioner of Income Tax regarding some suspicious and high-value benami transactions. Hence the book of accounts called and detailed enquiry was initiated into the matter under the Prohibition of Benami Property Transaction Act, 1988. Mr. Pinto is of opinion that deputy commissioner of Income Tax has no jurisdiction to inquire into the matter under the Prohibition of Benami Property Transaction Act, 1988.

Ms. Anna, the daughter of Mr. Pinto is architecture, stays in Georgia and holds NRI status. In India, there are many assets and properties vested in name of Ms. Anna, from which she earns the rental income. Ms. Anna willing to manage her Indian income through the use of a bank account, but is confused with NRE, NRO, FCNR, RFC Accounts, and their utility and implications.

Mr. Joe, the son of Mr. Pinto recently joined him in business and starts working on diversification. He identified the opportunity in the export of seafood, especially to European countries. Mr. Joe contacted a shipping company for an operational tie-up to reserve the space of two containers on the vessel moved on every Friday. After recording an initial good response for few days, Mr. Joe decided to form a company 'Silver Exports Private Limited' (SEPL) with overseas branches to expand the business. Despite the directors and managers warn Mr. Joe to consolidate rather than keep on expanding highlighting financial vulnerability, but Mr. Joe further decided to buy own ship named 'silver-line' for logistic (because according to him the arrangement of shipping through the vessel, as discussed above is economical but inflexible) of seafood. The decision of purchasing a ship puts the burden on financial leverage. In the years, Mr. Joe realized his mistake because increased logistic and financial cost starts causing troubles.

The situation became worse when different countries announced lockdowns across the globe to prevent the widespread of COVID-19, including India. International trade and transport almost halted to nil. After lockdown lifted, the finances of SEPL were really in bad shape. While reaching towards the end of F.Y 2020-2021, SEPL left with only two weeks of working capital (on the 20th March, 2021). Somehow SEPL is serving its debt. On the evening of 22nd March, 2021 silver-line left the mormugao port for its destination in Europe through the Indian Ocean and the Mediterranean Sea via the Red Sea. On the morning of 23rd March, 2021, the Suez Canal was blocked after the grounding of Ever Given, a 20,000 TEU container ship, hence the silver-line stuck and forced (amid ambiguity) to take another route (circumnavigate the African continent) to its destination, which results in a huge increase in logistic cost and the SEPL made default again in meeting its debt obligation due on 30th March, 2021 as working capital turned negative. The amount regarding default that took place was 2.1 crore. One of the financial creditor with an outstanding of 42 lakh moved to NCLT for initiation of the Corporate Insolvency Resolution Process.

Ms. Rita, the wife of Ms. Joe who is also a director in the SEPL and designated as officer-in-charge and signing authority for legal filing, forex and export documentations. Custom officers identified Silver-line engaged in illegal trans-shipment of psychotropic substance worth INRs 4- 4.5 crore. Captain of the ship, Ms. Rita, and One of the other directors (who is a senior citizen) of SEPL arrested under the Prevention of Money Laundering Act 2002. Ms. Rita argued that she was unaware of the matter and her arrest is without a warrant. Captain and Director also argued against their arrest stating the officer is not empowered to arrest them without a warrant and investigate without prior authorization from the Government.

Mr. Sadanand Yadav, father of Ms. Rita started his journey as a real estate agent around two decades ago and currently owning a construction business with the name 'Nand Developers and Infrastructures' (NDI). NDI recently launched another residential project 'Surya Enclave', developed near to Haniman Chauraha on Sahara Hospital Road in Viraj Khand, Gomti Nagar (Lucknow, UP). The project consists of 320 residential units with different dimensions and specifications. The project got an overwhelming response and all the unit was subscribed within a week of the start of the booking. Allocation was duly made and the allottee develops an informal association among themselves and it was decided that a residential society will be formed as and when projects reach the stage of completion.

