

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

Answers to Case Study 1

1.1 (d)

1.2 (c)

1.3 (d)

1.4 (b)

1.5 (c)

- 1.6 Evasion of duty or prohibitions as per Section 135 of the Customs Act, 1962 is a Scheduled Offence under the Prevention of Money Laundering Act, 2002 as per Paragraph 12 of Part A of the Scheduled Offences.

Section 2(1)(u) defines "proceeds of crime" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

As per Section 5 of the Prevention of Money Laundering Act, 2002, where the Director or any other officer, has reason to believe, on the basis of material in his possession, that—

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

Such director/ any other officer may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

Exception to the aforesaid conditions: Any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

In the instant case, Mr. Arjun 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. Such 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.

Thus, Mr. Arjun has committed a Scheduled Offence as aforesaid and he was in possession of the proceeds of crime i.e. the imported furniture.

As it was a Scheduled Offence, the Director could have only attached such furniture in compliance with the mention conditions in the Act, but there is an exception that in case if Director on the basis of material in his possession, has reasons to believe that if the property involved in money-laundering is not

attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Thus, 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 provided he was having reasons to believe that on the basis of material in his possession that the non-attachment of the imported furniture was likely to frustrate any proceeding under this Act.

- 1.7 (i) As per Section 2(v) of the FEMA, 1999, "Person resident in India", inter-alia, means a person residing in India for more than 182 days during the course of the preceding financial year but does not include a person who has gone out of India or who stays outside India, in either case—
- (a) for or on taking up employment outside India, or
 - (b) for carrying on outside India a business or vocation outside India, or
 - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

Implication of the term '**intention to stay outside India**':- If a person goes outside India in such circumstances that his period of stay outside India is not certain, it cannot be said that he has intention to stay outside India for an uncertain period.

It is given that Mr. Arjun 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. So, he would have resided in India for more than 182 days during the course of the preceding financial year 2020-21.

Further it is given that his period of stay in USA was for an uncertain period as it was dependent on the recovery by Mr. Ashok who was able to recover fast and so, Mr. Arjun was able to leave for India 20th April, 2022.

Now here, it cannot be said that Mr. Arjun had intention to stay outside India for an uncertain period as in the given circumstances his stay outside India dependent on the recovery of his nephew, Mr. Ashok.

Thus, the residential status of Mr. Arjun for F.Y. 2021-22 as per FEMA, 1999 would be person resident in India.

- (ii) Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely draw and remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.

AD Category banks may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University. However, AD Category bank may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 250,000 based on the estimation received from the institution abroad.

'Drawal ' means drawal of foreign exchange from an authorised person and includes opening of Letter of Credit or use of International Credit Card or International Debit Card or ATM card or any other thing by whatever name called which has the effect of creating foreign exchange liability.

No approval is required where any remittance has to be made from an RFC account.

During the F.Y. 2022-23, Mr. Arjun imported furniture from USA worth \$ 130,000 for a new tenement home bought by him in New Delhi for which he used letter of credit drawn from SBI bank for the purpose of making payment.

Besides, 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.

Thus during the F.Y. 2022-23, Mr. Arjun has drawn \$ 130,000 + \$ 80,000 + \$ 195,000 = \$ 405,000 which would be reduced by \$ 80,000 (as drawn from RFC account) and \$ 35,000 (estimation fees certificate by University of Chicago, USA) = \$ 290,000.

Thus, Mr. Arjun has drawn \$ 40,000 in excess of the prescribed limit of \$ 250,000 for which penalty leviable would be upto three times of the sum involved, as it is quantifiable and if it is a continuing offence, further penalty upto ₹ 5,000 per day after first day as per Section 13 of the FEMA, 1999

Penalty that could be levied upon Mr. Arjun = \$ 40,000 × 3 = \$ 120,000 equivalent in Indian rupees.

- 1.8** As per Section 2(9) of the Prohibition of Benami Property Transactions Act, 1988, "Benami transaction", inter-alia, means a transaction or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person.

In the matter of *Bhim Singh & Anr vs Kan Singh (And Vice Versa)* 1980 AIR 727, 1980 SCR (2) 628, the Hon'ble Supreme Court of India, observed as given below –

The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus:

- (a) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction;
- (b) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is *prima facie* assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary;
- (c) the true character of the transaction is governed by the intention of the person who has contributed the purchase money; and
- (d) the question as to what his intention was has to be decided on
 - (i) the basis of the surrounding circumstances,
 - (ii) the relationship of the parties,
 - (iii) the motives governing their action in bringing about the transaction and
 - (iv) their subsequent conduct etc.

