

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

Suggested answers /Hints

Case study 1

1.1 (c) 1100 Square feet

**Reason**

Section 2(k) of RERA provides the definition of Carpet Area. It means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Calculation: 1200 Sq Ft – [3% of 1200 =36 External wall + 24 Sq Ft of Balcony + 40 Sq Ft of open terrace]

=1200 – [36+24+40]

=1200 – [100]

=1100 Sq Ft.

1.2 (c) Any transaction in any high-value exports or remittances

**Reason**

The explanation attached to Section 12AA(4) of the PML Act provides the meaning of 'Specified transaction'. It states that 'Specified transaction' means-

- (a) any withdrawal or deposit in cash, exceeding such amount;
- (b) any transaction in foreign exchange, exceeding such amount;
- (c) any transaction in any high value imports or remittances;
- (d) such other transaction or class of transactions, in the interest of revenue or where there is a high risk or money-laundering or terrorist financing,

as may be prescribed.

Thus, as per the definition of 'specified transaction', among the four options given in the above MCQ, the options (c) which states that 'Any transaction in any high-value exports or remittances' do not come, since in the explanation the words used are 'any transaction in any high value imports or remittances'.

1.3 (a) Valid, because Mr. Mishra is a member of the association, and notice can be served through the post

**Reason**

"As per sub-section 1 to section 25 of the Prohibition of Benami Property Transaction Act 1988,

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a notice under sub-section (1) of section 24 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908 (5 of 1908).

Further as per clause V to sub-section 2 provides that notice referred to in sub-section (1) may be addressed to the principal officer or any member, in the case of any association or body of individuals.”.

- 1.4 (d) Treasury bills of one-year maturity rated not less than A by Fitch

**Reason**

The RBI has issued Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations, vide No. RBI/FED/2018-19/67 FED Master Direction No.5/2018-19, dated 26.03.2019 (updated as on 12.04.2021).

The para 4.1. of the aforesaid Master Direction provides as under:

**Parking of ECB proceeds abroad:** ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilisation. Till utilisation, these funds can be invested in the following liquid assets

- (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's;
- (b) Treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and
- (c) deposits with foreign branches/subsidiaries of Indian banks abroad.

Here, in the given options of the MCQ, the options (a), (b) and (c) are correct. As regards the option (d) is concerned, it is written as 'Treasury bills of one-year maturity rated not less than A by Fitch', while as para 4.1. (b) of the Master Direction the rating of the TB should not be less than the rating Fitch IBCA.

- 1.5 (a) Valid

**Reason**

Section 22(2) of the IBC provides that the committee of creditors (CoC), may, in the first meeting, by a majority vote of not less than sixty-six per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

In the given case the CoC in its meeting passed a resolution with 73% of the voting share to replace the existing IP to another IP. Hence the action of the CoC is valid.

- 1.6 (a) No, 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 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.

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.  $\frac{2}{3}$ rd 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. Moreover, the in the case study, no where it is mentioned that prior written approval of the State RERA Authority has been taken. Hence for these 3 reasons (as mentioned above) the transfer is not valid.

- (b) JSED is not allowed to re-allocate the allotments for the project 'Nirmal Awas' because as per proviso to sub-section 1 to section 15 of the Real Estate (Regulation and Development) Act 2016. It provides that any such 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.
- (c) 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 as per the provisions of section 15(2) of the Real Estate (Regulation and Development) Act 2016. It provides that on the transfer or assignment being permitted by the allottees and the Authority under section 15(1), the intending promoter shall be required to comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees.

The proviso attached to section 15(2) further clarifies the position. It states that any transfer or assignment permitted under provisions of this section shall not result in 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, Section 15 puts restrictions on the promoter from making any kind of amendment or alteration in any plans that have already been sanctioned.

- 1.7 (a) No, the credence of NCLAT (Appellate Authority) is not admissible, because as per section 238A of Insolvency and Bankruptcy Code 2016 the provisions of the Limitation Act, 1963 shall,

as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

Hence applications moved under sections 7 and 9 are time-bound and must be filed within the limitation period.