Due to lockdown and afterward restrictions the construction work at Surya Enclave halted, since a large part of workforce (labour) are daily-based casual migrant workers who walked back to their villages and towns; hence delay in completion of the project as compared to sanctioned plan is expected. The financial cost and blocked working capital are causing trouble at NDI to manage its projects including Surya Enclave. Mr. Sadanand along with other directors of NDI thinks it's better to transfer the project to some other realtor or developer.

Mr. Dev Manohar is a business partner of the brother-in-law of Sadanand Yadav and a renowned landlord of the region. Mr. Sadanand who has political ambition also, willing to contest in the upcoming assembly election in the state. To arrange funds for the campaign and allied expenditures, Mr. Sadanand approached Mr. Dev to buy a piece of land he owns near to highway on the way to Kanpur. Mr. Dev ready to buy the plot, but considering the limit on landholding and land already owned by him in his own name, he instructed Vasika Navis (Deed Writer) to draft the deed for registration of the property in four equal part in name of him, his wife, his mother, and wife of his elder brother.

Multiple choice questions (2 Marks each for correct answer)

- 2.1. Ms. Rita, Captain of Ship, and Director (who is a senior citizen) approached the special court constituted under the Prevention of Money Laundering Act 2002 for bail. Explain the validity of bail applications.
- (a) Ms. Rita (being a woman) can get bail
 - (b) Ms. Rita (being a woman) and Director (being a senior citizen) can get the bail
 - (c) None of them get the bail as the amount involved in the offence is more than INRs one crore.
 - (d) None of them get bail as the offence is non-bailable.
- 2.2 Who among the following is benamidar?
- i. Wife of Mr. Dev
 - ii. Mother of Mr. Dev
 - iii. Wife of the elder brother of Mr. Dev
- (a) ii only
 - (b) iii only
 - (c) Both ii and iii
 - (d) None of i, ii, and iii

- 2.3 Regarding admissibility of application furnished by financial creditor to initiate the Corporate Insolvency Resolution Process in case of SEPL, which of the following statements is correct?
- (a) Since the default is caused by a bad financial position that arises due to COVID-19, hence suspension provision applies here.
 - (b) Amount of default is less than the threshold limit for filing an application.
 - (c) Default took place after the suspension clause expired, this is sufficient cause to admit the application
 - (d) None of these.
- 2.4 Which of the following statements are correct requirements regarding the transfer of project 'Surya Enclave' in the case of NDI?
- i. Project can be transferred, after obtaining the consent from at least two-thirds of allottees
 - ii. Project can be transferred, after obtaining the written approval from the authority
 - iii. Allocation or sale done by original or erstwhile promoters remain unaffected
- (a) i and ii only
 - (b) ii and iii only
 - (c) i and iii only
 - (d) All i, ii, and iii
- 2.5 Who out of the following can act as initiating officer under the Prohibition of Benami Property Transaction Act, 1988?
- (i) Assistant Commissioner
 - (ii) Joint Commissioner
 - (iii) Deputy Commission
- (a) ii only
 - (b) both ii and iii only
 - (c) both i and iii only
 - (d) All i, ii and iii

Descriptive Questions

- 2.6 Differentiate between NRE and NRO accounts while highlighting its purpose and implications, how the residential status of the person is relevant to them, and can Ms. Anna open and operate a joint NRO account with his father? **(2+1+2 Marks)**
- 2.7 Does the acquisition of TTTP by TTPL results in the formation of a combination under the Competition Act, 2002? Mention the thresholds. Is combination prohibited under the Competition Act 2002? **(2+2+1 Marks)**
- 2.8 Ms. Rita argued that she was unaware of the matter and her arrest is without a warrant. Captain and Director also argued against their arrest stating the officer is not empowered to arrest them without a warrant and investigate without prior authorization from the government. Are their arguments legally tenable? **(5 Marks)**