All the four factors stated above may have to be considered cumulatively (O P Sharma vs. Rajendra Prasad Shewda & Ors.

Here, *prima facie* it appears that it is a benami transaction as Mr. Arjun has paid the consideration money for purchase of the tenement house bought in New Delhi but it has been registered in the name of Mr. Mangal who is his child hood friend.

The tenement house bought in New Delhi by Mr. Arjun in the name of Mr. Mangal can be considered as a benami transaction.

However, consideration needs to be given to the four factors as discussed above in the case law, to the given situation as follows:-

Factors	Given case
The basis of the surrounding circumstances	The father of Mr. Arjun, who had recently passed away, intended Mr. Arjun to buy the said home from the will money he inherited and donate it to an orphanage
The relationship of the parties	Mr. Arjun and Mr. Mangal, both are childhood friends and Mr. Mangal is a trustee of an orphanage.
The motives governing their action in bringing about the transaction	Mr. Arjun had bought the said tenement home in the name of, Mr. Mangal so that, later on it can be easily transferred to the orphanage.
Their subsequent conduct	It is not given in question but however it is given that Mr. Arjun and his family has decided to stay in the said tenement home till the time their newly bought apartment in the Greater Noida gets ready for physical possession which shows that the home was not meant for their personal residence or other purpose and in future will be given to the orphanage.

Thus, on unrevealing the true character of the transaction as above, it can be concluded that it is not a benami transaction.

ANSWERS TO CASE STUDY 2

2.1 (a)

2.2 (b)

2.3 (a)

2.4 (a)

2.5 (d)

2.6 (i) As per Regulation 4 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, export of goods / software may be made without furnishing the declaration in the following cases, inter-alia, namely:

(a) trade samples of goods and publicity material supplied free of payment.

(b) by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value.

As part of its export trade policy, Nitika Ltd. 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 exports extra 50 cloth garments worth ₹ 2 lakhs free of cost which is less than value of ₹ 5 lakhs as prescribed.

Thus, Nitika Ltd. is not required to furnish declaration in case of aforesaid goods which are exported free of cost as per its trade policy.

(ii) As per Regulation 4 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, unless otherwise authorised by the Reserve Bank, the amount representing the full export value of the goods exported shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 as amended from time to time.

Explanation—For the purpose of this regulation, re-import into India, within the period specified for realisation of the export value, of the exported goods in respect of which a declaration was made under Regulation 3, shall be deemed to be realisation of full export value of such goods.

As per Regulation 9 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015, the amount representing the full export value of goods / software/ services exported shall be realised and repatriated to India within nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time, from the date of export, provided.

Full export value declared by Nitika Ltd. was ₹ 63,00,000 in respect to export order from the company in Germany.

However, Nitika Ltd. re-imported 200 pieces of clothes worth ₹ 8,40,0000 from the said company in the month of July i.e. within the period specified for realisation of the export value. So, it shall be deemed to be realisation of full export value of such goods as per explanation to the Regulation 4 as aforesaid.

Also, remaining export value had been realized by Nitika Ltd. and repatriated through the authorised dealer in India.

Thus, it can be said that Nitika Ltd. has realized full export value with respect to the export order from the company in Germany.

- 2.7** As per Section 3 of the Competition Act, 2002, it shall be unlawful for any enterprise or association of enterprises or person or association of persons to 'enter' into any agreement in respect of production, supply, storage, distribution, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India and such agreements shall be void.

Sub-section 5 to the said section 3 protects the right of specific persons by restricting the application of section 3 to their rights, hence become exceptions to section 3.

One of such exceptions is - Any agreement or part thereof shall not be considered as anti-competitive, hence not void to extent it is exclusively related to the production, supply, distribution or control of goods or provision of services for purpose of export of goods from India.

Here, in the given case, the agreement entered into between different exporters of cloth garments in Tamil Nadu exporting in Europe is for the purpose of export of goods from India and hence cannot be considered as an anti-competitive agreement as it has been covered by the exception as aforesaid.

