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**PAPER 6D: ECONOMIC LAWS**

The solutions to case studies have been worked out on the basis of certain assumptions/views derived from the facts given in the question or language used in the question. It may be possible to work out different solutions based on the assumption made or view taken. Further, there should be no negative marking for wrong answers in MCQ based questions.

**CASE STUDY - 1**

*Cinemaworld Corporation Private Limited ("CCPL") is a company incorporated in Mumbai, India and is engaged in the business of producing bollywood feature films. CCPL was founded by Mr. Ajay Rathore, a well-known real estate mogul and industrialist. Mr. Ajay is engaged in his real estate business of development of high rise apartments and providing interiors, furniture etc. in the name of Luxury Heaven Private Limited ("LHPL"). CCPL also had a subsidiary, Wonderful Imagination India Private Limited ("WIPL") which was into imaging business for production of movies and was making substantial profits due to its professional approach and superior quality of mastering digital prints.*

*During the course of business, Ajay earned enormous wealth in the form of cash through his real estate business (by mandating payment in cash from his home buyers). This was invested in his various businesses to acquire agricultural farm land (to grow and export opium), acquiring and selling (export) of antiquities etc. and his net-worth grew to a substantial sum of ₹ 500 crores. A majority of his dealings in the farm and antiquities businesses were done through cash transactions or through a specific bank account maintained with ABC Bank Limited. Amounts were received in cash from his international customers through a hawala agent known to Mr. Ajay Rathore. He also purchased villas in India and in Spain using the money earned through his farm and antiquities businesses. Mr. Ajay Rathore also established Sure Returns Private Limited, a small non-banking finance company for securing the lives of the employees and the families with asset size of ₹ 450 crore.*

*Mr. Ajay invested an amount of ₹ 5 crore in Sure Returns out of the funds received from his antiquities business. He also used the cash generated from his agriculture, antiquities and real estate business in funding CCPL and producing movies. He also used cash to pay money to the censor board for speedy clearance of his movies and to theatres for timely release.*

*CCPL wanted to produce a big budget film and obtained a loan from ABC Bank Limited for an amount of ₹ 100 crore after mortgaging all the assets of CCPL and also the rights relating to the film. CCPL also obtained a loan from LHPL for an amount of ₹ 25 crore and an unsecured loan of ₹ 20 crore from Mr. Rohit Jain, a local money lender and a friend of Mr. Ajay Rathore. Due to the disputes that arose between some of the parties involved, the movie was not certified by the Censor Board and therefore, couldn't be released. Due to the same CCPL suffered heavy losses and therefore, could not pay its financial and operating creditors. ABC*

Bank Limited then filed an application under the Insolvency and Bankruptcy Code, 2016 and the application was admitted. Other than the loans obtained, CCPL had a liability of ₹ 5 crore to its employees and ₹ 6 crore to the government for statutory dues.

The resolution professional appointed for CCPL reviewed the assets of CCPL and concluded that out of the total book value of various assets of ₹ 180 Crores (including the amounts spent on producing the movie), the recoverable value is only ₹ 40 crore. The RP also noted that WIPL, the subsidiary of CCPL had substantial assets and the RP wanted to include such assets for the purpose of liquidating the claims against CCPL.

Further, pursuant to the review of the transactions at CCPL, the RP got wind of the businesses carried out by Mr. Ajay Rathore and informed the regulatory authorities about the transactions carried out.

Answer the following questions:

**(2 x 5 = 10 Marks)**

- 1.1 Which of the following are not functions of insolvency professional agencies under IBC, 2016?
- (A) Addressing grievance of aggrieved parties.
  - (B) Gathering information on the performance of insolvency resolution professionals.
  - (C) Suggesting the appointment of interim resolution professionals for specific companies.
  - (D) Monitoring, inspecting and investigating members.
- 1.2 Due to the downturn in the finance industry, Sure Returns Private Limited suffered heavy losses and couldn't repay the dues to its creditors and investors. Who can initiate proceedings against Sure Returns Private Limited under the IBC, 2016?
- (A) Any regulator
  - (B) Directors of Sure Returns
  - (C) Any creditor of Sure Returns
  - (D) None, IBC 2016 does not apply
- 1.3 As per PMLA, a person who exercises ultimate effective control over a Juridical person conducting a transaction is called:
- (A) Client
  - (B) Beneficial owner
  - (C) Authorised person

(D) Intermediary

1.4 Out of the below, what is not part of the responsibility of ABC Bank Limited under PMLA, 2002-

(A) Report suspicious transaction undertaken by Mr. Ajay Rathore and the Group

(B) Furnish all information requested by the Director

(C) Verify the identity of the clients and beneficial owners

(D) Maintain records of transactions for a period of 5 years

1.5 The Director wanted to provisionally attach the properties of Mr. Ajay Rathore for a period of 365 days, which was vehemently challenged by Mr. Ajay Rathore. Examine

(A) The maximum period for which a property can be attached is for 365 days

(B) The maximum period for which a property can be attached is for 180 days.

(C) The time limit for the provisional attachment will be decided by the Adjudicating Authority on a case to case basis.

(D) The maximum period for which a property can be attached is for 275 days.

1.6 Answer the following questions:

(i) Identify the various transactions in the case study which are offences under the PMLA 2002, the proceeds of the crime and the parties to the crime. **(6 Marks)**

(ii) Examine the correctness of the position taken by the Resolution Professional to use the assets of WIPL for satisfying the claims against CCPL? What are the assets to be included / excluded when computing the liquidation estate of CCPL? **(5 Marks)**

(iii) Based on the facts of the case, identify the claims against CCPL and the prioritization of the claims as per IBC, 2016. **(4 Marks)**

#### **ANSWER TO CASE STUDY- 1**

1.1 Option- **(C)** - Suggesting the appointment of interim resolution professionals for specific companies

1.2 Option- **(D)** - None, IBC, 2016 does not apply

1.3 Option **(B)** - Beneficial owner

1.4 Option **(A)** - Report suspicious transactions undertaken by Mr. Ajay Rathore and the Group.

1.5 Option **(B)** - The maximum period for which a property can be attached is for 180 days

**Answer 1.6**

- (i) Section 2(1)(u) of the Prevention of Money Laundering Act, 2002, 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;

"Proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity related to the scheduled offence.

S. No.	Transactions which are offences under the PMLA 2002	Proceeds of crime	Parties to crime
1.	Mandating payments in cash from home buyers (through real estate business)	Wealth in the form of cash through his real estate business	Mr. Ajay
2.	Acquisition of agricultural farm land (to grow and export opium)	₹ 500 crores	Mr. Ajay Seller of farm
3.	(a) Acquiring and selling (export) of Antiquities	Amount received from international customers	Mr. Ajay Seller of Antiquities Purchaser of Antiquities (receiving parties in importing countries) Hawala agent
	(b) Investment in Sure Returns Pvt. Limited	₹ 5 crores	Sure Returns Pvt. Limited Mr. Ajay
4.	Purchase of villas in India and Spain	Amount of cash paid to purchase the villas	Mr. Ajay The construction company to which the said amount was paid in cash
5.	Funded CCPL and to produce movies by using cash generated	Amount of cash paid to CCPL	Mr. Ajay CCPL

	from agriculture, antiquities and real estate business		
6.	Amount paid to censor board for speedy clearance of his movies and to theatres for timely release	Amount paid to censor board for speedy clearance of his movies and to theatres for timely release	Mr. Ajay Rathore Censor Board

- (ii) As per Section 18 of the Insolvency and Bankruptcy Code, 2016, the key duties to be performed by the Interim Resolution Professional are to collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor.

