

Roll No.

Total No. of Case Study Questions – 3

Time Allowed – 4 Hours

Total No. of Printed Pages – 23

Maximum Marks – 100

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Suitable assumptions to be made and should form part of the paper.

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate who has not opted for Hindi Medium, his/her answers in Hindi will not be valued.

**The Question Paper comprises three case study questions. The candidates are required to answer any two case study questions out of three.**

In case, any candidate answers extra question(s)/sub-question(s) over and above the required number, then only the requisite number of questions first answered in the answer book shall be valued and subsequent extra question(s) answered shall be ignored.

### I. Case Study No. 1

- (A) A complaint was made by a complainant (Informant) to the Competition Commission of India (CCI) against the practices adopted by certain Insurance Companies in implementation of the Insurance scheme, Country Peoples Plan (CPP) by an imaginary State Government 'Z' in India.

The CCI after going through the complaint, on merit, ordered a detailed investigation by the Director General of Investigation under the Competition Act, 2012 (as amended in 2007, briefly referred to hereinafter as the "Act"). The facts of the case are mentioned as under :

- (i) CPP is the health insurance scheme introduced by the Central Government for below poverty line (BPL) families. The task of implementation of this scheme was entrusted to the respective State Governments of the country with the Central Government bearing 75% of the expenses incurred in relation to the annual premiums.

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- (ii) A tender was floated by a State Government 'Z' through its agency ULTRA (on 1.11.2009) for selecting an insurance service provider for the implementation of the CPP for the year beginning 2010-11 for a period of three years. The State Government 'Z' issued a tender for the implementation of CPP scheme for the selection of the insurance provider. In this regard, bids were invited from: (a) insurance companies licensed and registered with the Insurance Regulatory and Development Authority; and (b) agencies enabled by any central legislation to undertake health insurance related activities. The last date for submission of the tender was 31.1.2010.
- (iii) Four Public Sector Insurance Companies A, B, C & D Insurance Company, each submitted their offer in response to the above tender before its last date of submission. All these companies formed an Insurance Facilitation Group (IFG) with the objective of a common cause of furtherance and development of insurance business in India and all these companies were members of the IFG. Before submitting their bids against the above tender, officials of these companies attended a meeting of IFG as per their practice, held on 27.12.2009 at XYZ place in the State 'Z' with the sole agenda to discuss the 'Tender Notice on CPP dated 1.11.2009 of the State Government 'Z'. They agreed on a business sharing model of sharing the business in the ratio of 55% by the winning company and 15% each by the remaining companies of the total business generated. They also agreed on the premiums to be quoted by each of them in response to the tender. The minutes of the meeting signed by officials of aforementioned companies stated "to share the business among the four Insurance Companies with insurance Company with 55% and other Companies with 15% each. D Insurance Company will be L1 and other three insurance companies will be L-2 to L-4 in the quotation being submitted on 28<sup>th</sup> December, 2009" as per the decision taken in the above meeting.

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- (iv) Seven insurance companies including the A, B, C & D Insurance Company submitted the tender documents. The Technical Evaluation Committee ("TEC") formed by the State Government 'Z' evaluated the bids on the basis of a scoring system. The TEC decided that the companies which scored 50 marks and above (a benchmark set by the TEC through ratings) would be declared successful in the technical rounds. As such, only C and D Insurance Company were declared successful and their financial bids were opened in the presence of the representatives of the respective insurance companies. TEC recommended acceptance of D Insurance Company's bid for implementation of CPP scheme being the lowest in the State 'Z' for a period of three years subject to yearly basis renewals. D Insurance Company was awarded the tender on the basis of comparative bids mentioned as under :

