ANSWER 1

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (c) [Hints: Refer Regulation 2 of Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000]

2. (c) [Hint: Refer Section 2 (9) of the Prohibition of Benami Property Transactions Act, 1988. It is not a benami transaction because all statutory dues have been paid and his father knew about the transaction. Therefore, it falls under exempted category. The amount so contributed can be a loan or gift to the son.]

3. (c) [Hint: Refer Regulation 4 of the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015]

4. (c) [Hint: Refer Regulation 15 of the FEM (Export of Goods and Services), Regulations, 2000]

5. (a) [Hint: Refer Regulation 3 of FEM (Acquisition and transfer of immovable property in India) Regulations, 2000]

6. (d) [Hint: Refer Regulation 7 of FEM (Realisation, Repatriation and surrender of Foreign Exchange) Regulations, 2015]

7. (b) [Hint Refer Regulation 4 the FEM (Export of Goods and Services), Regulations, 2015 which has exempted such export transaction from furnishing of export declaration]

8. (b) [Hint: Section 14 of the Insolvency and Bankruptcy Code, 2016, describes moratorium. It is an order passed by the adjudicating authority (NCLT) declaring a moratorium on the debtor's operations for the period of the Insolvency Resolution Process, during which no action can be taken against the Company or the assets of the Company. This operates as a 'calm period' during which no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can take place against the debtor.]

9. (b) [Hint: FEMA does not impose any restriction on acquisition of immovable property outside India by a non-resident Indian. Further, when at a future date the person concerned becomes a person resident in India, Section 6(4) even permits him to hold, own or transfer immovable property situated outside India since such property was acquired by him when he was resident outside India]

10. (c) [Hint: As per section 22 of the Insolvency and Bankruptcy Code, 2016, an Interim Resolution professional approved by the Committee of Creditors can be replaced with 75% voting in favour of the decision and approval of the Board.]

II. ANSWERS TO DESCRIPTIVE QUESTIONS

1. (i) Section 11(3) of the Foreign Exchange Management Act, 1999 states that where any Authorised person contravenes any direction given by the Reserve Bank of India under the said Act or fails to file any return as directed by the Reserve Bank
of India may, after giving reasonable opportunity of being heard, impose on Authorised Person, a penalty which may extend to ten thousand rupees and in the case of continuing contraventions with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

Since as per the facts given in the question, the Authorised person, namely, Forex Dealers Ltd., has failed to file the returns as directed by the Reserve Bank of India. According to the above provisions, it has exposed itself to a penalty which may extend to ten thousand rupees and in the case of continuing contraventions in the nature of failure to file the returns, with an additional penalty which may extend to two thousand rupees for every day during which such contravention continues.

(ii) According to the provisions of section 2(v) of the Foreign Exchange Management Act, 1999, a person in order to qualify for the purpose of being treated as a “Person Resident in India” in any financial year, must reside in India for a period of more than 182 days during the preceding financial year. In the given case, Mr. Shekhar has resided in India for a period of only 150 days, i.e., less than 182 days, during the financial year 2016-2017. Hence, he cannot be considered as a “Person Resident in India” during the financial year 2017-2018 irrespective of the purpose or duration of his stay.

(iii) Printex Computer being a Singapore based company would be person resident outside India [(Section 2(w)]. Section 2 (u) defines ‘person’ under clause (vii) thereof, as person would include any agency, office or branch owned or controlled by such person. The term such person appears to refer to a person who is included in clause (i) to (vii). Accordingly printex unit in Pune, being a branch of a company would be a ‘person’.

Section 2(v) defines a person resident in India. Under clause (iii) thereof person resident in India would include an office, branch or agency in India owned or controlled by a person resident outside India. Printex unit in Pune is owned or controlled by a person resident outside India, and hence it, would be a ‘person resident in India.’

However, Dubai Branch though not owned is controlled by Printex unit in Pune which is a person resident in India. Hence prima facie, it may be possible to hold a view that the Dubai Branch is a person resident in India.

2. **Capital Account Transactions:** All the transactions referred to in the question are capital account transactions.

