

MOCK TEST PAPER 1
FINAL (NEW) COURSE: GROUP – II
PAPER – 6D: ECONOMIC LAWS

Suggested Answer

Case Study 1

Multiple Choice Questions (MCQs)

1. (c)
2. (b)
3. (a)
4. (a)
5. (c)

Descriptive Questions

Answer 1

De-registration of a building project is not an ideal choice for the authorities keeping in view the larger interests of the stakeholders as well as the nation as a whole and it is resorted to only when all the possible avenues of reaching a comfortable and plausible solution are shut.

According to Section 7 of the Real Estate (Regulation and development) Act, 2016 (in short 'RERA Act') various reasons responsible for revocation of registration granted to a project under RERA due to which the building project stands de-registered are stated as under:

- (a) **Making of default:** The promoter makes default in doing anything required by or under the RERA Act or the rules or the regulations made thereunder;
- (b) **Violation of terms or conditions of approval:** The promoter violates any of the terms or conditions of the approval given by the competent authority. From the case study it shall be noticed that broadly the following terms or conditions of the approval were violated by the promoters of the Royal Golf Burg:
 - (i) Non-construction of all the apartments in fifteen towers till the due date.
 - (ii) Non-furnishing of apartments though the deadline to handover the furnished apartments passed.
- (c) **Involvement in unfair practice or irregularities:** The promoter is involved in any kind of unfair practice or irregularities.

Explanation. — For the purposes of this clause, the term “**unfair practice**” means a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:

- (A) the practice of making any statement, whether in writing or by visible representation which, —
 - (i) falsely represents that the services are of a particular standard or grade;
 - (ii) represents that the promoter has approval or affiliation which such promoter does not have;
 - (iii) makes a false or misleading representation concerning the services;

- (B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;
- (d) **Fraudulent practices:** The promoter indulges in any fraudulent practices. From the case study it shall be noticed that the fraudulent practices undertaken by the promoters of the Royal Golf Burg included:
- (i) Resorting to double allotment due to which the genuine home-buyers were not allotted the apartments which they very much deserved.
 - (ii) Diversion of funds meant for constructing the apartments to shell companies.
 - (iii) Allotment of apartments in the name of the peons and drivers though such allotments were actually meant for the use of the promoters since the consideration flowed from them.

Answer 2

When a project is de-registered due to revocation of registration, following are the obligations of the RERA Authority and other matters associated with it in terms of Section 8 of the RERA Act:

- (i) **Consultation with the Appropriate Government:** The concerned RERA Authority may consult the appropriate Government to take such action as it may deem fit. This will include:
- the carrying out of the remaining development works by competent authority; or
 - the carrying out of the remaining development works by the association of allottees; or
 - the carrying out of the remaining development works by in any other manner, as may be determined by the Authority.
- (ii) **When the direction, decision or order of the Authority shall take effect:** It is provided that a direction, decision or order of the Authority under section 8 shall take effect only after the expiry of the period of appeal provided under the provisions of the RERA Act.
- (iii) **First right of refusal rests with association of allottees:** It is provided that in case of revocation of registration of a project under the RERA Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

Answer 3

- (i) According to Section 6 of the RERA Act, under the circumstances relating to "force majeure" and where there is no default on the part of the promoter, the registration granted under section 5 of the RERA Act may be extended by the Authority.

The expression "force majeure" means a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

For the purpose of extension, the Promoter of the building project affected by "force majeure" shall make an application to the Authority in the specified form and shall make payment of the specified fee as prescribed by the RERA Regulations made by the Authority.

The Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary. However, the extension of registration shall, in aggregate, not exceed a period of one year.

The Authority shall not reject any application for extension of registration unless it gives the applicant an opportunity of being heard in the matter.

- (ii) According to Section 7 (3) of the RERA Act also, the Authority may, instead of revoking the registration under sub-section (1) of Section 7, permit the registration to remain in force subject to such further terms and conditions as it thinks fit to impose in the **interest of the allottees**, and any such terms and conditions so imposed shall be binding upon the promoter.

Case study 2

MCQ

1. c
2. d
3. b
4. d
5. a

Descriptive Questions

Answer 1

As per section 2(c) “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

Although, Northwest Agro Produce Cooperative Society was formed to ensure the timely collection of sale proceeds from sugar mills. But Northwest Agro Produce Cooperative Society also developed a charter, in form of memorandum for its members, to **regulate and control supply, price, term of sales of sugar canes (even though on behalf cane-growers)**, collection of sale proceed and recovery if required. This memorandum is binding on all the members of society. Hence Northwest Agro Produce Cooperative Society is ‘Cartel’ under Competition Act, 2002.