**Details of Price Bids relating to the Tender dated 1.11.2009 for 2010-11**

| S. No. | Participating Insurance company | Whether Technically Qualified | Marks Awarded in Technical Evaluation | Premium Amt. as stated in Bid (₹) |                 |
|--------|---------------------------------|-------------------------------|---------------------------------------|-----------------------------------|-----------------|
|        |                                 |                               |                                       | Without S.T.                      | With ST @ 10.3% |
| 1      | D                               | Yes                           | 76                                    | 521                               | 575             |
| 2      | C                               | Yes                           | 63                                    | 597                               | 658             |
| 3      | E                               | No                            | 49                                    | 509                               | 561             |
| 4      | F                               | No                            | 45                                    | 599                               | 652             |
| 5      | B                               | No                            | 49                                    | 590                               | 651             |
| 6      | A                               | No                            | 47                                    | 580                               | 640             |
| 7      | G                               | No                            | 48                                    | 775                               | 854             |

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- (v) Accordingly, D Insurance Company won the tender for 2010-11 and later on shared its business with A, B & C Insurance Company in their agreed mutual model sharing ratio. The tender was issued for a period of three years. However, towards the end of the first year of the contract, D Insurance Company sought for an upward revision of premium to ₹ 1,000/- per family. When this request of D Insurance Company was turned down by the State Government 'Z'; D Insurance Company invoked the exit clause of the contract. As a result of this action, the State Government retendered.
- (vi) **Post Retendering Scenario :** It was found that the price rise effected by the Insurance companies - A, B, C & D Insurance Company could not have been based on any rational business justification as the retender for the year 2011-12 and 2012-13 was won by E Insurance Company at a much lower premium of ₹ 840/- per family. The awarded contract was even extended with the same premium for the year 2012-13, 2013-14 and 2014-15 i.e. for a period of three years and this contract was renewed for the year 2014-15 at the same price. E Insurance Company confirmed that the company was not incurring any losses for providing health insurance services under CPP scheme. The details of rates of these Insurance companies in relation to the tenders of 2010-11 to 2012-13 are mentioned as under :

**Details of Insurance companies rates bids in relation to tenders of  
2010-11 to 2013-14**

| S. No. | Name of Insurance company | Price Bids (₹) |         |            |         |            |         |            |         |
|--------|---------------------------|----------------|---------|------------|---------|------------|---------|------------|---------|
|        |                           | 2010-11        |         | 2011-12    |         | 2012-13    |         | 2013-14    |         |
|        |                           | Without ST     | With ST | Without ST | With ST | Without ST | With ST | Without ST | With ST |
| 1      | 2                         | 3              | 4       | 5          | 6       | 7          | 8       | 9          | 10      |
| 1      | A                         | 580            | 640     | 850        | 938     | 1700       | 1875    | 900        | 994     |
| 2      | B                         | 590            | 651     | 850        | 938     | 1250       | 1392    | 1100       | 1214    |
| 3      | C                         | 597            | 658     | 910        | 1004    | 1400       | 1546    | 920        | 1016    |
| 4      | D                         | 521            | 575     | 1000       | 1104    | 1000       | 1104    | 1000       | 1104    |
| 5      | E                         | **509          | 561     | 840        | 927     | 840        | 927     | 840        | 927     |

\*\* Not technically qualified

- (vii) It was observed that the State Government entrusted its agency named ULTRA to implement CPP scheme in letter and spirit in the State and this agency had actually facilitated continuance of D Insurance Company as the insurer under these schemes by employing an arbitrary practices. A, B, C & D Insurance Companies have claimed that until 2002, all of them were owned by General Insurance Company.

It was also submitted that pursuant to the enactment of the General Insurance Business (Nationalization) Amendment Act, 2002, Government of India holds 100% shares of each of them and controls the management and affairs of the companies through Department of Financial Services (Insurance Division), Ministry of Finance. In this regard, a reference may be had to the policy reforms introduced by the Government of India in 1991 which led to the de-regulation of the Indian economy.

With the commencement of private participation, a need was felt to modify the existing market structure of certain select sectors, including, the insurance sector so as to promote orderly growth of these sectors.