Case Study 3

Mr. Yogandra Prasad, Mr. Srinivasan, and Mr. Venkatesh Rao started the business of manufacturing the saw machines around seven-eight years ago as business partners. Mr. Prasad is the only son in his Salem-based agriculture family. A decade back when Mr. Prasad completed his ITI diploma in mechanics, moved to Madurai for employment in a company that was engaged in manufacturing different machines and hand tools; because the size of a farm owned by Mr. Prasad's family not that big that it requires two-person to manage and Prasad's father performs the farm-related activities easily with the occasional support of Prasad's mother. There he met with Mr. Srinivasan who was an accountant in the company, has an additional charge of looking after the dealership-related stuff, and Mr. Rao was plant supervisor. Soon they become good friends. Mr. Srinivasan always stressed upon the starting of own-business; Mr. Prasad and Mr. Srinivasan were also inspired by his thought.

With help of the elder brother of Mr. Rao, who is based in Madurai only; they (all 3) established the workshop. Mr. Prasad and Mr. Rao started repairing the machines there in the evening or on holidays; Mr. Srinivasan also helped them in to look after the general management and client dealings. Soon they started getting more and more installation and repair requests from nearby, even one saw machine manufacturer outsourced the task of repairing the defective machine or those upon whom the warranty is invoked. They (all 3) quit the job and start spending full time in workshops and hire few workers as well. In a couple of years, they installed a manufacturing facility of saw machines and turned workshops into the plant and their informal partnership changed into the duly incorporated company (PRS Machine Limited).

Mr. Prasad looks after the production and operations, Mr. Rao looks after general management, HR, and control, Mr. Srinivasan looks after finance and marketing. Business resources were applied with utmost caution, like idle cash immediately invested in marketable securities, working capital optimized, production process streamlined and cash operating cycle (using floats) was minimized. The business was really doing well and able to acquire a substantial market share because it has a low cost of production. Due to the low cost of production PRS machine Limited (here-in-after PRS) able to offer deep discounts to its customer, especially first-time customers. The Standard portable saw machine of 16th Inches which PRS was able to manufacture under INRs 3500/- and sold for in a range of INRs 3800-4000, other competitors were able to manufacture the same in and around INRs 4000/-.

Out of rivalry, a business competitor uses its political nexus to annoy the management at PRS Machine Limited, through frivolous searches of the Prevention of Money Laundering Act 2002 and notices from the Enforcement Directorate. PRS faced notices from the Competition Commission of India as well.

In 2019, Mr. Prasad got married to the younger sister of Mr. Rao, Ms. Rukmani. They visited Europe after marriage. Mr. Prasad and Rukmani had few unspent Euros in the form of currency notes and coins with them, which they forgot to exchange at the airport.

To accelerate the growth (organic and inorganic) PRS need more fund and keeping the hurdle rate low is another target in front of management, hence it was decided to raise the fund through External Commercial Borrowings. Despite Mr. Srinivasan managed the finance function but not well-aware of the latest directions of the apex bank (money market regulator) on External Commercial Borrowings. The floatation process has been completed in the week first of March, 2020. Lockdown announced in the fourth week of March, 2020, hindered the expansion projects in midways and idle funds (raised through ECB) is need to be parked domestically. Management is thinking to repay some of the existing loans as regular cash flow is barely enough to meet the needs and commitments of PRS.

Mr. Prasad booked a 4BHK flat in royal residency so that the entire family including his wife and parents migrate to Madurai. Prasad deposits 12% of the cost of the property with the promoter (Shiva Estate and Relators) in advance after entering the agreement to sell. Brochure carrying due date and amount of instalment handed over to Mr. Prasad along with receipt of deposit made by him. Mr. Prasad also becomes a member of the association of the allottees, the legal formation of the association is in process.

Mr. Prasad figured out that his father is getting older now and it may be difficult for him to manage farms, hence insisted his parent to shift with him. But his parents decided to stay back at Salem only because they wish to spend their remaining life in the house and village, where they spent a substantial part of life (post-marriage in the case of his mother). Father gave him (Mr. Prasad) INRs 50 lakh to register the property. Mr. Prasad registered the property in his own and his wife's name using such INRs 50 lakh as part of the consideration paid.

