Test Series: October, 2020

MOCK TEST PAPER

FINAL (NEW) COURSE GROUP – II

PAPER 6D: ECONOMIC LAWS

SUGGESTED ANSWERS

MCQS

1. (d)

2. (d)

3. (d)

4. (b)

5. (a)

Descriptive questions

1. Section 19 (1) of the Prohibition of Benami Property Transaction Act 1988, prescribes the authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely;

a. discovery and inspection;

b. enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;

c. compelling the production of books of account and other documents;

d. issuing commissions;

e. receiving evidence on affidavits; and

f. Any other matter which may be prescribed.

Authorities includes initiating officer as per section 18 (1) (a) of the said act. Further as per section 2(19) of the said act "Initiating Officer" means an Assistant Commissioner or a Deputy Commissioner as defined in clauses (9A) and (19A) respectively of section 2 of the Income-tax Act, 1961. Hence ACIT is authorise to practice the powers vested under section 19 (1) of the Prohibition of Benami Property Transaction Act 1988 .Further, ACIT is authorised to enforce Mr. and Mrs. Kataria to appear in front of his office, compel to produce books of accounts and receive/record evidence on affidavits under the Prohibition of Benami Property Transaction Act 1988.

2. (a) As per rule 5 of Foreign Exchange Management (**Current Account Transactions**) Rules, 2000 read with liberalized remittance scheme; for purpose of transactions mentioned in schedule III, an individual can avail of foreign exchange facility within the limit of USD 250,000 only during a particular financial year. Any additional amount in excess of the said limit requires prior approval of RBI. In present case an **amount equivalent to USD 280,000 also remitted to Mr. Prince Kataria in foreign currency**, which **cause contravention and same is current account transaction prescribed as item number III in Schedule III 'going abroad for employment' of said rules.**

Since the amount which can be maximally remitted can be USD 250,000. But Mr. & Mrs. Kataria remitted USD 280,000 which is in contravention to regulations under FEMA, Hence the amount involved in the contravention is USD 30,000.

(b) As per section 13 of Foreign Exchange Management Act 1999, 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 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**. Where the amount is not quantifiable then penalty will be up to INRs 2 lakhs.

Since the amount involved in the contravention is USD 30,000, hence the **maximum amount of penalty will be USD 90,000** (i.e. 3 times of USD 30,000). No, the **minimum limit is not prescribed**.

(c) As per section 15 of Foreign Exchange Management Act 1999, **if offence committed under section 13 of said act, application for compoundable can be made. Hence in the present case too offence/contravention identified in part (a) is compoundable**. As per section 15 of said act, on an application made by the person committing such contravention, compound within one hundred and eighty days from the date of receipt of the application by the **Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised** in this behalf by the Central Government in such manner as may be prescribed.

3. The facts of the present case similar to the case decided by Bombay High Court in Civil Second Appeal (Stamp) No.9717 of 2018 'Lavasa Corporation Ltd vs. Jitendra Jagdish Tulsiani' Hence in order to answer the question let discuss first, the what the court observed and held in said case.

In the case of Lavasa Corporation Ltd (appellant/developer/lessor) vs. Jitendra Jagdish Tulsiani (allottee/purchaser), Bombay high court considers the fact that the **developer had availed more than 80% of consideration** amount of the apartments booked by the purchaser. Further that, the developer had registered the project with RERA.

Court **held** that the developer was also fully aware that the lease agreement for giving possession of the apartments to the purchaser for the lease period 999 years (at lease rental of INR 1 per year) was in the **nature of the sale**. Therefore, the developer could not contend that the Adjudicating Authority established under the RERA had no jurisdiction to entertain the complaints filed by the purchaser under section 18. Thus, the Appellate Tribunal rightly held that the **complaint under section 18 filed by the purchaser before the Adjudicating Authority was maintainable** and the Adjudicating Authority was having the jurisdiction to entertain and decide the complaints.

a. Hence in the present case, **'Agreement to Lease'** (wherein the apartments were leased out to the allottees for the period of 499 years and allottees already paid consideration equal to 99.99% of the sale price of the apartment to get the lease apart from agreed to pay INRs 12/- each year to PBIL as lease rental) signed between PBIL and allottees are **more or less can be equated to Sale**.

b. In the present case, the project Green Valley Apartments is also registered under RERA, hence considering this in light of the structure of 'Agreement to Lease' make **allottees eligible to claim a remedy under section 18** of the RERA through adjudicating authority.

Case study 2

Multiple Choice Questions

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

Descriptive Questions:

1. **(a)** According to Section 21(3), Subject to sub-sections (6) and (6A), where the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them. It means all the bank will represent themselves according to their shares.