In this regard, the Government of India established a committee in the year 1993 under the chairmanship of Shri R. N. Malhotra (former Governor of the Reserve Bank of India) to propose reforms for the insurance sector. Pursuant to the recommendations of the Malhotra Committee, two major regulatory changes were introduced, including, ending the monopoly of General Insurance Company in the general insurance business and ending the control exercised by General Insurance Company over its wholly owned subsidiaries.

These regulatory changes were ushered in to allow the public sector insurance companies to act independently and to compete with the private players to offer better services to consumers.

(viii) Further, A, B, C & D Insurance Companies submitted that all decisions relating to submission of bids, determination of bid amounts, business sharing arrangements, etc. were taken internally at company level without any *ex ante* approval/ directions from Ministry of Finance. Even the decisions taken by the companies were not notified *ex post* to the Ministry. These companies participated in the above said tenders, independent of Ministry of Finance.

(ix) Details of Business Sharing Arrangement among A, B, C & D Insurance Companies relating to the Tender dated 1.11.2009 are tabulated as under :

**Details of Business Sharing Arrangement relating to the Tender dated 1.11.2009**

Total Business Generated for D Insurance Company : ₹ 92,94,65,400/-

| S. No. | Name of Insurance Company | Business Sharing (in terms of %) | Business sharing (in terms of revenue) (₹) |
|--------|---------------------------|----------------------------------|--------------------------------------------|
| 1      | A                         | 15                               | 139419810.00                               |
| 2      | B                         | 15                               | 139419810.00                               |
| 3      | C                         | 15                               | 139419810.00                               |
| 4      | D                         | 55                               | 511205970.00                               |

(x) Turnover of the A.B.C & D Insurance Companies in the last three financial years based on the financial statements were as under :

| S. No. | Name of the Insurance Company | Annual Turnover (₹ in crore) |         |         |
|--------|-------------------------------|------------------------------|---------|---------|
|        |                               | 2010-11                      | 2011-12 | 2012-13 |
| 1      | A                             | 6000                         | 7660    | 9575    |
| 2      | B                             | 5400                         | 6745    | 7853    |
| 3      | C                             | 7600                         | 7500    | 8765    |
| 4      | D                             | 6745                         | 7352    | 7872    |

You are required to analyse, with reference to the Competition Act Provisions.

- Q.1 Whether the public sector insurance companies i.e., A, B, C & D Insurance Company constitute a single economic entity? Explain. 5
- ✓ Q.2 Examine whether the A, B, C & D Insurance Companies by their conduct have entered into an agreement and have contravened any of the provisions of the Competition Act. Explain. 10
- ✓ Q.3 The State Government 'Z' has now desired to include a specific clause in the bid document to prevent abuse of the Competition Act. What key clauses would you recommend ? Please draft your reply within a total of 100-200 words. 5
- ✓ Q.4 Assume a situation where the agreement and the meeting of IFG took place outside India. Explain whether the provisions of the Act still be applicable. 4
- ✓ Q.5 Chairman of the Competition Commission of India, based upon the facts of the above case, has requested you as an officer of the Commission to draft a brief show cause notice that should be issued to the insurance companies alleged to be in default. Your notice should cover the following aspects namely Authority issuing the notice, Defendant details, Alleged contraventions, Facts as available and Time line for the response by the defendant. Also include the relevant provisions which empower such notices to be issued. 6
- (B) You are the Chairman of Competition Commission of India (CCI) under the Competition Act, 2002 (hereafter, the Act) as amended in 2007 and subsequently you are chairing the Bench to deal with information filed under section 19(1) (a) of the Act relating to the radio taxi market, alleging abuse of dominance and predatory pricing. You do not own a car. For official journeys, you are provided with an office vehicle. For private use, you generally avail of the facility available in the market of radio taxis, fitted with GPS instruments. Therefore, you are fully aware of the radio taxis available in the market and exposed to the methodology of requisitioning a taxi for personal use and of paying for the service.

