

MOCK TEST PAPER
FINAL COURSE GROUP – II
PAPER 6D: ECONOMIC LAWS

Time Allowed – 4 Hours

Maximum Marks – 100

Case study 1

Mr. Arjun, aged 52 years and a neuro surgeon by professional, went to USA for the first time on 15th February, 2022, for assisting in the operation of nervous system of his nephew, Mr. Ashok, who was unable to travel to India. His period of stay in USA was for an uncertain period as it was dependent on the recovery of Mr. Ashok.

During his stay in USA, he contracted with a local furniture dealer on 5th April, 2022 and imported furniture worth \$ 130,000 for a new tenement home bought by him in New Delhi.

Mr. Ashok was able to recover fast and so, Mr. Arjun was able to leave for India on 20th April, 2022. At the time of leaving, Mr. Ashok gave \$ 6,000 currency notes as well as ₹ 80,000 as a gift to Mr. Arjun and his family for helping him in his tough times.

Mr. Arjun used letter of credit drawn from SBI bank for the purpose of making payment in respect of the imported furniture but provided false declaration in the customs regarding the type of imports made because of which there was invasion of customs duty of ₹ 25,00,000. However, such an act was unrevealed by the Customs authority and Mr. Arjun was held punishable for such an offence under section 135 of the Customs Act, 1962.

The Director under the Prevention of Money Laundering Act, 2002, got information of such an act by Mr. Arjun and accordingly on the basis of such information, the Director after recording the reasons in writing, passed an order of provisional attachment of the imported furniture for a maximum period as prescribed on 25th June, 2022. The Director then on 5th July, 2022 filed a complaint with the Adjudicating Authority against Mr. Arjun and the said Authority served a show cause notice to Mr. Arjun on 10th July, 2022, as to why the imported furniture should not be declared as a property involved in money laundering.

Mr. Arjun duly replied to such notice. The Adjudicating Authority heard Mr. Arjun as well as the Director and after taking into account all relevant materials, passed an order confirming the provisional attachment of the imported furniture on 30th September, 2022. Mr. Arjun aggrieved by the same filed an appeal with the Appellate Tribunal on 30th October, 2022.

During the appellate proceedings, the Tribunal requisitioned from the Customs Authority, the records pertaining to Mr. Arjun and after considering all facts passed an order in favour of Mr. Arjun. Aggrieved by the same, the Director filed an appeal with the High Court which was based on factual grounds.

Further, during the F.Y. 2022-23, Mr. Arjun had used his two international debit cards, one associated with his Resident Foreign Currency account and other associated with his SBI bank account for making payment of \$ 80,000 and \$ 195,000, respectively for certain prescribed current account transactions. As per Mr. Arjun, the payment of \$ 195,000 pertained to remitting foreign exchange for the purpose of his daughter's education in the University of Chicago, USA but the said University had provided an estimation fees certificate of only \$ 35,000.

The father of Mr. Arjun, who had recently passed away, intended Mr. Arjun to buy a home from the will money he inherited and donate it to an orphanage and accordingly, Mr. Arjun had bought the said tenement home in New Delhi in the name of his child hood friend, Mr. Mangal who is a trustee of an orphanage, so that, later on it can be easily transferred to the orphanage. However, the Initiating Officer under the Prohibition of Benami Property Transactions Act, 1988 initiated an inquiry in respect of such tenement home and during

the inquiry issued a show cause notice to Mr. Arjun and Mr. Mangal that why the tenement home should be not treated as benami property.

Mr. Arjun had bought an apartment in the real estate project named 'Nivas' by PPL (P) Ltd. in the city of Greater Noida, the completion of time which got extended by 3 months on an application made by PPL (P) Ltd. for the same with the authority under RERA due to occurring of certain riots in the said city. Earlier also the authority under RERA had granted extension of time in completion of 'Nivas' by 2 months, after recording the reasons in writing. Accordingly, Mr. Arjun and his family have decided to stay in the said tenement home till the time their newly bought apartment in the Greater Noida got ready for physical possession.

Answer the following questions:

- 1.1 How much excess Indian currency can be said to have been brought by Mr. Arjun into India from USA and whether any declaration needs to be given in case of the USD currency notes brought into India by Mr. Arjun to the Custom Authorities?
- (a) Mr. Arjun has brought in excess ₹ 55,000 in India and in case of USD currency notes brought into India, he is not required to provide declaration to the Custom Authorities but to the Authorised Dealer.
 - (b) Mr. Arjun has brought such amount of Indian currency which is within the limits in India and in case of USD currency notes brought into India, he is not required to provide declaration to the Custom Authorities.
 - (c) Mr. Arjun has brought in excess ₹ 30,000 in India and in case of USD currency notes brought into India, he is not required to provide declaration to the Custom Authorities but to the Authorised Dealer.
 - (d) Mr. Arjun has brought in excess ₹ 55,000 in India and in case of USD currency notes brought into India, he needs to provide declaration to the Custom Authorities. **(2 Marks)**
- 1.2 Whether the authority under RERA can be rightly said to have granted extension of time in completion of 'Nivas' and in case if PPL (P) Ltd. again makes an application for extension of time, then how much maximum time can be granted by authority under RERA, once again?
- (a) No, as opportunity of being heard should have been given to PPL (P) Ltd. and the authority under RERA can again grant extension of time for 1 year.
 - (b) No, as riots in the city cannot be considered as 'force majeure' and the authority under RERA can again grant extension of time to PPL (P) Ltd. for maximum 1 year.
 - (c) Yes, as it appears that there is no default on the part of PPL (P) Ltd. and the authority under RERA can again grant an extension of time to PPL (P) Ltd. for maximum 7 months.
 - (d) Yes, as it is upon the discretion of the authority under RERA to grant of extension of time and it can again grant extension of time to PPL (P) Ltd. for maximum 6 months. **(2 Marks)**
- 1.3 What shall be duty of director on confirming the attachment order by the Adjudicating Authority and till what maximum time period such order should have continued if Mr. Arjun had not filed appeal against the same and there were no proceedings pending before the Special Court under the Prevention of Money Laundering Act, 2002 in case of Mr. Arjun?
- (a) The director shall forthwith take the possession of the imported furniture of Mr. Arjun on confirming the attachment order by the Adjudicating Authority and such order should have continued till the date of 29th March, 2023.

