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SUBJECT- ECONOMIC LAW

Test Code –

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Head Office : Shraddha, 3rd Floor, Near Chinai College, Andheri (E), Mumbai – 69.

Tel : (022) 26836666

CASE STUDY 1

I. Multiple Choice Questions

1. (d) Not guilty
2. (a) Guilty, because he facilitated the sale of apartment in a non-registered project
3. (d) No, because these are more than the costs
4. (d) The acquisition is invalid
5. (a) 25th March, 2021

II. Descriptive Questions

6. (a) Clause (9) to Section 2 of the Prohibition of Benami Property Transactions Act, 1988, is required to be considered here along with clause (8) and clause (10) of the said section.

As per clause 10, benamidar means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.

Further as per clause 8, benami property means any property which is the subject matter of a benami transaction and also includes the proceeds from such property.

As per section 2(9)(A)(b)(iii), property registered in name of the child of individual will not be considered as a benami transaction, where the consideration for such property has been paid out of the known sources of the individual.

As per section 2(9)(A)(b)(iv), property registered in the joint name of an individual and his brother or sister or lineal ascendant or descendant will not be considered as a benami transaction, where the consideration for such property has been paid out of the known sources of the individual.

Hence, in the present case;

Ms. Saba is not a benamidar by virtue of section 2(9)(A)(b)(iii), read with clause (8) and clause (10) respectively.

Mr. Amanat Ali is not a benamidar as per clause (10) itself.

But, mother of Mr. Amanat Ali is a benamidar in the present case, by virtue of section 2(9)(A)(b)(iv), read with clause (8) and clause (10) respectively as acquiring property in the sole name of mother is not covered the exceptions, it should have been acquired jointly in the name of Mr. Amanat and his mother.

- (b) As per sub-section 1 to section 53 of the said act, where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid

payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

Further sub-section 2 provides, whoever is found guilty of the offence of benami transaction shall be punishable with rigorous imprisonment for a term which shall not be less than one-year, but which may extend to seven-years and shall also be liable to fine which may extend to twenty-five per cent of the fair market value of the property.

As per section 2(16) of the said act, "fair market value", in relation to a property, means the price that the property would ordinarily fetch on sale in the open market on the date of the transaction.

As per section 2(12) of the said act, "beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar. Here, Mr. Amanat will be considered as the beneficial owner as for his benefit the property is held by his mother as a benamidar.

Hence, the penalty shall be leviable upon Mr. Amanat, being the beneficial owner and his mother, being the benamidar and the quantum of penalty leviable shall be rigorous imprisonment varying from one-year to seven-years, and a fine which may extend upto Rs.35 lakhs (i.e. 25% of Rs.1.40 crores).

7. (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.

TCL didn't enjoy dominance when it came-up initially with the testing software, but over the period of two years, TCL truly acquired the dominant position. Quite a large share i.e. 54% of the segment of the market, is a clear indicator of their dominance in the relevant market online testing. In the journey of being zero to acquiring 54% market share, TCL has affected the competitors particularly who are small and in early years of operation, who can't sustain the heat of low price competition. TCL has captured the market by its own penetration strategy, independent of market forces.

- (b) Further, Section 4(2)(a)(ii) says, 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.

TCL increased the prices to Rs. 580/- and Rs. 300/- per candidate for online test at the centre and remote respectively. Even then, TCL successfully managed to retain 47% of the market share (reduced from 54%). The loss of market share

was compensated by high profits due to enhanced prices, hence the bottom line improved a bit. However, one of the reasons that TCL was able to substantially retain its existing market share is the fact that it offers better technology i.e. Software which is AI-equipped, that gives its additional competitive advantage and leverage over others and such better technology can be considered as a justifiable reason for such increase in prices which have also not crossed the market prices that prevailed when TCL had entered the market of online testing.

According, it does not amount to abuse of dominant position.

