Mrs. Shakuntala Bisht was a dynamic woman entrepreneur running her factory of manufacturing designer candles and other items made of wax as a proprietary concern in Dehradun (Uttrakhand) titled as M/s. Bisht Designer Candles since 2003. She had appointed a number of dealers pan India for selling her designer products.

She was residing in a bungalow on Subhash Road in Dehradun along with her family. Her husband Mr. O. P. Bisht was joint-secretary in Uttrakhand Sachivalaya. Her son Varun had done his B.E. (Bachelor of Engineering) from IIT, Kharagpur and thereafter MBA from IIM, Kolkata in the year 2013. Her daughter Latika was pursuing B.Sc. (Hons.) in Physics from DIT University, Dehradun.

Varun, being a brilliant student, secured a job in Accenture through Campus placement. He attended a three months’ residential training programme and joined as Assistant Manager (Operations) in Pune branch of the company. He took a one BHK flat on rent at Hinjewadi locality, purchased some furniture and other daily household items and got himself settled in the new atmosphere. He was happy and content as the package offered to him was very lucrative.

Mrs. Bisht had high aspirations and was desirous of expanding her business further. Therefore, in the year 2013, she thought of exporting her products to various countries crossing the borders of India. After discussing with her family members, she decided to convert her proprietary concern into a private limited company. Accordingly, she got registered her company under the title Bisht Designer Candles Pvt. Ltd. in which she and her daughter were directors while all of the four family members were shareholders. Thereafter, she completed various formalities required for exporting her product which, *inter-alia*, included obtaining a ten digit importer-exporter code (IEC) number from Directorate General of Foreign Trade (DGFT).

In the year 2015, she sent her first export consignment of designer candles to a foreign buyer in Berlin, Germany. The order amounted to € 20800 and the importer was required to make payment in three months after shipment. As per the terms and conditions a Letter of Credit (L/C) was opened by the Deutsche Bank on behalf of the importer. Before shipping goods, Mrs. Bisht had to fill requisite
export declaration form since the consignment did not fall in exempted category as mentioned in Regulation 4 of the FEM (Export of Goods and Services), Regulations, 2015. After shipment of goods, she submitted the documentary bill of exchange drawn under L/C to Syndicate Bank, Dehradun and got it discounted under her sanctioned bills discounting limit. On the due date Syndicate Bank received the export payment and squared off her liability.

Subsequently, she explored candle market in the USA and came in contact with M/s. Williams’ Art Gallery in Boston which had a five storey departmental store. In this store, one of the floors was meant only for designer candles and other items made of wax. After due negotiations with the CEO Mr. Williams, she managed to get an advance of 50,000 USD being 50% of the total export value. It was well within her knowledge that in case an advance was received against export to a foreign buyer, the shipment of goods was to be made within one year of receipt of advance and the export documents were required to be routed through the same authorised dealer which received the advance on her behalf. She shipped the goods much before one year and also got payment well within the statutory period of nine months from the date of export.

On the of successful settlement of her first export consignment to M/s. Williams’ Art Gallery of Boston, she took steps to complete another export order from the same party for USD 1,00,500. However, this time no advance payment was made by the importer and on the basis of his firm order, she dispatched the consignment of designer candles. After shipment of goods, she submitted the documentary B/E to Syndicate Bank, Dehradun for discounting. As per the agreement, the importer was to make payment on the completion of five months from the receipt of consignment at his godown. However, by the time five months were over, the importer could make payment of only 40% of the total export value.

Being in need of funds, she started raising and collecting funds from various sources. In one of the cases she had given an unsecured loan of Rs. 5 lacs to a private limited company in which a distant relative of her husband was a director. However, when she demanded her loan back from the company, it was transpired that the company was under liquidation process before the National Company Law Tribunal under Insolvency and Bankruptcy Code, 2016.