Although by the end of 3 quarter of 2020 the construction was expected to be completed and possession was planned to be given, but COVID-19 hit the schedule, and projects are running delay with 4-5 months. Considering this the association of allottees talked to representatives of Shiva Estate and Relators and demand interest on their money deposited with the promoter in form of advance and part payments. Promoter promises to complete the project at the earliest, pointing out pandemic as the only reason for delay. Further, he denies paying interest to allottees on money deposited with the promoter in form of advance and part payments. The period for which the registration granted to Shiva Estate and Relators under section 5 of the RERA 2016 also approaching to end.

Multiple Choice Questions (2 Marks each for correct answer)

- 3.1 Assess the correctness of following statements in view of provisions contained in the Prevention of Money Laundering Act 2002, regarding the offence of frivolous search without recording the reason in writing by authority or officer;
 - i. Cognizance can be taken by the court at its own
 - ii. Such authority or officer shall be punishable with both fine and imprisonment
 - (a) Only i is correct
 - (b) Only ii is correct
 - (c) Both i and ii are correct
 - (d) Both i and ii are incorrect
- 3.2 Mr. Prasad and Rukmani had few unspent Euros in the form of currency notes with them. These amounts can be retained with him:
 - (a) For 120 days from the date of acquisition
 - (b) For 120 days from the date of return to India
 - (c) For 180 days from the date of acquisition
 - (d) For 180 days from the date of return to India
- 3.3 Regarding parking of ECB proceeds domestically pick the correct statement out of the following;
 - (a) In term deposit with AD Category I bank for 6 Months
 - (b) In term deposit with AD Category I or II bank for 6 Months
 - (c) In term deposit with AD Category I bank for 12 Months
 - (d) In term deposit with AD Category I or II banks for 12 Months
- 3.4 Which of the following statement is correct regarding the deposit of advance for 4BHK under the RERA 2016:
 - (a) Promoter shall not accept any deposit
 - (b) Promoter may accept the deposit to any percentage
 - (c) Promoter shall not accept any deposit unless entered into a written agreement for sale
 - (d) Promoter is allowed to accept the deposit less than ten percent in any case

- 3.5 Whether the father of Mr. Prasad is benamidar?
- (a) Yes, because he is not among the person in whose name property is registered
 - (b) Yes, because his daughter in law is also part owner of the property
 - (c) No, because he provides money which is part of the total consideration
 - (d) No, because the property is not held for the immediate or future benefit, direct or indirect, of him

Descriptive Questions

- 3.6 Is PRS abusing the dominance through predatory pricing of their product? What factor, commission shall consider while determining the existence of dominance? The cost determined under the regulation is INRs 3800/-. **(2+2 Marks)**
- 3.7 Mr. Srinivasan is not clear about end uses of ECB hence approached Mr. Kartik (you), a chartered accountant to know, whether -
- (i) ECB can be availed of for making equity investment domestically or buying goodwill? Can ECB be availed of for making a contribution in an LLP? **(1+1 Mark)**
 - (ii) ECB raised and used for repayment of Rupee loans availed domestically for purposes other than capital expenditure? Will it make any difference if Rupee loans availed domestically for purposes of capital expenditure? Will it make any further difference if the loan is not availed domestically? **(2+1+1 Marks)**
- 3.8 In light of provision contained in the Real Estate (Regulation and Development) Act, 2016, decide:
- (i) Can an unregistered allottees association can file a complaint with the authority? **(3 Marks)**
 - (ii) Can Shiva Estate and Realtors apply for an extension of registration for the project? **(2 Marks)**

