

Test Series: May, 2020

**MOCK TEST PAPER 1**  
**FINAL (NEW) COURSE GROUP – II**  
**ELECTIVE PAPER 6D: ECONOMIC LAWS**  
**SUGGESTED ANSWER/HINTS**

**Case study 1****Answers to MCQs**

1. (D)
2. (C)
3. (B)
4. (D)
- (5) (C)

**Answers to Descriptive questions**

1. Prohibition of Benami Property Transactions Act 1988 (PBPT Act) is the applicable Act here. The general belief is that the provisions of the PBPT Act apply only to persons, trying to hide their properties and not to genuine properties acquired out of disclosed funds. But that is not true. Even a property acquired using disclosed funds in a genuine transaction may sometimes be treated as Benami.

“Benami Property” under Sec 2 (8) means any property, which is the subject matter of a Benami transaction and also includes the proceeds from such property. Benami Property means property without a name. Here the person, who pays for the property does not buy it under his own name. The person, who finances the deal, is the real owner of the property. The person in whose name the property has been purchased is Benamidar.

As per the provisions of Section 2 (9) a Benami transaction means-

1. A transaction or arrangement where a property is transferred to or held by one person for direct or indirect, immediate or future benefit of another person, who has provided or paid the consideration, except when-
  - (i) An HUF is purchasing a property in the name of a Karta, or any other member from known sources;
  - (ii) A person is holding the property in a fiduciary capacity (e.g. trustee, executor, partner of a partnership firm, director of a company, a depository participant, etc.);
  - (iii) An individual is purchasing a property in the name of his spouse or any child provided the consideration is paid out of the known sources;
  - (iv) Any person is purchasing any property in the name of his brother or sister or lineal ascendant or descendant, where he is one of the joint-owners, provided the consideration is paid out of the known sources; or
    1. A transaction or arrangement carried out in a fictitious name; or
    2. A transaction or arrangement where the owner of the property is not aware of or denies knowledge of such ownership;

3. A transaction or arrangement, where the person providing the consideration is not traceable or is fictitious.

Any transaction where possession of any immovable property is taken as a part performance of a contract is not a Benami transaction if the contract is registered and consideration as well as stamp duty has been paid.

Property would include asset of any kind, whether movable or immovable, tangible or intangible, and includes rights or interest as well as proceeds from the property.

In the above case study, in one of the cases, Subhash invested Rs. 1.50 Crore in a Bank Fixed deposit in the name of his married daughter, Mangala, who is a UK Resident, without her knowledge. Later during the course of enquiries by Tax officials, Mangala denies ownership of Bank Fixed Deposit. Here, the transaction is Benami, though the FD is generated using disclosed funds in a genuine transaction.

2. (A) Money Laundering is not an independent crime. It depends upon another crime, which is known as the "Predicate Offence". Every Scheduled Offence is a Predicate Offence.

Offences under Narcotic Drugs and Psychotropic Substances is a Scheduled Offence and as such a predicate Offence too. As such secret drug dealings and then disguising the original source of money by Rajesh and JJPL is a Predicate offence.

Under PMLA, commission of any offence, as specified in the Part A and Part C of the Schedule of PMLA will attract the provisions of PMLA. Some of the Acts and offences, which may attract PMLA, are enumerated herein below:

- Part A enlists offences under various acts such as: Indian Penal Code, 1860 (including but not limited to offences against Property such Cheating, Forgery, Counterfeiting, Fraud, murder etc) Narcotics Drugs and Psychotropic Substances Act, 1985, Prevention of Corruption Act, 1988 SEBI, Customs Act, 1955, Foreigners Act, Arms Act, Antiquities and Art Treasures Act, Copyright Act, 1957, Trademark Act, 1999, Wildlife Protection Act, 1872, Information Technology Act, 2000, amongst others.
- Part B offences (offence under the Customs Act), provided the value of property involved is more than one crore rupees or more;
- Part C deals with trans-border crimes, and reflects the commitment to tackle Money Laundering across International Boundaries.

The Scheduled Offence is called Predicate Offence and the occurrence of the same is a pre requisite for initiating investigation into the offence of money laundering.

- (B) Predicate offences are investigated by the agencies such as Police, Customs, SEBI, NCB, CBI etc under their respective Acts.
- (C) Following actions can be taken against the persons involved in Money Laundering:-
- (a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.
  - (b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4].

- (c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.
- (d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

These are the possible actions that can be taken against Rajesh, JJPL or other concerned persons in the above case for their offences.

3. (A) The following are the rights of Rajesh and his associates, being searched during search:
- (i) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.
  - (ii) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section.
  - (iii) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.
  - (iv) Search shall be made in the presence of two or more persons.
  - (v) No female shall be searched by anyone except a female [Section 18 PMLA].
- (B) The following are the rights of Rajesh during his arrest, in case arrested :-
- (i) The Authorized Officer making arrest shall, as soon as may be, inform the arrestee of the grounds for such arrest.
  - (ii) Every person so arrested shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction [Section 19 PMLA].