Accordingly, he takes control and custody of any assets over which corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets.

**Following shall not be included in the meaning of “Assets” [Explanation to Section 18]**

- (a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;
- (b) assets of any Indian or foreign subsidiary of the corporate debtor; and
- (c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

Accordingly, as per the above provision, since the assets of subsidiary of the corporate debtor is not included in the assets over which corporate debtor has ownership rights, therefore, position of the resolution professional to use the assets of WIPL for satisfying the claims against CCPL, is not correct.

**Following are the assets to be included/ excluded from computing the liquidation estate of CCPL**

**Assets which form part of Liquidation Estate [Section 36(3)]**

Subject to sub-section (4), the liquidation estate shall comprise all liquidation estate assets which shall include the following: -

- (a) any assets over which the corporate debtor has ownership rights.

- (b) assets that may or may not be in possession of the corporate debtor including but not limited to encumbered assets;
- (c) tangible assets, whether movable or immovable;
- (d) intangible assets and financial instruments, insurance policies, contractual rights;
- (e) assets subject to the determination of ownership by the court or authority;
- (f) any assets or their value recovered through proceedings for avoidance of transactions in accordance with this Chapter;
- (g) any asset of the corporate debtor in respect of which a secured creditor has relinquished security interest;
- (h) any other property belonging to or vested in the corporate debtor at the insolvency commencement date; and
- (i) all proceeds of liquidation as and when they are realized.

**Assets which do not form part of Liquidation Estate [Section 36(4)]**

The following shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation: -

- (a) assets owned by a third party which are in possession of the corporate debtor, including-
  - (i) assets held in trust for any third party;
  - (ii) bailment contracts;
  - (iii) all sums due to any workmen or employee from the provident fund, the pension fund and the gratuity fund;
  - (iv) other contractual arrangements which do not stipulate transfer of title but only use of the assets; and
  - (v) such other assets as may be notified by the Central Government in consultation with any financial sector regulator;
- (b) assets in security collateral held by financial services providers and are subject to netting and set-off in multi-lateral trading or clearing transactions;
- (c) personal assets of any shareholder or partner of a corporate debtor as the case may be provided such assets are not held on account of avoidance transactions that may be avoided under this Chapter;
- (d) assets of any Indian or foreign subsidiary of the corporate debtor; or

- (e) any other assets as may be specified by the Board, including assets which could be subject to set-off on account of mutual dealings between the corporate debtor and any creditor
- (iii) As per the facts, following shall be the claims against CCPL and the prioritization of the claims as per the section 53 of the Insolvency & Bankruptcy Code, 2016:
- Accordingly, from the proceeds of the sale of the liquidation assets (i.e., from recoverable value ₹40 crore) claim shall be distributed in the following order of priority —
- (1) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52: Amount 100 crore (from ABC Bank Limited) + 25 crore (from LHPL).
  - (2) wages and any unpaid dues owed to employees: Liability of ₹ 5 Crore to its employees
  - (3) financial debts owed to unsecured creditors: ₹ 20 crore from Mr. Rohit Jain
  - (4) Amount Statutory due to the Central Government and the State Government: ₹ 6 crore

#### **CASE STUDY- 2**

*Mr. Raj Mishra is an Indian resident who moved to Punjab from Bihar around 10 years back for employment with State Titanium India Limited (STIL), after completion of his master's in business management from IIM. Raj Joined STIL as an assistant manager in operations and got numerous promotions based upon his performance. A year ago, Raj was elevated from the position of Vice- President Plant Operations of Punjab Plant and transferred to a new plant of STIL in Telengana as Plant Head. Mr. Mishra is a member of the committee on the financial matters as an employee's representative. STIL is a multi- product manufacturing company headquartered in Punjab. One of its products is in high demand abroad and around 60% of its production is exported majority to Europe followed by Australia. STIL established a branch office in central London recently and is in the process of making a bid for acquiring a textile plant there, the deal and the funds will be arranged through ECB (External Commercial Borrowings) in Euro currency. STIL is eligible to receive FDI.*

*Raj, after shifting to Telengana, wanted to buy his own house and, in that process, identified a housing project 'Nirmal Awas' in Gachibowli. Raj applied to CDIL, the promoter of 'Nirmal Awas' for a 3 BHK apartment. The project was duly registered with the relevant state authority under Real Estate (Regulation and Development) Act, 2016 (RERA). The price of the apartment will be calculated based upon the carpet area at a rate of ₹3,000 per square feet. The 3 BHK apartment is comprising gross area of 1200 square feet, including external walls and internal partition walls equal to 3% and 4% of the gross area of the apartment,*

respectively; and also including a balcony of 24 square feet and an open terrace area of 40 square feet for exclusive use of allottee of the apartment independently. Allotment for all 140 apartments were done in the month of February, 2020 to the respective allottees with included Mr. Nayak who had applied for two apartments and got the same in his own name; and Mr. Gautam who had applied for three apartments, got one in his own name, another in the name of his elder son and another one in name of his business firm; which will be used as a guest house for guests related to his business. Rest all had applied for a single apartment.

Due to the nation-wide lock down, the majority of labourers working at 'Nirmal Awas' being casual workers moved back to their villages. CDIL realised that it would be difficult to complete the project by December, 2020 (due-date committed for possession) and after some efforts CDIL decided to transfer the project to JSED, a renowned name for developing residential projects. The allottees of 93 apartments, including Mr. Nayak and Mr. Gautam agreed for the transfer of the project because they already had put a huge sum for the apartments promised to them and hence the allottees of 93 apartments gave their consent by raise of hands to CDIL to transfer its rights and liabilities in Nirmal Awas to JSED. CDIL notified the said transfer to the relevant state authority under RERA within 30 days of transferring the project. JSED is willing to re-allot the apartments after taking charge from CDIL and it also filed an application to the relevant state authority under RERA for extension of 3 months quoting such transfer of project as a major reason.

As mentioned earlier that, STIL is planning to raise funds through ECB. STIL figures out that there will be two-three months' gap between the raising of money and packing the deal of acquiring the textile plant in London. Considering the transaction cost involved, STIL decided to park the funds for such time abroad only. STIL is considering various alternatives to park such funds. Committee on financial matters asked Raj to present his views on central banks' guidelines. The authorised dealer category I bank with whom STIL is maintaining an EEFC account has sought for more information than in previous transactions. Raj finds the same a bit irritating, in response to which the banker explains to Raj that they are bound to enhance due diligence in case of specified transactions.