Varun was doing his job at Pune to the complete satisfaction of his superiors. In the next three years’ time after joining Accenture, Varun could save a lot of money as he was a man of few needs. One day, a casual talk with the local grocer Ajay Gupta gave him an idea to buy a flat in a housing society. Ajay gave him the phone number of a known property dealer, Mr. Rajnikant. Thereafter, a meeting was fixed in the office of Mr. Rajnikant where he noticed a Certificate of Registration hanging on the wall of his office. On enquiry, he was told that now it was mandatory for the property agents to get themselves registered under Real Estate (Regulation and Development) Act, 2016. After seeing the certificate Varun could conclude that he was dealing with a genuine person. After due negotiations, a ground floor 2BHK apartment was finalised in Vayudoot Apartments at a cost of Rs. 62.35 lacs. He himself arranged Rs. 30 lacs out of his savings; obtained a housing loan of Rs. 20 lacs from Axis
Bank while the remaining amount of Rs. 12.35 lacs was given by his father out of his personal savings. The title deeds got registered in his name after making payment of stamp duty and other statutory dues. On an auspicious day Varun shifted to his new flat.

About after a month of shifting to his own flat, Varun’s boss called him and informed that recognizing his hard work and devotion towards the company he was being transferred to Boston, USA on promotion as Manager (Operations). He was beaming with happiness and thanked his boss from the bottom of his heart. He was supposed to join within next one month.

He went back to Dehradun, completed various formalities including obtaining of visa, packed his belongings and bade goodbye to his family. On the advice of his father he leased out his flat on rent to a reputed private company and then flew to Boston and joined his job. Over there, he was provided with a furnished apartment by the company in the suburbs of Boston. As daily commuting was a bit difficult, he purchased a second-hand SUV. Slowly and gradually he settled in his new home, new office and new country.

Here in Dehradun, Mrs. Bisht was pursuing vigorously to obtain export payment from M/s. Williams’ Art Gallery because the statutory period of nine months was over long back and the remaining payment was yet to be received. In the meantime, the authorities at Syndicate Bank also started pressurizing Mrs. Bisht to get the foreign exchange realised at the earliest since the statutory period of nine months was already over. They opined that in cases of default the Reserve Bank of India may also issue appropriate directions for the purpose of securing the payment if the goods were sold in USA or if they were still unsold to get them re-imported into India within the specified period. Though the Reserve Bank had not so far issued any directions but according to her bankers, omission on the part of RBI to give directions did not absolve her from the consequences of committing the contravention. Therefore, she was duty bound to realise the export payment as early as possible.

Besides taking various steps, she also persuaded her son Varun who was already in Boston to follow the matter vigilously and advised him to meet Mr. Williams personally and settle the case. A meeting was fixed and during conversation, it was transpired that though Mr. Williams had sold whole of the consignment, the purchaser was yet to make payment because of some mismanagement. However, on the vigourous persuasion of Varun, Mr. Williams exerted pressure on the local purchasers and within next one month, remaining payment along with interest was realised and repatriated to India.

Varun had a school friend Raman Verma in India who had done MBA from Symbiosis, Pune after his graduation from Dehradun and had joined sales team of LIC at Shimla. From time to time after joining Accenture in Boston, Varun was persuading him to visit Boston and nearby areas along with his wife Vaishnavi Verma. At last, Raman and his wife agreed for the foreign visit and both of them obtained visa.
Raman approached Canara Bank, Shimla for purchase of USD 12,000 for a private visit to the USA. The bank without much formalities gave him the required amount in foreign currency since it was well within USD 2,50,000, i.e. an amount which could be remitted by a resident individual in a financial year under Liberalised Remittance Scheme (LRS). Moreover, the foreign currency was not required to be remitted for any prohibited current account transaction [mentioned in Schedule I to the FEM (Current Account Transactions) Rules, 2000] like participation in lottery schemes or lottery like schemes existing under different names like money circulation scheme or remittances for the purpose of securing prize money/awards, etc. He was asked to submit a simple letter containing the basic information, viz., his name, address and that of beneficiary (i.e. self), SB account number, amount to be remitted and the purpose of remittance along with a cheque of equivalent amount in rupees. In no time, both of them reached the USA.