Informants A and B are engaged in the business of providing radio taxi services in a certain city XXX in South India under the brand names "Press and Hail a Taxi" and "Taxi before you blink". A large Radio Taxi provider C is also in the market competing with Radio Taxi providers A and B and some others too. Informants A and B filed before the CCI separate information under Section 19 (1) (a) of the Act alleging that Radio Taxi provider C had abused its dominant position by engaging in predatory pricing in the relevant market by offering heavy discounts to passengers and incentives to cab drivers, in contravention of Section 4 (2) (a) (ii) of the Act. Radio Taxi provider C was in the habit of having oral agreements with customers thus practising an opaque behaviour prejudicing the interests of A and B.

Informants alleged that C controlled over 50% of a highly concentrated market, demonstrating C's dominance. The Informants also alleged that there were considerable entry barriers present which had made it difficult for a new player to effectively compete. Consistent payment of high incentives and discounts along with exclusivity clauses in agreements with drivers allowed C to thwart effective competition, lock-in drivers and create a wide base of customers.

Additionally, the Informants alleged that the presence of an extensive network of C across the city XXX had acted as a sufficient detriment to any countervailing buying power available with consumers. They alleged that the presence of a large network of C had restricted the power of consumers to negotiate and had substantially restricted competition in the market for other Radio Taxis in the city XXX.

Based on the high market share of C, the Commission arrived at the prima facie view that C held a dominant position in the relevant market of "Radio Taxi services" in city XXX and directed the Director General ("DG") to conduct a detailed investigation into the matter.

### Findings of the DG

The DG recognized the different business models prevailing in the radio taxi service industry i.e. asset-owned model, aggregator model and hybrid model. He noted that while C functioned under the aggregator model, its services were functionally substitutable with those provided by other taxis operating under the different business models.

Accordingly, the DG concluded that the relevant product market would be the "market for radio taxi services" and the relevant geographic market would be the city of XXX.

The DG compared the number of trips / rides undertaken by different players in the relevant market between 2012 and 2016 to observe that while C did grow at a meager rate of 63% between January and September of 2015, Informant A's trip size registered a phenomenal growth of 1200% in the same period. He noted that A was an aggressive player in the market and that the rise of A as a healthy competitor defeated the argument of the presence of entry barriers. The DG concluded that C was not in a dominant position, given these facts.

Informants had alleged that C had access to funds and had availed of the same in big measure, thwarting the other operators to avail of funds. This, according to them, was an entry barrier. DG found that no evidence had been supplied by the Informants to substantiate this entry barrier allegation. DG dismissed the allegation as not proved.

Answer the following 10 Multiple Choice Questions by selecting the most appropriate answer from the options given for each question. Write a few lines justifying your stance. 10×2  
=20

✓(i) The oral agreements between Radio Taxi provider C and some customers, falling within Section 2(b) of the Act \_\_\_\_\_.

- (a) are not legally enforceable
- ✓(b) are legally enforceable ✓
- (c) are not anti-competitive
- (d) are not actions in concert

✓(ii) Dominance under the Act should be determined on the basis of \_\_\_\_\_.

- (a) market share
- (b) price leadership
- (c) profitability
- ✓(d) ability to operate independently of competitive forces in the relevant market

✓(iii) Relevant market is made up of \_\_\_\_\_.

- (a) relevant geographic market
- (b) relevant product market
- ✓(c) relevant geographic market and relevant product market
- (d) market structure and size alone

✓(vi) Abuse of dominance by a dominant enterprise arises \_\_\_\_\_.

- ✓(a) if the enterprise imposes unfair or discriminatory condition in purchase or sale of goods or service
- (b) if the enterprise imposes discriminatory condition or price to meet competition
- (c) if the enterprise makes a sizeable profit in its activities
- (d) if the enterprise is a price leader

✓(v) Predatory pricing arises when an enterprise \_\_\_\_\_.

- (a) prices its product very high
- (b) prices its product just below the prevalent market price
- (c) prices its product to clear inventory
- ✓(d) prices its product below its cost of production with a view to reducing competition or eliminating competitors

✓(vi) Two Enterprises \_\_\_\_\_.