- (b) The director shall forthwith make an application to the Special Court to take the possession of the imported furniture of Mr. Arjun on confirming the attachment order by the Adjudicating Authority and such order should have continued till the date of 22nd December, 2022.
 - (c) The director shall initiate investigation unless stayed by court on confirming the attachment order by the Adjudicating Authority and such order should have continued till the date of 29th March, 2023.
 - (d) The director shall forthwith take the possession of the imported furniture of Mr. Arjun on confirming the attachment order by the Adjudicating Authority and such order should have continued till the date of 30th September, 2023. **(2 Marks)**
- 1.4 Whether the Initiating Officer under the Prohibition of Benami Property Transactions Act, 1988 had the authority to initiate inquiry in respect of the tenement home and whether such inquiry can be continued after the issue of show cause notice by the Initiating Officer?
- (a) Yes, provided the Initiating Officer had obtained previous sanction of the competent authority as explained, and such inquiry shall be deemed to cease on issue of show cause notice by the Initiating Officer.
 - (b) Yes, provided the Initiating Officer had obtained previous approval of the Approving Authority and such inquiry shall be deemed to cease on issue of show cause notice by the Initiating Officer.
 - (c) Yes, provided the Initiating Officer had obtained previous sanction of the Adjudicating Authority and such inquiry can be continued on previous approval of the Approving Authority after issue of show cause notice by the Initiating Officer.
 - (d) Yes, provided the Initiating Officer had obtained previous approval of the Approving Authority and such inquiry can be continued on previous approval of the Approving Authority after issue of show cause notice by the Initiating Officer. **(2 Marks)**
- 1.5 Whether the Appellate Tribunal was having the authority to requisition the records pertaining to Mr. Arjun from the Customs Authority and whether the appeal filed by the Director can be entertained by the High court?
- (a) Yes, as the Appellate Tribunal has the same powers as are vested in a civil court under the Code of Criminal Procedure, 1973 for such matter and the appeal filed by the Director can be entertained by the High court.
 - (b) Yes, as the Appellate Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908 for such matter and the appeal filed by the Director cannot be entertained by the High court.
 - (c) Yes, as the Appellate Tribunal has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for such matter and the appeal filed by the Director can be entertained by the High court.
 - (d) No, as the Appellate Tribunal has the power to only requisition any public record and the appeal filed by the Director can be entertained by the High court. **(2 Marks)**
- 1.6 Whether the Director under the Prevention of Money Laundering Act, 2002, can be considered to have been properly passed the order of provisional attachment of the imported furniture by Mr. Arjun?
- (5 Marks)**

- 1.7 (i) What shall be the residential status of Mr. Arjun for F.Y. 2021-22 as per FEMA, 1999? **(3 Marks)**
- (ii) Whether Mr. Arjun has properly availed the foreign exchange facility under the Liberalised Remittance Scheme (LRS) during F.Y. 2022-23 and if not, what could be the amount of penalty that could be levied upon him for contravention of the same? **(2 Marks)**
- 1.8 Whether the tenement house bought in New Delhi by Mr. Arjun in the name of Mr. Mangal can be considered as a benami transaction? **(5 Marks)**

CASE STUDY 2

Nitika Ltd. is an unlisted public company, situated in Chennai, Tamil Nadu, with seven directors on its Board and it has share capital of ₹ 10 crore with 150 shareholders. It is engaged in the business of cloth garments manufacturing and wholesaling. Also, it exports outside India.

As part of its export trade policy, it provides trade samples free of cost to the prospective customers and if it receives an export order of delivering more than 1000 cloth garments, then it has to export further 50 cloth garments worth ₹ 2 lakhs free of cost to the customer.

Recently, in the month of June, it had received an export order of delivering 1500 cloth garments to a company in Germany for which the full export value declared was ₹ 63,00,000 (70,000 Euros). However, the said company returned 200 pieces of clothes worth ₹ 8,40,000 back to Nitika Ltd. in the month of July. Remaining export value was realized by it and repatriated through the authorised dealer in India.