- 2.8** The facts in the given case are similar to the case law with citation, MahaRera Order in the Suo Moto Enquiry No.17/2018 dated 03.10.2019, where in it was decided that a digital portal needs to be registered as a real estate agent if it carries out the following functions:-

1. Portals when they collect the details of the viewer and share them with advertiser/seller and also disclose the information of promoters to buyers, they introduce the parties to the sale transaction.
2. If the portal simply provide the information about the real estate project, its offering for sale to the public at large, then they are simply the agencies engaged for advertisement and when an individual is targeted by contacting and persuading him by the portals for sale and purchase of listed properties they come under the legal definition of negotiation.
3. Web Portals introduce the buyer and seller with each other, they provide the information of the project to the buyer, they arrange virtual tour of the project and also provide other information useful for taking an informative decision. Hence, they facilitate the sale of the real estate project.

4. Once any monetary gain is derived for the purpose of performing any act of the real estate agent by whichever name it amounts the receipt of the fees under the RERA.
5. The Parliament has not carved out any exceptions to the applicability of the provisions of RERA, hence, we hold that RERA overrides section 79 of the IT Act.

Here, in the website, named 'Har-Ghar.com', 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 such promoters were charged by the website.

Accordingly, Mr. Neeraj has been introduced to the sale transaction and he would be contacted by such promoters for a property deal. Due to this, the website has earned monetary gain for exchange of information of prospective buyers with the promoters.

Also, on payment of some fees by Mr. Neeraj on permission of director, a virtual 3D tour of a real estate project was arranged by the said website. This type of facility helps in taking an informative decision to the prospective buyer.

Thus, it can be said that the website portal named 'Har-Ghar.com' would be required to be registered as it carries out the functions of the real estate agent as explained above.

- 2.9 (i)** As per Regulation 16 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.

The committee formed under this Regulation shall consist of members as under –

- (a) 18 largest operational creditors by value:

Provided that if the number of operational creditors is less than 18, the committee shall include all such operational creditors;

- (b) 1 representative elected by all workmen; and
- (c) 1 representative elected by all employees.

Here, all the financial creditors of Roshni Ltd. were related parties and it had 15 operational debtors, so the committee of creditors constituted would have been as follows:

- (a) All the 15 operational creditors (as it has less than 18 operational creditors);
- (b) 1 representative elected by all workmen; and
- (c) 1 representative elected by all employees.

- (ii)** As per Section 32A(1) of the Insolvency and Bankruptcy Code, 2016, notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not-

- (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- (b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of

the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having fulfilled.

Here, it is given that, as a result 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.

It appears from the given facts that conditions as demonstrated in section 32A(1) has been satisfied by Roshni Ltd. and thus, the liability of Roshni Ltd. for an offence committed under the provisions of the Companies Act, 2013, prior to the commencement of the corporate insolvency resolution process shall cease, and it shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31.

Answer to Case study 3

3.1 (b)

3.2 (d)

3.3 (b)

3.4 (c)

3.5 (a)

Answer 3.6

As per the FEM (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, an NRI or an OCI may Acquire immovable property in India other than agricultural land/farm house/plantation property.

Provided that in case of acquisition of immovable property, payment of purchase price, if any shall be made out of (i) funds received in India through normal banking channels by way of inward remittance from any place outside India or (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank of India.

Provided further that no payment of purchase price for acquisition of immovable property shall be made earlier by traveller's cheque or by currency notes of any foreign country or any mode other than those specifically permitted by this clause.

In the instant case, Ms. Reva purchased a large farm house in India which has a lavish bungalow and 8 acre farm land. Further, a portion of the payment (Rs.50 lakh) was made through traveller's cheques.

As per the FEMA Regulations, an OCI cannot acquire immovable property in India in the form of agricultural land/farm house/plantation property and cannot make payment through traveller's cheques. Thus, Ms. Reva has violated the provisions of FEMA for purchase of property in near Udupi. Hence, the purchase of property in Udupi by Ms. Reva is not valid.

Answer 3.7

W.r.t. Equity Investment by WLLC in WLPL:

As per Schedule II relating to the Capital Account Transactions, investment in equity capital of a body corporate in India by a person resident outside India is a permissible transaction.

Accordingly, the contention of Ms. Reva that the equity investment by WLLC in its subsidiary in India, WLPL of USD 700,000 is not correct. **It is a permitted Transaction.**

W.r.t. ECB investment by WLLC: The Minimum Average Maturity Period (MAMP) will be 5 years for ECB raised from foreign equity holder for working capital purposes.