STIL has a stake of 26% in a Dubai based company named Dibschi LLC. STIL has an overseas office in Dubai but at the third-party location as STIL doesn't have any office premises in Dubai. STIL is now approaching various real estate brokers to find a suitable space for opening an office in Dubai.

Sridhar, another employee of STIL left India on 26 May, 2006 for employment with the subsidiary of STIL based in Germany. Sridhar was born and brought up in India and holds an Indian passport with non-resident status. Sridhar acquired a commercial property in Pune in May 2018 for which he paid out of funds held in a non-resident account. He, while being a

*non- resident, had also inherited an ancestral house situated in Mumbai from his deceased father, who was resident in India.*

*Sridhar took his mother to Germany along with him as he is the only son and decided to permanently settle there. In order to acquire bigger property there, he decided to sell both the property he owns in India; hence start looking for buyers. Through his brother- in- law, who is a real estate broker (but not charged any commission from Sridhar); he sold the inherited property for ₹2.5 crore and the property at Pune got sold for ₹4.5 crore. Since Sridhar holds NRI status for Indian income tax law purposes, hence buyers deduct tax of ₹52 lakh and ₹93.6 lakh respectively at the source. Sridhar wishes to repatriate the realised funds to his German account.*

*Answer the following questions:*

**(2 x 5 = 10 Marks)**

- 2.1 *With reference to the property acquired by Mr. Sridhar in Pune in May 2018, choose the correct statement out of following considering the legal validity in the context of provisions of Foreign Exchange Management Act, 1999 and regulations made there under.*
- (A) *Mr. Sridhar shall not acquire any immovable property in India.*
  - (B) *Mr. Sridhar may acquire the immovable property in India, but only in joint ownership with some resident in India.*
  - (C) *Mr. Sridhar may acquire only one immovable property, but not from the fund held in a non-resident account*
  - (D) *Mr. Sridhar may acquire immovable property other than plantation property.*
- 2.2 *Under RERA, the price of the apartment is based upon the carpet area and therefore it becomes important to correctly measure the same. What shall be the carpet area of the 3 BHK apartment in Nirmal Awas?*
- (A) *1146 square feet*
  - (B) *1100 square feet*
  - (C) *1136 square feet*
  - (D) *1052 square feet*
- 2.3 *STIL is now approaching various real estate brokers to find a suitable space for opening an office in Dubai. Can STIL buy office premises (immovable property) in Dubai?*
- (A) *STIL, being an Indian company cannot buy office premise outside India.*
  - (B) *STIL can buy office premises in Dubai.*

- (C) Only Dibschi LLC can buy office premises in Dubai for STIL.
- (D) Dibschi LLC and STIL can buy office premises jointly only.
- 2.4 With reference to the explanation given by the banker to STIL with respect to seeking of more information, which of the following is not a specified transaction?
- (A) Any transaction in foreign exchange
- (B) Any transaction in any high-value imports or remittances
- (C) Any transaction in any high -value exports or remittances
- (D) Any transaction where there is a high risk or risk of being considered as money laundering.
- 2.5 Which amongst the following is not a valid alternative available with STIL to park the funds abroad?
- (A) Deposit the funds with a foreign bank rated AA by S & P
- (B) Deposit the funds with a foreign bank rated AA by Moody
- (C) Deposit the funds with a foreign branch of Indian bank abroad
- (D) Treasury bills up-to one-year maturity rated A + by Fitch.
- 2.6 Answer the following questions:
- (i) Examine the following, with reasons based on applying the provisions of RERA 2016:
- (a) Whether the transfer of rights and liabilities in the project 'Nirmal Awas' by CDIL to JSED is legally valid? **(5 Marks)**
- (b) Whether JSED is allowed to re-allocate the allotments already done in the project 'Nirmal Awas' by CDIL? **(3 Marks)**
- (c) Whether the application moved by JSED to seek an extension of time on the grounds of delay on account of transfer of project is maintainable? **(3 Marks)**
- (ii) Since Mr. Sridhar is not aware of the local laws of the country, hence looking for your assistance to know can he repatriate funds back to his German account; if yes then how much amount of the sale proceeds can be repatriated? **(4 Marks)**

### **ANSWER TO CASE STUDY- 2**

2.1 Option (D) - Mr. Sridhar may acquire immovable property other than plantation property

2.2 Option (B) - 1100 square feet

2.3 Option (B) - STIL can buy office premises in Dubai

2.4 Option (C) - Any transaction in any high- value exports or remittances

2.5 Option (D) - Treasury bills up to one year maturity rated A+ by Fitch

**Answer 2.6**

- (i) (a) As per section 15(1) of Real Estate (Regulation and Development) Act 2016, the promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority.

It is also important to consider explanation to the said sub-section, which says that for the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

Explanation simply implies that Mr. Nayak and Mr. Gautam will be counted as 2 allottees rather than 5 in totality which makes the total allottees 137 in number.  $\frac{2}{3}$ <sup>rd</sup> of 137 will be 91.33. Here, 91.33 shall be considered as 92.

**Note** – Here, reasonable interpretation (of law) shall be constructed,  $\frac{2}{3}$  allottees shall be read as at least  $\frac{2}{3}$  allottees and shall be round-up.

Further consent by allottees of 93 apartments, including Mr. Nayak and Mr. Gautam, becomes the consent from only 90 allottees by the virtue of the explanation to section 15(1) as quoted above, and 90 is less than the required number i.e. 92.

Thus, the transfer of an interest in the project 'Nirmal Awas' by CDIL to JSED is not legally valid due to the following three reasons:

1. Consent of  $\frac{2}{3}$  allottees is not taken.
  2. Consent given by allottees is not in writing.
  3. Prior written approval from the state authority under RERA is not taken.
- (b) As per proviso to sub-section 1 to Section 15 of the Real Estate (Regulation and Development) Act, 2016, any transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter. Hence, JSED is not allowed to re-allocate the allotments for the project 'Nirmal Awas'.

- (c) According to Section 15(2) of the Real Estate (Regulation and Development) Act 2016, any transfer or assignment permitted under provisions of this section (i.e. section 15) shall not result in the extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

Thus, the application moved by JSED to seek an extension of time on the grounds of delay on account of transfer of project is not maintainable.

- (ii) As per Section 6 (5) of the Foreign Exchange Management Act, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security, or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

As per Regulation 8 (a) of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, a person referred to in sub-section (5) of Section 6 of the Act, or his successor shall not, except with the general or specific permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.

Further regulation 8 (b) provides, in the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:

- (a) The immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of his acquisition or the provisions of these Regulations;
- (b) the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non-Resident External account;
- (c) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

Thus, Mr. Sridhar can repatriate of sale proceed of both the immovable properties.

Mr. Sridhar can repatriate ₹ 1.98 crore (₹ 2.5 cr- ₹ 52 lakh), the net proceeds from the sale of an inherited ancestral house, under Regulation 8(a) with permission from RBI,

whereas authorised dealer may allow repatriation of ₹ 3.564 crore (₹ 4.5 crore- ₹ 93.6 lakh), the net proceeds from sale of commercial property under Regulation 8(b).

