

Roll No.

Total No. of Questions – 5

Total No. of Printed Pages – 31

Time Allowed – 4 Hours

Maximum Marks – 100

EHK

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 five case study questions. The candidates are required to answer any four case study questions out of five.

Answers in respect of Multiple Choice Questions (MCQs) are to be marked on the OMR answer sheet as given on the cover page of the answer book.

Answer to MCQs, if written inside the descriptive type answer book will not be evaluated.

Candidates should answer the Case Study Questions as selected by them in totality i.e., MCQ as well as descriptive Questions of the same Case Study Question.

Candidates are not permitted to answer MCQs of one Case Study Question and the descriptive questions of another Case Study Question and vice-versa.

Candidates may use calculator.

Marks

CASE STUDY – 1

Mr. Prem Agarwal is an Indian businessman. He is the Chairman of Courage Industries Limited, which was incorporated at Chennai on 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 engaged in 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

EHK

P.T.O.

(2)

EHK

Marks

Company also decided to expand its telecommunication business and DTH services in India. In this regard, the Company approached Foreign Banks seeking loans. Being one of the pioneer Companies of India and based on its credibility, all the three foreign banks – Global Bank of X, Exim Bank of Y and Chartered Bank of Z, 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 Apex Bank of Rajasthan (₹ 1,090 crore), P & G National Bank (₹ 810 crore) and JV National Bank (₹ 792 crore). Among overseas lenders, X Bank of America had an exposure of ₹ 700 crore, followed by Y Bank of Scotland (₹ 430 crore) and Z 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 commitments paid the instalments on time.

Everything went well but from August 2017, due to heavy losses, the Company defaulted in paying instalments to all the Indian 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. Eventually, the Banks started sending reminders to Courage Industries Limited to clear all of their respective dues.

The JV National Bank had a warehouse in Mumbai which it had seized in the insolvency proceedings of PQR Company Limited. After many attempts, the Bank was unable to recover its loan by selling the property at the expected market price. So the bank decided to lease the premises. Courage Industries Limited had come to know about it and approached the Bank in May 2016 to take the

EHK

(3)

EHK

Marks

premises on lease. After negotiations, the annual rent of the premises was fixed at ₹ 1.5 crores. As Courage Industries Limited suffered losses from the year 2017, it defaulted in paying lease rentals for the last two years, which amounted to ₹ 3 crores. Due to non-payment of dues by some other companies along with Courage Industries Limited to JV National Bank, the NPA of JV National Bank rose to sixty-five percent and it has been grappling with mounting bad loans since last two years.

On the other hand, Aditya Agarwal, son of Prem Agarwal, who was inducted as a Director in Courage Industries Limited, commenced a vertical business in real estate projects across different cities of Maharashtra as part of which he announced four real estate projects in Mumbai, Nagpur, Pune and Nasik on 21st November, 2019. The details of the project were as follows :

- “Courage Serene” in Vashi, Navi 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 fifty thousand square meters and the number of proposed apartments will be eighty.
- “Courage Lifestyle” in Pune, where the proposed project consists of five thousand square meters and the number of proposed apartments will be eighty.
- “Courage Royal Serenity” in Nasik, where the proposed project area consists of five thousand square meters and the proposed apartments will be one hundred.

The Company decided that the booking of the apartments in all the projects will start from 24th December, 2019 onwards, after obtaining all the legal permissions from the prescribed authorities. Meanwhile, a Board meeting was convened on 5th

EHK

P.T.O.

(4)

EHK

Marks

December, 2019 wherein the Board of Directors, in view of shortage of funds, unanimously resolved to reduce the budget of two projects. Accordingly, the Company reduced the number of apartments in two projects, wherein the Company will build only eight apartments in "Courage Serene" in Vashi, Navi Mumbai and in the case of "Courage Codename" in Nagpur, the construction will take place in two phases. In the first phase, twenty-five thousand square meters area will be developed with construction of forty flats and in second phase another twenty-five thousand square meters area will be developed for constructing remaining forty flats. As per the Real Estate (Regulation and Development) Act, 2016 (RERA, 2016) all the required documents were submitted by the Company for registration under the RERA, 2016. Considering the latest 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 "Courage Royal Serenity" project in Nasik, which was being built on the banks of river Godavari.

From 25th December 2019, the Company started the bookings 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 authorities.

Mr. Harshit Khanna, 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

EHK

(5)

EHK

Marks

gave an advertisement without the Company's knowledge, in the newspaper for the sale of flats along with an offer that whomsoever books any flats via his firm, will get extra one percent discount in the 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, 2020. 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, insolvency proceedings against Courage Industries Limited started on a plea filed by a Japanese Telecom Company after the Company failed to clear its dues.

The Committee of Creditors (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 the National Company Law Tribunal, CoC should complete the entire process by 30th March, 2020 and the Resolution Professional 'Legal Hawk' needs to file the resolution plan with the National Company Law Tribunal (NCLT) Mumbai, by 2nd April 2020.