Case study 4

State Metro Rail Corporation is responsible for the construction and smooth operation of the metro rail network in the states' capital. In the first phase, two lines (tracks) are in operation, North-South (Red Line) and East-West (Blue Line); on which train (with the length of 4 coaches) runs both ways. A tender notice was floated by State Metro Rail Corporation, for procurement of battery sets for metro coaches running in the state's capital, from the list of approved vendors across the globe. None of the global firms responds to tender considering logistic-related uncertainties due to the second wave of Covid-19. Only 8 firms from different parts of India submitted the response. The general manager found the rate quoted by most of the firms was the same per unit, on an all-inclusive basis. The quoted rate found 25% higher than, the rate at which procurement of similar battery sets (exactly same specifications) was done by National Capital's Metro Rail Corporation very recently. It is also observed that the quantity quoted by each of the firms was, far or less near to 20% of the total tender quantity.

The General Manager at State Metro Rail Corporation in presence of the Project Director talked to the Head of Legal Division regarding this, to express his suspicions over the possible cartelization among the bidders. A letter regarding this sent to Directors' office (State Metro Rail Corporation) seeking permission to lodge a complaint with the Competition Commission of India.

Metal and Casting Iron Limited (MCIL) is one of the largest suppliers to State Metro Rail Corporation, supplies a wide range of metals of different shapes and specifications. To lower down the cost of operation, MCIL decided to go for floating funds from the international market. Mr. Mukund Yadav, VP finance made a presentation in front of the Board of directors including the CEO, whereat he expressly favours the External Commercial Borrowings (ECBs) as a cheap and long-term source of finance, above others. In the next board meeting at MCIL, the board approves the decision to raise fund through ECBs in two tranches, out of which one shall be used for the repayment of rupee loans availed domestically. It was also decided that borrowing from foreign branches and subsidies of any sort of Indian financial institutions shall not be accepted. When it comes to deciding the duration of borrowing, there is a difference of opinion, regarding the minimum average

maturity period (MAMP).

MCIL to establish itself as a global brand that carries a sustainable strategic vision and a promising value system, start sponsoring national and international sport, music, and cultural events. Recently it sponsored the Grammy awards. MCIL became a sponsor for the Man of Match Award for the 13th edition of the Indian Premier League (season 2020) hosted in the United Arab Emirates by the Emirates Cricket Board. The Board of Control for Cricket in India issued a letter of sponsorship in favour of MCIL. For a total of 32 league matches, USD 800,000 needs to be remitted by MCIL @ USD 25,000 for each match.

Way back in 2018, MCIL decided to diversify the business. Based on expert committee (of board members) report and multiple rounds of consultation with advisories firms, it decided to venture into the Real Estate sector. Another company was formed after the name of the founder of MCIL, 'Ramaanuj Construction Limited' (RCL) which is structured as a subsidiary to MCIL. To start with RCL acquire the few running (ongoing) projects from promoters and stated few others on their own. Since RCL did not own much experience in real estate, hence failed to deliver the project on time as scheduled in their majority of the project. This delay not only annoys the allottees but also causing a huge escalation in cost. Some of the projects really stuck in bad shape. Association of allottees wrote to RCL and talked to representatives of RCL, except promises allottees are not getting anything concrete hence the association of allottee decides to file the complaint against the RCL to the state RERA authority. Authority issued the various instructions to RCL, including instruction to make afresh application for extension of registration for its ongoing projects which should be completed as of now (considering the schedule) otherwise. RCL fails to comply with the instructions and didn't make an application for extension of registration as currently under moratorium (as a result of actions taken under some other law, in force). RCL is charged with many offences under the Real Estate (Regulation and Development) 2016 and penalties are also imposed including imprisonment of directors in few cases.

Despite various actions and efforts by allottees things were not moving and finally, allottees decide to move an application under the Insolvency and Bankruptcy Code, 2016 (IBC 2016) for initiation of Corporate Insolvency Resolution Process (CIRP) against RCL to recover of advances deposited by them (against the allocation). They came to know that financial creditors already made the application for initiation of CIRP and a resolution professional (Mr Raj) also appointed in the second week of April 2021.