### **CASE STUDY - 3**

*Mr. Hiren Patel is a young dynamic artificial intelligence professional with mechanical engineering qualification and currently resides in Seattle, USA and holds NRI status. Hiren works for a Company called Navigate Automobiles LLP (Navigate). Navigate is in the business of designing, developing and selling automobile computer operating system to make “smart cars”, which is called “ignite”. Ignite is very popular among the smart automobile manufactures since it offers proprietary applications and services such as maps, internet explore and blue tooth connectors etc. Ignite Automation Services (IAS) is a bundled suite of Navigate’s applications and services and such apps and services are not available in isolation. In trade parlance, the OS is different from OS designed for typical cars as they have additional use features. 80% of smart cars, which are in use has Ignite as the operating system. If a car manufacturer wants to manufacture a normal Ignite car, it needs to only pass technical tests and accept the Ignite License Agreement; but in a normal car, the manufacturer are not permitted to include any of IAS such as Maps, Internet Explorer etc. If a manufacturer wants to manufacture a car having Ignite with pre-installed IAS, they have to enter into two additional agreements with Navigate i.e. Application Distribution Agreement and Anti Fragmentation Agreement. IAS couldn’t be availed directly by the end users, in case it is not pre-installed in their cars. Hiren got married to Ms. Anna Harris (a US citizen) around a year back. The marriage took place in a traditional saptapadi ceremony in the backyard of Harris’s residence where only close relatives were present. Marriage was registered six months later due to a widely observed lockdown to prevent the widespread of COVID-19.*

*Indian traditions have a deep-rooted impact on Anna’s family because the grandmother of Anna is from India. Anna’s grandfather is also influenced by Indian culture, hence willing to migrate to India along with Anna’s grandmother to spend the rest of their life. Considering this in the month of January 2021, Hiren and Anna acquired a luxurious apartment in their joint names in India, so that Anna's grandparents can stay there comfortably. Half of the consideration was paid by Hiren out of the Non-Resident Account maintained by him, and the remaining half by Anna through proper banking channel, and that too in the manner prescribed. To identify the flat and fulfil the legal requirement for registration of the same, Hiren took the help of his elder cousin Mr. Arya Patel, who is permanently residing in India.*

*Mr. Arya along with two of his friends owns a cement manufacturing company in India called "Strong Cement Private Limited (SCPL). SCPL supplies cement to various builders and retail consumers through a network of stockist and retailers. An understanding has been reached among the manufacturers of cement to control the price and supply of cement, but the understanding is not in writing and it is also not intended to be enforced by legal proceedings.*

*In order to grow the business, SCPL wanted to acquire another company in the same business, Venture Cements Private Limited (VCPL). The proposed acquisition of control in VCPL by SCPL will result into creation of a combination under section 5 of the Competition Act, 2002, and so a notice is furnished to the Commission for approval on 10th March, 2020. The Commission is of the opinion that the combination has an adverse effect on competition but such adverse effect can be eliminated by suitable modifications to such combination, hence Commission proposes appropriate modifications to the combination which were informed to SCPL and VCPL on 12th March, 2020. SCPL accepts some of the modifications suggested and for the remaining modifications it submitted its suggestions/amendments back to the Commission on 25th March. Thereafter the Commission has neither issued directions nor passed any order approving / rejecting combination. Rock Solid Private Limited (RSPL) is the substantial supplier of clay, slate, blast furnace slag, silica sand which are essential raw materials of cement, and a shortage of the same is observed in the market. Mr. Arya, on behalf of SCPL, has executed a supply agreement with RSPL on 20th October, 2020 wherein it is provided that RSPL will not supply these raw materials to any other cement manufacturer, against this the purchase commitment has been made from SCPL for all their (RSPL) output at the price mentioned in such agreement. Magnite Cement Limited (MCL) who is another cement manufacturer is not happy with the RSPL, because RSPL has not supplied the slate and silica sand to MCL against the PO (Purchase Order) placed by MCL dated 18th October, 2020, hence the Board of Directors of MCL is considering taking legal remedy against RSPL in the capacity of the consumer. MCL has borne loss on account of the stock-out situation emerged from the non-availability of raw material. It was found that only half of the consideration was paid and 30 days' credit was available for making payment of the remaining balance, regarding which payment promise is made by MCL. MCL also imports clinker for its operations and has imported a significant quantity of clinker from Vietnam for the first time under a deferred payment arrangement for a period of three and half years.*

*Mrs. Patel, the mother of Hiren, who also resides with her son and daughter in law in States and holds NRI status, acquired two immovable properties (one farmhouse for residential purposes and another an agricultural land, because she studied botany during her masters and willing to develop botanical garden there) in their native place situated near Rajkot district of Gujarat in India in the year 2020-2021 for a total consideration equivalent to USD 4,70,000. She made payment for the same out of her non-resident account.*

Answer the following questions:

**(2 x 5 = 10 Marks)**

3.1. Which of the following options are correct with respect to import by MCL from the Vietnam based supplier under the deferred payment arrangement?

- I. Such deferred payment arrangement will be treated as trade credit because its term is less than 5 years

- II. *Such deferred payment arrangement will be treated as normal borrowings, because of duration of 3 and half years*
- III. *Authorised dealer may give a guarantee in respect of deferred payment arrangement*
- IV. *Authorised dealer can't give a guarantee in respect of deferred payment arrangement*
- (A) *I and III*
- (B) *I and IV*
- (C) *II and III*
- (D) *II and IV*
- 3.2 *The agreement is executed among SCPL and RSPL on 20th October, 2020, can be categorised as:*
- (A) *Exclusive supply agreement*
- (B) *Tie-in arrangement*
- (C) *Refuse to deal agreement*
- (D) *None of these*
- 3.3 *Whether the understanding reached among the manufacturers of cement be termed as an agreement?*
- (A) *No, because it is not in writing*
- (B) *No, because it is not intended to be enforced by legal proceedings*
- (C) *No, because it is not in writing and also not intended to be enforced by legal proceedings*
- (D) *Yes*
- 3.4. *Can MCL assume the position of the consumer for the purpose of competition laws?*
- (A) *No, because only half of the consideration paid by SCL*
- (B) *No, because SCL is not buying slate and silica sand for personal use or direct resale*
- (C) *Yes*
- (D) *No, because only an individual can be a consumer*

- 3.5. Which of the following statements is correct regarding the acquisition of immovable property in India by Mrs. Patel?
- (A) Mrs. Patel is not allowed to acquire any sort of immovable property in India.
  - (B) Mrs. Patel is not allowed to acquire farmhouse and agricultural land in India
  - (C) Mrs. Patel may acquire the farmhouse, but not agricultural land in India
  - (D) Mrs. Patel may acquire both the farmhouse and agricultural land in India
- 3.6. Answer the following questions:
- (i) Evaluate, with reasons whether Navigate has dominance and has it abused its dominant position? **(5 Marks)**
  - (ii) Analyse the provisions of the Competition Act and evaluate whether the Commission has approved the combination between SCPL and VCPL and if so, the date of approval thereof. **(4 Marks)**
  - (iii) Examine the following, with reasons based on applying the provisions of FEMA 1999:
    - (a) Can Anna acquire immovable property in India independently? **(2 Marks)**
    - (b) Is the acquisition of the apartment by Hiren and Anna valid as per FEMA regulations? **(2 Marks)**
    - (c) Can Anna acquire another property which is agricultural land, in joint ownership with Hiren for investment purposes? **(2 Marks)**