The Banks have also classified the accounts of Courage Industries Ltd. as Non-Performing Assets (NPAs) and issued a demand notice to Prem Agarwal for payment of dues standing in the books of the Bank on account of the default by Courage Industries Limited and wanted to enforce the personal guarantee provided by Prem Agarwal. However, Prem Agarwal contended that the demand is not enforceable in view of the ongoing corporate insolvency resolution process.

EHK

P.T.O.

Part - A

On the basis of the above inputs given in the case study, you are required to answer the following Multiple Choice Questions (MCQs) :

Provide the correct option to the following questions :

2×5

=10

1.1 Aditya Agarwal decided to construct the Nagpur project in two phases due to shortage of funds. What shall be the impact of the decision on the project under the provisions of the RERA, 2016 ?

- (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 the first phase, then no separate registration of the phases is required.

1.2 Mr. Harshit has announced that any person making bookings via their agency will be given an extra discount. In the light of the provisions of RERA, 2016, this announcement can be deemed as :

- (A) Voidable at the option of 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) Reliable as made by the registered agent of the Company.

(7)

EHK

Marks

1.3. The final meeting of Committee of Creditors was to be held on 25th March, 2020. Under the Insolvency and Bankruptcy Code, 2016, 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 physically present in person.
- (B) Meeting in person is not necessary and it can be held via video conferencing.
- (C) Only the resolution plan can be discussed via video conferencing and voting needs to be done in person.
- (D) With the prior permission of the Tribunal (NCLT), the Resolution Professional can hold the meeting via video conferencing.

1.4. XYZ Infrastructure Company after takeover of the project, did changes in the layouts of the project. Is it authorized to do the changes to the layouts of the ongoing project under the provisions of the RERA, 2016 ?

- (A) Before doing any changes in the project, it has to take the prior approval of the RERA Authority.
- (B) As a new promoter of the project, they are authorized to make the necessary changes.
- (C) With the permission of two-third allottees of the flats, they can make the necessary changes.
- (D) The new promoter is required to carry forward the project by complying with all the pending obligations of the erstwhile promoter, before making any changes.

1.5. 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

EHK

P.T.O.

(8)
EHK
Part – B

Marks

1.6 Answer the following Questions :

(i) With respect to the constitution of Committee of Creditors under the provision of the Insolvency and Bankruptcy Code, 2016, answer the following :

(a) All the four Indian banks, as a consortium, gave loans to Courage Industries Limited. How will they form part of Committee of Creditors and how would their voting shares be determined ? **3**

(b) JV National Bank is Financial as well as an Operational Creditor of Courage Industries Limited. Can JV National Bank club both the debts and claim it as a financial debt ? **3**

(c) The banks decided to enforce the personal guarantee provided by Mr. Prem Agarwal. But he contended that the demand is not maintainable in view of the ongoing Corporate Insolvency Resolution Process. Evaluate. **5**

(ii) Aditya Agarwal 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 the RERA, 2016. **4**

EHK

CASE STUDY – 2

Aawas Private Limited (APL) was engaged in the business of real estate for the last fourteen years. The Company was founded by two friends, Mr. Atanu Dey and Mr. Biswajit Mondal, who were also its directors. Mr. Devjyoti Basu, the brother-in-law of Mr. Atanu, was the Manager of the Company since its inception.

The Company had acquired 10% shares of a Company in Egypt, named Belashom LLC that was engaged in construction of commercial properties. Recently, APL received some bonus shares from the said Company.

Belashom LLC was looking for a commercial property in India for opening its branch office in order to expand its business. For that purpose, Mr. Lee, an international real estate agent in Egypt was contacted by Belashom LLC and Mr. Lee told that one of his clients in India, a Private Limited Company named Prithvi Private Limited (PPL) wanted to sell, one of its commercial properties in India.

After going through the details of the said property, Belashom LLC became interested in the said property and decided to send its director Mr. Andrews, to India to meet the client of Mr. Lee in India and finalize the deal for the property.

Mr. Biswajit Mondal who was on a visit to meet his old friend in Nepal, came to know that Mr. Andrews was going to visit India. So, he shortened his trip and came back to India bringing with him INR 30,000 in the form of currency notes with denominations of 100 and INR 20,000 in the form of currency notes with denominations of 500 received as a gift from his friend.

Mr. Andrews visited India bringing with him, some amount of Egyptian Pounds (EGP) as follows :

Particulars	EGP
Currency Notes	95,000
Bank Notes	50,000
Travelers Cheque	22,500

Mr. Biswajit Mondal accompanied him. Mr. Andrews met the representatives of Prithvi Private Limited, Mr. Devneel Dutta and after two rounds of discussions between them, the deal for the property was finalized for INR 650 lakhs. EGP 6,00,000 was remitted to Mr. Lee as a commission amount out of the EEFC account of Prithvi Private Limited.

All the expenses incurred by Mr. Andrews in INR on account of his boarding, lodging and travelling in India were paid by PPL, which was going to be reimbursed later on by Belashom LLC.

Mr. Atanu Dey, being a resident individual, desires to obtain Foreign Exchange for the following purposes :

- (i) US \$ 1,20,000 for his daughter's higher education abroad on the basis of the estimates given by a foreign University.
- (ii) Gift remittances amounting US \$ 10,000.