In the case of *Dena Bank (Now Bank of Baroda) Vs. S. Shivakumar Reddy and Anr.* [Civil Appeal No. 1650 of 2020 dated 4<sup>th</sup> August, 2021], the Supreme Court of India quoted that the insolvency Committee of the Ministry of Corporate Affairs, Government of India, in a report published in March 2018, stated that the intent of the IBC could not have been to give a new lease of life to debts which were already time barred. Thereafter Section 238A was incorporated in the IBC by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, with effect from 6<sup>th</sup> June 2018. [Para 97]

- (b) In section 238A, the words 'proceedings or appeals before the Adjudicating Authority' is used, hence it does not make any difference for the applicability of the provisions of Limitation Act, 1963, in case the application is moved by the operational creditor under section 9. The answer will remain the same i.e. the credence of NCLAT (Appellate Authority) will still be not admissible.

In the case of *Dena Bank (Now Bank of Baroda) Vs. S. Shivakumar Reddy and Anr.* [Civil Appeal No. 1650 of 2020 dated 4<sup>th</sup> August, 2021], the Supreme Court of India stated that the right to initiate CIRP and a petition under section 7 or 9 (Section 9 deals with the CIRP by Operational Creditor) of the IBC is required to be filed within the period of limitation prescribed by law, which would be 3 years from the date of default by virtue of Section 238A of the IBC read with Article 137 to the Schedule to the Limitation Act, 1963, unlike delay in filing a suit. [Para 140]

Thus, the Apex Court in this case has already mentioned Section 7 or 9, hence there will not be any change in the answer and the law of limitation shall apply in initiation of CIRP either by financial creditor or operational creditor.

## CASE STUDY 2

- 2.1 (b) III only

### Reason

Section 70 (1) of Insolvency and Bankruptcy Code 2016 says misconduct in course of CIRP amounts to, where an officer of the corporate debtor on or after the insolvency commencement date;

- (a) does not disclose to the resolution professional all the details of the property of the corporate debtor, and details of transactions thereof, or any such other information as the resolution professional may require; or
- (b) does not deliver to the resolution professional all or part of the property of the corporate debtor in his control or custody and which he is required to deliver; or
- (c) does not deliver to the resolution professional all books and papers in his control or custody belonging to the corporate debtor and which he is required to deliver; or
- (d) fails to inform the resolution professional the information in his knowledge that a debt

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has been falsely proved by any person during the corporate insolvency resolution process; or

- (e) prevents the production of any book or paper affecting or relating to the property or affairs of the corporate debtor; or
- (f) accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor within the twelve months immediately preceding the insolvency commencement date, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that nothing in this section shall render a person liable to any punishment under this section if he proves that he had no intent to do so in relation to the state of affairs of the corporate debtor.

- 2.2 (c) Purchaser doesn't make a default, because 25% of the purchase price shall be deposited including the earnest money.

**Reason**

As per rule 9 of the Security Interest (Enforcement) Rules, 2002. On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than the next working day, as the case may be, pay a **deposit of 25% of the amount of the sale price, which is inclusive of earnest money deposited**, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again.

- 2.3 (c) Mr. Satbir violates the law, there will be a penalty of up to USD 90000

**Reason**

As per item number viii in part 1 to schedule III of Foreign Exchange Management (Current Account Transactions) Rules 2000 individuals can avail of foreign exchange facilities within a limit of USD 250000 without prior approval of RBI for the purpose of studies abroad.

Further sub-section 1 to section 13 of the Foreign Exchange Management Act 1999, provides if any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction, or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable, and where such contravention is a continuing one, a further penalty which may extend to five thousand rupees for every day after the first day during which the contravention continues.

Here in the present case since the amount involved in the contravention is quantifiable, which arrives at USD 30000, because the amount permissible by Schedule III is USD 250000. Hence the amount of penalty can be up to USD 90000 (i.e. 3 times USD 30000)

**Note** - Since the university fee was a mere USD 40000 in that year hence, the Liberalised Remittance scheme has no importance here, which otherwise, allows remittance of more than UDS 250000 for the purpose of studying abroad.