Section 6(2) of FEMA, 1999 provides that the Reserve Bank may in consultation with the Central Government specify the permissible capital account transactions and the limit upto which foreign exchange will be allowed for such transactions.

(i) **Depreciation of direct investments:** According to proviso to section 6(2), the Reserve bank shall not impose any restriction on the drawal of foreign exchange for certain transactions. One such transaction is drawal of foreign exchange for payment due for depreciation of direct investment in the ordinary course of business. Hence this transaction is permissible without any restrictions.

(ii) **Person resident in USA returning permanently to India:** When the person returns to India permanently, he becomes a resident in India. Section 6(4) provides that a person resident in India may hold, own, transfer or invest in foreign currency, foreign security, etc. if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. In view of this, the person who returned to India permanently can continue to hold the foreign security acquired by him when he was resident in U.S.A.

(iii) **Investment in shares of Indian company by non-resident:** Reserve Bank issued Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. Regulation 4(6) of the said Regulations prohibits a person resident outside India from making
investment in India, in any form, in any Company or partnership firm or proprietary concern or any entity, whether incorporated or not, which is engaged or proposes to engage in construction of farm houses. Hence it is not possible for a person resident outside India to invest in the shares of a company engaged in construction of farm houses as such investment is prohibited.

(iv) **Acquisition of immovable property by person resident outside India:** Reserve Bank issued Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. The regulations specify the classes of capital account transactions of persons resident outside India in Schedule II. Under this schedule, acquisition and transfer of immovable property in India by a person resident outside India is permissible. Hence, the person resident of Canada can acquire the immovable property in Mumbai.

3. (i) **Adherence to sanctioned plans and project specifications by the promoter (Section 14)**

The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.

Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

1. any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person.

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

_Explanation._—For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.

2. any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

_Explanation._—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.

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

Hence, in the instant case, reducing the number of rooms does not come under minor additions or alterations. The promoter i.e. Mr. Pankaj Gupta shall not make any additions and alterations in the sanctioned plans, layout plans and specifications 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 buildings.

(ii) No deposit or advance to be taken by promoter without first entering into agreement for sale

According to section 13 of the said Act, a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

In the instant case, the cost of the flat is Rs. 2 crore and Mr. Shyam put a condition to pay Rs. 50 Lakhs as an application fee before entering into a written agreement for sale with Mr. Vivaan. This is invalid as a promoter can accept only Rs.20 Lakhs (10% of Rs. 2 Crore) as an advance or an application fee without first entering into a written agreement for sale.

ANSWER 2

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (d) [Hints: As per section 3(12), Default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be]

2. (c) [Hints: Financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;{section 5(7)}]

3. (b) [Hint: Refer Regulation 15 of the FEM (Export of Goods and Services), Regulations, 2000]

4. (c) [Hint: Refer Section 5 (7) of the Code]

5. (d) [Hint: Refer Section 5 (21) of the Code]

6. (c) [Hint: Refer Section 16 of the Code]

7. (d) [Hint: Refer Section 15 of the Code]

8. (c) [Hint: Refer Section 22 (1)]

9. (d) [Hint: Refer Regulation 3 of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]

10. (d) [Hint: section 61(3) of the IBC]

II. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (i) According to section 33 of the Insolvency and Bankruptcy Code, 2016, where the Adjudicating Authority before the expiry of the insolvency resolution process period does not receive a resolution plan as approved by the committee of creditors, it shall—

   (a) pass an order requiring the corporate debtor to be liquidated as per the relevant provisions

   (b) issue a public announcement stating that the corporate debtor is in liquidation; and

   (c) require such order to be sent to the authority with which the corporate debtor is registered.
According to section 12 of the Insolvency and Bankruptcy Code, 2016, the corporate insolvency resolution process (CIRP) shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

As per the facts, Ronit, presented the approved resolution plan, before NCLT after the prescribed period for the completion of CIRP i.e., after 180 days of insolvency commencement date.

According to the above stated provisions, NCLT, shall pass an order requiring the corporate debtor (MMPL) to be liquidated. It shall issue a public announcement of its liquidation and send such order to the Registrar of companies.