### **ANSWER TO CASE STUDY- 3**

3.1 Option (A) – I and III

3.2 Option (C) – Refuse to deal agreement

3.3 Option (D) – Yes

3.4 Option (C) – Yes

3.5 Option (B) – Mrs. Patel is not allowed to acquire farmhouse and agricultural land in India

### **Answer 3.6**

- (i) Facts in the given case are more or less similar to the case (No. 39 of 2018, Competition Commission of India dated 16.04.2019) of Umar Javeed and Google LLC, wherein legal issue also about dominance and its abuse and act of Google found in violation of Section 4(2) of the Competition Act, 2002.

In the said case, CCI observed to form a prima facie view about the alleged abusive conduct, it would be first appropriate to define the relevant market and to determine the dominance of accused enterprise therein if any. In the present case, it is clearly mentioned that automobile computer operating system to make smart cars due to additional use features which are different from operating system designed for typical cars. Hence all Ignite Automation Services of navigate's applications and services and such apps and services were not available in isolation and so shall be excluded from the relevant market. Navigate appears to be dominant in the relevant market as 80% of smart cars, which are in use has Ignite as the operating system.

The signing of the Application Distribution Agreement and Anti Fragmentation Agreement is a pre-condition for smart automobile manufacturers to pre-install Apps and services (while using Ignite Automation Services of navigate's application). Further, IAS is also a bundled suite of Navigate's applications and services. In this manner Navigate Automobiles LLP reduced the ability of device manufacturers to develop viable alternatives with selected applications and services out of the IAS suite, hence disincentivize them. Thereby restricting technical development to the prejudice of consumers in violation of Section 4 of the Competition Act, 2002.

While reading Section 4 with Section 32 of the Act, it is important to note that the conduct of Navigate to tie or bundle applications and services is an attempt to eliminate effective competition from the market. There exists an element of coercion as the automobile manufacturers are coerced to purchase the IAS suite altogether which results in consumer harm through a reduction in choice of products.

**(ii) Orders of Commission on certain combinations [Section 31 of the Competition Act, 2002]**

As per section 31 read with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.

Parties after compliance need to file compliance report to the secretary of Commission within 7 days. If the parties don't accept the modification within thirty working days, the Commission by order shall direct that the combination shall not be given effect. The Commission may, however, if it considers appropriate, frames a scheme to implement its order. Such an order shall not be prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act. Such 30 days shall be excluded while the computing time period for deemed approval.

**Deemed approval:** If the Commission does not pass an order to approve the combination or doesn't issue the direction that combination shall not take effect until the expiry of a period of 210 days from the date of notice given to the Commission, the combination shall be deemed to have been approved by the Commission.

As per the facts, notice for the proposed combination in VCPL by SCPL was furnished to the commission for approval on 10/3/2020. The commission suggested suitable modifications to such combination and intimated to SCPL and VCPL on 12/3/2020. SCPL accepts some modifications and submits its suggestions/amendments for the remaining modifications back to commission on 25/3/2020. Thereafter heard nothing neither approval nor rejection from commission.

Accordingly, in the given case, Commission does not pass an order of approval of the combination or doesn't issue the direction that combination is rejected, therefore this shall be a deemed approval of the commission on the combination between SCPL and VCPL. Combination shall not take effect until the expiry of a period of 210 days from the date of notice given to the Commission i.e. approval to the combination will be deemed to approved from 7th October 2020.

- (iii) As per regulation 6 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, a person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India, who is a spouse of a Non-Resident Indian or an Overseas Citizen of India may acquire one immovable property (other than agricultural land/ farmhouse/ plantation property), jointly with his/ her NRI/ OCI spouse, subject to following conditions:
- (i) The consideration for the transfer, shall be made out of funds received in India through banking channels by way of inward remittance from any place outside India or funds held in any non-resident account maintained in accordance with the provisions of the Act and the regulations made by the Reserve Bank;
  - (ii) No payment for any transfer of immovable property shall be made either by travellers' cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause;
  - (iii) The marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the acquisition of such property;
  - (iv) The non-resident spouse is not otherwise prohibited from such acquisition.
    - (a) No. Mr. Anna (a person resident outside India, not being a Non-Resident Indian or an Overseas Citizen of India) can't acquire immovable property in India, independently.

- (b) No. the acquisition of a flat by Hiren and Anna, jointly is not aligned (hence legally invalid, and amount to violation) to the provisions of FEMA and relevant regulations made thereunder, because marriage has been registered and subsisted for a continuous period of fewer than two years immediately preceding the acquisition of such property.
- (c) No. Anna can't acquire another property being agricultural land in joint ownership with Hien for investment purposes because;
- i. The acquisition of agricultural land, farmhouse, and plantation property is specifically prohibited; and
  - ii. The time since the marriage took place and subsisted is less than two years; and
  - iii. There is a maximum ceiling limit of owning one property

#### **CASE STUDY - 4**

*Mrs. Susan, an Indian citizen and Mr. Rahm, a Pakistani citizen, got married on 13.12.1985. Mr. Susan is a housewife and is now residing in a farmhouse, B-91, Ludhiana, Punjab, with her husband. They were blessed with three children, Abhas, Razia, and Shabina. Mr. Rahim obtained a Long-term Visa in India and purchased agricultural land near his house. He entered into an agreement on 10.02.1992 in the name of his wife to purchase the said property for a total sale consideration of ₹44 lakh. The sale deed was executed on 23.01.1993 in the name of Mrs. Susan. The sale consideration of ₹44 lakh was paid by Mr. Rahim by a cheque of ₹24 lakh from his bank account and balance from unknown sources. Mr. Rahim liked the ecology of the area of Ludhiana and therefore, he had chosen to purchase the property for his benefit. After purchase of the agricultural land, Mr. Rahim spent huge amounts to reclaim the lands and to raise crops such as coffee, pepper, orange, etc. He raised cattle and sheep farms and laid roads at his own cost. He had also fenced the agricultural land with live wires to protect the crops from wild animals. He had also installed generators and bore well etc. he named the estate as 'Nelson Estate' and employed 50 workers. Mr. Rahim and Mrs. Susan had been living in Ludhiana, Punjab till 2001. During 2002, Mrs. Susan insisted to change her residence to Bangalore under the pretext of imparting education to the children. Mr. Rahim provided her with a separate residence at Bangalore registered in the name of his son, Abhas, at a cost of ₹30 lakh and paid the consideration from his funds. Mrs. Susan and the children got shifted their residence to Bangalore. Mr. Rahim had been paying ₹30,000 per month for the maintenance of Mrs. Susan and their children. Ms. Shabina wanted to marry Mr. Marzban, a citizen of Afghanistan. After marriage, Ms. Shabina got the citizenship of Afghanistan and simultaneously her Indian citizenship status got revoked.*