- 2.4 (b) the number, type, and the carpet area

**Reason**

Sub-section (2) to section 4 of the Real Estate (Regulation and Development) Act 2016, provides the list of documents and details that shall be enclosed with the application referred to in sub-section (1) of section 4. The item specified as clause (h) states the number, type, and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment if any.

- 2.5 (d) Transaction is not benami, hence there is no benamidar

**Reason**

Said transaction covered under exceptions (iii) and (iv) to sub-clause A to clause 9 to section 2 of The Prohibition of Benami Property Transactions Act 1988, hence not a benami transaction and there is no benamidar.

**Exception 3** read as any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual.

**Exception 4** read as 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.

- 2.6 (a) Provisions of section 45 (1) of the Prevention of Money Laundering Act, 2002 (here-in-after referred as to the Act) are applicable here.

As per the second proviso to section 45(1) of the Act, the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by;

- (i) the Director; or
- (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

Hence special court can't take sou-moto cognizance of any offence of money laundering.

- (b) Though section 45(1) of the Act says notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this act shall be released on bail or on his own bond unless

- (i) the public prosecutor has been given an opportunity to oppose the application for such release; and
- (ii) where the public prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail

But proviso states a person who is under the age of sixteen years or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money laundering a sum of less than one cores rupee may be released on bail if the special court so directs.

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Hence special court has the power to grant the bail applications.

In the case of Ms. Gurdeep, bail can be granted by the special court even without giving the public prosecutor an opportunity to oppose the application for such release.

Whereas in the case of Mr. Iyer, since the amount involved in the offence is INRs 3 crore (which is more than INRs one crore); hence bail can only be granted after giving the public prosecutor an opportunity to oppose the application for such release and court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

- 2.7 As per section 13 of the Real Estate (Regulation and Development) Act 2016, A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

Hence in the present case, the maximum advance that can be charged by ADRPL from Ms. Gurdeep is ₹ 8.04 lakhs.

Further, as per section 4 (2) (l) (D) of the Real Estate (Regulation and Development) Act 2016, seventy percent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose. Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

The same is applicable in the case of advance money or application fee as well, hence ADRPL shall deposit seventy percent of the advance or booking fee also in a separate account.

As per section 60 of the Real Estate (Regulation and Development) Act 2016, if any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty that may extend up to five percent of the estimated cost of the real estate project, as determined by the Authority. Hence if ADRPL fails to deposit seventy percent of the advance or booking fee also in a separate account then liable to penalties stated under section 60.

Whereas for accepting the advance or booking/application fee of more than ten percent of the cost of the apartment, the penalty specified under section 61 shall be levied.

Section 61 provides, if any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five percent of the estimated cost of the real estate project as determined by the Authority.

- 2.8 Benami transaction is defined under clause 9 to section 2 of the Prohibition of Benami Property Transactions Act 1988. Benami transaction means a transaction or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.

It is important to consider that Mr. Satbir will neither get any immediate nor future benefit, neither direct nor indirect benefit from such flat as he resides in Delhi and flat is in Mohali, further such flat is self-occupied by Ms. Gurdeep.

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It is also important to consider the apex court judgment in the landmark case '*Pawan Kumar Gupta vs. Rochiram Nagdeo*', AIR 1999 SC 1823. The word provided used in section 2 (9) (A) shall not be constructed narrowly. So even if the purchaser had availed himself of the help rendered by his father for making up the sale consideration that would not make the sale deed a Benami transaction so as to push it into the forbidden area envisaged in section 3(1) of the act. Court also took the example of a purchaser of land, who might have availed himself of the loan facility from the bank to make up the purchase money.

It is worth noting that money given to Ms. Gurdeep by Mr. Satbir is in form of borrowing, which is duly repaid by Ms. Gurdeep.

Hence amount borrowed by Ms. Gurdeep from his younger brother Mr. Satbir to pay advance or booking deposit shall not make push transactions into the forbidden area; hence the transaction is not a Benami transaction.

### CASE STUDY 3

- 3.1 (b) The show-cause notice can be addressed to the principal officer or any other member

**Reason**

As per section 25 (2) of the Prohibition of Benami Property Transactions Act, 1988, any notice referred to in sub-section (1) may be addressed to the principal officer or any member thereof, in the case of any other association or body of individuals.