The personal advisor of Mr. Atanu Dey informed that to carry out the above activities, prior permission of the RBI is required.

PPL was developing a real estate project in the Mihan area of Nagpur city named 'AASHIYANA'. It had made certain agreements with the real estate agents mainly operating in that area which required the said agents to promote and negotiate deals for the units in AASHIYANA and not for any other real estate in that area, and for entering into such agreement, a lumpsum amount was paid to such agents in cash.

Aditya Builders Private Limited's business was affected due to such arrangement of PPL and so it filed a complaint with the authority under the RERA, against such arrangement. The case was assigned to Mr. Sumit, a RERA member. Mr. Sumit in order to understand the arrangement being made by PPL with the real estate agents, contacted his friend Mr. Aman who himself was a real estate agent, and asked him to enter into an agreement with PPL as a normal agent and then provide him all the details of such arrangement.

(11)

EHK

Marks

Mr. Aman did the same and provided all the details to Mr. Sumit. Mr. Sumit discussed the matter with other members of the Authority under the RERA. In the meeting, it was decided that such agreements made by PPL affected competition in the relevant market and so the case was referred to the Competition Commission of India (CCI).

The CCI on receipt of such reference from the Authorities under the RERA, initiated an inquiry into the matter and formed an opinion on the existence of a prima facie case and directed the Director General to cause an investigation into the matter.

The Director General, during the investigation, received certain evidence on an affidavit from a few employees of PPL. Further, certain books and papers of PPL were also called for by the Director General which he kept in his custody for two months.

The Director General found that the Company Secretary of PPL, Mrs. Riya Sengupta, had assisted in drafting the impugned agreements with the real estate agents. Mr. Devjyoti Basu, the Manager, however, pleaded before the Director General, that though he knew of such agreements being entered into by PPL, he never gave his consent to such an act of the Company.

The copy of the report of the investigation was forwarded by the CCI to PPL and the authority under the RERA respectively. To get a favourable report, Mr. Atanu gave some cash and promised a flat in a posh area to Mr. Mahesh, one of the members of CCI.

After making further inquiry, the CCI closed the matter and passed a cease and desist order as well as a penalty order to pay an amount equivalent to 20% of the revenue earned by PPL by making such anti-competitive agreements with the real estate brokers.

EHK

P.T.O.

Part - A

On the basis of the above inputs given in the case study, you are requested to answer the following Multiple Choice Questions (MCQs). Please choose the correct option : $2 \times 5 = 10$

- 2.1 Mr. Atanu Dey desires to obtain US \$ 1,20,000 for his daughter's higher education abroad. As per the provision of the Foreign Exchange Management Act, 1999 :
- (A) Permission of RBI is required as the foreign exchange required is more than US \$ 1,00,000.
 - (B) No permission of RBI is required as it is within the specified limits.
 - (C) Prior approval of the Central Government is required as the foreign exchange required is more than US \$ 1,00,000.
 - (D) Only intimation to RBI is sufficient in this regard.
- 2.2 Mr. Atanu Dey desires to make gift remittances amounting to US \$ 10,000. In the light of the provisions of the Foreign Exchange Management Act, 1999.
- (A) Gift remittance is a current account transaction and all amounts of gift remittances exceeding US \$ 5,000 needs prior approval of the RBI.
 - (B) Gift remittance is a capital account transaction and all amounts of gift remittance exceeding US \$ 5,000 needs prior approval of the RBI.
 - (C) Gift remittance is a current account transaction and all amounts of gift remittances exceeding US \$ 7,500 needs prior approval of the RBI.
 - (D) No permission of the RBI is required as the gift remittance is within the specified limits.
- 2.3 Whether Mr. Biswajit Mondal had validly brought INR currency notes into India ?
- (A) No, Mr. Biswajit has bought in excess INR 25,000 than the prescribed limit.
 - (B) Yes, as there are no restrictions of bringing any amount into India from Nepal or Bhutan.
 - (C) No, Mr. Biswajit Mondal has brought INR currency notes with denominations of INR 500.
 - (D) Yes, if Mr. Biswajit Mondal has provided a declaration in respect of the same to the Custom Authorities.

(13)

EHK

Marks

2.4 Whether it was necessary for Mr. Andrews to provide any declaration to the Custom Authorities of India in respect of the EGP brought by him into India, if 1 USD = 18.88 EGPs ?

- (A) No, as Mr. Andrews is a person resident outside India.
- (B) Yes, as the amount of currency notes exceeds \$ 5,000 in equivalent.
- (C) No, as the aggregate of EGPs in all forms did not exceed \$ 10,000 in equivalent.
- (D) No, as there is no restriction in bringing foreign exchange, without any limit, in any form in India.

2.5 Which of the following persons would be deemed to be guilty of contraventions committed by PPL under the provisions of the Competition Act, 2002 ?

- (A) PPL, Mr. Biswajit, Mr. Atanu and Mrs. Riya, respectively.
- (B) PPL only.
- (C) PPL, Mr. Biswajit, Mr. Atanu, respectively.
- (D) PPL, Mr. Biswajit, Mr. Atanu, Mr. Devjyoti and Mrs. Riya respectively.