Also, in order to have business security, there is an exclusive distribution agreement entered into between different exporters of cloth garments in Tamil Nadu exporting in Europe whereby each exporter has been allocated different markets of Europe in which they are allowed to do business.

One of the directors of Nitika Ltd., Mr. Rohit, had withdrawn 50,000 Euros equivalent to \$ 60,000, for the purpose of business trip to Germany and Italy, respectively, for which he was going to be reimbursed by Nitika Ltd. but however due to the reason of Covid-19 pandemic, the trip was cancelled and so after utilizing 20,000 Euros for studies for her daughter in Germany, he returned back the remaining amount to the authorised dealer within 140 days.

Nitika Ltd. was getting expanded and for the same purpose, one another corporate office was being searched by the company in Chennai city only. One of its employees, Mr. Neeraj was searching online for a property and he visited a website, named 'Har-Ghar.com', whereby Mr. Neeraj was asked to enter certain details which were then going to be disclosed with certain promoters of real estate projects in Chennai for which the promoters were charged by the website. Also after taking permission of a director by Mr. Neeraj, on payment of some fees, a virtual 3D tour of a real estate project was arranged by the said website. The said website portal was not registered as a real estate agent.

The company found a property near its location but came to know later that the registration of such real estate project was revoked by the authority under RERA. The authority under RERA decided to hand over the task of the remaining development works of the said real estate project to the competent authority as the association of allottees had refused to do the same and at that time, 45 days had passed from the date of receipt of order of revocation of registration by the promoter.

In case of one of the operational debtors of Nitika Ltd. named Roshni Ltd., corporate insolvency resolution process was initiated against it by one of its operational creditor. Mr. Dev Sharma, was appointed as the Interim Resolution Professional (IRP) who is partner of Sharma & Co., a law consulting firm which had transactions of following amounts with Roshni Ltd. during the last 5 financial years:-

Financial Year	Turnover of Sharma & Co. (₹)	Total amount of Transactions with Roshni Ltd. during each F.Y. (₹)
2017-18	220 lakhs	10 lakhs

2018-19	180 lakhs	8 lakhs
2019-20	200 lakhs	9 lakhs
2020-21	190 lakhs	9 lakhs
2021-22	150 lakhs	8 lakhs

All the financial creditors of Roshni Ltd. were related parties and it had 15 operational debtors. Mr. Dev was appointed as the resolution professional (RP) and he sanctioned a transaction of supply of goods to an associate company of Roshni Ltd. during the insolvency process for which approval of the committee of creditors was not obtained by him.

The resolution plan of Roshni Ltd. contained a provision of combination as per Section 5 of the Competition Act, 2002 and it was approved by the prescribed authorities. As a result of the implementation of the resolution plan, there was change in the entire management of Roshni Ltd. and its control has been handed over to persons who have not been its related parties and against whom no legal proceedings are going on under any statute.

Also, Roshni Ltd. was liable for an offence committed under the provisions of the Companies Act, 2013, prior to the commencement of corporate insolvency resolution process.

Answer the following questions:

2.1 Mr. Dev Sharma would have been ineligible to be appointed as the Interim Resolution Professional of Roshni Ltd. if:-

- Sharma & Co. would have entered into transaction(s) of further amount of ₹ 1 lakh or more with Roshni Ltd. during any of the last 3 financial years.
- Sharma & Co. would have entered into transaction(s) of further amount of ₹ 1 lakh or more during F.Y. 2019-20 and transaction(s) of further amount of ₹ 50,000 or more during F.Y. 2020-21 with Roshni Ltd., respectively.
- Sharma & Co. would have entered into transaction(s) of further amount of ₹ 3 lakhs or more with Roshni Ltd. during any of the last 5 financial years.
- Sharma & Co. would have entered into transaction(s) of further amount of ₹ 28 lakhs or more with Roshni Ltd. during any of the last 3 financial years. **(2 Marks)**

2.2 Is there any contravention of the provisions of the FEMA, 1999, by Rohit?

- No, as Mr. Rohit has utilized the foreign currency amount for a permissible transaction and within the limits as per the 'LRS'.
- Yes, as Mr. Rohit has not utilized the foreign currency amount for the purpose for which it was acquired.
- No, as Mr. Rohit after utilizing the foreign currency amount for a permissible transaction, has surrendered the remaining amount with the authorised dealer within the specified period.
- No, as Mr. Rohit was eligible to utilize the foreign currency amount for any other permissible transaction as the business trip was cancelled due to a genuine reason and not because of default on his part. **(2 Marks)**

2.3 Whether Mr. Dev has validly sanctioned the transaction of supply of goods by Roshni Ltd.?

- No, he was required to take prior approval of the committee of creditors before sanctioning such transaction.