- ✓(a) can be in a dominant position at the same time
- ✓(b) cannot be in a dominant position at the same time
- (c) can be dominant only if they merge
- (d) can be dominant only if one acquires the other

✓(vii) Abuse of dominance does not arise if \_\_\_\_\_.

- (a) the enterprise limits or restricts production of goods or provision of services.
- (b) the enterprise limits or restricts technical and scientific development relating to goods or services to the prejudice of consumers.
- ✓(c) the enterprise does not indulge in practices resulting in denial of market access.
- (d) the enterprise uses its dominance in one relevant market to enter into other relevant market.

✓(viii) CCI cannot make enquiry into alleged contravention of the provisions in  
Section 3 and 4 \_\_\_\_\_.

- ✓(a) on unfounded rumours
- (b) on its own motion
- (c) on receipt of information from consumers or trade associations
- (d) on receipt of a reference from the Central Government or State Government

✓(ix) The parties requesting for confidentiality of information or documents submitted during the investigation shall have to satisfy the conditions laid down in regulation \_\_\_\_\_ of the Competition Commission of India (General) Regulations, 2009.

- (a) 42
- (b) 39
- ✓(c) 35
- (d) None of the above

✓(x) Relevant product market will have to reckon

- (a) regulatory trade barriers
- ✓(b) physical characteristics or end-use of goods
- (c) national procurement policies
- (d) transport costs

## II. Case Study No. 2

(A) A Corporate Insolvency Resolution process, under the Insolvency and Bankruptcy Code 2016 was initiated by M/s A Limited as a Corporate Debtor. The company was in default to its creditors and the assets were insufficient to meet the liabilities of the company.

Attempts to resolve the insolvency of the corporate debtors failed and in the last, it was decided to go for liquidation of the company. The balance sheet and additional information of A Ltd. are given below:

## Key Financial Information :

| Data                          | Amount<br>(₹ in crore) | Data                 | Amount<br>(₹ in crore) |
|-------------------------------|------------------------|----------------------|------------------------|
| Equity Share Capital          | 11,000                 | Land & Building      | 16,500                 |
| Preference Share Capital      | 3,800                  | Fixtures & Fittings  | 1,000                  |
| Term Loan                     | 1,500                  | Stocks               | 640                    |
| Working Capital Loan          | 1,200                  | Debtors              | 550                    |
| Unsecured Financial Creditors | 1,000                  | Other current Assets | 625                    |
| Government dues               | 400                    | Cash                 | 175                    |
| Workman dues                  | 240                    | Accumulated Losses   | 2,350                  |
| Employee Liability            | 300                    |                      |                        |
| Operational Creditors         | 2,400                  |                      |                        |
|                               | 21,840                 |                      | 21,840                 |

**Additional Information :****Creditors**

- (1) Term loan is secured against fixed charge on land & building and fixtures & fittings. Bank A with an ₹ 800 crore term loan outstanding has first charge on the assets and Bank B with ₹ 700 crore outstanding has second charge on the assets.
- (2) Working capital loan is provided by Bank C and secured against a floating charge on debtors stock of the company.
- (3) Unsecured financial creditors include a Director X who owns 3% of the share capital of M/s A Limited with an outstanding loan due to him of ₹ 50 crores.

**Other Liabilities :**

- (1) Workman dues represents amount payable for the period of 24 months preceding the liquidation commencement date.
- (2) Employee liability includes ₹ 25 crore is outstanding for employees for a period of 12 months.
- (3) Last three years of tax assessment pending total demand raised by the department is ₹ 1200 crore. This has not been included in the balance sheet, but reflected as a contingent liability only. However the liquidator has managed to get an assessment completion certificate and agreed to a final liability of ₹ 300 crore.

**Fixed Assets & Other Assets :**

- (1) Land & Building realized 70% of book value and there would be a cost of ₹ 175 crore in realizing the assets.
- (2) Fixtures & fittings would realize 30% of book value, net of any realization cost. Stock, debtors & other current assets would realize 65% of book value.