Varun received Raman and his wife with open heart at the Logan International Airport, Boston and all of them drove to his residence. The next ten days were full of fun and frolic. They visited a number of famous sites which included John F. Kennedy Presidential Museum & Library, Boston Public Library which was opened in 1852 as the first free publicly-supported municipal library in America, Museum of Fine Arts having world’s most comprehensive art collections, Boston Public Garden famous for its Swan Boats and having over 600 varieties of trees, Old North Church & Historic Site where the two famous signal lanterns were hung launching the American Revolution, New England Holocaust Memorial where its six glass towers represented the six million Jews who perished in the holocaust, Bunker Hill Monument, etc. In between, they had an overnight stay at New York as well.

Varun helped them in purchasing some nice dresses, chocolates, perfumes, cosmetic items and also some souvenirs for their relatives and friends in India. They enjoyed their trip to USA to the fullest and flew back to India with nice memories.

Raman still had with him unspent amount of USD 3500. On enquiry with his bankers regarding surrender of this amount he was informed that he could surrender to the bank any unspent foreign exchange within a period of 180 days from the date of his return to India. Even if he approached the bank after this period, the bank would not refuse to purchase unspent foreign exchange merely because the prescribed period of 180 days had expired. He was further informed that he was permitted to retain with him foreign currency notes up to USD 2000 and foreign coins without any ceiling beyond 180 days and he could utilize this amount for his subsequent visit abroad.

Varun wanted to be informed regarding sale of his flat in Pune if he was to settle down in the USA permanently since his family at Dehradun was not that much inclined to keep the flat. He once again approached Mr. Rajnikant and enquired whether, as NRI, could sell his flat. Mr. Rajnikant after obtaining necessary information from one of his lawyer friends, informed him that he was permitted to sell his flat in India to a person resident in India. Further, he could also sell the flat (since it was not an agricultural or plantation property or farm house) to a person resident outside India who is an Indian citizen or to a person of Indian origin resident outside India. Such permission was available
under Regulation 3 of FEM (Acquisition and Transfer of Immovable Property in India), Regulations, 2000.

As regards purchase of immovable property at Boston, Varun was informed that FEMA did not restrict such acquisition by a non-resident Indian and he had to follow local laws in this respect. However, if his family members in India remitted to him funds under the Liberalised Remittance Scheme (LRS) for purchasing immovable property outside India, then the said property should be in the name of all the members who made the remittances. Even as per Section 6(4) of the FEMA, if he becomes a person resident in India in future, he would be allowed to hold, own or transfer the immovable property situated outside India because such property was acquired by him when he was resident outside India.

I. Objective Type Questions (2 marks each)

Select the most appropriate answer from the options given for each question:

1. Which of the following remittance would require prior approval of the Reserve Bank of India?
   
   (a) Donation exceeding 0.5% of foreign exchange earning during the previous three financial years or USD 40,00,000, whichever is less for contribution to funds promoted by educational institutes,
   (b) Commission per transaction to agents abroad for sale of commercial plots in India of USD 20,000 or 4% of the inward remittance whichever is more,
   (c) Remittance exceeding USD 10,00,000 per project for other consultancy services procured from outside India.
   (d) Remittance of 4% of investment brought into India or USD 90,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

2. Mr. O. P. Bisht's name does not appear in the registration papers relating to Pune apartment purchased by Varun though he contributed Rs. 12.35 lacs towards the cost of the apartment.
   
   (a) It is a benami transaction to the extent of Rs. 12.35 lacs.
   (b) It is wholly a benami transaction.
   (c) It is not a benami transaction
   (d) None of the above

3. Export of the following goods/software would require furnishing of the declaration under FEMA, 1999?
   
   (a) Goods imported free of cost on re-export basis
   (b) Publicity material supplied free of payment
   (c) By way of gift of goods accompanied by a declaration by the exporter that they are of six lakh rupees in value
(d) Unaccompanied personal effects of travellers

4. An exporter receiving advance payment against exports from the foreign buyer is required to make the shipment of the goods within -------- of receiving advance payment, if export agreement does not mention anything to the contrary regarding time period:

(a) 6 months
(b) 9 months
(c) One year
(d) One and a half years

5. An Indian citizen resident outside India is permitted to transfer his agricultural property in India to:

(a) any person resident in India
(b) any person resident outside India if he is a citizen of India or a person of Indian origin.
(c) Neither (a) nor (b)
(d) both (a) and (b)

6. Foreign exchange purchased from an authorised dealer by a resident individual, if remains unspent, needs to be surrendered to the authorised dealer within -------- of purchase or date of his return to India:

(a) 60 days
(b) 90 days
(c) 120 days
(d) 180 days

7. In case of goods valuing up to Rs. 5,00,000 as declared by the exporter and sent by way of gift to an importer in a foreign country:

(a) an export declaration need to be furnished
(b) an export declaration need not be furnished
(c) furnishing of export declaration depends upon the discretion of the authorised dealer who handles export documents
(d) furnishing of export declaration depends upon the discretion of the Custom authorities

8. The term 'Moratorium' in the Insolvency and Bankruptcy Code, means-

(a) A temporary prohibition on an activity by the competent authority.
(b) A period declared by the NCLT, during which no action can be taken against the Company or the assets of the Company.
(c) Suspension order of the Board on the debtor's operations.
(d) Order issued by the NCLT prohibiting an action against the creditor.

9. Is it possible for a non-resident Indian to acquire immovable property outside India:
   (a) No, it is not possible
   (b) Yes, it is possible
   (c) Yes, it is possible but subject to the permission of RBI
   (d) None of the above

10. As per the Insolvency and Bankruptcy Code, 2016, an Interim Resolution professional approved by the committee of Creditors:
   (a) Can never be replaced until the conclusion of the resolution process
   (b) Has a fixed term of 180 days
   (c) Can be replaced with 75% voting in favour of the decision and approval of the Board
   (d) Can be replaced with 75% voting in favour of the decision.

II Descriptive Questions (10 marks each)

1. Analyse the following situations under the Foreign Exchange Management Act, 1999:

   (i) Forex Dealers Ltd. is an Authorised Person within the meaning of Foreign Exchange Management Act, 1999. Reserve Bank of India issued certain directions to the said Authorised Person to file certain returns, which it failed to file. You are required to state the penal provisions to which the said Authorised Person has exposed itself.

   (ii) Mr. Shekhar resided for a period of 150 days in India during the Financial year 2016-2017 and thereafter went abroad. He came back to India on 1st April, 2017 as an employee of a business organization. What would be his residential status during the financial year 2017-2018?

   (iii) ‘Printex Computer’ is a Singapore based company having several business units all over the world. It has a unit for manufacturing computer printers with its Headquarters in Pune. It has a Branch in Dubai which is controlled by the Headquarters in Pune. What would be the residential status under the FEMA, 1999 of printer units in Pune and that of Dubai branch?

2. Examine with reference to the provisions of the Foreign Exchange Management Act, 1999 whether there are any restrictions in respect of the following:-
(i) Drawal of Foreign Exchange for payments due for depreciation of direct investment in the ordinary course of business.

(ii) A person, who is resident of U.S.A. for several years, is planning to return to India permanently. Can he continue to hold the investment made by him in the securities issued by the companies in U.S.A.?

(iii) A person resident outside India proposes to invest in the shares of an Indian company engaged in construction of farm houses.

(iv) A person, who is resident of Canada, is planning to acquire an immovable property in Mumbai.

3. Analyze the following situations under the Real Estate (Regulation and Development) Act, 2016:

(i) Mr. Ram booked a 4 BHK flat under the Gateways project. The project is under supervision of Mr. Pankaj. Mr. Pankaj without telling the allottees reduced the number of rooms from 4 to 3 himself. Whether this is allowed under the Act and what remedies does the Allottees have.