Answer 2

Yes, North West Agro Limited hold dominance, because as per explanation (a) to section 4 “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

Instances of abuse of dominance

Predatory Pricing after acquisition of Sun Sugar Limited - North West Agro Limited, acquired substantial network of retailer after takeover of sun sugar Limited, help of which they tried to penetrate in the market using predatory pricing [**Section 4(2)(a)(ii)**]. North West Agro Limited reduce the price of its sugar ‘Meetha’ from INRs 40 to 35 per kilogram, where as other player in market like Moon Sugar limited selling sugar at INRs 40 per kilogram.

As per explanation (b) to section 4 “predatory price” means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Increase the price after acquisition of Moon Sugar Limited – After hostile acquisition of Moon Sugar Limited, with help of another group company South West Agro Limited; North West Agro Limited raise the prices of its sugar ‘Aur Meetha’ from INRs 35 to 42 per kilogram; even Moon Sugar Limited, originally selling its sugar ‘Aur’ at INRs 40 per Kilogram. **Section 4(2)(b)(i)** says there shall be an abuse of dominant position under sub-section (1) of section 4, if an enterprise or a group limits or restricts production of goods or market therefore .

Answer 3

Provision of related to combination detailed in section 5 of Competition Act ,2002

Sr. No	Nature of Combination	Case facts	Criteria	Is combination
1	Acquisition by single acquirer but different goods (Section 5(a)(i))	North West Agro Limited Takeover Sun Sugar Limited	Joint Asset over INRs 1000 crores or Turnover over INRs 3000 crores	Yes, Joint turnover is INRs 4400 crores (3200+1200) which is more than INRs 3000 crores, whereas joint assets base is only INRs 998 crores
2	Acquisition by group with similar goods (Section 5(b)(ii))	North West Agro Limited Acquired Moon Sugar Limited, with help of another group company South West Agro Limited	Group Asset over INRs 4000 crores or Turnover over INRs 12000 crores	No, Joint Asset base of group is only INRs 1566 crores and aggregate turnover is also INRs 7200 Crores
3	Not considered as combination	MOU between North West Agro Limited and Star Ethanol Limited	Not eligible to be considered as combination	Not Applicable

Regulation of Combinations (Section 6)

No person or enterprise shall enter into a combination which **causes or is likely to cause an appreciable adverse effect** on competition within the relevant market in India and such a combination shall be void.

Any person or enterprise, who enter into a combination, **give notice to the Commission**, disclosing the details of the proposed combination, **within thirty days** of -

(a) **Approval of the proposal** concerned with such merger or amalgamation by the board of directors, or (b) **execution of any agreement** acquiring of control

No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders whichever is earlier.

Answer 4

Vide **Foreign Exchange Management (Current Account Transactions) Rules 2000**, some restriction on current account foreign exchange transaction prescribed. A general permission is available for opening of Bank Account for the purpose of meeting the Branch Expenses abroad.

Authorised Dealer Category – I banks may allow remittance up to **ten per cent** of the **average annual turnover during the last two financial years**. But this restriction shall not be applicable if remittance to account maintained abroad, made out of the funds held in EEFC account.

In given case turnover for relevant 2 years was INRs 120000 lakhs and INRs 110000 lakhs (i.e. INRs 120000 lakhs - INRs 10000 lakhs). Average of which is INRs 115000 lakhs. Maximum permissible amount of branch recurring expenditure in case of normal account was 10% of INRs 115000 lakhs i.e INRs 11500 lakhs. Expenditure incurred by Sun Sugar Limited in given case is INRs 14000 lakhs. But such expenditure will not be considered in violation of Foreign Exchange Management (Current Account Transactions) Rules 2000, because amount expended out of EEFC Account .

Case study 3

Multiple Choice questions (MCQs)

1. (d)
2. (c)
3. (b)
4. (d)
5. (c)

Descriptive questions

Answer1

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

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

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

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

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

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

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

Answer 2

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

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

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

3. (1) For the purposes of sub-clause(ii) of clause (16) of the section 2 of the Act, the price shall be determined in the following manner, namely:—

- (a) the price of unquoted equity shares shall be the higher of,—

- (I) its cost of acquisition;
- (II) the fair market value of such equity shares determined, on the date of transaction, by a merchant banker or an accountant as per the Discounted Free Cash Flow method; and
- (III) the value, on the date of transaction, of such equity shares as determined in the following manner, namely:—

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

where,

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

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

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

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

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

applicable thereto;

- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

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

PV= the paid up value of such equity shares;

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

Answer 3

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

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

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

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

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

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

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

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

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

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

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

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

Case study 4

Multiple Choice Questions

1. (d)
2. (a)
3. (d)
4. (c)
5. (a)

Descriptive Questions

Answer 1

As per the provisions of the Section 11 (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—

- (a) details of the registration granted by the Authority;
- (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
- (c) quarterly up-to-date the list of number of garages booked;
- (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate; (e) quarterly up-to-date status of the project; and
- (f) such other information and documents as may be specified by the regulations made by the Authority.