Part – B

Answer the following Questions

In the light of the provisions of the Foreign Exchange Management Act, 1999 examine the following :

- 2.6 (i) Whether PPL was permitted to make payment for meeting expenses of Mr. Andrews in India ? 3
- (ii) Whether Prithvi Private Limited was required to get any permission for remitting the amount of commission to Mr. Lee, if 1 USD = 18.88 EGPs and 1 USD = ₹ 75 ? 3

EHK

P.T.O.

- 2.7 The role of Competition Commission of India is vital in order to ensure healthy competition in the market. Determine the legal validity of the Government's action in terms of 'making reference to' and "refusal to consider the opinion" furnished by the Competition Commission of India. 4
- 2.8 Mr. Mahesh, was one of the members of the CCI. On the basis of information that he has acquired such financial interest as was likely to affect prejudicially his functions as member of the Commission, the Central Government appointed an officer to hold an inquiry. Subsequently, reacting on the report of the said officer, the Central Government issued an order to remove Mr. Mahesh as a member of CCI. Decide whether the action of the Central Government is in order under the provisions of the Competition Act, 2002. 5

CASE STUDY – 3

Mr. Rajesh and Mr. Suresh were childhood friends. They grew up together sharing everything including their passion for construction. So, upon attaining the majority, they started their own venture and formed a Public Limited Company named R.S. Constructions Limited (RSCL). Their businesses flourished and soon they became a household name. Expecting a future uptrend in land prices and better prospects for commercial development, both of them decided to build land bank across India. So, R.S. Constructions Limited hired the services of Mr. Sanjay to assist in the process of acquisition of lands.

R.S. Constructions Limited issued a detailed offer letter to Mr. Sanjay for the purchase of around 100 acres of land at a maximum price of INR 10,00,000 per acre in different parts of India within a period not exceeding five years. The said offer was accepted by Mr. Sanjay by a letter of acceptance. A legally binding and valid contract came to be in force between R.S. Constructions Limited and Mr. Sanjay.

Mr. Sanjay received from R.S. Constructions Limited, a sum of INR 1,000 crores as a loan/ advance for the purchase of land as specified in the contract between the parties. Mr. Sanjay purchased various moveable and immoveable properties with the fund received from R.S. Constructions Limited. Since all the funds could not be invested directly in the land as required by the contract, investments were made by Mr. Sanjay by himself or through his Company in purchase of immovable property including land, built-up residential and commercial buildings, etc. both in India and abroad. Investments were also made in fixed deposits in the name of Mr. Sanjay and his associated companies. Investments were also made in the movable properties including bullions, precious stones, bank balances, and luxury cars. He also created fictitious companies out of the proceeds that he received from RSCL and made investments in smuggled items, booking false incomes on trading / use of such items.

In the meantime, the Director of Enforcement initiated a suo moto proceedings under the provisions of the Prevention of Money Laundering Act, 2002 (PMLA, 2002) and registered a complaint under Section 3 and Section 4 of the Act, and attached the properties of Mr. Sanjay under the PMLA, 2002. Aggrieved by the action of the Director of Enforcement, Mr. Sanjay got a stay from the High Court for any proceedings under the said Act. The stay was subsequently vacated.

Mr. Rajesh, in the meantime, started entering into fictitious transactions and all the proceeds from the same were diverted to a different offshore Companies. Mr. Rajesh also arranged a credit sanction for exports to be made to a fictitious Malaysian Company. The money so received was diverted to a Malaysian based benami Company owned by Mr. Rajesh and was later on re-routed to India. Most of the transactions that took place were in between close contacts of Rajesh. As Mr. Rajesh frequently needed to travel to Malaysia, he bought a flat there. It was purchased with transmittals beyond the permissible limits under the Liberalised Remittance Scheme (LRS).

Mr. Rajesh's maternal uncle resided in London since 2005. He died in the year 2019. But in the year 2018, out of natural love and affection, he gifted his eastern London mansion worth \$ 1,50,000 to Mr. Rajesh. His family felt rejoiced, to hear that, they now have a home in London too. In 2020, Mr. Rajesh's cousin residing in London, contacted him to buy a new mansion, built on the side of the river Thames. The cost of the mansion was \$ 4,00,000. His cousin advised him to buy the mansion jointly with him. He sold the property for \$ 2,00,000 and with that amount, he jointly bought the new mansion with his cousin. In between, Mr. Rajesh went on a vacation to Hungary. He took \$ 7,000 along with him. On returning, he had \$ 3,300 unspent with him. Out of this amount he gave \$ 1,000 to his friend, who is going abroad next month.

Rajesh's yet another maternal uncle residing in Nagpur has been subjected to investigation under the PMLA, 2002 on account of information of bank accounts in tax haven country 'X' which was shifted with money earned from extortions. In this regard, Mr. "Z", the Investigating Officer of this case, is of the opinion that certain information such as number of accounts and details of transactions may be available only from country "A". Hence, he made an application to the Special Court seeking permission to write a letter to the Competent Authority of Country 'A' to seek information.