(ii) Mr. Vivaan booked a 4 BHK flat under the Flower Valley project for a total cost of Rs. 2 Crore. The project is under supervision of Mr. Shyam. 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. Decide whether the contention of Mr. Shyam is valid?
QUESTION 2

Ronit Chawla was a Fellow Chartered Accountant (FCA) practicing in the field of corporate and economic laws. He represented his clients before Company Law Board (CLB) and thereafter in National Company Law Tribunal (NCLT). After coming into force of Insolvency and Bankruptcy Code, 2016 w.e.f. 28 May, 2016, he learnt about the Limited Insolvency Examination (LIE) for becoming Insolvency Professional (IP). Since he had about eleven years of experience as practicing CA, he attempted the very first examination of LIE conducted by Insolvency and Bankruptcy Board of India (IBBI) in December 2016 and successfully cleared it. He then enrolled himself with a reputed Insolvency Professional Agency (IPA) and got registered with IBBI by fulfilling the requisite formalities including payment of non-refundable application fee of Rs. ten thousand.

His father Roopesh Chawla, a resident of Green Park, New Delhi, was recently posted as Chief Manager in Bank of India, Delhi which was a full-fledged Foreign Exchange (FX) branch though Roopesh, being unable to get a chance to work in a FX branch, had very little knowledge of rules relating to Foreign Exchange. Therefore, he used to consult his son Ronit in the matters of foreign exchange from time to time. His mother Rukmani Chawla was a senior teacher in Kendriya Vidyalaya, New Delhi, taking commerce classes.

Rajnish Sinha, a close friend of Roopesh, was heading a Delhi branch of Punjab National Bank (PNB) and knew that Roopesh’s son Ronit besides being a Chartered Accountant was also an Insolvency Professional. Rajnish, on behalf of PNB, wanted to initiate corporate insolvency resolution process (CIRP) before NCLT in the case of its customer Manohar Masale Pvt. Ltd. (MMPL) of Delhi which had defaulted in repaying the dues of the bank totaling approximately Rs. 23.00 lacs. Accordingly, PNB being financial creditor, while making an insolvency resolution application to NCLT proposed the name of Ronit as Interim Resolution Professional (IRP). MMPL was sanctioned cash credit limit of Rs. 10.00 lacs against hypothecation of stock of raw material and finished goods and another bill discounting limit of Rs. 5.00 lacs against actionable claims. MMPL was registered with an authorised capital of Rs. 25.00 lacs but its paid up capital was to the tune of Rs. 10.00 lacs.

Initially started as a registered partnership concern (Manohar Masale & Co.) by two brothers, namely, Ram Manohar and Shyam Manohar, it did profitable business and keeping an eye on future business growth, it was converted into a private limited company with Ram, Shyam and Shyam’s elder son Shivam as directors. Shyam’s younger son Dwapam, an alumnus of IIFT, Delhi and also a law graduate, did not have any interest in the family business and was more inclined to continue with his current employment in a German MNC having its office in Gurugram.

MMPL’s factory in Okhla Industrial Area was located on the one-fourth portion of the plot which was co-owned by the brothers. However, the bank had created an equitable mortgage on the plot as well as factory building while sanctioning the working capital limits to the company. The elder brother Ram Manohar was the anchoring person who steered the company to newer heights due to his sheer business acumen and inherent managerial skills but one day, all of a sudden, he had a massive
heart attack resulting in his untimely death. Since he was not married, the business of ‘masale making’ was now run by Shyam and his son Shivam.

However, the father-son duo could not manage the business properly because of the lack of foresight, faulty inter-personal relations and poor organisational skills. Their authoritative style of leadership resulted in demotivation of workers which led to labour unrest and all sort of other conflicts. The paternalistic approach towards them which Ram always displayed was missing altogether. Needless to say, the output started declining and wastage of raw material turned north. Since there was no vigorous follow-up as well, the debtors to the tune of around Rs. 12.00 lacs were long overdue. Consequently, the company started suffering losses and also defaulted on dues from the bank.

When PNB, even after repeated reminders to MMPL, could not realise its dues and the liability touched the height of around Rs. 23.00 lacs (including normal and overdue interest), Rajnish Sinha, on behalf of PNB, decided to file corporate insolvency resolution application duly supported by ledger extracts and other specified evidences (services of Information Utility could not be used as by the time application was filed there was no IU registered with IBBI) with Adjudicating Authority i.e. NCLT, New Delhi for initiating CIRP against MMPL.