(ii) As per Section 33(3) of the Insolvency and Bankruptcy Code, 2016, where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order as referred above. Accordingly, the employees and the stakeholders of MMPL, whose interests are affected by contravention in compliances of the resolution plan, may make an application to NCLT for initiation of liquidation. On receipt of an application, if the Adjudicating Authority determines that the MMPL has contravened the provisions of the resolution plan, it shall pass a liquidation order.

(iii) As per section 33(7) of the Insolvency and Bankruptcy Code, 2016, the order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor.

However, where the business of the corporate debtor when continued during the liquidation process by the liquidator, it shall not be deemed to be notice of discharge to the officers, employees and workmen of the corporate debtor.

So the Conduct of business of MMPL during liquidation process by the liquidator is tenable and shall not be deemed to be notice of discharge to the officers, employees and workmen of the MMPL.

2. (i) Validity of the conduct of undervalued transaction: As per the provisions given in section 45 of the Insolvency and Bankruptcy Code, 2016, Ronit, on an examination of the transactions of the MMPL, determines that certain transactions were made by MMPL with a related party (Rama devi) within the period of two years preceding the insolvency commencement date (in 6 months preceding the Insolvency Commencement date), which were undervalued. Ronit, shall make an application to the NCLT to declare such transactions as void and reverse the effect of such undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transaction.

(ii) Failure to report to NCLT of undervalued transactions: As per the stated facts given in the light of the provisions laid in Section 47 of the Insolvency and Bankruptcy Code, an undervalued transaction has taken place and Ronit (Resolution Professional) has not reported it to the NCLT, in such case, a creditor, member or a partner of a MMPL, as the case may be, may make an application to the NCLT to declare such transactions void and reverse their effect in accordance with the relevant provisions of this Code.

(iii) Order of NCLT: Where the NCLT, after examination of the application made above, is satisfied that undervalued transactions had occurred; and Ronit (RP) after having sufficient information or opportunity to avail information of such transactions did not report such transaction, there it shall pass an order of —

(a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48 of the Code. The order of the Adjudicating Authority may provide for the following: —
(1) require any property transferred as part of the transaction, to be vested in the corporate debtor (MMPL);

(2) release or discharge (in whole or in part) any security interest granted by the corporate debtor (MMPL);

(3) require any person to pay such sums, in respect of benefits received by such person, to the Ronit (RP), as the Adjudicating Authority may direct; or

(4) require the payment of such consideration for the transaction as may be determined by an independent expert.

(b) requiring the Board (IBBI) to initiate disciplinary proceedings against Ronit.

3. (a) (i) As per the provisions given in section 68 of the Code, Mr. Shyam, Director (an officer in default) has within the twelve months immediately preceding the insolvency commencement date, fraudulently transferred his holding of shares in favour of his sister of Rs.1 lakh (which is more than value of ten thousand rupees). So, Mr. shyam, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both: However, he shall not be liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

(ii) According to section 71 of the Code, on and after the insolvency commencement date, Mr. Shyam, makes a false entry in the books of account of MMPL with an intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

(iii) As per Section 77 of the Code, as Shyam permitted Shivam to provide informations in the application under section 10, which is false in material particular and omits material fact related to a books of accounts of a specified period, so he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.

(b) As per section 69 of the Code, on or after the insolvency commencement date, where the directors of the MMPL—

(a) has made transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;

(b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such directors of MMPL, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

However, directors of MMPL, shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.
ANSWER 3

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (a) [Hint: The matter relates to concerns of an individual consumer regarding non-delivery of booked vehicle in the given time]

2. (b) [Hint: The allegations essentially relate to abuse of dominance by a car manufacturing company, directly or through its authorized dealer]

3. (c) [Hint: The tried to portray his issue as an issue of consumer exploitation to draw the attention of the competition authority]

4. c, d, a, b [Hint: To examine a case under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct]

5. b, a, d, c [Hint: To examine a case under section 3 (4) of the Competition Act, 2002, first it is to be seen whether the alleged two entities are in a vertical chain and whether they have entered into any agreement as defined under the Competition Act, 2002. Then it is to be seen whether such agreement is anti-competitive and it has appreciable adverse effect on competition]