   (b) According to Section 21 (4), Where any person is a financial creditor as well as an operational creditor,—

   (a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;

   (b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

   Section 24 (4) states, that the directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings.

   So in the above mentioned scenario JV National Bank has no right to club both the debt and to vote as an Operational creditor.

2. **(a)** Under sub section 2 of Section 6 it is stated that subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of—

   (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

   (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

   Section 2A states, that no combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section(2) or the Commission has passed orders under section 31, whichever is earlier.

(b) In case the Commission is suspected about the merger of the company then it will investigate it under section 29 as mentioned below:

(a) Under Section 29(1) Where the Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a show cause notice to the parties to the merger and calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

(b) Under section 1(A) After receipt of the response of the parties to the combination, the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

(c) Under section 29(2), the Commission, if prima facie is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub section (1A), whichever is later direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

(d) Under section 29 (3) The Commission may invite any person or member of the public, affected or likely to be affected by the said merger, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the merger was published.

(e) Under Section 29(4) The Commission may, within fifteen working days from the expiry of the specified period, call for such additional or other information as it may deem fit from the parties to the said merger.

(f) Under section 29(5) the additional or other information called for by the Commission shall be furnished by the parties within fifteen days from the expiry of the period specified in sub-section(4).

(g) Under section 29(6) after receipt of all information and within a period of forty-five working days from the expiry of the period the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

Case study 3

Multiple Choice Questions:

1. (d)

2. (d)

3. (c)

4. (b)

5. (a)

Descriptive Questions:

1. Under the Liberalised Remittance Scheme ("LRS"), resident individuals are permitted to remit overseas up to USD 250,000 per financial year. Such remittances are permitted to be used for conducting permissible current or capital account transactions and subsumes gift in foreign currency made to any NRI or Persons of Indian Origin ("PIO").

However, as per the FAQs on the LRS, a resident individual can also make a gift in Indian Rupees to his NRI/ PIO "close relatives" by way of a credit to their NRO account. However, all such money gifts, put together for the resident individual, should be within the LRS limit of USD 250,000 in any financial year.

Here, the term "relative" is to derive its meaning from the definition provided in the Companies Act, 2013 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 the gifting transactions by covering gifts of sum of money within the LRS domain and the scope of relative is more narrower.

So according to the definition of relative under Company Act 2013, it does not include cousin brother. Therefore, gift of a sum of Indian Rupees by Mr. Lal to his cousin brother would not be permitted as per the FEMA regulations.

As per schedule III of FEMA Mr. Lal will also require prior permission of RBI to transfer Gift remittance exceeding USD 5,000 per remitter/donor per annum.

Hence in the above case, rupees one crore can only be transfered to Mr. Ranveer if in case he comes in the ambit of the definition of "close relatives", with prior permission of RBI.

2. Section 14(2)(ii) requires that 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.

Section 14 (2)(ii) Explanation 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 above section and explanation it is cleared that despite the Company holding twenty flats in the project they will be counted as single allottee. The builder need consent of two third allottees prior to making changes in the existing plan or building lay outs. So we can say that the company is not in a position to manipulate neither builder nor any other allottees. If two third of the allottees give their written consent than the required changes will be made in the building structure.

Case study 4

MCQS

1. (c)

2. (d)

3. (c)

4. (a)

5. (d)

Answers to Descriptive questions

1. Section 18 of the Real Estate (Regulation and Development) Act, 2016 ("RERA") provides for return of the amount and compensation if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein. The section further states that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Hence it is clear that an allottee has 2 choices:

(1) to withdraw from the project and ask for refund or

(2) to continue with the project and call upon the promoter to pay for interest for every month of delay.

In this case, it is pertinent to evaluate the terms "promoter", "allottee" and "agreement for sale" to determine whether Mr. Manish Mehra can sought the recourse provided by the said section 18. Section 2(c) of RERA defines the term "agreement for sale" as an agreement entered into between the promoter and the allottee. Section 2(d) of RERA defines the term "allottee" as the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent. Further Section 2(zk) defines the term "promoter" to include a person who constructs any building or apartment for sale to the general public.

From the above mentioned definitions it is obvious that the deciding factor shall be the nature of the document executed by Manish and TBPL to determine whether this is a case of agreement for sale or otherwise. In the given case, the Memorandum of Understanding ("MoU") was executed for a period of 99 years effective from the date of signing. TBPL received a consideration of ₹ 50 lakhs for the purpose of the arrangement and occupancy fee was set as low as ₹ 500 per month. The MoU was also duly stamped with the applicable stamp duty and was duly registered. The fact that Manish paid a consideration for the arrangement, the document was stamped and registered and the term of the MoU was for a long period of 99 years reflects that the nature of the transaction was that of a sale. The fact that Manish had the right to alter the Premises and make changes therein, he also was liable to pay the water, electricity and other charges, shows that his rights and obligations were equivalent to that of a purchaser. In drafting a document, more than the nomenclature used, the intent captured is material. When the document captures the intent of a sale between both parties, the title given to the document is immaterial. Hence the MoU is nothing but an agreement for sale and Manish has the right of recourse to under section 18 of RERA.