All-in-cost ceiling per annum is Benchmark rate i.e. 6-months LIBOR rate plus 500 bps spread.

All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route.

Under the approval route, the prospective borrowers are required to send their requests to the Reserve Bank through their AD Banks for examination.

In the instant case, WLPL 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.

Hence, amount of borrowing and interest rate is within the permissible limit. Therefore, such an investment by WLLC in WLPL is valid act and can be performed without seeking approval from RBI. Hence, the contention of Ms. Reva in this regard is incorrect.

Answer 3.8

1. **Ground floor shop in Indira Nagar:** Mr. Sukumar purchased a ground floor shop in Indira Nagar for an amount of ₹ 3.2 crores. The payment was made by cheque and the title deeds of the property were registered in his name after making appropriate stamp duty. **It is not a benami property.**
2. **Independent villa in Jaya Nagar:** Mr. Mehul purchased an independent villa in Jaya Nagar for an amount of ₹ 7.2 crore (out of his own funds) and gave it on lease to a leading Information Technology company for a monthly rent of ₹ 10 Lakhs. **It is not a benami property.**
3. **Apartment in Whitefield:** Mr. Sukumar purchased an apartment for ₹ 2 crore in Whitefield in the name of his wife Ms. Seetha by paying lesser stamp duty as a relaxation was given to women. **It is not a benami property.**
4. **Independent villa in Mangaluru:** This property will be a benami property as ₹ 20 lakhs has been procured from family friend and balance ₹ 30 Lakhs was paid by Mr. Sukumar in cash. Also, the property got registered in the name of Mr. Mehul and Ms. Reva for an amount of ₹ 90 Lakhs and accordingly stamp duty was paid. The value of the apartment was ₹ 1.10 crore but got registered for ₹ 90 lakhs. **Hence, it is a benami property.**
5. **BHK apartment in Koramangal:** Mr. Mehul also purchased a small 2 BHK apartment in Koramangala for an amount of ₹ 60 Lakhs in the name of his driver, Mr. Swamy then rented it out to a company under lease. **It is a benami property.**
6. **Farm House near Udipi:** Ms. Reva purchased farm house which has lavish bungalow and 8 acres farm land for an amount of ₹ 5 crores for which ₹ 4.5 crores was sent by her from USA to India through nationalised bank in India. Balance ₹ 50 lakhs was paid through USD denominated traveller's cheques. **It is not a Benami property.**

Answer to case study 4

- 4.1. (d)
- 4.2 (c)
- 4.3 (b)
- 4.4 (d)
- 4.5 (a)

- 4.6** 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.

As per section 5(20) of the Insolvency and Bankruptcy Code 2016, an operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

In the instant case, APPL has filed the CIRP Application, due to its capacity as a del-credere agent. APPL after making payment to the Principal (DIL) shall step into the shoes of the Principal to recover dues from the customer i.e. the Corporate Debtor (XCPL) in this case.

Further, it is worth noting as per section 5(21) operational debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

In the instant case, the claim of APPL is in respect of the provision of goods to the Corporate Debtor, hence, in view of the above APPL qualifies the definition of an operational creditor under the provisions of the IBC.

- 4.7** Facts given in case and issue on which question is raised are more or less similar to what was decided by the Hon'ble Supreme Court in civil appeal 9405 of 2017 in the matter of *Mobilox Innovations Private Limited vs Kirusa Software Private Limited*. It is better to go through the legal provision prior to referring to judicial precedence.

Section 8 (2) (a) says the corporate debtor shall, within a period of ten days of the receipt of the demand notice bring to the notice of the operational creditor, the existence of a dispute if any, **or** record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.

It is important to note that the word 'and' was written in section 8 (2) (a) earlier, such 'and' is substituted by 'or' in 2018, with the retrospective effect from 6th June 2018. The reason for substitution highlighted by interpretation of section 8 (2) (a) by the apex court in the stated case;

Court held the word and occurring in Section 8 (2) (a) must be read as or. The Supreme Court was of the opinion that such an understanding shall lead to great hardship as the corporate debtor would then be able to stave off the bankruptcy process provided a dispute is already pending in a suit or arbitration proceedings.

Further, the Supreme Court held that the existence of the dispute and/or suit or arbitration proceeding necessarily be pre-existing, that is to say, it should exist prior to receipt of the Demand Notice.

Supreme Court provided a new test plausible contention to determine the existence of a dispute.