- (b) No, due to applicability of order of moratorium by the Adjudicating Authority, such a transaction should have not taken place.
 - (c) Yes, the IBC, 2016, itself has given authority to the resolution professional to undertake such actions necessary for the continued business operations of the corporate debtor.
 - (d) Yes, provided the transaction was conducted at arm's length price. **(2 Marks)**
- 2.4 On expiry how many further days from the date of receipt of order of revocation of registration by the promoter, the decision of the authority under RERA for carrying out of the remaining development works should have taken effect?
- (a) 15 days
 - (b) 60 days
 - (c) 45 days
 - (d) It shall be immediately effective. **(2 Marks)**
- 2.5 Which authorities would have approved the resolution plan of Roshni Ltd. and in what sequence?
- (a) Committee of Creditors and then Adjudicating Authority, respectively.
 - (b) Committee of Creditors, Adjudicating Authority and then Competition Commission of India, respectively.
 - (c) Committee of Creditors, Competition Commission of India and then Adjudicating Authority, respectively.
 - (d) Competition Commission of India, Committee of Creditors and then Adjudicating Authority, respectively. **(2 Marks)**
- 2.6 (i) Whether Nitika Ltd. needs to furnish declaration in case of goods which are exported free of cost as per its trade policy? **(2 Marks)**
- (ii) Whether Nitika Ltd. can be said to have realized full export value with respect to the export order from the company in Germany? **(2 Marks)**
- 2.7 Whether the agreement made between different exporters of cloth garments in Tamil Nadu can be considered as an anti-competitive agreement? **(4 Marks)**
- 2.8 Whether the website portal named 'Har-Ghar.com' would be required to be registered as a real estate agent? (Please support your answer on the basis of a relevant case law) **(3 Marks)**
- 2.9 (i) What would have been the constitution of committee of creditors of the Roshni Ltd.? **(2 Marks)**
- (ii) Whether Roshni Ltd. would be prosecuted for the offence committed under the provisions of the Companies Act, 2013, prior to the commencement of corporate insolvency resolution process? **(2 Marks)**

CASE STUDY 3

Waterfall Private Limited (WPL), a well-known textile brand in Mangaluru is known for its genuine Mysore sarees and dress materials. Mr. Sukumar is the founder and CEO of WPL. He is in the business for more than 25 years. WPL made a turnover of ₹ 80 crore in Financial Year 2020-2021 and took its business to more than ₹ 100 crore in Financial Year 2021-2022. Mr. Sukumar's daughter, Ms. Reva, is happily married and settled in the USA and has become a US Citizen, whereas his son, Mr. Mehul, supports his father in the textile business. For the purpose of expanding his operations, Mr. Sukumar purchased a ground floor shop in Indira Nagar for an amount of ₹ 3.2 crore. The payment was made by cheque and the title deeds of the property were registered in his name after making the payment of appropriate stamp duty.

Besides, Mr. Mehul purchased an independent villa in Jaya Nagar for an amount of ₹ 7.2 crores (out of his own funds) and gave it on lease to a leading Information Technology company for a monthly rent of ₹ 10 lakh.

On account of the continued success of the textile business, WPL commenced exporting of Mysore Sarees to all parts of the world and Sukumar incorporated a company in the USA, Waterfall LLC (WLLC) and made Ms. Reva as the Shareholder and Director.

Ms. Reva wanted to invest her earnings earned in USA to buy some ancestral property near Udupi, India and accordingly, purchased a large farm house which has a lavish bungalow and 8 acre farm land for an amount of ₹ 5 crore for which ₹ 4.5 crore was sent by her from USA to India through a Nationalised Bank in India. Balance ₹ 50 lakh was paid through USD denominated traveller's cheques which she had with her and was encashed with the same Bank. She does not plan to continue the farming activity after a period of 5 years.

WLLC also incorporated a subsidiary in India called as WL Private Limited (WLPL) for making leather jackets and accessories and invested USD 700,000 as share capital through normal banking channels. WLPL made a payment of USD 107,000 to WLLC as reimbursement of pre-incorporation expenses, incurred by WLLC through its EEFC account. WLPL also obtained an external commercial borrowing from WLLC for an amount of USD 1,000,000 for working capital purposes at an interest rate of 6 month LIBOR + 500 bps and repayable as a bullet repayment after 3 years. Notices were issued to Ms. Reva for the alleged violation of the Foreign Exchange Management Act, 1999 from Reserve Bank of India.

Mr. Sukumar had a bonanza in his business during the 2021 and therefore, wanted to buy another apartment in Whitefield and therefore invested an amount of ₹ 2 crore for acquiring the apartment in the name of his wife Ms. Seetha.

Ms. Seetha was a home maker and was involved in lot of social activities through NGO, apart from taking care of the family. Earlier Ms. Seetha have visited Ms. Reva in USA and on her return she had around USD 10,000 in currency and travellers cheques which she retained with herself not aware of the provisions of the Foreign Exchange Management Act, 1999 (FEMA, 1999).

Mr. Mukund, son in law of Mr. Sukumar was also from Karnataka and was fully settled in the USA as a US citizen. He was desirous of investing his funds through his NRE Bank account in India for acquiring a good independent home in Mangaluru. So, Mr. Mukund, along with Mr. Mehul acquired an independent villa in Mangaluru in the joint names of Mr. Mehul and Ms. Reva (siblings) for a total consideration of ₹ 1.10 crore. Mr. Mukund intended to buy the property as a gift to Ms. Reva and had informed her about the same. Mr. Mukund and Mr. Mehul each paid ₹ 30 lakhs each from their side and procured a cheque for another ₹ 20 lakhs from family friend and the balance amount of ₹ 30 lakhs was paid by Mr. Sukumar in cash. The property got registered in the name of Mr. Mehul and Ms. Reva for an amount of ₹ 90 Lakh and accordingly stamp duty was paid. Mr. Mehul also purchased a small 2 BHK apartment in Koramangala for an amount of ₹ 60 lakh in the name of his driver, Mr. Swamy, which was then rented out to a company under lease. Mr. Mehul considered that he can get the property transferred back to his name at a later point of time.