Thus, the Alpha promoter are required to be disclosed above mentioned information for public view on the webpage of promoter Alpha on the Website of the DELHI RERA Authority.

Answer 2

The payment for purchase of the flat by Mr. P, a non resident in India is made in parts. Since, the payment of INR 25,00,000 is made from unknown source for registry of the apartment. So, to the extent of unknown source of the consideration payment, it may be a Benami Transaction.

Answer 3

- (i) As per the provisions of the Section 11(4)(c) of the Real Estate (Regulation & Development) Act, 2016, the promoter shall be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees.

Thus, Alpha Promoter have to fulfil all responsibilities as discussed above.

- (ii) As per the provisions of the Section 11(5) of the Real Estate (Regulation & Development) Act, 2016, the promoter may cancel the allotment only in terms of the agreement for sale.

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

Thus, the Alpha Promoter cannot cancel the allotment without including such terms of cancellation in the executed agreement of sale.

Case study 5

Multiple choice Questions

1. b
2. b
3. c
4. c
5. b

Descriptive Questions.

Answer 1

- (i) A body corporate incorporated outside India (including a firm or other association of individuals), desirous of opening a Liaison Office (LO) / Branch Office (BO) in India have to obtain permission from the Reserve Bank under provisions of FEMA 1999. Establishment of Project Offices/Liaison Offices in India is regulated in terms of Section 6(6) of Foreign Exchange Management Act, 1999 read with Notification No. FEMA 22/2000-RB dated May 3, 2000.

So if the foreign company wants to establish a Liaison Office in India, it cannot acquire immovable property. However, the company needs to acquire property by way of lease not exceeding 3 years, for its Liaison Office.

- (ii) A non-resident Indian (NRI) or person of Indian origin (PIO), can inherit any immovable property in India, whether it is residential or commercial. The FEMA regulations applicable to transfer of immovable property permit a NRI/PIO to acquire an immovable property in India by way of gift from a person resident in India provided the property is not agricultural land/ farm house/ plantation property. All gifts to NRIs will be considered as income accruing in India and would be taxed as per the normal slab rates applicable to resident Indians. This means that the NRI/PIO needs to mandatory pay the applicable tax

A liaison office of a foreign company in India should be established only with requisite approvals wherever necessary, and is eligible to take any immovable property on lease, in India which is

necessary for its activities, provided that all such applicable laws, rules, Regulations or directions in force are duly complied with.

But in the aforementioned both the cases the property is bought in contravention of the provisions of benami act hence it is a benami transaction. It is liable to attract section 3 of Prohibition of Benami Property Transactions Act. The property is liable to attachment by the Adjudicating Authority.

A liaison office of a foreign company in India should be established only with requisite approvals wherever necessary, and is eligible to take any immovable property on lease, in India which is necessary for its activities, provided that all such applicable laws, rules, regulations or directions in force are duly complied with. Since the property liable to be leased is in brought in contravention to the provisions of law applicable in India, it cannot be leased. If any case it is leased without the knowledge of the company the lease stand terminated. In case of gift to an NRI niece the gift stands null and void.

Answer 2

- i. A Benami transaction is an arrangement, where a property is transferred to, or is held by, in the name of a person called Benamidar and the consideration for such property has been provided, or paid by another person called beneficiary; and that property (benami property) is held for the immediate or future benefit, direct or indirect, by that person who has provided the consideration.

In the particular case the consideration is paid by Mr Suresh Agarwal but the property is purchased in his mother's name.

So it is clear that, Mr Suresh Agarwal has done this benami transactions in respect of the holding of the property, with the object of concealing the real owner.

- ii. In case, if after the issuance of the initial notice by the Initiating Officer, the property in question is transferred to a third party secretly, then the said transaction would be null and void and confiscation would take effect, notwithstanding such a transfer.

However, in case where the person proves that, the property is held or acquired by a person from the Benamidar for:

- a. adequate consideration, prior to the issuance of show-cause notice by the Initiating Officer
- b. Without his having knowledge of the benami transaction in such a case the transfer may be valid.

- iii. Effect of confiscation of benami property:

Where an order of confiscation has been made, all the rights and title in such property will vest absolutely in the Central Government. It will be free of all encumbrances and no compensation will be paid in respect of such confiscation.