Mr. Abhas's maternal grandfather went to the UAE for a business trip and purchased gold jewellery having weight of 5 kgs. He hid the gold jewellery in the white goods to save custom duty. He gifted that gold jewellery to his grandson, Mr. Abhas. Mr. Abhas purchased a flat in Maharashtra at a price of ₹40 Lakhs in the name of his sister, Ms. Shabina, after her child was born. He took a loan of ₹10 lakhs from bank by mortgaging the Bangalore property and took ₹5 lakhs from his savings. For the balance amount, he sold the jewellery gifted by his grandfather at ₹25 lakhs. Mr. Abhas rented the property in Maharashtra for the monthly rent of ₹25,000. Mr. Abhas also purchased another property in the name of his mother in law (as she is a senior citizen female -to bear less registration cost in the form of stamp duty), consideration for which was paid out of known sources of funds by Mr. Abhas. Mr. Aslam, the elder son of Mr. Abhas is settled in USA. He left India to pursue MS in civils. After his post-graduation, he got a job in an MNC in USA. He visited India every year and gave substantial funds to his mother, Mrs. Heena and Mr. Abhas suggested that as Aslam's substantial funds are in deposit with her and he is doing well for himself in USA, he should purchase a plot of land to build a house thereon in New Delhi. Mr. Aslam agreed on the idea and was ready to purchase a house. Mr. Aslam came to India and handed over further funds to his mother for acquiring the plot that had already been identified to be acquired on a perpetual lease.

Mrs. Heena obtained the aforesaid plot on a perpetual lease in her name jointly with Mr. Aslam. All the funds used in the purchase of the plot by Mrs. Heena were from the money deposited with her and given to her by Mr. Aslam from time to time. The possession of the plot was obtained by her jointly with Mr. Aslam and a perpetual lease deed was executed by the Delhi Development Authority (DDA). After two years from the date of purchase of property in Delhi by Mrs. Heena, she met with a car accident and died. Her younger son, Mr. Kafil filed a suit that the property was in the name of his mother, and he has 50% rights alongwith his elder brother Mr. Aslam in the property situated in New Delhi. Mr. Aslam came to India and averred that the property was purchased by his mother out of the funds that have been provided by him from time to time.

During the middle of the year 2012, Mr. Rahim's health condition deteriorated, and he was advised to go to England for treatment. During September 2012, he left India and got himself admitted in a hospital in England and remained there due to his health condition. During the period of his absence in India, he used to send money to the tune of ₹30,000 per month towards the maintenance of the agricultural land to Mrs. Susan. During March 2003, Mr. Rahim came back to India and found that Mrs. Susan had retrenched all the workers, sold away the property, cows, buffaloes numbering about 50, generators and the agricultural produce such as pepper, coffee, etc., and appropriated the amount without his knowledge. After a further visit to England for his treatment on 17.08.2013, when Mr. Rahim returned to India, he was prevented from entering the estate by Mrs. Susan. Mr. Rahim filed a case against his wife, Mrs. Susan, that he is the owner of the agriculture land in Ludhiana. He

*purchased the property in the name of his wife out of love and affection. She has no right to sell the property without his permission. Mrs. Susan argued that she was the owner of the property, and that the sale deed stands in her name. Further she argued that she was making negotiations for the sale of a portion of the estate within the knowledge of Mr. Rahim. Also, Mr. Rahim conveyed his no objection to selling the property and appropriating the proceeds to be paid unreservedly to Mrs. Susan or to her order. She alleged that Mr. Rahim had deserted her and her children, and she had to necessarily make the provisions to support them. Also, in her support she said that there is a presumption in law that the ostensible owner is also a legal owner.*

*Answer the following questions:*

**(2 x 5 = 10 Marks)**

- 4.1. *Whether Mrs. Susan having the ostensible ownership of the land can be considered as what for the purpose of considering a benami transaction assuming the land was purchased by Mr. Rahim from known sources?*
- (A) *Beneficial Owner*
  - (B) *Benamidar*
  - (C) *Real Owner*
  - (D) *Non-owner*
- 4.2 *Who can be considered as the benamidar for the property purchased in Bangalore?*
- (A) *Mr. Abhas*
  - (B) *Ms. Shabina*
  - (C) *Mrs. Susan*
  - (D) *The transaction is not a benami transaction.*
- 4.3. *Whether the maternal grandfather of Mr. Abhas is liable for punishment under the Prevention of Money Laundering Act, 2002?*
- (A) *No, he is not liable for any punishment under any provisions of the Prevention of Money Laundering Act, 2002*
  - (B) *Yes, he is liable to punishment for commitment of offence under Part C of the Schedule to the Prevention of Money Laundering Act, 2002*
  - (C) *Yes, he is liable to punishment with rigorous imprisonment for a term which shall not be less than 3 years*

- (D) Yes, he is liable for punishment for commitment of offence under Part A, Paragraph 1 as well as Paragraph 12 of Schedule to the Prevention of Money Laundering Act, 2002
- 4.4 Evaluate the legal position of mother in law of Mr. Abhas as benamidar in the case study:
- (A) Yes, the mother in law of Mr. Abhas is a benamidar
  - (B) No, the mother in law of Mr. Abhas is not a benamidar as she is covered under the exceptions under the Act
  - (C) No, the mother in law of Mr. Abhas is not a benamidar as the consideration is paid out of known sources of funds
  - (D) No, the mother-in-law of Mr. Abhas is not a Benamidar as it is not a Benami Transaction
- 4.5. The Regulator wanted to consider the property purchased by Mr. Rahim in Bangalore as a benami property, since it was purchased by him in his son's name and hence, Abhas is a Benamidar. Evaluate
- (A) Yes, because consideration was paid by Mr. Rahim, but the property was registered in his name
  - (B) Yes, because Abhas is a party to the transaction despite having not paid the consideration
  - (C) No, because he is the son of Mr. Rahim, who paid the consideration
  - (D) No, because he did not participate in the negotiation of price and the payment thereof
- 4.6. Answer the following questions:
- (i) Examine with reasons whether the contention of Mr. Rahim that Mrs. Susan has no right to sell the property which was purchased by him is correct? If yes, consequences for the property. **(6 Marks)**
  - (ii) Whether the purchase of property by Mr. Aslam jointly in the name of his mother is a Benami Transaction? Support your opinion with reasons. **(3 Marks)**
  - (iii) Mr. Abhas is of the view that he has not violated any provisions of the PMLA. Provide your views in this regard and evaluate the consequences under the relevant provisions. **(6 Marks)**

**ANSWER TO CASE STUDY- 4**

- 4.1 Option (C) - Real owner
- 4.2 Option (D) – The transaction is not a benami transaction
- 4.3 Option (B) –Yes, he is liable to punishment for commitment of offence under Part C of the Schedule to the Prevention of Money Laundering Act, 2002
- 4.4 Option (A) – Yes, the mother in law of Mr. Abhas is a benamidar
- 4.5 Option (C) – No, because he is the son of Mr. Rahim, who paid the consideration

**Answer 4.6**

- (i) As per the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018, prohibition on acquisition or transfer of immovable property in India has been marked by the citizens of certain countries.