2. Given the facts of the case the Bank has classified the accounts of MEL and WTL as Non-Performing Assets (NPAs) and issued a demand notice to Mr. Arjun Malhotra for payment of the dues standing in the books of the Bank on account of the default of MEL and WTL. Arjun's response mentioned that since the efforts were underway to cure the defaults in terms of monetization, the Bank was requested to withdraw the demand notice. Section 60(2) of the Insolvency and Bankruptcy Code, 2016 ("Code") provides that, "Where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal."

Hence the provisions of the Code provide for recourse to the personal guarantor even if the Corporate Insolvency Resolution process has been initiated against the corporate debtor, being MEL and WTL in our case. Had the intention of the legislature been to let the aggrieved creditor, Bank in our case, wait for subsequent events to happen under the Insolvency Process, the provision for the initiation of proceedings wouldn't have been made in the first place. Therefore, it would not be right for Mr. Malhotra to assume that the proceedings of insolvency have been filed with the NCLT so no action can be taken until the resolution plan has been accepted / materialized. Also it is to be noted that the liability of a guarantor, Arjun in our case, does not extinguish / reduce merely by virtue of the proceedings. The law does not envisage that the insolvency resolution of the personal guarantor should follow only when the process of the corporate insolvency of the corporate debtor has come to an end.

In view of the above Ms. Saniya Sharma should advise the Bank to proceed against the corporate debtors in the bench of the NCLT, where the proceedings for insolvency is being heard.

3. The Insolvency and Bankruptcy Code, 2016 ("Code") defines an operation creditor to mean a person to whom an operational debt is owed. Operational debt would refer to a claim against the provision of goods or services rendered to an entity. In the given case LPL has claimed against the services it rendered to MEL and WTL ("corporate debtor"), hence LPL can be classified as an operational creditor.

In terms of Section 9 of the Code, an operational creditor must submit an invoice / notice demanding payment to the corporate debtor. If after expiry of 10 days, the operational creditor does not receive its payment it can file an application before the National Company Law Tribunal (NCLT) for initiating a corporate insolvency resolution process. Unless the NCLT rejects the application, the NCLT shall after admission of the application under Section 9 shall declare a moratorium, appoint an interim resolution professional and cause a public announcement of the initiation of the corporate insolvency resolution process and call for submission of claims. The interim resolution professional shall form the Committee of Creditors ("COC") which consists of financial creditors.Post the formation of the COC, the appointment of the interim resolution professional may be confirmed or the COC may appoint someone else for the purpose. In the given case Mr. Rajesh Panchal was appointed as the Resolution Professional for the corporate debtors.

Mr. Panchal invited prospective lenders, investors and other person to put forward the resolution plan. He received a resolution plan from AGPL who offered an upfront payment of ₹ 90 crores and takeover the company. The resolution plan included preference payment to the Bank and other financial institutions. Here it is to be noted that the COC is the approving authority of the resolution plan and only once the COC approves the plan that the same is placed for approval of the NCLT. Hence it can be said that the COC will have the final say in the resolution plan under the Code. The resolution plan, in the given case takeover by AGPL, is a commercial decision and the same is to be taken by the COC. The NCLT cannot interfere with the same. Hence LPL, an operational creditor's plea to the NCLT to make necessary amends to the resolution plan is not maintainable.

Further equitable v/s equity.

It said that the law talks of "equitable" and not "equal" treatment of operational creditors. Fair and equitable dealing of operational creditors' rights involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately.The fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors.

CASE STUDY 5

MCQS

1. (d)

2. (c)

3. (a)

4. (b)

5. (a)

Answers to Descriptive questions

1. Firstly, the purchase of the Panvel farmhouse has been done in the name of Mrs. Shanti Kapoor, mother of Vikas Kapoor. This is a Benami Transaction. Section 2(9) of the Prohibition of Benami Property Transactions Act, 1988, lays down the definition of a Benami Transaction. It says it is a transaction where a property is transferred to a person, consideration 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.

Further, the exceptions for a Benami Transaction would be when the property is held in the name of any person who is individual's lineal ascendant or descendant and such a lineal ascendant or descendant appears as a joint owner in the property. Provided further that the consideration has been paid from a known source. Mother shall be a lineal ascendant. Hence in the given case thought the consideration has been paid from a known source, i.e. remunerations earned by Vikas Kapoor, the farmhouse is not held jointly by the mother and the son for the exception to apply.