Answer the following questions:

- 3.1 Reva seeks your views regarding the appropriateness of the reimbursement of pre-incorporation expenses by WLPL to WLLC under the provisions of the Foreign Exchange Management Act, 1999?
- (a) Appropriate, since the transaction is covered by Schedule III under the provisions the Foreign Exchange Management Act, 1999;
 - (b) Not Appropriate, since the amount of reimbursement is above the threshold prescribed and therefore required the approval of the Reserve Bank of India.
 - (c) Appropriate, if the same is approved-by the Central Government of India;

- (d) Not Appropriate, since the pre-incorporation expenses are specifically not allowed to be reimbursed under FEMA, 1999. **(2 Marks)**
- 3.2 WPL received a large export order on 15 May, 2022 from a retailer in the UK for supplying material for which WPL received an advance payment of GBP 100,000 on 15 June 2022. What is the last date by which WPL has to supply goods under the agreement, under the provisions of the Foreign Exchange Management Act, 1999?
- (a) 14th May 2023;
 (b) 15th May 2023 or as per the terms of the agreement, whichever is later;
 (c) 14th June 2023;
 (d) 15th June 2023 or as per the terms of the agreement, whichever is later. **(2 Marks)**
- 3.3 Ms. Seetha went to visit Ms. Reva in the USA for a holiday and after coming back noted that she had around USD 10,000 in currency and travellers cheques. She is keen to know whether she has to surrender the same to the Authorised Dealer under the provisions of the Foreign Exchange Management Act, 1999.
- (a) Yes, she has to return the travellers cheques within 180 days, but can retain the currency for future visits;
 (b) Yes, within a period of 180 days from date of her return to India
 (c) No, she can retain both travellers cheques (subject to expiry date consideration) and currency for future visits;
 (d) No, the amount of USD 10,000 is within the limit prescribed under FEMA for possessing foreign currency. **(2 Marks)**
- 3.4 Can Mr. Mehul get the property purchased in the name of his driver, Swamy re-transferred in his name?
- (a) Yes, he can after complying the legal requirements
 (b) No, he cannot unless Swamy agrees on such transfer
 (c) No, not allowed under the Prohibition of Benami Property Transactions Act, 1988
 (d) Yes, since he was the person who funded the property **(2 Marks)**
- 3.5 With regard to the property purchased in Mangaluru in the name of Mr. Mehul and Ms. Reva, how much amount of the property will be considered as a benami property under the Prohibition of Benami Property Transactions Act, 1988?
- (a) 20 lakh
 (b) 50 lakh
 (c) 60 Lakh
 (d) 1.10 crore **(2 Marks)**
- 3.6 Examine the legal position w.r.t the purchase of property in Udupi by Ms. Reva. As alleged in the notice received by Ms. Reva from Reserve Bank of India that the said it violates the provisions of the Foreign Exchange Management Act, 1999. **(3 Marks)**
- 3.7 The contention of Ms. Reva that the equity investment and the external commercial borrowing investment by WLLC are not complying with the provisions of the Foreign Exchange Management Act, 1999. Examine the contention. **(3 Marks)**

- 3.8 Enumerate in the light of the Prohibition of Benami Property Transactions Act, 1988, legality of the each property purchased/transactions made in the given case study. **(9 Marks)**

CASE STUDY 4

X Consumer Products Limited (XCPL) is a company incorporated under the Companies Act 1956, with the Registrar of Companies - Mumbai, Maharashtra. A Petrochemicals Private Limited (APPL) as the del-credere agent of DEF Industries Limited (DIL) had supplied PVC materials to XCPL. A del-credere agency is a type of principal-agent relationship wherein the agent acts not only as a salesperson, or broker, for the principal, but also as a guarantor of credit extended to the buyer.

APPL raised the following invoices on XCPL for the same to be paid by XCPL to DIL.

S. No.	Invoice Details		
	Number	Date	Due Date
1.	105/XYZ0291	22 nd July 2021	2 nd August 2021
2.	307/XYZ0321	28 th July 2021	8 th August 2021
3.	567/XYZ0511	11 th August 2021	22 nd August 2021
4.	568/XYZ0512	11 th August 2021	22 nd August 2021
5.	569/XYZ0513	11 th August 2021	22 nd August 2021
6.	750/XYZ0642	22 nd August 2021	2 nd September 2021
7.	788/XYZ0669	26 th August 2021	6 th September 2021
8.	821/XYZ0721	28 th August 2021	8 th September 2021
9.	823/XYZ0722	28 th August 2021	8 th September 2021
10.	922/XYZ0789	9 th September 2021	20 th September 2021

The total amount payable against the invoices was INRs 52,94,356/- and the XCPL failed to make the payment to DIL. In the capacity of a del-credere agent, the APPL had ended up paying an amount of INRs 83,79,552/- on behalf of XCPL for material supplied to XCPL against various invoices for the period from 1st July 2021 to 30th September 2021 along with interest thereon and to that effect DIL issued a certificate. Eventually, APPL followed up with XCPL for the payment made on its behalf. Subsequently, XCPL issued Cheque No.151546 dated 10th November 2022 for a sum of INRs 78,54,982/- which was dishonoured when presented to the XCPL's bankers.