Mr. Raj observed serious defaults that took place during the second and third quarter of 2020-2021 not only causing insolvency to RCL but results in loss to creditors and some of the losses are potential (due to such defaults). Mr Raj identified that directors of RCL knew that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of RCL, still, they indulged and did not exercise due diligence in minimizing the potential loss to the creditors of the corporate debtor.

Few employees and a couple of directors of RCL are probably part of some suspicious transactions, where RCL is also a participant in the capacity of either benamidar or beneficial owner. The initiating officer decided to inquire into the matter hence summoned them to attend his officer under section 19 and call upon the information under section 21 of the Prohibition of Benami Property Transactions Act, 1988. Some of the employees are scared (after summon served upon them) from the threat of legal proceeding and abstained, decided to make an excuse for remain absent. Whereas few out of those, who were present before the authority, failed to furnish information. Some others furnished the false information knowingly.

Multiple Choice Questions (2 Marks for each correct answer)

- 4.1 The prescribed Minimum Average Maturity Period (MAMP) is _____ and _____ in case of ECB raised for repayment of rupee loans availed domestically for capital expenditure and other than capital expenditure respectively.
- (a) 3 and 3 years respectively
 - (b) 7 and 5 years respectively
 - (c) 10 and 7 years respectively
 - (d) 7 and 10 years respectively

- 4.2 What will the maximum penalty that may be levied by the Competition Commission of India, in case of cartelisation?
- (i) Three times of its profit for the last three preceding financial years
 - (ii) Ten percent of the average of turnover for the last three preceding financial years.
 - (iii) Three times of its profit for each year of the continuance of such agreement
 - (iv) Ten percent of its turnover for each year of the continuance of such agreement
 - (a) Higher of i or ii
 - (b) Maximum upto ii only
 - (c) Higher of iii or iv
 - (d) Higher of all i, ii, iii or iv
- 4.3 Offences under the Real Estate (Regulation and Development) Act, 2016 are-
- (a) Cognizable, Non-bailable, and Compoundable
 - (b) Non-cognizable, Bailable, and Compoundable
 - (c) Cognizable, Non-bailable, and Non-compoundable
 - (d) Non-cognizable, Bailable, and Non-compoundable
- 4.4 Few among allottees take RCL to NCLT for initiation of Corporate Insolvency Resolution Process (CIRP) against it. Advance payment against allotment by allottees to RCL shall be considered as
- (a) Operational debt
 - (b) Financial debt
 - (c) None of the operational or financial debt, it is a mere advance
 - (d) Financial debt, if overdue for more than one year
- 4.5 For a total of 32 league matches USD 800,000 need to be remitted. For remittance of prize money/sponsorship abroad, MCIL requires approval of
- (a) Ministry of Finance (Department of Economic Affairs)
 - (b) Reserve Bank of India
 - (c) Ministry of HRD (Department of Youth Affairs and Sports)
 - (d) Ministry of External Affairs

Descriptive Questions

- 4.6 In the given case, can Mr. Raj took action against the directors of the corporate debtor for carrying out the business in a negligent way, which may be resulting in loss to a creditor, explain in light of provisions of IBC. **(4 Marks)**
- 4.7 If State Metro Rail Corporation moved to Competition Commission of India, considering what factors commission will decide the nature is anti-competitive and has the appreciable adverse effect on competition. In your opinion 'is there anything anti-competitive'? **(2 + 4 Marks)**
- 4.8 If any person fails to furnish information under the Prohibition of Benami Property Transaction Act, 1988 then what penalty can be imposed upon such person? Will it make any difference if there is reasonable cause, due to which person from whom the information is called, fail to furnish the information? **(3 Marks)**
- What will be the penalty for giving false information? Will it make any difference if any false document is furnished? **(2 Marks)**

Case Study 5

Tamil-Nadu based Krishnan family owns cotton farms (where cotton is grown, both as a Kharif and as a Rabi crop), and operates as Hindu Undivided Family. Mr. Raghuvaran Krishnan (Karta of HUF) is the 4th generation that engaged in growing and marketing cotton, the 5th and 6th generation also actively participating in operations. The quality of cotton produced in Krishnan's farms is premium, hence exported to many countries of Europe and the Middle-east apart from sale in the Indian market for domestic, industrial, and surgical use. Mr. Raghuvaran Krishnan currently out of the country to attend the farming workshop.