CASE STUDY : 2

I. Multiple Choice Questions

1. (c) Yes, during the period of one year preceding the insolvency commencement date
2. (b) Chief Metropolitan Magistrate
3. (b) 3 & 4
4. (d) Adjudicating authority shall issue notice to Jayesh, Mahesh and IOWE Ltd.
5. (b) \$ 268,000

II. Descriptive Questions

6. The eligibility criteria for a resolution applicant is mentioned in section 29A of the Code and accordingly the question is answered on the basis of its provisions as follows:

Name	Eligible to be resolution applicant?	Reason
Tryl ARC Ltd.	Yes	As per clause (c) of the Section 29A of the Code, person having account of corporate debtor classified as NPA since 1 year from insolvency commencement date shall not be eligible to be a resolution applicant. However, nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor. As per Explanation I to the said clause, related party shall not include a financial entity of the corporate debtor, if it is a financial creditor of the corporate debtor and is a related party solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date and as per Explanation II of clause (j) to Section 29A of the Code, financial entity includes an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial

		Assets and Enforcement of Security Interest Act, 2002 and hence, Tryl ARC Ltd. is eligible.
Raj	Yes	As per clause (e) of Section 29A, a person is ineligible if he is disqualified to act as a director under the Companies Act, 2013: Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I, which includes related party of a person who shall be in management of the business of the corporate debtor during the time of implementation of the resolution plan and Raj being sister's spouse of Deepak is a related party of Deepak, as per section 5(24A) of the Code, who shall be the managing director of IOWE Ltd. during the time of implementation of the resolution plan and hence, Mr. Raj is eligible even though he is disqualified to act as a director.
Prem	No	As per clause (g) of Section 29A, Mr. Prem being the CEO will be considered in the management of the company at the time when preferential transaction had taken place and in respect of which an order has been made by the Adjudicating Authority under this Code. Therefore, Mr. Prem is ineligible.
Bhavesh	Yes	As per clause (d) of Section 29A, Mr. Bhavesh has been convicted for an offence punishable with imprisonment for two years or more under the FEMA Act, 1999, specified under the Twelfth Schedule but this clause is not applicable to person who is a connected person referred to in clause (iii) of Explanation I, which includes related party of a person who shall be in management of the business of the corporate debtor during the time of implementation of the resolution plan and Mr. Bhavesh being sister's spouse will be considered as a related party to Mrs. Asmita as per section 5(24A) of the Code, , who shall be in the management of IOWE Ltd. as a woman director, during the time of implementation of the resolution plan and hence, Mr. Bhavesh is eligible.
Jayesh	No	As per clause (d) of Section 29A, Mr. Jayesh has been convicted for an offence punishable with imprisonment for two years or more under the Prohibition of Benami Property Transactions Act, 1988 specified under the Twelfth Schedule and since only 6 months have expired from the date of imprisonment, Mr. Jayesh is ineligible.

Urmila	Yes	As per clause (d) of Section 29A, Mrs. Urmila has been convicted for an offence punishable with imprisonment for two years or more under the Competition Act specified under the Twelfth Schedule and since 2 years have expired from the date of imprisonment, Mrs. Urmila is eligible.
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7. (A) The following calculation is done on an estimated basis according to the provisions of section 53 of the Code.

Particulars	(Rs. in lakhs)
Value Realized by Liquidator	180
Add: Cash	30
Total Amount of Funds Available	210
Less: Section 53(1)(a) Estimated Insolvency resolution process costs	40
Balance Available	170
Less: Section (53)(1)(b)	
(i) Workmen's dues for the period of 24 months preceding the liquidation commencement date (18 lakhs*24/27)	16
(ii) Debt owed to a secured financial creditors	80
Balance available	74
Less: Section(53)(1)(c) Wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date	22
Balance available	52
Less: Section(53)(1)(d) Financial debts owed to unsecured creditors	-
Balance available	52
Less: Section(53)(1)(e) –	
Amount due to the Central Government and the State Government	20
Balance available	32
Less: Section(53)(1)(f) (Pending payable amount = Rs. 2 lakhs+Rs.38 lakhs=Rs. 40 lakhs)	
(i) Workmen's dues pending beyond 24 months of liquidation commencement date (2 lakhs * 32/40)	1.6
(ii) Unsecured operational creditors (38 lakhs * 32/40)	30.4
Balance available	Nil
Less: Section(53)(1)(g) Amount to be given to Preference Shareholders	Nil
Balance available	Nil
Less: Section(53)(1)(h) Amount to be given to Equity Shareholders	Nil
Balance available	Nil