In the meantime, Rajesh came to know that his childhood friend Mr. Suresh used his car for smuggling cash and the Special Court found on conclusion of trial that an offence of money laundering was committed by Mr. Suresh under the PMLA, 2002. The car was under hypothecation to a Nationalized Bank for the car loan obtained. Nevertheless, the car was confiscated by an order of the Special Court made under the provisions of the PMLA, 2002.

Part - A

On the basis of the above inputs given in the case study, you are requested to answer the following Multiple Choice Questions (MCQs). Please choose the correct options : $2 \times 5 = 10$

3.1 The Investigating Officer made an application to the Special Court seeking permission to write a letter to the Competent Authority of Country 'A' seeking information. In this regard :

- (A) The Special Court is empowered to act on the requests of the Investigating Officer.
- (B) The Special Court is not empowered to act on the requests of the Investigating Officer.
- (C) The Special Court needs the prior approval of the Central Government in this regard.
- (D) The Special Court can recommend the request of the Investigating Officer to the Police Officers.

3.2 The Director of Enforcement provisionally attached the properties of Mr. Sanjay. Such provisionally attached properties can be attached for a :

- (A) Period not exceeding 120 days from the date of the order including the period of stay granted by the High Court.
- (B) Period not exceeding 180 days from the date of the order including the period of stay granted by the High Court.
- (C) Period not exceeding 180 days from the date of the order excluding the period of stay granted by the High Court.
- (D) Period not exceeding 120 days from the date of the order excluding the period of stay granted by the High Court.

3.3 Mr. Suresh's car was confiscated by an order of the Special Court. In this regard :

- (A) The Special Court cannot order to confiscate the car when it is encumbered to a Nationalized Bank.
- (B) The Special Court can order to confiscate the car and declare such an encumbrance to be void.
- (C) The Special Court can confiscate the car despite the existence of an encumbrance provided, it gets the consent of the Central Government.
- (D) The Special Court will leave the matter to be handled by the Police Officers.

3.4 On returning from London, Mr. Rajesh had unspent \$ 3,300. He gave \$ 1,000 to his friend, who was leaving abroad next month. Is he permitted to do so ?

- (A) Rajesh needs to give a declaration to the authorised agent that he gave \$ 1,000 of the amount remaining with him to his friend.
- (B) Rajesh cannot do so, as he needs to deposit the amount exceeding beyond \$ 2,000 to the Authorised Dealer (AD) within specified days.
- (C) Rajesh needs to surrender the remaining \$ 3,300 to the AD within specified days.
- (D) Rajesh can do so, as he bought this amount from AD.

3.5 Mr. Rajesh's residential flat in Malaysia was bought in contravention of the FEMA, 1999 regulations. Fearing legal action against him, he wants to gift the same to his nephew, Mr. Udav, who is residing in Malaysia for the last 15 months with him. Can he do so ?

- (A) Since, Mr. Udav is a resident of India, so, Mr. Rajesh can gift him the flat.
- (B) Mr. Rajesh can only transfer it to Udav via inheritance.
- (C) Mr. Rajesh cannot gift it to Udav as it was bought in contravention of the FEMA, 1999 provisions.
- (D) Mr. Rajesh can gift it to Udav as the FEMA, 1999 provisions are not applicable to a property located in Malaysia.

Part – B

Answer the following questions :

- 3.6 Properties confiscated under the provisions of the Prevention of Money Laundering Act, 2002, shall be available for disposal by the Ministry of Finance as and when necessary. Examine the correctness of the above statement. **3**
- 3.7 One of the employees of R.S. Constructions Limited was given an offer by a Company vendor to disclose him the bid quoted by the Company. The employee accessed the computer of Mr. Rajesh and passed on the information to the vendor and thus helped him to grab the said plot of land. Will the employee be liable under the Prevention of Money Laundering Act, 2002 ? **2**
- 3.8. Whether a statement made before Enforcement Directorate (PMLA, 2002) is binding on the accused without proof as admission ? **4**
- 3.9. Mr. Rajesh jointly bought a mansion with his cousin in London. Evaluate on the validity of the acquisition of the said immoveable property outside India by Mr. Rajesh and is there any legal consequences according to the provisions of the FEMA, 1999 ? **6**

CASE STUDY – 4

The Central Government of India proposed that by the year 2028, all new vehicles on roads in India shall be zero-emission vehicles. Motivated by the thought process of the Central Government, a young dynamic student, named Sri Krishna, who had just passed Plus two examinations from India, got an admission in the year 2016 in Mechatronics Engineering at an University in the USA. He passed out his under-graduate Degree in Mechatronics in the year 2019.

Sri Krishna then came back to India in July 2020 to see the future of Electric Vehicles in India but was disappointed to see the slow progress. He decided to start a Company in Ukraine as well as in India too, which will manufacture Electric Vehicles in Ukraine and export invertors for electric vehicles from India to Ukraine, being a big demand in the international market.

He ventured out for establishing a Company along with his graduated friends for producing heavy-duty battery powered drive systems for underground mining in East Ukraine. As planned, a Company was incorporated in September, 2020, under the name SPV Inc. and he was one of the Directors in that Company. The Company started operations in Kyiv, Ukraine. SPV Inc. got funds inducted in the Company from various other partners and soon diversified into various other segments like designing diesel-to-battery conversion kits and rebuild mining machines to electric versions.