- 3.2 (d) all i, ii, and iii

**Reason**

Power to impose a lesser penalty is provided with CCI under section 46 of the Competition Act, 2002. Section 46 has four provisos, the first three of them are relevant here.

Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure.

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section.

Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.

- 3.3 (c) Special Court or Judicial Magistrate or a Metropolitan Magistrate; 24 hours excluding the time necessary for the journey from the place of arrest to Special court or court of Judicial Magistrate or Metropolitan Magistrate

**Reason**

As per section 19 (3) of the Prevention of Money Laundering Act 2002, every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's Court.

- 3.4 (d) None of i, ii, and iii

**Reason**

Remittance of freight of vessel chartered by a PSU is stated at serial number 3 of the Schedule II to the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

As per rule 4 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000, no person shall draw foreign exchange for a transaction included in Schedule II without prior approval of the Government of India. In the case of Remittance of freight of a vessel chartered by a PSU, the prior permission of the Ministry of Surface Transport (Chartering Wing) is required to be sought.

Rule 4 shall not apply where the payment is made out of funds held in the Resident Foreign Currency (RFC) Account of the remitter.

- 3.5 (d) All of i, ii, and iii

**Reason**

As per section 5(23C) of the Insolvency and Bankruptcy Code, 2016, the pre-packaged insolvency resolution process costs means

- a. the amount of any interim finance and the costs incurred in raising such finance;
- b. the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the pre-packaged insolvency resolution process period, subject to section 54F(6);
- c. any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under section 54J(2);
- d. any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and
- e. any other costs as may be specified.

- 3.6 As per section 33(1) of the Real Estate (Regulation and Development) Act, 2016, the appropriate Government may, while formulating a policy on the real estate sector (including review of laws related to the real estate sector) or any other matter, make a reference to the Authority for its opinion on the possible effect of such policy or law on real estate sector and on the receipt of such a reference, the Authority shall within a period of sixty days of making such reference, give its opinion to the appropriate Government, which may thereafter take further action as it deems fit.

In the given case, a draft of the upcoming policy was sent by the appropriate government to State Real Estate Regulatory Authority for its reference on 29th March 2022. Hence 60 days will last till 28th May 2022. Whereas the opinion was furnished by the authority with the appropriate government during the 3rd week of May, hence within the prescribed time limit.

As per sub-section 2 to section 33, the opinion given by the Authority under sub-section (1) shall not be binding upon the appropriate Government in formulating such policy or laws.

- 3.7 (a) As per sub-rule 4 to rule 9 of the Security Interest (Enforcement) Rules, 2002, the balance amount of the purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

Since the period of 15 days is specified in the rules hence specifying the time limit of two weeks for payment of the balance amount by authorised officer is invalid. The period for payment of the balance amount to the authorized officer shall be computed from the day of confirmation of sale of the immovable property.

- (b) Yes, the bank (the secured creditor) can grant the extension for payment of the balance amount of the purchase price for a period not exceeding three months.
- (c) Further as per sub-rule 5 In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

Hence if Mr. Mishra failed to pay the balance amount within 8 weeks then the bank may forfeit the amount deposited by Mr. Mishra and resale the property.

- 3.8 Facts stated in this case are similar to that, in the matter of *Rajasthan Cylinders and Containers Limited vs UOI* (Civil Appeal No. 3546/2018 dated 01.10.2019), wherein Hon'ble Supreme Court answered the "Can enterprises be in violation of the Competition Act, 2002 (Competition Act) when prevailing market conditions are themselves not conducive to a competitive market?"

While examining the market conditions prevailing in the LPG cylinders market, the Supreme Court held that 'those very factors on the basis of which the CCI has come to the conclusion that there was cartelization, In fact, become valid explanations to the indicators pointed out by the CCI'. The Supreme Court noted that the above mentioned market condition led to a situation of oligopsony that prevailed because of limited buyers and influence of buyers in fixation of prices s all prevalent'.

On the basis of the above factors, the Supreme Court held that the LPG cylinder manufacturers had discharged their onus by showing that the parallel behaviour was not a result of concerted practice but of the market conditions where BPCL was calling the shots in so far as price control is concerned.