### Case study 2

#### Answer to Mcq's

1. (C)
2. (B)
3. (C)
4. (D)
5. (B)

#### Descriptive answers

1. As per section 4(2)(a)(ii), there shall be an **abuse of dominant position**, which is considered as offence under the Competition Act 2002, if an enterprise or a group, directly or indirectly, imposes unfair or discriminatory condition in purchase or sale of goods or services; or price in purchase or sale(including predatory price) of goods or services.

Further, as per explanation b to section 4, "**predatory price**" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

In given case price is less than comparative market price but not less than cost. Cost of project is INR 3 crores and total price will be INR 3.672 crores (18 apartment x 68 square meters x INR 30000 per square meter). Hence, act of Sweet Homes Private Limited offering apartment at prices lower than price prevailing in market **shall not** be considered as predatory bidding under the Competition Act, 2002.

2. Section 19(1) of Prohibition of Benami Property Transaction Act 1988, prescribed the powers of authorities [Authorities includes initiating officer i.e ACIT or DCIT as per section 18 read with section 2(19) of same act].

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, 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.

In the given case, the notices issued by Assistant Commissioner of Income Tax (ACIT) is justified because rights are vested with him u/s 19(1) of Prohibition of Benami Property Transaction Act 1988 to compel the Mr. Verma to produce books of accounts and record evidence on affidavits .

3. (a) Pricing for sale of property will be based upon carpet area instead of super built – up area. Hence method of pricing adopted by Sweet Homes Private limited is not in line with the Real Estate (Regulation and Development) Act, 2016.

Section 2(k) of the Real Estate (Regulation and Development) Act, 2016 defines carpet area as 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 In given case, built-up area is 70 Square Meters but Carpet Area is 68 Square Meter i.e. 70-2. Hence price should not be per square meter of 70 square meters, it should be of 68 square meters.

If we presume price remain INR 30,000 per Square Meter then price for each apartment will be INR 20.40 lakhs (i.e. INR 30,000 x 68 square meters).

As per section 13(1) of the Real Estate (Regulation and Development) Act, 2016, 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. Hence, maximum of advance money that can be taken from customer is INR 2.04 lakhs (i.e. 10% of INR 20.40 lakhs)

**Note** – 70% clause of transfer of amount to specific escrow account is also applicable to advance money, hence deposit of same in normal current account or incurring more than 30% of same on other than current project will also considered as violation of the Real Estate (Regulation and Development) Act, 2016.

- (b) As per section 10 (a) of the Real Estate (Regulation and Development) Act, 2016, every real estate agent registered under section 9 (in given case 'Home Advisor') shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority.

'Home Advisor' was appointed as authorized real estate agent for project Hamara Ghar, on 11<sup>th</sup> November, 2019. Home Advisor started advising their clients about the affordable house from Sweet Homes Private Limited and within first five days means till 15<sup>th</sup> November 2019, identifies 4 clients, who offered advance to book the apartment.

Whereas application for project approval moved to Real Estate Regulatory Authority on 15<sup>th</sup> November, 2019 by Sweet Homes Private Limited and Project Hamara Ghar got nod from Real Estate Regulatory Authority on 2<sup>nd</sup> December 2019.

Hence, 'Home Advisor' is guilty of facilitating the sale of apartments under project Hamara Ghar, prior to its registration with Real Estate Regulatory Authority.

### Case study 3

#### Answers to Multiple Choice Questions

1. (C)
2. (B)
3. (D)
4. (C)
5. (B)

#### Descriptive Questions (15 Marks)

1. Delay in handing over of projects by the developer within the stipulated time frame has been a major woe of the buyers and hence this Act came in as a savior for the buyers. All the promoters or builders at the time of registration, has to specify a time line during which they will complete and handover the project to the buyer. The builder or promoter should be very particular about the date of completion, because if he fails to do so within the stated time, then there are rigorous provisions prescribed in this Act. As per section 7 & 8, his registration would be revoked and his project would be usurped by the Regulatory Authority.

According to section 6, the registration granted under section 5 may be extended by the Authority on an application made by the promoter due to force majeure, in such form and on payment of such fee as may be specified by regulations made by the Authority. "Force majeure" shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

The Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year. The application for extension of registration shall not be rejected unless the promoter has been given a fair chance of being heard.

Hence in the above-mentioned case, we can say that the date of completion of the project may be extended on the application made to the Regulatory Authority. The promoter or builder needs to mention in the application all the reasonable causes of delay and how much time is needed to extend the date of completion of project.