The Supreme Court holds that while determining the existence of a dispute, all that the NCLT is to see is whether there is a plausible contention that requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence.

Court says under section 9, NCLT must answer these three questions to accept or reject the application;

1. Whether there is an operational debt of more than the threshold notified under section 4?
2. Whether the documentary evidence provided with the application shows the debt is due and payable and has not yet been paid?
3. Whether there is an existence of a dispute between the concerned parties or any record of the pendency of the suit or arbitration proceeding filed before the receipt of Demand Notice?

Finally, the court says NCLT is not required to satisfy itself that the defence is likely to succeed or to examine the merits of the dispute.

4.8 The appeal made by the Corporate Debtor can be rebutted on the following grounds:

- a) APPL is a del-credere agent and hence DIL will not be the operational creditor in this case as it has received all the payments from APPL.
- b) The IBC does not warrant MoA and AoA of the Operational Creditor to ascertain whether a transaction is operational in nature.
- c) The Demand Notice is valid and as per the orders of the Hon'ble Supreme Court in the matter of *Macquarie Bank Limited vs. Shilpi Cable Technologies Ltd*, demand notice can be issued by the Advocate of the Operational Creditor;
- d) There is absolutely no intent behind IBC to mandate the creditors to conform to the rigid requirements of the Civil Procedure Code.

Answers to case study 5

5.1 (a)

5.2 (b)

5.3 (c)

5.4 (b)

5.5 (c)

- 5.6** (a) Government has to establish that there is an offence of money laundering as per section 3 of the Prevention of Money-Laundering Act, 2002 (here-in-after referred to as the act) to bring a successful prosecution of the concerned in Niti Raj family and their close supporters under the PMLA.

As per section 2 (p) of the act, money-laundering has the meaning assigned to it in section 3. Further section 3 reads whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeding of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of the offence of money laundering.

- (b)** Prima facie, various offences of Money Laundering appear to have been committed in the given case.

As per section 4 of the Prevention of Money Laundering Act, 2002, whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Further provided that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 (Offences under The Narcotic Drugs and Psychotropic Substances Act, 1985) of Part A of the Schedule, then the maximum imprisonment may extend to ten years.

- 5.7** In the given case, it was found that cash was kept in bank lockers in the names of some of the long-serving employees as benami.

A transaction or arrangement where the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration is a benami transaction under Section 2 (9) (A) (b) of the Prohibition of Benami Property Transactions Act, 1988.

However, there are certain exceptions to this when the transaction or arrangement shall not be considered benami. The exceptions are when the property is held by;

- (i) a Karta or a member of a Hindu undivided family, for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family.
- (ii) a person standing in a fiduciary capacity for the benefit of another person and any other person as may be notified by the Central Government for this purpose.
- (iii) any person being an individual in the name of his spouse or in the name of any child and the consideration for such property has been provided or paid out of the known sources of the individual.
- (iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual.

- 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 NG was estimated at over INRs 270 crore. Unaccounted cash of INRs 30 crore, jewellery worth INRs 12 Crore, and 2 new luxury cars value INRs 2 crore each were seized.

As per section 2 (d) of the Prevention of Money laundering Act 2002, the attachment means prohibition of transfer, conversion, disposition or movement of property by an order issued under the Act.

Section 5 of the Act gives extremely wide **powers to the authorities** to attach properties suspected to be involved in Money Laundering.

Passing of order for attachment: According to section 5(1) of the Act, where the director or any other officer not below the rank of deputy director has reason to believe (such reason need to be recorded in writing) based on the material in his possession, he may by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days (the period during which the proceedings under this section is stayed by the High Court, shall be excluded) from the date of the order;

‘That any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to the confiscation of such proceeds of crime’.

Provided that no such order of attachment shall be made unless (with exception of cases where the absence of immediate attachment leads to frustrate any proceeding under this Act), in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country.

Forward of Copy of Order: Section 5(2) states that the director, or any other officer not below the rank of deputy director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope and such Adjudicating Authority shall keep such order and material.

Time period for validity of an order: Under section 5(3) every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under section 8 (3), whichever is earlier.

Not affecting on right to claim any interest in the property: As per section 5(4), nothing in this section shall prevent the person interested (includes all persons claiming or entitled to claim any interest in the property) in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Filing of complaint: As per section 5(5), the Director or any other officer who provisionally attaches any property shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.