Thus, the Supreme Court held that at this stage it was up to the CCI to inquire further in the case, which it failed to do. Accordingly, the Supreme Court held that there was not sufficient evidence to hold the LPG cylinder manufacturers in violation of the Competition Act and set aside the COMPAT orders upholding the LPG cylinder manufacturers in violation of the Competition Act.

Hence in the given case, it is advised to make an appeal against the order of the COMPAT, as both the arguments advanced are likely to be accepted in light of the judicial precedent discussed above.

#### CASE STUDY 4

- 4.1 (d) The allottees have the right to claim a refund whereas Mr. Lal has no right to raise any objection against the same.

**Reason**

The allottees can demand refund from the promoter in terms of section 19(4) of RERA. Here Mr. Lal is the financier only and do not come within the definition of promoter as prescribed under section 2(zk) of RERA.

- 4.2 (d) RERA is applicable as Mr. Lal advertises for selling and flats are resold with new allotments.

**Reason:**

Section 3(2)(c) of RERA provides that notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Thus, as per the provision the registration was not required for renovation or repair or re-development provided the promoter has not done the advertisement. Here the promoter has done advertisement, therefore he is liable for registration under RERA.

- 4.3 (d) Mr. Lal is liable for the structural defects in the buildings if such defects bring to his notice within five years from the date of handing over the possession.

**Reason:**

The proviso attached to section 11(4)(a) of the RERA provides that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

Section 14(3) of RERA provides that in case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

- 4.4 (d) None of these is a correct statement.

**Reason:**

We have to examine each of the option given below:

**Option (a):** As per section 13(1) of RERA the advance payment is restricted up to 10% of the cost of apartment. In the given case, Mr. Ashima paid only 10%, so option (a) is correct.

**Option (b):** Section 13(1) provides that a promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. In the given case, the agreement for sale was entered into before giving 10% as an advance. Hence option (b) is correct.

**Option (c):** This is not the benami transaction, since the purchase has paid the amount from his known sources of income (on which the Income tax has been paid) and for the remaining amount he has taken loan from bank. Hence option (c) is correct.

**Option (d):** Now option (d) remains which is the last correct option which says "None of these is a correct statement."

- 4.5 (a) Penalty up to ten percent of the estimated cost of the project.

**Reason:**

Section 59(1) of the RERA provides that if any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to 10% of the estimated cost of the real estate project as determined by the Authority.

- 4.6 Under the Liberalised Remittance Scheme ("LRS"), all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year for any permissible current or capital account transaction or a combination of both. Such remittances are permitted to be used for conducting permissible current or capital account transactions and subsumes gifts in foreign currency made to any NRI or Persons of Indian Origin ("PIO").

However, as per answer to FAQ no. 26 on the LRS, a resident individual can make a rupee gift to an NRI/PIO, who is a close relative of the resident individual [relative' as defined in Section 2(77) of the Companies Act, 2013] by way of crossed cheque /electronic transfer. The amount should be credited to the Non-Resident (Ordinary) Rupee Account (NRO) of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO Account. The gift amount would be within the overall limit of USD 250,000 per financial year as permitted under the LRS for a resident individual. It would be the responsibility of the resident donor to ensure that the gift amount being remitted is under the LRS and all the remittances made by the donor during the financial year including the gift amount have not exceeded the limit prescribed under the LRS.

Here, the term "relative" is to derive its meaning from the definition provided in section 2(77) of the Companies Act, 2013, which state that 'relative' with reference to any person, means anyone who is related to another, if –

- (i) They are member so a HUF;
- (ii) They are husband and wife; or
- (iii) One person is related to the other in such manner as prescribed in Rule 4 of the Companies (Specification of definitions details) Rules, 2014. i.e. spouse, father, mother, son, son's wife, daughter, daughter's husband, brother, and sister of the individual.

Accordingly, FEMA brings in, a restrictive meaning to gifting transactions by covering gifts of the sum of money within the LRS domain and the scope of relative is narrower.

So, according to the definition of 'relative' under the Company Act 2013, it does not include cousin brother. Therefore, gift of a sum of Indian Rupees by Mr. Lal by way of a crossed cheque to his cousin brother would require prior approval of RBI.