2. According to Section 19 of the Competition Act, 2002, the Commission is empowered to make enquiry into any contravention of the provisions of sub-section (1) of Section 3 or sub-section (1) of Section 4 thereof, on its own motion or upon the receipt of any information or upon a reference made to it by the Central Government or the State Government or the statutory authority, as the case may be.

Hence if the Commission is prima facie satisfied under section 19 that the information needs investigation, it will ask the Director-General to make the necessary inquiry/investigation under sub-section (1) of section 26, submit a report on his findings within such period as may be specified by the Commission. The Commission shall forward a copy of the report to the parties concerned or to the Central Government or the State Government or the statutory authority, as the case may be.

Under section 27, when after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, it may pass orders:

- (a) directing such enterprises or association to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position,
- (b) Impose such penalty, which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse
- (c) Award compensation to parties
- (d) Can also modify the agreements to the extent and in the manner as may be specified in the order by the Commission.
- (e) Direct the enterprises concerned to abide by such other orders as the Commission may pass.
- (f) Recommend to the Central Government for the division of an enterprise enjoying dominant position;
- (g) pass such other order as it may deem fit.

Further, Section 60 of the Competition Act states that, the provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

It is also laid down under the provisions of section 61 that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

The provision of this Act shall be in addition to and not barring application of other laws.

Hence, the plea given by bidders that civil case on matter is under litigation and so commission is not having a jurisdiction to investigate the said matter, is not valid. Pending case in any civil court will not affect on the power of Commission to investigate.

#### **CASE STUDY 4**

##### **Answer to Multiple Choice Questions:**

1. (A)
2. (B)
3. (C)

4. (C)

5. (D)

**Answers to Descriptive Questions:**

1. (a) Initiating Officer has rightly issued the notice to Mr. Babubhai to show cause. However, the order should have been passed within 90 days from the date of issue of notice. **Since the Initiating Officer passed the order within 90 days, the order passed is correct.**
- (b) As per proviso to Section 26 of Prohibition of Benami Property Transactions Act, 1988, the Adjudicating Authority shall provide a period of not less than 30days to the person to whom the notice is issued to furnish the information sought. **Thus, Mr. Babubhai is right in contending that Adjudicating Authority have provided less time to furnish the information. Mr. Babubhai can ask Adjudicating Authority to provide at least 30days to furnish the information sought.**
- (c) Mr. Babubhai should note that as per Section 27 of Prohibition of Benami Property Transactions Act, 1988 where any order for confiscation of property has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation. Any right in favour of third party to defeat the provision of this Act shall be null and void.

Thus, Mr. Babubhai's decision to sell the property is incorrect as per law as the same will not give any rights to the villager as the rights have already been passed in favour of the Central Government. Infact, the transaction of selling of property by Mr. Babubhai shall be null and void.

2. I. Mr. Raju will have to designate a branch of an Authorised Dealer through which all the remittances under the Scheme will be made. Mr. Raju should furnish Form A2 for purchase of foreign exchange under Liberalised Remittance Scheme. It is mandatory for Mr. Raju to provide his /her PAN to make remittance under the Scheme. Mr. Raju is required to sign a self-declaration provided by the Authorised Dealer which will satisfy the Authorise Dealer that the transaction will not involve and is not designed for the purpose of any contravention or evasion of the provisions of the FEMA or any rule, regulation, notification, direction or order issued there under.

Further, the Authorised Dealers shall obtain bank statement for the previous year from the applicant to satisfy themselves regarding the source of funds. If such a bank statement is not available, copies of the latest Income Tax Assessment Order or Return filed by Mr. Raju shall be obtained.

- II. As per Regulation 15 of LRS, furnishing of Permanent Account Number (PAN), which hitherto was not to be insisted upon while putting through permissible current account transactions of up to USD 25,000, shall now be mandatory for making all remittances under Liberalised Remittance Scheme (LRS).

While allowing the facility to resident individuals, Authorised Dealers are required to ensure that "Know Your Customer" guidelines have been implemented in respect of bank accounts. They should also comply with the Anti-Money Laundering Rules in force while allowing the facility.

Thus, Mr. Raju will have to provide PAN for remittance under LRS as per the above circular.

Further, as per RBI/2017-18/161 A.P. (DIR Series) Circular No. 23 dated 12 April,2018, in order to improve monitoring and also to ensure compliance with the LRS limits, RBI has put in place a

daily reporting system by AD banks of transactions undertaken by individuals under LRS, which will be accessible to all the other ADs.

Thus, all AD Category-I banks are required to upload daily transaction-wise information undertaken by them under LRS at the close of business of the next working day. In case no data is to be furnished, AD banks shall upload a 'Nil' report. AD banks can upload the LRS data as CSV file (comma delimited), by accessing XBRL site through the URL <https://secweb.rbi.org.in/orfsxbrl/> as hitherto.