Secondly,Mrs. Shanti Kapoor re-transfers the Panvel farmhouse to Vikas. This transaction is null and void as per Section 6 of the Prohibition of Benami Property Transactions Act, 1988. The said Section says that a benamidar shall not re-transfer the Benami property held by the benamidar to the beneficial owner or any person acting on behalf of the beneficial owner. Any such re-transfer shall be null and void.

The ideal course of action in the given case should have been execution of a sale deed in the favour of Vikas Kapoor capturing the consideration paid by him, duly stamped with the applicable stamp duty and registered. If Vikas was desirous of later transferring the same in favour of his mother, then he could have executed a Gift Deed as per the Transfer of Property Act. Alternatively, Vikas and his mother could have been joint owners of the farmhouse, their share being in the desired ratio.

2. Yes, Vikas is guilty of offence under the Prevention of Money Laundering Act, 2002.

Vikas purchased the following from New York, when US$ 1 = ₹ 80:

a. A gold necklace of 80 grams @ US$ 50 per gram amounting to US$ 4,000 which = ₹ 3,20,000

b. A sterling silver rose of 30 grams @ US$ 20 per gram amounting to US$ 600 which = ₹ 48,000

c. A watch worth US$ 550 amounting to ₹ 44,000

As per Customs, free allowance is not applicable to gold and silver in any form other than ornaments. Hence the sterling silver rose was subject to customs duty. Moreover, the other items are not of personal effect and hence subject to customs duty beyond permissible limits. But Vikas walked through the Green Channel with dutiable goods. He should have walked through the Red Channel and declared his dutiable goods. Hence Vikas has committed an offence under section 135 of the Customs Act, 1962.

As per Section 3 of the Prevention of Money Laundering Act, 2002, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, shall be guilty of offence of money-laundering.

Further as per Section 2(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad. Further as per paragraph 12 of part A of Schedule to the Prevention of Money Laundering Act 2002, offences under the Section 135 of Customs Act, 1962 regarding evasion of custom duty; and offences under the Section 132 of Customs Act, 1962 regarding False declaration, false documents, are considered as scheduled offence under the Prevention of Money Laundering Act, 2002.

Therefore, Vikas' act constitutes an offence under the Prevention of Money Laundering Act, 2002.

3. The facts of the case are that DRPL wanted to release its film 'Hero no 1' on December 25, 2015 being Christmas and its film 'Love Tales' on February 14, 2016 being Valentine's day. VFPL also wanted to release its film 'Dil se Dil tak' on the same day as 'Love Tales'.

DRPL put forth a condition before the Single Screen Theatres that if they want to purchase the rights of the film 'Hero no 1' they have to also purchase the rights of the film 'Love Tales' to be released and exhibited on valentine's day. DRPL kept that as a non-negotiable condition. Some of the Single Screen Theatres

agreed to the condition, some did not find it lucrative and hence declined. The ones who declined did not get the rights to exhibit both, 'Hero no 1' and 'Love Tales'.

Section 4(1) of the Competition Act, 2002 ("Act") expressly prohibits abuse of dominant position. Further Section 3(4) states that any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services shall be a void agreement if it causes or is likely to cause an appreciable adverse effect on competition in India. What needs to be ascertained in this case whether there exists an appreciable adverse effect on account of DRPL's condition and whether DRPL enjoys dominant position and if yes then whether it abuses it.

The Single Screen Theatres account for merely 35% of the market share. Here it is pertinent to note that the Single Screen Theatres had the freedom to make a choice, whether to agree to the condition or not. They could have declined to accept the condition to keep their options open for other films. Also before the release of film it is not possible to ascertain whether the film will be a hit, average or flop. Hence the decision was taken by DRPL as well as the Single Screen Theatres on commercial grounds. An enterprise has the legal right to grow its business and achieve the position of strength. Attainment of dominant position is not prohibited, abuse of that position is prohibited.

Hence though the Agreement between DRPL and Single Screen Theatres may be tie-in nature, it is per se not violate the Act in the absence of an appreciable adverse effect. Section 19 lists down factors for the CCI to consider for ascertaining appreciable adverse effect on competition and the lists includes factors such as creation of barriers to new entrants in the market, driving out competitors etc. The arrangement between DRPL and Single Screen Theatres has neither created barriers for new entrants nor drove out competition. Further, VFPL had the option of postponing / preponing the release if it was desirous of avoiding the clash. It cannot be said that DRPL has a dominant position merely on the basis of its name or casting mega stars.

In view of the above, it can be said that DRPL is not in contravention of the Act.