Comments:

Plan no. 2 contravenes the provisions of the IBC, 2016 as treating secured creditor as unsecured one because of attachment of property under section 5 is incorrect and against the law, thereby it is not eligible.

Plan no. 3 provides for payment to operational creditors at Rs. 28 lakhs whereas they should be paid at higher of: amount to be paid in the event of a liquidation

of the corporate debtor under section 53 i.e. liquidation value (not given in question) or amount to be paid in order of priority under section 53, i.e. Rs. 30.4 lakhs. As plan no. 3 provides only for Rs.28 lakhs payment, it is ineligible.

Plan no.1 satisfies all the requirements of section 30(2) of the Code and therefore is an eligible resolution plan.

(B) As per Section 42 of the Competition Act, 2002, the Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit.

The Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorized by it.

Analysis and conclusion of given case

The commission might have caused inquiry that whether PKC Pvt. Ltd. is complying with the provisions of the order passed by it, by which it would have come to know about the violation by the company and Mrs. Urmila being a managing director of the company would have been involved in it because of which she was also punished.

The penalty that would have been imposed would be imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may have deemed fit, for not complying with the order of the commission.

8. **(A)** The facts in the given case commensurate with the case of *M/s. PMT Machines Ltd. vs The Deputy Director, Directorate of Enforcement, Delhi*, for which the key ratio decidendi is produced hereunder,

1. The Appellate Authority of the Prevention of Money Laundering Act, 2002 (PMLA) has upheld the prevalence of the IBC over the provisions of PMLA.

2. The PMLA Appellate Tribunal, distinguished between the objectives of the PMLA and IBC, and was of the view that “the objective of the PMLA was to deprive the offender from enjoying the 'illegally acquired' fruits of crime by taking away his right over property acquired through such means. The Bench opined that the IBC's objective on the other hand was maximization of value of assets, to promote entrepreneurship, availability of credit and balancing the interest of all the stakeholders.”
3. The Appellate Bench observed that, if the attachment in this case were lifted, the RP would be able to take steps to get a viable Resolution Plan. It was noted that the attachment order was passed in relation to mortgaged properties in favour of banks, which were not purchased from "proceeds of crime", as they were purchased and mortgaged with the banks prior to the crime period.

Analysis and Conclusion of Given Case:

Based on the decision given by appellate tribunal in the above case, it can be understood that the act of the provisional attachment under section 5 of the PMLA Act, 2002, of property of IOWE Ltd. cannot be justified as there is prevalence of the IBC over the provisions of PMLA and the attachment needs to be lifted so that the resolution professional would be able to take steps to get available Resolution Plan.

(B) As per Section 4 of the Prohibition of Benami Property Transactions Act, 1988,

- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.
- (2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

Since the property acquired by Jayesh is held to be benami, the filing of suit by IOWE Ltd. is not a valid act because as per section 4 of the Act, no such suit shall lie against the person in whose name the property is held to be benami or against any other person.

CASE STUDY 3

I. Multiple Choice Questions

1. **(b)** Sagar cannot do so, as he needs to deposit the amount exceeding beyond \$ 2000 to AD within specified days.
2. **(b)** Exotic Ltd. requires prior approval of Reserve Bank of India before remittance of the said amount.
3. **(c)** Mr. Suri cannot gift it to Mr. Udav as it was bought in contravention of FEMA provisions.
4. **(b)** 180 days and can be extended by order of Adjudicating Authority.
5. **(c)** Such a sale shall be null and void.