Further, Authorised Dealers are also required to keep on record any information / documentation, on the basis of which the transaction was undertaken for verification by the Reserve Bank. In case the applicant refuses to comply with any such requirement or makes unsatisfactory compliance therewith, the Authorised Dealer shall refuse, in writing, to undertake the transaction and shall, if he has reasons to believe that any contravention / evasion is contemplated by the person, report the matter to the Reserve Bank. It shall be mandatory on the part of Authorised Dealers to comply with the requirement of the tax laws, as applicable.

Thus, as per the above, Mr. Raju's contention that none of the authorities would come to know of the remittance made by him is wrong. Authorised Dealers are required to report to RBI all the remittances under the Scheme. Authorised Dealers are also required to record the documents/information on the basis of which the transaction was undertaken for further verification by RBI.

### Case study 5

#### Answer to Multiple Choice Questions

1. (D)
2. (D)
3. (B)
4. (C)
5. (D)

#### Descriptive Questions (Total 15 Marks)

1. (a) Section 11 of Insolvency and Bankruptcy Code, 2016 defines following persons shall not initiate insolvency process-

- (a) A corporate debtor **already undergoing** an insolvency resolution process, or
- (b) A corporate debtor having **completed** corporate insolvency process **12 months preceding** the date of making of the application, or
- (c) A corporate debtor who has **violated any of the terms of resolution** plan which was approved **12 months before** the date of an application, or
- (d) A corporate debtor in respects of whom a **liquidation order** has been made.

Since, DBSCs is not falling under any of the above mentioned categories, so it's eligible for initiation of application of Insolvency in the given case study.

- (b) As per provisions contained in Section 10 of Insolvency and Bankruptcy Code, 2016, following document should accompany the application form;

- (a) Its **books of accounts** and **such other documents**



(b) **Name of resolution professional** proposed to appoint as interim resolution professional.

2. (a) As per the FEMA, 1999, a person of Indian origin resident outside India **may acquire** immovable property in India other than an agricultural property, plantation, or a farm house.

**Condition 1** – Payment of purchase price; **shall be** made out of

- (i) Funds received in India through normal banking channels by way of inward remittance from any place outside India, or
- (ii) Funds held in non-resident bank account maintained in accordance with the provision of the act and regulations made by the RBI

**Condition 2** – **No payment** of purchase price for acquisition of immovable property shall be made either by traveler's cheque or by currency notes of any foreign country or any mode other than those specifically permitted.

- (b) Section 8 of Foreign Exchange Management Act deals with realisation and repatriation of foreign exchange. It provides Save as otherwise provided in this Act, where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall **take all reasonable steps to realise and repatriate to India** such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

RBI specify Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000 in this regards;

Regulation 3 provides a person resident in India to whom any amount of foreign exchange is due or has accrued shall, **take all reasonable steps to realise and repatriate to India such foreign exchange** .

Regulation 4 says on realisation of foreign exchange due, a **person shall repatriate the same to India**, namely bring into, or receive in, India and sell it to an authorised person in India in exchange for rupees; or retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.

**Note** - A person shall be **deemed to have repatriated** the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

Regulation 5 provides a person shall **sell the realised foreign exchange to an authorised person** under clause (a) of sub-regulation (1) of regulation 4, within a **period of ninety days** from the date of its receipt.

Hence DBSCs need to realise, then repatriate and then convert (by making sale to authorized dealer within 90 days from date of receipt) the foreign exchange.

3. (a) As per explanation (a) to section 4 of the Competition Act 2002, "dominant position" means a position of **strength, enjoyed by an enterprise**, in the relevant market, in India, which enables it to (i) **operate independently of competitive** forces prevailing in the relevant market; or (ii) **affect its competitors or consumers** or the relevant market **in its favour**.

**Further Section 4(2)(a)(ii)** says that there shall be an abuse of dominant position under sub-section (1) of section 4, if an enterprise or a group directly or indirectly, impose **unfair or discriminatory prices** in purchase or sale.

Hence, the increase of price by DBS for AMC contract from INRs 999 to INRs 1499 should be **constituted as abuse of dominance**.

- (b) Chapter number 7 of the Competition Act 2002, deals with provision on Competition Advocacy, it comprises section 49 which was majorly amended in year 2007. Section 49 states as under-

Sub-Section 1 provide that the Central Government may, in formulating a policy on competition (including review of laws related to competition) or any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, **make a reference to the Commission** for its opinion on possible effect of such policy on competition and on the receipt of such a reference.

Further it provides; the Commission shall, **within sixty days of making such reference**, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.

Sub-Section 2 provides, the opinion given by the Commission under sub-section (1) **shall not be binding upon the Central Government** or the State Government, as the case may be in formulating such policy.

Hence Central Government is **legally correct** in both the aspect 'making reference to' & 'refusal to consider the opinion' furnished by competition commission.