No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Hong Kong or Macau or Democratic People's Republic of Korea (DPRK) without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.

Provided this prohibition shall not apply to an Overseas Citizen of India. An NRI or an OCI may acquire immovable property in India other than agricultural land/farm house/plantation property. Purchase of agricultural land by Mr. Rahim in the name of his wife, Mrs. Susan is not valid.

Further, also purchase of property in the name of his wife is a benami property acquired partially from unknown source for his immediate or future benefit.

Accordingly, in the case study, the acquisition of property by Mr. Rahim, is not valid from the very beginning for the purchasing of agricultural land and that to it is also a benami transaction. The whole transaction is unlawful in the eyes of law. Therefore, the contention of Mr. Rahim that Mrs. Susan has no right to sell the property which was purchased by him, is right.

If any such transaction of benami property is made, it will be termed as illegal and shall be void. Further as per section 6 of the Prohibition of Benami property transactions Act, 1988, there is a Prohibition on retransfer of property by benamidar.

- (ii) As per section 2(9) of the Prohibition of Benami Property Transactions, Act, 1988, "Benami transaction" means a transaction or an arrangement—
- (a) 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; and

- (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.

Except when the property is held by 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.

In the given case, purchase of property by Mr. Aslam jointly in the name of his mother Mrs. Heena, is not a benami transaction.

- (iii) As per the information given in the case study, following acts of Abhas can be classified as an offence committed under the Prevention of Money Laundering Act, 2002:

- (a) **Jewellery gifted by maternal grandfather of Mr. Abhas-** As per Section 2(1)(u) of the PMLA, "proceeds of crime" means 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;

"Proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence.

- (b) Purchase of property in the name of his (Abhas) mother in law to bear less cost in the form of stamp duty:

Said act is an offence committed under Part C (3) of the schedule of the PMLA, w.r.t. the offence of wilful attempt to evade any tax, penalty or interest referred to in section 51 of the Black Money (undisclosed foreign income and assets) and Imposition of Tax Act, 2015.

**Consequences for commission of an offences under the PMLA, 2002: Section 4 provides for the Punishment for Money-Laundering-**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.

#### **CASE STUDY - 5**

*Mr. Prem Agarwal is an Indian businessman. He is the chairman of the Courage Industries Limited, which was created in July 1984 by Mr. Prem Agarwal's father, Mr. D.D. Agarwal. After his father's death in 2004, Mr. Prem Agarwal became the chairman of the Company. The*

*Company is running multiple businesses such as Financing, Infrastructure, Telecommunications, etc.*

*To pay the existing debts and to make the Company work efficiently, Courage Industries Limited took bank loans from consortium of Indian banks. The Company wanted to expand its telecoms business and DTH services in India. So this time the Company approached foreign banks for the loan. Being one of the pioneer companies of India and on its credibility all the three foreign banks - Global Bank of America, Exim Bank of Scotland and Chartered Bank of London, sanctioned the required loan amounts.*

*The Indian lenders of Courage Industries Limited included ABD State Bank with an exposure of over ₹ 1,245 crore followed by Bank of Ajmer (₹ 1,090 crore), P&G National Bank (₹ 810 crore) and JV National Bank (₹ 792 crore). Among overseas lenders, Global Bank of America had an exposure of ₹ 700 crore, followed by Exim Bank of Scotland (₹ 430 crore) and Chartered Bank of London (₹ 350 crore). The loans were also personally guaranteed by Mr. Prem Agarwal. All the four Indian banks as aforesaid, sanctioned the loans in the year 2012 in a consortium agreement. Courage Industries Limited assured the bank to pay all the instalments on time. The Company as per their commitment paid instalments on time.*

*Everything went well but from August 2017, due to heavy losses, the Company defaulted in paying instalments to all the Nationalised as well as the foreign banks. Due to tough competition in telecommunications market and entry of new giants in the market, the rates of voice call and data plan reduced considerably. The Banks started sending reminders to the Courage Industries Limited to clear all of their respective dues.*

*The JV National Bank had a warehouse in Mumbai which it seized in the insolvency proceedings of a PQR Company. After many attempts, the Bank was not able to recover its loan by selling the property at the expected market price. So the bank had decided to lease the premises. Courage Industries Limited had come to know about it and had approached the bank in May 2016 to take the premises on lease. The annual rent of the premises had been fixed at 1.5 crore. As the Courage Industries went in losses from the year 2017, it defaulted in paying lease rentals for the last two years, which amounted to ₹3 Crore. Due to non-payment of dues by some other companies as well along with Courage Industries Limited to JV National Bank, the NPA of JV National Bank rose to sixty-five percent. JV National Bank, has been grappling with mounting bad loans since last two years.*

*Aditya Agarwal, son of Prem Agarwal, commenced real estates projects across different cities of Maharashtra as part of which he announced four real estate projects in Mumbai, Nagpur, Pune and Nashik on 21st November, 2019. The details of the project were as follows:*

- *Courage Serene in Vashi Mumbai, where the proposed project consists of area of five hundred square meters and the number of proposed apartments will be twelve.*

- *Courage Codename in Nagpur, where the proposed project consists of area of fifty thousand square meters and the number of proposed apartments will be eighty.*
- *Courage Lifestyle in Pune, where the proposed project area consists of five thousand square meters and the number of proposed apartment will be eighty.*
- *Courage Royal Serenity in Nasik, where the proposed project area consists of five thousand square meters and the proposed apartment will be one hundred.*

*The Company decided that the booking of the apartments in all the projects will start after 24th December, 2019, after obtaining all the legal permissions from the prescribed authority. A Board meeting was held on 5th December, 2019. The Board of Directors was of view that there is shortage of funds with the Company. Ultimately with an unanimous decision, the budget for two projects was reduced. The Company decided to reduce the number of apartments in two projects. Now the Company will build only eight apartments in Courage Serene in Vashi Mumbai and in case of Courage Codename in Nagpur, the construction will take place in two phases. In the first phase, twenty-five thousand square metres area will be developed with construction of forty flats and in second phase another twenty-five thousand square metres area will be developed for constructing UFH remaining forty flats. As per the Act, all the required documents were then submitted by the Company for RERA registration. Considering the latest NGT requirements and amendments in the policy about the environment (applicable for civil construction in the embankment areas of large rivers), certain structural changes relating to the height and common area landscape was made to the sanctioned plan of the Courage Royal Serenity project in Nasik, which was built on the banks of the river Godavari.*

*From 25th December 2019, the Company started the booking of flats in all the four projects. As a Christmas day offer, the Company gave an extra two lakh rupees discount in each project on the booking of the flat within 6 months of starting of construction work. People started booking flats in all the four projects. The cost of the flats in all the four project started from rupees three crores to seven crores. The Company started the work in all the projects in full swing after getting commencement of work certificate for each of the projects from the authority. Mr. Harshit khana, a registered real estate agent, is owner of a firm called Harshit Homez. He wanted to get associated with Courage Industries Limited for selling the flats of Mumbai as well as Nagpur projects respectively. Mr. Harshit gave an advertisement without the Company's knowledge, in the newspaper for the sale of flats along with an offer that whosoever books any flats via his firm will get extra one percent discount in booking amount. The Company overall got a good response for the three projects except the Nasik project. It got only seventy percent of the total booking slots till mid of February. A Board meeting was held on 26th February, 2020 in which it was decided that due to losses in other businesses of the Company and being heavily in debt to the creditors, the Company will sell its Nasik project*

to a third party, XYZ Infrastructure Company. After taking over the project, XYZ Infrastructure Company made certain changes in the layouts of the project. Courage Industries Limited tried to sell its assets to various companies, including its rival Tele Tones Company, to clear the debts but the deals did not crystallize as expected. Later, the insolvency proceedings against Courage Industries Limited started on a plea filed by Japanese telecom company after the Company failed to clear its dues.