APPL in the capacity of an operational creditor of XCPL (Corporate Debtor) had sent a demand notice under the provisions of the Insolvency and Bankruptcy Code, 2016 (Code or IBC) to the Corporate Debtor on 16th December 2022 to which the Corporate Debtor has sent a reply on 2nd January 2023 wherein they have, *inter alia*, the alleged existence of the dispute. However, the operational creditor filed the application for initiation of Corporate Insolvency Resolution Process (CIRP) on 1st January 2023 with the amount of default as INRs 83,79,552/- before the Adjudicating Authority. In the application, the name of Mr. Kamran was proposed as interim resolution professional. Corporate Debtor has set up the following defence against the application:

- Material was supplied directly by DIL and the APPL is only a consignee;
- The APPL is not carrying on business in accordance with the main objects of its Memorandum of Association. The APPL was incorporated to carry on the business of authorised distributors, commission agents, sub-agents, brokers of Indian Petrochemicals Corporation Limited, Baroda. The APPL is

claiming to be acting as a del-credere agent of DIL in the present Petition, which is not the main object of APPL. Therefore, the alleged transaction is ultra vires and therefore void;

- (c) The Demand Notice is invalid since it has not been issued by the APPL but by the Advocate;
- (d) There is no cause of action for filing the present petition since there are no pleadings of default in terms of section 47 of the Sale of Goods Act;
- (e) The statement of accounts and bank certificate is not as per provisions of section 2A and section 4 of the Bankers Books Evidence Act;
- (f) In addition to all the above grounds, there was an existence of a dispute between the Corporate Debtor and the APPL and hence, this application filed by the APPL under the provisions of the Insolvency and Bankruptcy Code, 2016 is completely baseless and against the objective of the Code.
- (g) APPL has to plead on the documents on which he relies, but this has not been done in terms of the CPC

Having heard both the parties, the Adjudicating Authority observed that the reply of the Corporate Debtor is predicated wholly on technical grounds such as non-compliance with various provisions of the Code of Civil Procedure, the Sale of Goods Act, the law of evidence, the law relating to affidavits, etc. and that these defences are wholly untenable within the IBC architecture. It further observed that the enquiry in an application filed by the operational creditor for initiation of CIRP against any Corporate Debtor under the IBC is essentially restricted in scope and extent only to the three Ds – Debt, Default and Dispute and that the legislature clearly did not intend it to conform to the rigid requirements of the Civil Procedure Code. It also observed that any such exercise will effectively injure the legislative construct of the IBC itself and that as the Adjudicating Authority, it is not inclined to travel beyond its remit.

With respect to the Corporate Debtor's objection that the objects clause in the MoA failed to contain any clause on del credere agency based on which the APPL (Operational Creditor) filed the application for initiation of CIRP, the Adjudicating Authority held that it is not concerned with this aspect, nor does it consider this a valid defence that can be taken in a petition filed by the operational creditor for initiation of CIRP against any Corporate Debtor under the IBC.

Finally, the Adjudicating Authority held as follows:

- (a) The application made by the APPL (Operational Creditor) is complete in all respects as required by law.
- (b) It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of the minimum amount of one crore rupees stipulated under the provisions of the IBC.
- (c) Therefore, the default stands established and there is no reason to deny the admission of the Petition.
- (d) In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

Accordingly, the Adjudicating Authority passed its order on 25th February 2023 admitting the application for initiation of CIRP by the operational creditor and declared moratorium against the Corporate Debtor. Mr. Kamran was appointed as Interim Resolution Professional.

A week later the Managing Director of the Corporate Debtor, filed an appeal before the Appellate Authority against the order passed by the Adjudicating Authority on the ground that there was an existence of a dispute between the Corporate Debtor and the Operational Creditor even before the demand notice has been issued by the Operational Creditor under the provisions of the Code.

The matter is pending hearing the argument of the Operational Creditor by the Appellate Authority.

Answer the following questions:

- 4.1 APPL filed an application for initiation of CIRP under the Code. Specify which of the following requirement is not binding while filing of an application before NCLT:
- (a) No existence of dispute before the receipt of demand notice by the Corporate Debtor
 - (b) Proof of occurrence of default
 - (c) Sending demand notice to the Corporate Debtor before filing an application for initiating CIRP against the Corporate Debtor
 - (d) Proposing the name of an Interim Resolution Professional **(2 Marks)**
- 4.2 Which as per the Insolvency and Bankruptcy Code, 2016, constitutes default?
- (a) Non-payment of a creditor's claim
 - (b) When both principal and interest are unpaid
 - (c) The liability or obligation in respect of a claim shall become due and payable and remains unpaid
 - (d) Non-payment of financial or operational debt **(2 Marks)**
- 4.3 On 25th February 2023, the Adjudicating Authority admit the application for initiation of CIRP. Which of the following statements hold truth?
- i. Adjudicating authority shall listen to both the parties only then admit the application
 - ii. Adjudicating authority may give notice to the applicant before rejecting the application
 - iii. Adjudicating authority shall within 14 days of receipt of the application, by order either accept or reject the application
- (a) ii only
 - (b) **iii only**
 - (c) i and iii only
 - (d) ii and iii only **(2 Marks)**
- 4.4 In the case study, has the operational creditor moved its application under the Code on behalf of DIL?
- (a) Yes, because APPL is an agent acting on behalf of its principal DIL.
 - (b) Yes, because APPL made the payment to DIL on behalf of the Corporate Debtor.
 - (c) No, because APPL has supplied the PVC materials on its own and not on behalf of DIL.
 - (d) No, because APPL is a del-credere agent and hence liable for payment by Corporate Debtor to the DIL. **(2 Marks)**
- 4.5 Mr. Kamran (Interim Resolution Professional) shall hold the office till;
- (a) Till the date of appointment of the resolution professional under section 22.
 - (b) 30 days from the commencement of the corporate insolvency resolution process.
 - (c) Till the date first meeting of the committee of creditors.
 - (d) Till the date notified by Adjudicating Authority in the order wherein corporate insolvency resolution process was ordered. **(2 Marks)**
- 4.6 Determine the nature of creditor that APPL is qualifying as in the given case study and brief whether he is entitled to proceed under the Insolvency and Bankruptcy Code, 2016. **(5 Marks)**

- 4.7 APPL seeks your advice on the relevance of the 'existence of a dispute' in the context of an application filed for initiation of CIRP against the Corporate Debtor. Does NCLT need to look into the merit of the cause of dispute prior to admit the application? **(6 Marks)**
- 4.8 You are a practicing Insolvency Professional. You are approached by the APPL to counter the appeal made by the Corporate Debtor before the Adjudicating Authority. How do you defend the case of an Operational Creditor? Recommend any three counter-arguments in support of APPL. **(4 Marks)**

CASE STUDY 5

Nityanand Group (NG) is an establishment run by renowned businessman Niti Raj and family. Nityanand Group is involved in conduct of many businesses. It mainly carries educational and coaching Institutes for different competitive examinations in various places in PAN India. The NG comprised three private limited companies, four partnership firms, and a trust, controlled by a close-knit group of individuals. The annual revenue of NG was INRs 200 Crore as per the latest available audited financial statements as on 31st March 2023.

On complaint of illegal business being conducted by the NG, raids were sprang against at various premises linked to the Niti Raj and family. This business of NG was started by Late Adarsh Raj, the Grandfather of Niti Raj, who is presently the CMD of the NG. Besides raiding the office, residence, and institutions belonging to Niti Raj, the IT officials also searched the residences of his two brothers and some of their close supporters.

On investigation, it was traced involvement of the multi-crore tax evasion case. The search was undertaken on the basis of intelligence outputs that NG was indulged in substantial tax evasion through the following ways:

- (a) By the suppression of fee receipts received from students.
- (b) There was also an allegation of forgery/impersonation in a competitive examination and
- (c) Illegal payments- "cash for seat"- to secure seats in the educational institutions.

Following were the *modus operandi*:

- (a) To receive a part of the fees (40%) through bank transfers and balance (60%) in cash;
- (b) Such cash receipts were invariably not entered into a regular accounting system. Instead, the receipts were maintained in a separate set of manual accounts handled by a lone close associate of the Niti Raj family;
- (c) Cash received from some of the students, education Institutions permitting illegal impersonation during competitive examinations;
- (d) Cash received from students to secure seats, though the Institution managed a network of brokers.

Incriminating evidence of such suppression of receipts was found during the search in the form of separate manual accounts, electronic storage devices, huge sums of unaccounted cash, and some other properties.

It was found that:

Cash was kept in bank lockers in the names of some of the long-serving employees on behalf of the Niti Raj family.

A significant amount of cash was also found in a secret safe inside an auditorium on the main premises of the educational institution.

Huge amount of cash was also found in the residences of the family members of Niti Raj, their close supporters

The unaccounted cash receipts were deployed for-

- (a) **acquiring immovable properties** as personal investments in different places in India and abroad,
- (b) The immovable properties were then **leased for long terms to the Trust** for expansion of business in other towns. The documents evidencing the acquisition of immovable properties were showing lesser values, but actual market prices were much higher.
- (c) **Well qualified and highly-priced faculty were hired and employed** in the educational and coaching institutes. They were paid outside the books.
- (d) **Luxury vehicles, highly-priced jewellery**, etc. were purchased for the promoters.
- (e) **Shares, Debentures, Properties, Fixed Deposits, and Bank Accounts** of the family members of Niti Raj were held in the names of some of the long-serving employees and close supporters.

Investigating Authorities found that there are highly sophisticated acts to cover up or camouflage the identity or origin of illegally obtained earnings so that they appear to have derived from lawful sources.