6. (a) [Hint: Essentially, the allegations relate to passenger car market]

7. (d) [Hint: All are the factors prescribed under section 19 (6) the Competition Act, 2002 to assess dominance of an enterprise in a relevant market]

8. (b) [Hint: Cartelization requires agreement amongst players placed at horizontal level]

9. (a) [Hint: No competition concerns raised in the matter as delay in giving delivery to a consumer or not passing the benefit of tax reduction to consumer or increasing the price cannot said to be anti-competitive]

10. (d) [Hint: Refer section 4 of the Competition Act, 2002]

II. ANSWERS TO DESCRIPTIVE QUESTIONS

1. Even though the concerns raised by Mr. Nazir cannot be redressed by the competition authority as it essentially relates to grievances of an individual consumer of a passenger car manufactured by XMC Pvt. Ltd, however if the matter is placed before the competition authority it will be examined in terms of section 4 of the Competition Act, 2002. It is so because the allegations of Mr. Nazir essentially relate to abuse of dominance by XMC Pvt. Ltd, directly or through its authorized dealer M/s Ratan Lal & Sons.

   To examine the matter under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct.

   Enterprise: Yes, XMC Pvt. Ltd. is an enterprise in terms of Section 2 (h) of the Act.

   Relevant Product Market: The market for passenger car [section 2 (t)]

   Relevant Geographic Market: whole of India [see section 2 (s)]

   Relevant Market: the market for passenger car in India [section 2 (r)]

   Assessment of Dominance of XMC Pvt. Ltd.: Appear to be dominant in the market for passenger car in India as it has highest market share and financial strength besides its brand name and dependence of the consumer on it.

   Assessment of the alleged conduct of XMC Pvt. Ltd.: Not appear to be abusive. Delay in giving delivery of a product to a consumer or not passing the benefit of tax reduction to consumer or increasing the price cannot said to be anti-competitive in terms of section 4 of the Competition Act, 2002.
2. To examine the matter under section 4 of the Competition Act, 2002, it is to be seen first whether the alleged entity is an enterprise or not before defining the relevant market, assessment of its position of dominance in the relevant market and examination of its conduct. (all the steps of answer no. 1 above to be followed)

Delay in giving delivery of a product to a consumer without enabling provisions in the booking document may be an issue of breach of contract between two parties. It may not be a case of imposition of unfair condition in term of the provisions of section 4 of the Competition Act, 2002. Further, increasing price is a commercial decision of an enterprise which is taken considering the market demand conditions of the product. If market is competitive then excess price, if any, can be wiped out in the long run, no intervention of the competition authority is required. However, if the company raised the price after negotiation with the consumer, it can be challenged in other appropriate forum.

3. As per section 2(r) of the Act, 'relevant market' means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. Further, the term 'relevant product market' has been defined in section 2(t) of the Act as a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. And, the term 'relevant geographic market' has been defined in section 2(s) of the Act to mean a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.

In order to determine the 'relevant product market', the Commission, in terms of the factors contained in section 19(7) of the Act, is required to have due regard to all or any of the following factors viz. physical characteristics or end-use of goods, price of goods or service, consumer preferences, exclusion of in-house production, existence of specialized producers and classification of industrial products. Similarly in order to determine the 'relevant geographic market', the Commission, in terms of the factors contained in section 19(6) of the Act, is required to have due regard to all or any of the following factors viz., regulatory trade barriers, local specification requirements, national procurement policies, adequate distribution facilities, transport costs, language, consumer preferences and need for secure or regular supplies or rapid after-sales services.

As stated above, as per the provisions of the Competition Act, 2002 the relevant market comprises of the relevant product market and relevant geographic market. In the instant matter, the relevant product market may be considered as the ‘market for passenger car’. It may be noted that the allegations of Mr. Nazir pertains to purchase and after sale service of a passenger car which cannot be substitutable with other type of vehicle in terms of price, end use, characteristics, etc. The relevant geographic market in this matter may be considered as ‘India’ because the condition of competition in passenger car market in India is homogeneous throughout India. A consumer can buy a passenger car from any part of India with similar competitive condition. Thus, the market for passenger car in India may be considered as the relevant market in this case.