II. Descriptive Questions

6. (i) (1) As per the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, a person resident in India may acquire immovable property outside India,—
- (a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4;
 - (b) by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;
 - (c) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;
- (2) A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

Explanation:

For the purposes of these regulations, 'relative' in relation to an individual means husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

In the above mentioned case, the property was gifted to Mr. Suri by his Uncle. And according to the provisions of FEMA, Mr. Suri is legally entitled to hold the property. As mentioned above he sold his house (gifted from his uncle), and bought a Joint mansion with his cousin in London. Mr. Suri has not remitted any funds from India. Whatever property he bought jointly with his cousin was, bought from the sale amount of the house gifted to him. Hence, the acquisition of property outside India and related transaction made in London is valid transaction according to the provisions of FEMA.

- (ii) The nature of crime committed by the company is an offence of cross border implications has been defined u/s 2(1)(ra) of the Prevention of Money Laundering Act, 2002 as —

any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or

any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

As per Part C of the Schedule to the PMLA, 2002, an offence which is the offence of cross border implications and is specified in,—

- (1) Part A; or
- (2) the offences against property under Chapter XVII of the Indian Penal Code.
- (3) The offence of willful attempt to evade any tax, penalty or interest

referred to in section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Hence, Mr. Suri is guilty under Part C of the Schedule to the PMLA as making export through a sister concern in tax heaven amounts to offence of willful attempt to evade tax. He would be held guilty under section 3 and will be liable to punishment for the offence of PMLA under section 4 of the Act.

7. (i) According to section 4 of the FEMA, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India, except as otherwise provided under the Act. Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. As per para 6 of the LRS, an individual is permitted for purchase of immovable property abroad.

However, 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 under section 13(1) of FEMA, upon adjudication shall be liable to penalty upto thrice the sum involved in such contravention where the amount is quantifiable. If the amount is not quantifiable, penalty upto rupees two lakhs can be imposed.

The Adjudicating Authority adjudicating the contravention can also order confiscation of any currency, security or any other money or property in respect of which the contravention has taken place. He can also direct that foreign exchange holdings of any person committing the contravention shall be brought back to India or retained outside as per directions.

The term 'property' in respect of which contravention has taken place shall include deposits in bank or Indian currency where the contravening property has been converted into bank deposits/Indian currency. It also includes any other property which has resulted out of conversion of the contravening property. [Section 13(2) of FEMA]

In other words, if the contravening property is converted into bank deposits, Indian currency or another property, such deposit/Indian currency/other property can also be confiscated.

Besides, Section 37A of the FEMA specifies Special provisions relating to assets held outside India in contravention of section 4, states that upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property.

The order of seizure along with relevant material shall be placed before the Competent Authority. The Competent Authority shall dispose of the petition within a period of one hundred eighty days from the date of seizure by either confirming or by setting aside such order, after giving an opportunity of being heard to the representatives of the Directorate of Enforcement and the aggrieved person.

The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made above.

In this case, purchase of a flat by Mr. Suri in Malaysia was beyond the permissible limit of transmission of amount under the liberalised remittance Scheme, so the said transaction is in contravention to the provision of the Act. Therefore, Mr. Suri will be liable for prosecution & penalty in the light of the aforesaid provisions of the FEMA.

- (ii) Under the section 15 of FEMA, Mr. Hardeep Suri can seek following remedy incase of contravention under section 13 of the FEMA:
- (1) he can make an application for compound of such offence within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or any other officers of the Directorate of Enforcement and Officers of the Reserve Bank.
 - (2) Where a contravention has been compounded, then no further proceeding, shall be initiated or continued, against the person committing such contravention, in respect of the contravention so compounded.