Krishnan family supplied raw cotton to Kurl-Well Enterprises Limited (KWEL) which KWEL used for mattresses and pillows. The financial health of KWEL was under the dark clouds since 2016. In the last month of 2019, after considering an application of the financial creditors of KWEL, the Corporate Insolvency Resolution Process has been initiated by National Company Law Tribunal (NCLT) and a moratorium was ordered. Krishnan family being operational creditor, under the impression that Insolvency and Bankruptcy Code, 2016 (IBC) is discriminatory and unfair to an operational creditor as compared to the financial creditor.

Mr. Nariman Izzat who is one of the directors at KWEL has been given a personal guarantee against the borrowings of KWEL. He is of view that after the declaration of moratorium under section 14 of IBC, legal action against him is barred too. Ms. Jaya Subramanian is another director and who has given a loan of INRs 80 Lakh to KWEL, which remained outstanding when the Corporate Insolvency Resolution Process was ordered.

Krishnan family got a long-term forward procurement order from Dignity Surgical Products Limited (DSPL) for its proposed factory. The price offered by DSPL is premium than prevailing in the market. In response to the financial newspaper, DSPL clarifies the intent to ensure smooth supply and procure only high-quality cotton (monitoring during cotton grown in farms), because it wishes to offer the best quality pure surgical cotton (sterilized & free from bacteria) to its customers. DSPL is a famous brand for surgical products and currently owned nearly 18% shares of the relevant market.

DSPL registered tremendous growth in the recent past, with organic and inorganic means. It currently conducting due diligence to make an agreement of acquiring a stake in Alvira Naturals and Surgical Limited (ANSL), which has import agreements and tie-up with foreign vendors from whom it procures necessary raw material to manufacture double-layer N-95 masks and oximeter. The directors of both the companies decided that both the companies shall operate independently after the acquisition. It is also decided that part of the consideration will be paid in cash and a larger part in stocks.

The consultancy and advisory firm hired by DSPL estimates that the value of DSPL will be doubled, whereas the EPS (earning per share) will improve significantly, P/E (price to earning ratio) expected to decline. After the acquisition, the market share of both the company putting together will be around 32% of the relevant market. Since this information found satisfactory, hence DSPL and ANSL enter into an agreement to give effect to acquisition. The advisory firm suggests that since the threshold prescribed in section 5 of the Competition Act 2002 has crossed, hence a notice needs to be furnished to the Competition Commission of India (CCI) in the form as may be specified.

Soon after the acquisition, on 24th June, 2020, ANSL placed an import order worth US\$ 248,000 to manufacture the oximeter and N-95 masks. The entire order received through a single shipment on 3rd July, 2020.

It was found by the authority under the Prohibition of Benami Property Transaction Act, 1988, that the Krishnan family illegally helps the DSPL to acquire the agricultural land for its factory. Since there are certain restrictions on acquiring agricultural land for industrial purposes; hence DSPL acquired the land in name of the Krishnan family and above mentioned long-term forward procurement order is only a way to oblige back.

Authority issue the notice to HUF to clear their role in acquiring, holding, or aid in acquiring and holding the property. After considering the information and records furnished in front of the authority, it is easily concluded that some of the property held in name of HUF and its members are meant for benefits of DSPL and

Consideration was also paid by funds provided by DSPL. Authority desires to confiscate the property so held benami.