Hence, in the above case, rupees one crore can only be transferred to Mr. Ranveer, if in case, he comes within the ambit of the definition of "close relatives" otherwise the money can be transferred through crossed cheque to a cousin brother, only with the prior permission of RBI and no benefit of the limit under LRS would be available in such case.

- 4.7 Section 14(2)(ii) of the RERA, 2016, states that the promoter shall not make any other alterations or additions in the sanctioned plans, layout plans, and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation to section 14(2)(ii) also states that, for the purpose of this clause, the allottees, 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, etc., 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.

Hence, from the provisions of the above section and its explanation, it is clear that despite the company holding twenty flats in the project, it will be counted as a single allottee. The builder needs the consent of two-thirds of allottees prior to making changes in the existing plan or building layout. So, it can be said that X-One Company Ltd. is not in a position to manipulate neither builder nor any other allottees. If two-third of the allottees give their written consent, then the required changes will be made in the building structure.

## CASE STUDY 5

- 5.1 (d) Mr. Aditya Chopra will need RBI approval for remittance beyond USD 250,000.

### Reason

Para 1(viii) of Schedule III of FEM (Current Account Transactions) Rules, 2000 provides that individuals can avail of foreign exchange facility for the studies abroad within the limits of USD 250000. Any additional remittance in excess limit for the aforesaid purpose shall require prior approval of the RBI.

- 5.2 (c) Prior approval of RBI is required as the commission exceeds the limit of five percent.

### Reason

Para 2 Schedule III of FEM (Current Account Transactions) Rules, 2000 provides that certain remittance by persons other than individuals shall require prior approval of the RBI. Its sub-para (ii) provides that the Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 250000 or 5% of the inward remittance, whichever is more, require prior approval of RBI.

- 5.3 (d) The cultural group will require prior permission from the Central Government.

### Reason

Schedule II of FEM (Current Account Transactions) Rules, 2000 provides the list of transactions which require prior approval of the Central Government. S. No. 1 of this Schedule states that for Cultural Tours, the approval of the Ministry of Human Resources Development (Dept. of Education and Culture) is required.

- 5.4 (b) The rental income can be freely repatriated outside India subject to payment of applicable taxes.

### Reason

Para 3(f) of Schedule I of Foreign Exchange Management (Deposit) Regulations, 2016 provides that Current income in India due to the account holder, subject to payment of applicable taxes in India.

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- 5.5 (a) Mr. Naveen shall be a person resident in India for the financial year 2019-20 only

**Reason**

Section of 2(v) of FEMA reads as under:

**“person resident in India” means—**

- (i) a person residing in India for more than 182 days during the course of the preceding financial year but does not include—
- (A) a person who has gone out of India or who stays outside India, in either case—
    - (a) for or on taking up employment outside India, or
    - (b) for carrying on outside India a business or vocation outside India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
  - (B) a person who has come to or stays in India, in either case, otherwise than—
    - (a) for or on taking up employment in India, or
    - (b) for carrying on in India a business or vocation in India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

Section 2 (w) “person resident outside India” means a person who is not resident in India;

In the given case, Mr. Naveen got shifted to the U.S.A. on 1st August 2019. So he remained in India for a period of 243 days in FY 2019-20.

For the FY 2020-21, Naveen remained out of India for the full FY.

So Naveen shall be resident in India for the FY 2019-20 only.

- 5.6 (i) Para A.21- International Credit Cards of Master Circular on Miscellaneous Remittances from India –Facilities for Residents, RBI/2015-16/91 Master Circular No.6/2015-16 dated 01.07.2015 provides as under:

- 21.1 The restrictions contained in Rule 5 of the Foreign Exchange Management (Current Account Transactions) Rules, 2000 will not be applicable for use of International Credit Cards (ICCs) by residents for making payment towards expenses, while on a visit outside India.
- 21.2 Residents can use ICCs on internet for any purpose for which exchange can be purchased from an Authorised Dealer in India, e.g. for import of books, purchase of downloadable software or import of any other item permissible under Foreign Trade Policy (FTP).
- 21.3 ICCs cannot be used on internet or otherwise for purchase of prohibited items, like lottery tickets, banned or proscribed magazines, participation in sweepstakes, payment for call-back services, etc., since no drawal of foreign exchange is permitted for such items/activities.