SPV Inc. got orders for the next 2 years to convert Diesel mining trucks into Electric trucks and the Government of Ukraine also funded the Company with 5 bn US Dollars, to speed up its operations for better and emission free environment. The Company's business was flourishing.

In January 2021, Sri Krishna's parents visited him in Ukraine and returned within 30 days to India. Sri Krishna gifted his mother gold necklace of 40 grams and his father a gold chain of 20 grams. He also gave US Dollars 30,000 to his father for their use in India. While coming back in March 2021, their parents never declared gold and foreign currency with the Customs Authorities at the Bengaluru Airport.

On 7th August 2021, Sri Krishna came to India and opened an NRE account and transferred funds from his profits from Ukraine. He bought a residential villa for his stay, while in India and for his parents measuring 8000 Square feet in Kolar district for ₹ 7 crores from a Real Estate Agent. He transferred ₹ 2 crores from his NRE account, part of the money was financed from a Bank which gave him a loan of ₹ 4.50 crores after mortgaging his ancestral property in Koramangala in Bengaluru having market value of ₹ 5 crores and the balance of ₹ 50 lakhs paid by him in US Dollars which he brought in cash from Ukraine and his father gave 30,000 USD (1 USD = ₹ 80), which was earlier given by Sri Krishna and the money having been kept at home for the last 7 months. The property was registered in his father's name and his father submitted his KYC documents to the bank. Sri Krishna was made a guarantor / co-applicant in the loan.

During his stay, Sri Krishna visited many companies which were interested in setting up electric vehicle plants in India and he signed MoUs with them.

His father, along with Sri Krishna's local friends and relatives, opened a 100% Export Oriented Unit, named Greenage India Private Limited, in Kolar District, Karnataka in November 2021 for manufacturing invertors, a major part used in electric vehicles. His father was appointed as a Director in this Company. Entire production was meant for exporting to SPV Inc. For this purpose, Company took a loan of ₹ 120 crores from PNR Bank and ₹ 10 crores from Karna Bank. The operation started in full swing under the supervision of other Directors. The Company sent 2 shipments of invertors worth ₹ 24 crores (equal to USD 3 Million) to SPV Inc. on 31.01.2022 but the shipment was held up on the way due to war in Ukraine.

In the 3rd week of February 2022, when Sri Krishna was to travel back to Ukraine, Russia invaded Ukraine in a major escalation. The entire Ukraine was declared a No-Fly Zone and all international financial transactions were halted by the Ukrainian Government. In view of this, Sri Krishna was forced to stay in India for the next 6 months. Hearing the situation in Ukraine and destruction of many commercial plants / buildings by Russian bombing and seeing the defaults in monthly instalments of the Company and Sri Krishna himself, the Bank sent

overdue notices to his father, to him and to Greenage India Private Limited and classified the bank accounts as Non-Performing Asset (NPA). As Sri Krishna was unable to submit any amount to clear his outstanding, PNR Bank sent Greenage India Private Limited, his father and Sri Krishna final notices under Section 13(2) of the SARFAESI Act, 2002 and asked for clearance of principal and interest to the tune of ₹ 109 crores. The notices given above expired on 30th September 2022.

Subsequently, PNR Bank took possession of the mortgaged ancestral property, his newly bought Villa and took over the Company, Greenage India Private Limited. The PNR Bank, then, transferred the entire loan bucket to an Asset Reconstruction Company (ARC) named Suraksha Limited, which was registered with RBI and regulated under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002). ARC, Suraksha Limited advertised for sale of properties in local newspaper Kolar Express and invited bids for all the properties. All the properties fetched ₹ 130 crores and excess money was sent to Sri Krishna and to the Company respectively.

On seeing the credit of this money in the Company's bank account, as well as his personal bank account, Sri Krishna (a co-owner of villa) alongwith his father, on behalf of his Company, filed a legal case against the bank and the ARC stating the following reasons :

- (i) The said ARC, namely Suraksha Limited is not a valid ARC as they had failed to comply with the conditions prescribed for an establishment of an ARC;
- (ii) They never started their businesses, and
- (iii) The bank has favoured them.

In view of the above submission, their certificate of registration needs to be cancelled and the properties taken over and sold is legally invalid and nevertheless should be returned to him and to Greenage India Private Limited.

On an another transaction, Sri Krishna took ₹ 5 crores by cash from various prospective customers which was not disclosed anywhere. Out of this proceeds,

he bought a property as a joint owner with his mother. The Initiating Officer, issued a Notice to Sri Krishna to show cause as to why the above property should not be considered as a benami property and subsequently, he passed an order provisionally attaching the property with the prior approval of the Adjudicating Authority. The Adjudicating Authority, after giving Sri Krishna an opportunity of being heard made an order confiscating the benami property.