NCLT considered the corporate insolvency resolution application along with the proposed name of Ronit as Interim Resolution Professional (IRP). Within next 10 days of receipt of application (which was lesser than the statutory period of 14 days) NCLT ascertained that there existed default because the defaulted amount was much more than the minimum required of Rs. one lac. Since the CIRP application was complete in all respects, NCLT admitted it and within the statutory period of next seven days after admission, it conveyed its order of commencement of CIRP to the financial creditor (i.e. PNB) and the corporate debtor (i.e. MMPL).

The order of NCLT confirmed the proposed appointment of Ronit as IRP for 30 days, for Ronit had a clean record without any disciplinary proceedings pending against him. It was also stated in the order that a moratorium period of 180 days had become applicable during which all suits and legal proceedings, etc. against MMPL (i.e. corporate debtor) were to be held in abeyance so as to give time to the ailing company to resolve its status. MMPL was also barred from transferring or disposing of any of its assets or any legal rights therein. However, the supply of specified essential goods and services to the MMPL as mentioned in the order, were not to be interrupted during moratorium period.

In the meantime, Ronit’s father Roopesh faced a peculiar problem related to the foreign exchange matter at his branch. His FX officer brought to his knowledge that one of their exporter customers who had received an advance of USD 75,000 from an importer based at California, USA against export of ready-made jeans had not shipped the requisite items worth USD 2,00,000 by utilizing the advance so received. The exporter, not willing to ship the goods, wanted to refund the advance to the importer along with interest for which permission of Roopesh was required. Roopesh did not allow the refund immediately and in turn, advised the FX officer to gather more knowledge about FX
provisions whether refund along with interest was permissible. At the same time he also discussed the matter with his son Ronit who advised him to refer FEM (Export of Goods and Services) Regulations, 2015. A scrutiny of the relevant banking records revealed that 14 months had already expired since advance of USD 75,000 was received. Further, he came to know that if goods were not shipped within one year of receipt of advance, such advance could not be refunded without the permission of the RBI. Accordingly, he advised the customer to seek permission of RBI through his branch.

After his appointment as IRP, Ronit assumed full control of the affairs of MMPL. Since powers of the board of directors stood suspended he was empowered to exercise such powers. Accordingly, he took immediate custody and control of all the assets of the MMPL including its business records.

Following the orders of NCLT, Ronit took steps to make a public announcement within three days from the date of his appointment regarding the initiation of CIRP against MMPL.

Public announcement, included the following aspects:

- Name and address of the corporate debtor (i.e. MMPL) and its registration/incorporating authority.
- His details as IRP and the fact that he would be vested with the management of the corporate debtor and be responsible for receiving claims.
- Penalties for false or misleading claims.
- The last date for the submission of the claims.
- The date on which the CIRP would end.

After the expiry of last date for submission of claims, a Committee of Creditors was constituted which included PNB and five trade creditors who had cumulative dues of Rs. 3.00 lacs. Within seven days of its constitution, the first meeting of the committee was called. In the meantime, Ronit electronically submitted an Information Memorandum to the creditors after they had given an undertaking regarding maintaining of confidentiality. This Information Memorandum contained details of assets and liabilities of the MMPL with their estimated values, audited financial statements for the last two financial years and provisional financial statements for the current financial year made just eight days earlier from the date of the application, a list of creditors and the amounts claimed by them which were duly admitted and other prescribed information.

In the meeting of the Committee of Creditors it was resolved to let Ronit continue as full-fledged Resolution Professional (RP) since he was eligible to be appointed as an independent director and was not a related party of the MMPL and such decision was conveyed to the NCLT as well as MMPL. As RP, Ronit assumed all those powers which were conferred on him as IRP. He was required to manage the operations of the MMPL during the CIRP period.
Based on the Information Memorandum, Rajnish on behalf of PNB as resolution applicant undertook to prepare a resolution plan as per the provisions of the Code for onward submission to Ronit. Before finalizing the resolution plan, he along with his two officers took up the matter with Shyam and his son Shivam regarding the revival of MMPL and repayment of long outstanding dues or face liquidation if they were not inclined to revive the company. The fear psychosis of liquidation made them think frantically to save their company from imminent death. Having woken up from their slumber they started exploring ways to bring in short term finance and also to rope in some professional who would help the company in its revival.