**Other information :**

- (1) There was a pending insurance claim filled by the company for a quality breach by a supplier, which was not recorded in the books. The liquidator has managed to recover ₹ 150 crore from the insurance company.
- (2) Lease for the office premises had a lock in period of 10 years, out of which three years have expired. The landlord has submitted a claim of ₹ 120 crore for the remaining seven years of the lease period.
- (3) Based on the amount realized & distributed, the cost of liquidation is computed to be ₹ 140 crores.
- (4) The pending insolvency period cost was ₹ 80 crore, mainly including interim funding, remuneration of the IP and other such costs as permitted under the Code.
- (5) The secured creditors have decided to relinquish their security interest to the liquidation estate and receive proceeds from the sale of the liquidation assets by the liquidator as per provisions laid under the Insolvency and Bankruptcy Code, 2016.

You are required to find out following with reference to the relevant provisions laid under the Insolvency and Bankruptcy Code, 2016 :

- ✓ Q1 What would have been the constitution of the Committee of Creditors and what would have been the voting share of each of the members of the committee ? 2+3  
=5
- Q2 Total value realized by liquidator. 4
- Q3 Order of Priority with Notes indicating the relevant section of the Code. 8

Q.4 You have been appointed as the Interim Resolution professional of A Ltd. Draft a public notice as required under the Act and Regulations. 5

Q.5 The application before NCLT was filed on 5<sup>th</sup> January, 2018. The case was admitted on 20<sup>th</sup> January, 2018. The IRP who was appointed on 20<sup>th</sup> January, 2018, received the order on the same day and issued public notice on 23<sup>rd</sup> January, 2018 seeks your guidance on the various time lines to be compiled with. Prepare a checklist for his ready reference. 5

Q.6 In the said case, assume that A Ltd. has transferred an amount of ₹ 500 crore to its subsidiary abroad. The subsidiary has acquired assets for its business purposes. How will you, as the liquidator treat the assets of the subsidiary and the shares held in the subsidiary ? 3

(B) You are a Chartered Accountant specialising in FEMA related matters. You are back in office after a short trip and your assistant has compiled all clients' queries on which your opinion is requested. Choose the most appropriate reply and write a few lines justifying your stance. 2×10 =20

(i) Mr. Patel's mother requires to travel to US for a complicated brain surgery. The estimate given by the hospital in USA is USD 3,00,000 over and above Mr. Patel would need USD 50,000 towards lodging, boarding and other incidental expenses. Mr. Patel had already spent USD 2,00,000 during the concerned Financial Year. Mr. Patel can remit from India\_\_\_\_\_.

(a) USD 2,50,000

(b) USD 3,00,000

(c) USD 3,50,000

(d) USD 1,00,000

✓ (ii) Mr. Smith is deputed to India by his company to develop a strategic software for a period of five years from 1<sup>st</sup> January, 2015. He is paid salary to his Indian bank account. On 1<sup>st</sup> May, 2017 he wants to remit his entire salaries ended till 30<sup>th</sup> April, 2017 to his home country USA. Mr. Smith can \_\_\_\_\_.

- ✓ (a) remit the salary after payment of applicable taxes and contribution to applicable social security schemes
- (b) cannot remit any amount as salary is credited to his bank account in India
- (c) remit gross salary before taxes and can make payment of taxes at the year end
- (d) remit salary only upon completion of assignment after payment of taxes and filing of Income tax return

✓ (iii) Mr. John, an Australian citizen of non-Indian origin is engaged in construction of farm houses in Australia. He intends to take 50% stake in an Indian company which is engaged in construction of residential premises in Jammu. Mr. John \_\_\_\_\_.

- (a) cannot make any investment in the Real Estate Sector.
- (b) can invest through his company in Australia
- ✓ (c) can make direct investment for construction of residential premises
- (d) Both (a) and (b) above

✓ (iv) Mr. Mehra intends to return to India for good after 30 years of stay in USA. Mr. Mehra needs to \_\_\_\_\_.