Part - A

On the basis of the above inputs given in the case study, you are requested to answer the following Multiple Choice Questions (MCQs). Please choose the correct options :

2×5

=10

4.1 In the given case study, Sri Krishna's parents brought gold ornaments of 60 grams along with USD 30,000 for their use in India. While coming back in March 2021, his parents never declared gold and foreign currency with the Customs Authorities at the Bengaluru Airport. Whether this act will constitute an offence under the provisions of the Prevention of Money Laundering Act, 2002 ?

- (A) Yes, because the gold and US dollar brought is beyond the permissible limit.
- (B) Yes, because of an evasion of duty chargeable on goods on and above the permissible limit and they need to deposit US dollars within 180 days of their return.
- (C) No, because they are carrying the original bills of the purchased gold which was gifted by their son and US dollars are within permissible limits.
- (D) No, because gold and US dollars bought is within the permissible limits.

4.2 In the case of PNR Bank and Karna Bank acting as secured creditors, what percentage of amount outstanding on a record date, is required to either of them for exercising all the rights conferred on any of them under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 which is binding on all secured, creditors.

- (A) Not less than 51% in value of the amount outstanding.
- (B) Not less than 33% in value of the amount outstanding.
- (C) Not less than 75% in value of the amount outstanding.
- (D) Not less than 66% in value of the amount outstanding.

4.3 Every reporting entity shall within how many days after the commencement of an account based relationship with a client, file the electronic copy of the client's KYC records with the Central KYC Records Registry under the provisions of the Prevention of Money Laundering Act, 2002.

- (A) Within 30 days
- (B) Within 60 days
- (C) Within 90 days
- (D) Within 10 days

4.4 The permissible limits of bringing gold to India by Sri Krishna's parents is :

- (A) 40 grams and 20 grams having value ₹ 1 lakh and ₹ 50,000 to female and male respectively.
- (B) 50 grams and 30 grams to a female and a male irrespective of the value.
- (C) Gold worth ₹ 3 lakhs and ₹ 1,00,000 to a female and a male respectively.
- (D) Cannot bring any gold as duty free allowance as his parents stayed only for 30 days in Ukraine.

(25)

EHK

Marks

4.5 Under the Foreign Exchange Management Act, 1999, the maximum amount of money that can be transferred by Sri Krishna to his NRE account in India in a financial year is limited to :

- (A) USD 2,50,000. (B) USD 1,00,000.
(C) USD 1 Million. (D) No Limitation.

Part – B

Answer the following questions :

- 4.6 Whether the purchase of villa in Kolar by Mr. Sri Krishna in the name of his father is barred by the provisions of Prohibition of Benami Transactions Act, 1988 ? Whether the payment made in cash in the form of USD by Mr. Sri Krishna is legal in India under the provisions of the Foreign Exchange Management Act, 1999 ? 6
- 4.7 What is the option available with Sri Krishna against the confiscating order of the property passed by the Adjudicating Authority under the provisions of the Prohibition of Benami Property Transaction Act, 1988 ? 4
- 4.8. Sri Krishna, along with his father filed a legal case against the Bank and the ARC on certain grounds and prayed for cancellation of certificate of registration. Explain on what grounds can it be done legally and by whom such powers can be exercised ? What shall be the remedy to the aggrieved ARC ? 5

EHK

P.T.O.

CASE STUDY – 5

Back Ground

Mr. Krishna Kumar (KK) built a multi-billion dollar diverse business empire with the holding Company KK Holdings Private Limited (KKHPL). He made his money by working in the United States of America for more than 15 years and then came back to his hometown, Mangaluru, India and established his business empire. He incorporated two companies as subsidiaries of KKHPL, namely (i) KK Electric Vehicles Private Limited (KKEVPL) and (ii) KK Infrastructure Private Limited (KKIPL). With India opening itself to technological advancements, KKEVPL entered into a strategic tie-up with a foreign automobile Company to start manufacturing e-scooters and e-three wheelers. (Electric Vehicles - EV)

Formation of a Third Subsidiary

Both KKEVPL and KKIPL did wonderful business and therefore KKHPL incorporated a third subsidiary, KK Decors Private Limited (KKDPL) for providing interior business and furnishing for homes and offices. While KKDPL started business on a sound note, the performance was not upto the expectations and KKHPL sold the shares of KKDPL to a consortium, who acquired KKDPL, but failed to manage its operations and finally, KKDPL went into Corporate Insolvency Resolution Process (CIRP). Another interior manufacturer, Wonder Decors Private Limited (WDPL) submitted the resolution plan for the same under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016). One of the customers of KKDPL owed ₹ 10 lakhs of operational debts to KKDPL. Such debt was overdue for quite a long period. KKDPL sent a demand notice to the customer, which was not responded to at all.

Entering into Real Estate Business

KKIPL, through its commitment to quality and timely deliveries made a good name for themselves in the Mangaluru real estate market involved in Infrastructure projects and captured a share of ~35% in the market. KKIPL commenced a large real estate project for which it obtained ₹ 950 lakhs as advance payments from the house owners during the period of construction.

However, KKIPL came to know that the project land was situated in a environmentally strategic zone and after 60% of the construction, the project had to be suspended, resulting in significant delay in handing over of the property to the customers.