- 21.4 There is no aggregate monetary ceiling separately prescribed for use of ICCs through internet.
- 21.5 Resident individuals maintaining foreign currency accounts with an Authorised Dealer in India or a bank abroad, as permissible under extant Foreign Exchange Regulations, are free to obtain ICCs issued by overseas banks and other reputed agencies. The charges incurred against the card either in India or abroad, can be met out of funds held in such foreign currency account/s of the card holder or through remittances, if any, from India only through a bank where the card holder has a current or savings account. The remittance for this purpose should also be made directly to the card issuing agency abroad, and not to a third party.
- 21.6 The applicable limit will be the credit limit fixed by the card issuing banks. There is no monetary ceiling fixed by the Reserve Bank for remittances, if any, under this facility.
- 21.7 Use of ICC for payment in foreign exchange in Nepal and Bhutan is not permitted.
- (ii) According to Foreign Exchange Management Act, 1999, Mr. Avinash must surrender the unused foreign exchange within 180 days of his return from abroad. However, if he so desires, he can keep foreign exchange up to USD 2,000 in his Resident Foreign Currency (Domestic) or RFC (Domestic) Accounts. He can also keep the said amount in form of foreign currency notes or traveler cheque for use in the future course of time. Residents are permitted to hold foreign currency up to USD 2,000 or its equivalent provided the foreign exchange was acquired by him from an authorised person for travel abroad and represents the unspent amount thereof. [Refer FAQ 7 Misc Forex Facilities, updated upto 21.10.2021]

Accordingly, Mr. Avinash has not contravened any provisions of the Foreign Exchange Management Act, 1999. The unspent money which is left with him belongs to the company and he needs to submit it back to the company within the stipulated time. Hence, according to the provisions of the Foreign Exchange Management Act, 1999, he is not liable for any punishment.

- 5.7 (i) Section of 2(v) of FEMA reads as under:

“person resident in India” means—

- (i) a person residing in India for more than 182 days during the course of the preceding financial year but does not include—
- (A) a person who has gone out of India or who stays outside India, in either case—
- (a) for or on taking up employment outside India, or
  - (b) for carrying on outside India a business or vocation outside India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
- (B) a person who has come to or stays in India, in either case, otherwise than—
- (a) for or on taking up employment in India, or
  - (b) for carrying on in India a business or vocation in India, or
  - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

As per facts stated in the case study, Mr. Demello resided in India for more than 182 days in the financial year 2019 -20. However, during 2020-21, he went back to carry on his employment with Alex Consultancy. Therefore, Mr. Demello will be considered as a person resident outside India for the financial year 2020-21.

Further, as per regulation 6 of the Foreign Exchange Management (Acquisition and transfer of Immovable Property in India) Regulation 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/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse subject to the conditions laid down.

Hence, a foreign national who is a person resident outside India may acquire one immovable property, jointly with his NRI spouse.

Hence, Mr. Demello despite being a person resident outside India and a foreign national is eligible to acquire a flat in Bengaluru in joint ownership with Mrs. Demello.

**Note** – It is presumed other conditions provided under regulation 6 is fulfilled.

(ii) According to the provisions of the Foreign Exchange Management Act, 1999:

Section 6(5) of FEMA provides that 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.

Regulation 8 of Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018 provides that-

- (a) A person referred to in sub-section (5) of section 6 of the Act, or his successor shall not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property referred to in that sub-section.
- (b) In the event of sale of immovable property other than agricultural land/farm house/plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:
  - (i) the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;
  - (ii) the amount to be repatriated does not exceed (a) the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels or out of funds held in Foreign Currency Non-Resident Account, or (b) the foreign currency equivalent, as on the date of payment, of the amount paid where such payment was made from the funds held in Non-Resident External account for the acquisition of the property; and
  - (iii) in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

So, in the above-mentioned case, Mrs. Demello can repatriate the sale of such property provided the above-mentioned conditions are duly satisfied.