- (a) close all his bank accounts in USA and remit funds to India
- (b) liquidate all his investments before returning to India
- (c) bring minimum of USD 2,50,000 to India for his survival
- ✓ (d) can retain his money, bank accounts, investments etc. abroad without any restrictions

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(v) Mr. Kale migrated to UK 20 years ago. He later on acquired UK citizenship. He inherited 50 acres of agricultural land in Maharashtra which has an inbuilt Farm House. Mr. Kale intends to gift or sell this property to his only son who has UK citizenship, but settled in India. Mr. Kale \_\_\_\_\_.

- (a) can gift this property to his son but cannot sale it
- (b) can neither gift nor sale this property to his son
- (c) can sale this property to his son but cannot gift it
- (d) can do both, gift as well as sale this property to his son

(vi) Mr. Iyer an Indian resident acquired a residential flat in Malaysia in contravention of FEMA regulations. Fearing actions, he intends to gift the same to his nephew Mr. Kartik, who is a resident of India at present but will soon be migrating to Malaysia for higher studies. Mr. Kartik \_\_\_\_\_.

- (a) can acquire the flat from his uncle by way of gift
- (b) cannot acquire the flat from his uncle by way of gift
- (c) can acquire the flat by way of inheritance but not as a gift
- (d) can acquire the flat by way of sale, gift or inheritance

(vii) M/s Charming Garments has a warehouse in Amsterdam to which goods worth ₹ 10 crore are exported. The firm needs to realise the proceeds of exports \_\_\_\_\_.

- (a) as soon as exports are made
- (b) within nine months from the date of export
- (c) as soon as goods are sold or within fifteen months from the date of shipment of goods whichever is earlier.
- (d) within twelve months from the date of shipment of goods

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✓(viii) Mr. Gotad travelled to Germany for attending a conference. He acquired USD 5,000 from his travel agent in India, out of which he saved currency notes worth USD 2,500. Upon his return to India, Mr. Gotad \_\_\_\_\_.

- ✓(a) needs to surrender USD 2,500 to his Authorised Dealer (AD) within six months of date of return
- (b) needs to surrender USD 2,500 to his AD within ninety days of date of return
- (c) can retain USD 2,000 and surrender USD 500 within 90 days of his return to India
- (d) can retain USD 2,500 for his next trip

✓(ix) For any contravention of FEMA Regulations under section 13 of the Act, where the sum involved is quantifiable, the quantum of penalty would be \_\_\_\_\_.

- (a) three times of sum involved
- (b) rupees two lacs only
- (c) upto Rupees five thousand per day of the offence in continue
- ✓(d) Both (a) and (c) above

✓(x) The time limit for compounding of offences under section 13 of FEMA by the Directorate of Enforcement is \_\_\_\_\_.

- (a) Nine months from the date of application
- (b) Six months from the date of committing such contravention
- ✓(c) 180 days from the date of receipt of application by the Directorate of Enforcement
- (d) 180 days from the date of application to the Directorate of Enforcement

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III Case Study No. 3

Everbullish Inc. USA has a subsidiary in Singapore, namely Ever bullish Steel Asia Pvt. Ltd. (ESA) looking after the entire south east Asia, including India.

ESA has following entities operating under it.

- (i) A branch in China for manufacturing of steel
- (ii) A liaison office in India for marketing of steel exported by ESA directly to Indian customers.
- (iii) A project office in Afghanistan
- (iv) A commission agent in Bangladesh
- (v) A warehouse in Srilanka

ESA upgraded its Liaison Office (LO) in India to a full fledged subsidiary as on 1<sup>st</sup> April, 2016 and transferred all its balances to the newly formed subsidiary, namely Everbullish Indian Steel Pvt. Ltd. (EISPL)

**Note :** In each of the above situations, you are required to give relevant 'FEMA' and 'Prohibition of Benami Property Transaction Act, 1988' and references options or steps to regularize the contraventions, if any.