The Allottees then formed a registered association themselves and they immediately moved the National Company Law Tribunal (NCLT) seeking their money back from KKIPL along with interest and also the closure of KKIPL under the IBC, 2016. In the opinion of KK, the act of allottees association would not be entertained by NCLT. But, NCLT consented to the initiation of the Corporate Insolvency Resolution Process against KKIPL. However, NCLT in its order, did not award interest to allottees.

KKIPL purchases cement from Number One Cement Limited (NOCL) for the construction of its projects and has an amount of ₹ 200 lakhs pending to be paid. Further, NOCL had also lent an inter corporate loan to KKIPL of ₹ 400 lakhs at an interest of 9% p.a.

KK was informed by the legal team of KKEVPL, that someone had furnished a complaint to the Competition Commission of India (CCI) that another EV manufacturer is not selling spare parts of its vehicles in the open market, causing a denial of market access for independent mechanics and repairers apart from charging high prices at its own service station. While disposing of the complaint, CCI conducted an inquiry against 7 other electric vehicle manufacturers. The CCI

(28)

EHK

Marks

discovered that KKEVPL also sells spare parts at its own service station only, which may be considered as anti-competitive. KKEVPL feels that CCI is not authorized to impose a penalty say at 3% of the average turnover of the last three preceding financial years like a Tribunal and extending the scope by conducting inquiry is also not allowed to CCI and hence he is consulting the legal team to decide how they shall proceed and what the legal remedy available is. In the meantime, his legal team also cautioned him that the business of KKIPL could also come into the purview of the CCI since they are holding more than 35% of the market share. KK could not believe this since, as part of his CA course, he studied that the Competition Act, 2002 dealt with sale of goods or service and real estate activity (i.e. sale of an apartment) is neither a sale of good nor a service.

Mr. Raju has recently been appointed as one of the members of Competition Commission of India (CCI) by the Central Government for 5 years. Since a case is pending against KKEVPL, of which he is investigating, Mr. Raju decided to resign from CCI.

Part - A

On the basis of the above inputs given in the case study, you are requested to answer the following Multiple Choice Questions (MCQs). Please choose the correct options :

5.1. For the purpose IBC 2016, what would be the status of NOCL ?

- (A) An Operational Creditor.
- (B) A Financial Creditor.
- (C) Partly an Operational and partly a Financial Creditor.
- (D) NOCL has option to choose on whether to get classified as an Operational Creditor or a Financial Creditor.

EHK

(29)

EHK

Marks

5.2 If the resolution plan as received from WDPL by the insolvency professional contained a provision for combination, under the provisions of the Competition Act, 2002, then who is required to seek approval and from which authority is required if the resolution plan is to be considered for approval by Committee of Creditors (CoC) ?

- (A) Insolvency Professional to seek prior approval from CCI and Adjudicating Authority.
- (B) KKDPL to seek prior approval from the Adjudicating Authority.
- (C) The Consortium managers to seek prior approval from CCI.
- (D) WDPL to seek the prior approval from the CCI.

5.3 Can KKDPL apply for Corporate Insolvency Resolution Plan (CIRP) against the customers who have overdue amounts ?

- (A) No, because the claim is not yet denied by the specified customer.
- (B) Yes, KKDPL can apply for initiation of CIRP against the customer.
- (C) No, because the requisite years have not been elapsed yet, from the conclusion of its own CIRP.
- (D) No, the Corporate Debtor who underwent CIRP itself, cannot apply for initiation of CIRP against other Corporate Debtors.

5.4 Assume that there are no legal proceedings going on between allottees and KKIPL and NCLT admitted the application filed by the allottees for initiation of the Corporate Insolvency Resolution Process against KKIPL but immediately thereafter KKIPL and the Allottees came to a satisfactory settlement. In such a case, the application for CIRP :

EHK

P.T.O.

(30)

EHK

Marks

- (A) May be allowed to be withdrawn by the NCLT on an application by the Allottees subject to the approval of the Committee of Creditors with a 90% voting share.
- (B) May be allowed to be withdrawn by the NCLT on an application by the Allottees.
- (C) May be allowed to be withdrawn by the NCLT on an application by the Resolution professional.
- (D) Cannot be withdrawn.

5.5 Mr. Raju decided to resign from CCI and therefore, he has to submit notice of his resignation to :

- (A) Chairman of CCI.
- (B) All the other members of CCI.
- (C) Chairman and all the other members of CCI.
- (D) Central Government.

Part – B

Answer the following questions :

5.6 Examine critically, whether the belief of KK that CCI has no jurisdiction over KKIPL case is valid ?

4

EHK

(31)

EHK

Marks

- 5.7 KK would like your advice on whether the quantum of penalty of 3% of the average turnover of the last three preceding financial years of KKEVPL if leviable is within the preview of CCI ? 3
- 5.8 Does CCI have the authority to expand the scope of its inquiry to cover other electric vehicle manufacturers other than the Company against whom the complaint was made ? 3
- 5.9. (i) How would the advance payment made by the house owners be considered under the provisions of the IBC, 2016 ? 2
- (ii) How advance given by home buyers against the allotment is distinct from the debt of the operational creditor ? Explain, in the light of decided case law, if any. 3

EHK