CASE STUDY 4

I. Multiple Choice Questions

1. (c) The Fair market value of the immovable properties acquired by Yashraj Family as on the date of acquisition or if the date cannot be determined, as on the date of possession.
2. (a) A transaction in respect of a property, where the person providing the consideration is unknown at the time of sale but can be traced is not valid.
3. (c) Such transaction and retransfer shall be deemed to be null and void.
4. (b) The proceeds from the properties are also illegal and consequently, such employees of Yashraj family are also liable.
5. (c) Separate manual accounts shall also include apart from accounts made through regular accounting system considered as a record for the purpose of investigation.

II. Descriptive Questions

- 6 (A) Government has to establish that there is an offence of money laundering as per section 3 of the Prevention of Money-Laundering Act, 2002 (here-in-after

referred as the act) to bring a successful prosecution of the concerned in Yashraj family and their close aids under the PMLA.

As per section 2 (p) of the act, money-laundering has the meaning assigned to it in section 3. Further section 3 reads whoever 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 proceeding of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of the offence of money laundering.

(B) Prima facie, various offences of Money Laundering appear to have been committed in the given case.

As per section 4 of the Prevention of Money Laundering Act, 2002, whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Further provided that where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 (Offences under The Narcotic Drugs and Psychotropic Substances Act, 1985) of Part A of the Schedule, then the maximum imprisonment may extend to ten years.

7. In the given case, it was found that cash was kept in bank lockers in the names of some of the long-serving employees as benami.

A transaction or arrangement where the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration is a benami transaction under Section 2 (9) (A) (b) of the Prohibition of Benami Property Transactions Act, 1988.

However, there are certain exceptions to this when the transaction or arrangement shall not be considered benami. The exceptions are when the property is held by;

- (i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family.
- (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose.
- (iii) 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.
- (iv) 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 descendent 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.

8. The unaccounted receipts were deployed for acquiring immovable properties as personal investments in different states. Based on the preliminary findings, the undisclosed income of the VGI was estimated at over Rs. 175 crores. Unaccounted cash of Rs. 30 crores, jewellery worth Rs. 12 Crores, and 2 new luxury cars value Rs. 2 crores each were seized.

As per section 2 (d) of the Prevention of Money laundering Act 2002 (here-in-after referred to as the act), the attachment means prohibition of transfer, conversion, disposition or movement of property by an order issued under the act.

Section 5 of the act gives extremely wide powers to the authorities to attach properties suspected to be involved in Money Laundering.

Sub-section 1 provides where the director or any other officer not below the rank of deputy director (authorised by the director for the purposes of this section) has reason to following believe (such reason need to berecorded in writing) based on the material in his possession, he may by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days (the period during which the proceedings under this section is stayed by the High Court, shall be excluded) from the date of the order;

‘That any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to the confiscation of such proceeds of crime’.

Provided that no such order of attachment shall be made unless (with exception of cases where the absence of immediate attachment leads to frustrate any proceeding under this Act), in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country.

Under sub-section 2 the director, or any other officer not below the rank of deputy director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope and such Adjudicating Authority shall keep such order and material.

Under sub-section 3 every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under section 8 (3) (Adjudication), whichever is earlier.

Under sub-section 4 nothing in this section shall prevent the person interested (includes all persons claiming or entitled to claim any interest in the property) in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Under sub-section 5 the Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

CASE STUDY 5

I. Multiple Choice Questions

1. (c) When the value of assets of the enterprise created after the merger is more than Rs. 2000 crores or the turnover after the merger is more than Rs.6000 crores.
2. (c) 210 days
3. (b) A capital account transaction
4. (d) None of the above
5. (b) An appreciable adverse effect on competition

II. Descriptive Questions

6. As per Section 2 (c) of the Competition Act 2002, the term “cartel” includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

From the above, it may be noted that the term ‘cartel’ has been given inclusive meaning. Although, Northwest Agro Produce Cooperative Society was formed to ensure the timely collection of sale proceeds from sugar mills, it also developed a charter, in the form of a memorandum for its members, to regulate and control the supply, price, term of sale of sugarcanes (though only on behalf sugarcane-growers), collection of sale proceeds and also recovery, if required. This charter, in the form of a memorandum, was binding on all the members of the Society. Hence, Northwest Agro Produce Cooperative Society is a ‘Cartel’ within the meaning of Section 2 (c) of the Competition Act, 2002.