- (A) ESA was advised that since it has a permission to operate as a LO till 31.3.2018, there is no need to obtain separate approval from RBI for converting or upgrading the same into a subsidiary. Hence No permission was taken by ESA or EISPL. Incorporation expenses were spent by the Indian LO out of funds remitted by ESA. EISPL started local trading in India. The LO was not closed by the ESA and no intimation was filed with RBI till 31/03/2018. 5

Q. Are there any FEMA violations in the above transactions, and if so, then what is the way out ?

(B) Sensing something wrong, EISPL decided to undergo voluntary FEMA compliance audit. EISPL has appointed you as a FEMA auditor. In the process of audit, you discover several transactions where FEMA regulations were not adhered to, or compliances pending. You are required to give your expert opinion on following matters as to what are the contraventions under FEMA and how they can be regularized ?

- Q. (1) Receipt of Share application money from ESA amounting to ₹ One crore on 1<sup>st</sup> April 2017. No compliances are made in this respect as the company was advised that activities of the EISPL falls under the automatic route of RBI. 5
- Q. (2) ESA had bought a large commercial property on 1<sup>st</sup> Jan., 2016 which was then leased to EISPL w.e.f. 1<sup>st</sup> April 2016 and part of the premises was leased to an unrelated Indian company w.e.f. 1<sup>st</sup> April, 2017. 5
- Q. (3) ESA had sent an adhoc amount of ₹ two crore to EISPL for its day to day requirements. The funds have been received by the EISPL on 1<sup>st</sup> Jan., 2018. Again no FEMA compliances are made in this respect. 4
- Q. (4) EISPL has exported steel worth ₹ 10 crore to solid steel GmbH an unrelated German Company on 1<sup>st</sup> Jan. 2017. Solid steel has run into financial trouble and therefore refused to pay. Despite best efforts, EISPL is unable to recover the sum. The directors of EISPL used to follow up for recovery over phone only and therefore no documentary evidence is available.
- (i) Assuming that the total exports of EISPL for the year ended 31<sup>st</sup> March 2017 is likely to cross ₹ 50 crore, can it write off this sum ? 3

- (ii) Assuming that EISPL has imported steel ingots from solid steel amounting to ₹ 11 crore, in Dec. 2016, which is still outstanding, can it net off and make the payment for the balance of ₹ 1 crore only ? 3
- (iii) Will your answer change if the import and export transactions would have happened in Dec. 2017 and Jan. 2018 respectively ? 2
- Q. (5) EISPL remitted ₹ one crore to the project office of the ESA in Afghanistan, in Feb. 2018. Is it permissible ? Will your answer be different if instead of money, steel worth of ₹ one crore is exported to the Afghanistan P.O. ? 3
- Q. (6) EISPL exported goods to Srilanka. For that purpose it hired the warehouse of ESA and paid warehousing charges. Is it permissible ? What is the time limit for realising goods exported by EISPL to its Srilankan Warehouse ? 5
- Q. (7) EISPL wants to remit commission to the agent of ESA for exports made by Bangladesh. However the Agent has requested to pay ₹ one crore extra, as advance to be adjusted against future commission. Looking at the present business scenario, it may take 5 years to adjust the advance commission paid to the Bangladesh Agent. Is it okay from FEMA perspective ? 5
- Q. (8) One of the directors, of the EISPL is a person of Indian origin with US citizenship. He wants to acquire a commercial premises in India and then lease it to the company. Is this permissible under FEMA ? Will your answer be different if that director is a US citizen of non-Indian origin ? 5

(23)

**GYTK**

**Marks**

- Q. (9) In the process of audit it is observed that one of the directors Mr. Valia of EISPL, who recently joined company has acquired a large bungalow in Bangalore in the name of his son who has settled in USA. He purchased the same by paying ₹ 10 crore. However, his son is still studying and has not disclosed this property in his US tax returns. Upon enquiry Mr. Valia's son denies of holding any such property. What are the consequences in this case under the provisions of the "Prohibition of Benami Property Transaction Act, 1988".
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