The CoC final meeting was to be held on 25th March 2020, but amidst the nation wide lockdown it got cancelled. According to the order of National Company Law Tribunal, CoC needs to complete the entire process by 30th March, 2020 and the resolution professional, Legal Hawk needs to file the resolution plan with the NCLT, Mumbai by 2nd April, 2020.

Answer the following questions:

**(2 x 5 = 10 Marks)**

- 5.1. The Company decided to construct the Nagpur project in two different phases due to shortage of funds. What shall be the impact of the decision on the project?
- (A) Both the phases are part of one project and so no separate registration is required for each phase
  - (B) Separate registration of the project is required only in case where it is developed by two different promoters.
  - (C) Each phase will be considered as a stand-alone project and separate registration is required for both the phases.
  - (D) If the second phase is immediately started after completion of first phase then no separate registration of the phases is required.
- 5.2. Mr. Harshit has himself announced that any person making bookings via their agency will be given extra discount. With regard to the provisions of RERA, this announcement can be deemed as:
- (A) voidable at the option of the Courage Industries Limited.
  - (B) misleading the buyers for services that are not intended to be offered.
  - (C) correct and to be intended to be offered by the Company.
  - (D) to be reliable as made by registered agent of the Company
- 5.3. The final meeting of Committee of Creditors was to be held on 25th March, 2020. Is it necessary to hold the meeting in person or can it be arranged otherwise?
- (A) Since it is a final meeting, everyone needs to be present in person.
  - (B) Meeting in person is not necessary and it can be held via video conferencing.

- (C) Only resolution plan can be discussed via video conferencing and voting needs to be done in person
- (D) With prior permission of the Tribunal (NCLT), resolution professional can hold meeting via video conferencing.
- 5.4 XYZ Infrastructure Company after takeover of the project, did changes in the layouts of the project. Is it authorised to do the changes to the layouts of the ongoing project? Which of the following statements is not correct?
- (A) Before doing any changes in the project, it has to take prior approval of the RERA Authority
- (B) As a new promoter of the project, it is authorised to make necessary changes.
- (C) With the permission of the two-third allottees of the flats, they can make necessary changes.
- (D) The new promoter is required to carry forward the project by complying with all the pending obligations of the erstwhile promoter.
- 5.5 In which of the four real estate projects started by Courage Industries Limited, registration of the project is not mandatory?
- (A) Courage Codename
- (B) Courage Royal Serenity
- (C) Courage Serene
- (D) Courage Lifestyle
- 5.6 Answer the following questions
- (i) Answer the following questions with respect to the constitution of Committee of Creditors:
- (a) All the four Indian banks, as a consortium gave loans to Courage Industries Limited. How they will form part of Committee of Creditors and how their voting shares would be determined? **(4 Marks)**
- (b) JV National Bank is financial as well as the Courage Industries Limited. Can JV National Bank club both the debts and claim it as a financial debt? **(4 Marks)**
- (c) The Banks decided to enforce the personal guarantee provided by Mr. Agarwal. But he contended that the demand is not maintainable in view of the ongoing Corporate Insolvency Resolution Process. Evaluate. **(4 Marks)**

- (ii) Aditya is of the view that since the alteration in the sanctioned plan was enforced by changes in policy matters, the approval for such changes in the sanctioned plans was not required to be obtained from the allottees. Evaluate in the context of the provisions of RERA. **(3 Marks)**

**ANSWER TO CASE STUDY- 5**

- 5.1 (C) - Each Phase will be considered as a stand alone project and separate registration is required for both the phase
- 5.2 (B) - Misleading the buyers for services that are not intended to be offered.
- 5.3 (B) - Meeting in person is not necessary and it can be held via video conferencing
- 5.4 (B) - As a new promoter of the project, it is authorised to make necessary changes
- 5.5 (C) - Courage Serene

**Answer 5.6**

- (i) (a) According to Section 21(3) of the IBC, 2016, Subject to sub-sections (6) and (6A), where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them. Hence, each of the Indian bank and overseas lenders will form part of the committee of creditors and their voting shares would be determined on the basis of financial debts (loan) owed to them by the Courage Industries Limited in line with section 5(28) of the Code.

Accordingly following shall be the voting shares of the lenders of Courage Industries:

<b>Lenders</b>	<b>Amount in crores</b>	<b>Voting share in %</b>
ABD Sate Bank	1,245	23
Bank of Ajmer	1,090	20
P&G National Bank	810	15
JV National Bank	792	15
Global Bank of America	700	13
Exim Bank of Scotland	430	8
Chartered Bank of London	350	6
Total	5,417	

Hence, in the given case, all the four Indian banks along with the overseas lenders will form part of the committee of creditors and their voting shares would be determined as above.

- (b) According to Section 21(4) of the IBC, 2016, where any person is a financial creditor as well as an operational creditor,—
- (i) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;
  - (ii) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

So, in the above-mentioned scenario, JV National Bank has no right to club both the debts and claim it as financial debt, as the bank would be considered as a financial creditor only to the extent of financial debts owed by it.

**(c) Enforcement of Personal Guarantee provided by Mr. Agarwal by Bank**

As per section 60(1) of the Code, the Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

Further as per Section 60(2), where a CIRP or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

Accordingly in the given question, Contention of Mr. Agarwal that the demand of enforceability of the personal guarantee given by him is not maintainable in view of the ongoing CIRP, is not correct.

- (ii) Section 14 of the RERA, 2016 requires a promoter to adhere to the sanctioned plans and the project specifications.

According to the Act, the proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities. According to the law, generally, the promoter shall not make any additions and alterations in the sanctioned plans, layout plans and

specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, without the previous consent of that person.

However, Promoter can make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee.

Since "Minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

As per the facts given in the question, considering NGT requirements and amendments in the policy about the environment (applicable for civil construction in the embankment areas of large rivers), certain structural changes relating to the height and common area landscape was made in the sanctioned plan of the Courage Royal Serenity Project in Nasik, which was built on the banks of the river Godavari.

Since these changes are, other than minor alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project, it requires previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.