7. Yes, North West Agro Limited holds dominance over the market because 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.
Instances of abuse of dominance

- (i) **Predatory Pricing after the acquisition of Sun Sugar Limited** - Northwest Agro Limited acquired a substantial network of the retailers after the takeover of Sun

Sugar Limited and due to such takeover, it tried to penetrate the market using predatory pricing [refer Section 4(2)(a)(ii) of the Competition Act, 2002]. Northwest Agro Limited reduced the price of the brand 'Meetha' from Rs. 40 to Rs. 35 per kilogram which was lower than the cost incurred, whereas other players in the market like Moon Sugar Limited were selling sugar at Rs.40 per kilogram.

As per *Explanation* (b) to Section 4 of the Competition Act, 2002, the term "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.

- (ii) **Increasing the price after the acquisition of Moon Sugar Limited** – After the hostile acquisition of Moon Sugar Limited by Northwest Agro Limited with the help of another group company Southwest Agro Limited, Northwest Agro Limited raised the price of its branded sugar 'Aur Meetha' from Rs. 35 to Rs. 45 per kilogram, even though Moon Sugar Limited was originally selling its sugar 'Aur' at Rs. 40 per kilogram. According to Section 4 (2) (b) (i) of the Competition Act, 2002, there shall be an abuse of dominant position under Section 4 (1), if an enterprise or a group limits or restricts the production of goods or market therefor through unfair or discriminatory price.

8. In the context of Northwest Agro Limited, the regulatory aspects of 'combination' as mentioned in Section 5 of the Competition Act, 2002 (here-in-after referred to as act) are given as under:

Sr. No	Nature of Combination	Facts of the case	Criteria for considering 'Combination'	Whether 'Combination' or not
1	Acquisition by single acquirer but different goods [Section 5 (a) (i) (A)]	Northwest Agro Limited acquired Sun Sugar Limited.	Joint Asset over Rs.2,000 crores or Turnover over Rs.6,000 crores	Yes. It is a combination. <i>Hint:</i> Joint turnover is Rs. 6,400 crores (4,200+2,200) which is more than Rs. 6,000 crores. The joint assets base of Rs. 1198 crores (728+470) which is less than Rs. 2,000 crores may be ignored.
2	Acquisition by a group with similar goods [Section 5 (b) (ii) (A)]	Northwest Agro Limited acquired Moon Sugar Limited with the help of another group company Southwest Agro Limited.	Group assets over Rs. 8,000 crores or turnover over Rs.24,000 crores	No. It is not a combination. <i>Hint:</i> Joint asset base of the 'group' is only Rs. 1,966 crores (1198+200+568) and aggregate turnover is also Rs. 9,700 crores. (6400+500+2800)
3	MOU for transfer of technology	Northwest Agro Limited enters into an MOU with Star Ethanol Limited for transfer of technology.	No criterion prescribed for considering the transfer of technology as 'combination'.	Not Applicable.

Note – Limits are quoted in section 5 of the Competition Act 2002 and further modified through notification number S.O. 675(E) dated 4th March 2016

Regulation of Combinations

According to Section 6 (1) of the act, no person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

Further section 6 (2) of the act says, any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission in the specified form along with a requisite fee, disclosing the details of the proposed combination, within thirty days of:

- (a) Approval of the proposal relating to merger or amalgamation by the Board of Directors of the enterprises concerned with such merger or amalgamation;
 - (b) Execution of any agreement or other document for acquisition or acquiring of control.
- Further section 6 (2A) of the act provides, 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 or the Commission has passed orders under Section 31, whichever is earlier.