The youngest grandson (Mr. Murli) of Raghuvaram Krishnan moved to the States (US) in 2008 for his graduation, which he completed in 2011. Afterward that he did master there and since then he was engaged in research on the 7 essential plant micro-nutrient elements boron (B), zinc (Zn), manganese (Mn), iron (Fe), copper (Cu), molybdenum (Mo), chlorine (Cl). His research helps in proving that these micro-nutrients constitute in total less than 1% of the dry weight of most plants, basically, he tries to identify the correct amount of Micro-nutrients which shall be used by farmers in agriculture according to different topography and environment. He holds an Indian passport. He completed his doctorate there.

Mr. Murli decided to come back to India. After returning back, he joined ICAR (Indian Council of Agricultural Research) as assistant director and deputed for a joint program with UN, posted at Rajaji Bhawan office of ICAR at Besant Nagar, Chennai. He booked a flat for himself there in Chennai at Ramaniyam Advaitam. He was told by promoter 'Ramaniyam Real Estate Builders' that he (Murli) shall participate in the formation of an association of the allottees. He has to pay 8% as a deposit after signing the agreement to sell.

Mr. Murli in order to transfer the deposit money to the promoter and open a salary account for him visited SBI's Adyar Branch at Kasturba Nagar, Chennai. There he came to know that, Aadhaar card is needed to open a bank account and to perform bank transaction (which he don't possess as he moved out of India when a law requiring Aadhaar was not promulgated and he is back in India just a month back). Bank denied Mr. Murli to transact in the absence of furnishing the Aadhaar Card as proof of identity.

Multiple Choice Question (2 Marks for each correct answer)

- 5.1 Under the Prohibition of Benami Property Transaction Act, 1988, if an order in respect of any property has been passed holding such property to be a benami property then which authority among followings can pass the order of confiscation?
- (a) Initiating Authority
 - (b) Adjudicating Authority
 - (c) Administrator
 - (d) Approving Authority
- 5.2 Under the Real Estate (Regulation and Development) Act 2016, in absence of local law the association of allottees shall be formed within a period of three months from the-
- (a) Issue of the completion certificate.
 - (b) Issue of the occupancy certificate.
 - (c) Majority of allottees having booked their plot or apartment or building, as the case may be.
 - (d) Majority of allottees occupied their plot or apartment or building, as the case may be.
- 5.3 In the given case, which one out of the following mentioned forms shall be filed under section 6 of the Competition Act 2002 with the Competition Commission of India?
- (a) Form I
 - (b) Form II
 - (c) Form III
 - (d) Form IV
- 5.4 Notice in case of Krishnan Family (HUF) under the Prohibition of Benami Property Transaction Act 1988, can be served on-
- (a) Karta only

- (b) Karta or any male member of HUF
 - (c) Karta, but if Karta is not available (due to any reason) then to any other member of HUF
 - (d) Karta or any member of HUF
- 5.5 As a financial creditor, whether Ms. Jaya can be a part of the Committee of Creditors (CoC) after she submitted her claim in 'Form C'.
- (a) Yes, she can be a part of the CoC as she had given a loan to KWEL
 - (b) Yes, she can be a part of the CoC, if Interim Resolution Professional permitted her despite the fact that she was a director of KWEL.
 - (c) Yes, she can be a part of the CoC, if Interim Resolution Professional sought permission of a minimum of 75% of the shareholders of the company carrying voting rights.
 - (d) No, she is a director of KWEL, hence can't be a part of the CoC.

Descriptive Questions

- 5.6 Is the Insolvency and Bankruptcy Code, 2016 (IBC) unconstitutional in the manner it is discriminatory and unfair to an operational creditor as compared to the financial creditor? **(3 Marks)**
- 5.7 Can the bank deny Mr. Murli to transact in the absence of furnishing the Aadhaar Card as proof of identity? What remedy is left with Mr. Murli for purpose of verification by the bank? **(3 Marks)**
- 5.8 Is the credence of Mr. Nariman Izzaz valid? Support your opinion in detail. **(6 Marks)**
- 5.9 Till what date, remittances against imports should be completed by ASNL? **(3 Marks)**