Based on the preliminary findings, the undisclosed income of the NG was estimated at over ₹ 270 crore. Unaccounted cash of INRs 50 crore, jewelry worth INRs 15 crore, and 2 new luxury cars value at INRs 2 crores each were seized. During the search, even some of the students, who impersonated could be traced, who accepted their crimes, along with some of institution managed brokers. Two of the 3 private limited companies were found to have existed only on papers.

Some of the close supporters, who held some of the shares and debentures of the Niti Raj family tried to re-transfer them to the Niti Raj family fearing actions by the investigating officials. Some of the employee's encashed fixed deposits held in their names and immediately tried to transfer the proceeds to the bank accounts of the Niti Raj family.

Answer the following questions:

- 5.1 The unaccounted cash receipts were deployed for acquiring immovable properties as personal investments in different places in India and abroad. The immovable properties were then leased for long terms to the Trust for expansion of business in other towns. The documents evidencing the acquisition of immovable properties were showing lesser values, but actual market prices were much higher. In the context of an investigation of concealment of the proceeds of crime relating to the value of any property, value means:
- (a) The Actual cost price at which the immovable properties were acquired by Niti Raj Family as on the date of acquisition or possession;
 - (b) The Actual Value as per the Title Deeds, based on which the immovable properties were acquired by Niti Raj Family;
 - (c) The Value as in the Title Deeds relating to the immovable properties acquired by Niti Raj Family, suitably adjusting the Cost Inflation Index as on the date of acquisition or possession.
 - (d) The Fair market value of the immovable properties acquired by Niti Raj Family as on the date of acquisition or if the date cannot be determined, as on the date of possession. **(2 Marks)**
- 5.2 Shares, Debentures, Properties, Fixed Deposits and Bank Accounts of Niti Raj Family were held in the names of some of the long-serving employees and their close supporters. In this context, which of the following statements is not correct?
- (a) A transaction in respect of a property carried out or made in a fictitious name is not valid.
 - (b) A transaction in respect of a property, where the person providing the consideration is unknown at the time of sale but can be traced is not valid.

- (c) A transaction in respect of a property, where the person providing the consideration is fictitious is not valid.
 - (d) A transaction or arrangement in respect of a property, where the owner of the property is not aware of such ownership is not valid. **(2 Marks)**
- 5.3 Some of the close supporters, who held some of the shares and debentures of the Niti Raj family, tried to re-transfer them to Niti Raj family fearing actions.
- (a) Such retransfer is a valid transaction
 - (b) Such transactions are voidable at the option of the Adjudicating Authority
 - (c) Such transaction and retransfer shall be deemed to be null and void.
 - (d) Such transaction and re-transfer shall be valid in case transferred to any other person, acting on behalf of Niti Raj Family. **(2 Marks)**
- 5.4 Some of the employees encashed the fixed deposits held in their names on behalf of the Niti Raj family and immediately after raids tried to transfer the proceeds to the bank accounts of the Niti Raj family. In this context;
- (a) Once transferred, such property becomes the property of the real owner Niti Raj family and the said employees are relieved from liability.
 - (b) The proceeds from the properties are also illegal and consequently, such employees of the Niti Raj family are also liable
 - (c) Fixed deposits of the Niti Raj family, if not transferred, becomes the property of such employees and they are not liable.
 - (d) Transactions in fixed deposits in the above case held in other names are valid transactions. **(2 Marks)**
- 5.5 Cash receipts were invariably not entered into the regular accounting system. Instead, the receipts were maintained in a separate set of manual accounts by a lone close associate of the Niti Raj family. Pick the correct statement regarding records, out of the following statements;
- (a) Only accounts made through a regular accounting system shall be considered as a record.
 - (b) Separate manual accounts may be considered as a record for the purpose of investigation at the will of investigating officers.
 - (c) Separate manual accounts shall also include apart from accounts made through regular accounting system considered as a record for the purpose of investigation.
 - (d) Separate manual accounts may be considered as records only if maintained directly by one of the family members of Niti Raj for the purpose of investigation. **(2 Marks)**
- 5.6 Prima facie various offences have been committed by the Niti Raj family and NG. There are the acts to cover up the identity and basis of illegally obtained earnings so that they appear to have derived from lawful sources. Answer the following:
- (a) What establishes the Government to bring prosecution against the Niti Raj family and their close supporters?
 - (b) Illegal payments such as cash to secure seats in the educational institutions, education institutions permitting illegal impersonation during competitive examinations, the unaccounted cash receipts were deployed for acquiring immovable properties. Explain the punishment that can be awarded

for such types of offences under the Indian Laws when the crime involves concealing of financial assets so that they can be used without detection of the illegal activity that produced them?

(6 Marks)

- 5.7 It was found that Cash was kept in bank lockers in the names of some of the long-serving employees. "All cases of transactions or arrangements may not be illegal or unlawful, where the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration". Clarify.

(4 Marks)

- 5.8 The unaccounted receipts were deployed for acquiring immovable properties as personal investments in different states. Based on the preliminary findings, the undisclosed income of the group was estimated at over INRs 270 crore, while unaccounted cash of INRs 30 crore, Jewellery valued INRs 12 crore, 2 Luxury Cars value INRs 2 crore each was seized.

What are the wide powers to the concerned authorities to attach such properties suspected to be involved in covering up the origin of illegally obtained earnings?

(5 Marks)