Shyam saw a ray of hope in his younger son Dwapam and persuaded him to participate in the management of the affairs of the company at least for the first three months to which he ultimately agreed. In the meantime Shyam, with a view to raise short term finance, consulted his elder sister Rama Devi to lend at least Rs. 5.00 lacs for a short period of about one year and also convinced his daughter Ria, her husband Dushyant as well as Dwapam to invest at least Rs. 3.00 lacs each in the share capital of the company. Shivam who had invested funds in the share market agreed to sell his securities to raise Rs. 3.00 lacs against which he was to be allotted shares in the MMPL. As per the advice of the bankers, Shyam also started inter-acting with long overdue debtors for recovery who eventually agreed to pay 50% of Rs. 12.00 lacs in the current month and remaining amount in the next month. Out of the raised amount, the operational creditors were to be paid fully while dues of PNB were to be satisfied to the extent of Rs. 12.00 lacs. Further, Rs. 2.50 lacs were to be allocated towards insolvency resolution process costs including fee of RP and remaining amount was to be utilized as working capital. Since both the directors of MMPL had consented to repay Rs. 12.00 lacs in one lump sum, Rajnish on behalf of PNB assured them that he would take up the matter of waiving of overdue interest up to Rs. 2.00 lacs with his Dy. General Manager and would also seek permission to revive MMPL’s limits which were currently frozen.

Based on the experience he gathered while working with two MNCs, Dwapam assumed the role of a leader to set the company on rails. He took note of the prevailing situation from which the ailing MMPL was passing through. He observed that the current as well as liquid ratios were much far away from the standard norms of 2:1 and 1:1 respectively. The turnover ratios were also unhealthy and at the same time the operating ratio was very high - not a good sign for any business. An investment of about Rs. 5.00 lacs was tied up in raw material like whole red chillies, coriander seeds, turmeric, black pepper, dry mango, etc.

Since currently the business of spices was run in a traditional manner, Dwapam decided to take the following short, medium and long term measures:

**Short term measures:**

- to understand the needs and wants of customers in the target market;
- to apply the principles of scientific management;
- to set standards for raw material, wastage, working conditions, etc.;
• to conduct time and motion studies;
• to provide financial incentives and to adopt social security plans for the workers;
• to secure registration with FSSAI immediately;
• to appoint an Administrative Officer and, if need be, to appoint another one in future;
• to devise competitive pricing strategy;
• to create a corporate brand identity by assigning the product a brand name ‘Manohar Uttam Masale’ which would help in building a brand image;
• to design an attractive package and label by using a graphic design of spices combining green, yellow and red colours for different varieties of masale;
• to promote the masale by advertising initially in leading newspapers and depending upon income generation in future, to advertise on FM radio, TV as well as cinema halls;
• to adopt sales promotion measures like free gift offers, contests, free sample distribution, etc.
• to select the similar channels of distribution as used by the competitors;
• to conduct SWOT analysis of MMPL and important competitors;
• to create an effective Website of the company;
• to take decisions regarding various activities under physical distribution of masale like order processing, transportation, warehousing and inventory control;
• to adopt strict credit policy by reducing debtors’ days with a regular follow-up;
• to use an accounting software;
• to submit various Government Returns within the prescribed time limits so that avoidable hefty penalties are not levied.

Medium and Long Term Measures:

• to stop heavy expenditure on repairs and maintenance by installing new machines and grinders;
• to establish direct contacts with the cultivators for obtaining raw material which would help in avoiding middlemen and their high commissions;
• to develop the remaining three-fourth portion of the plot and rent out some of the developed portion to a commercial establishment;
• to renovate the factory building.
• to manufacture more types of different spices like Rajma Masala, Pindi Chana Masala, Shahi Paneer Masala, Dal Makhni Masala, Mushroom Matar Masala, etc;
• to diversify MMPL’s operations by manufacturing Jams and Ketchups;
• To explore offshore markets.

Rajnish prepared a resolution plan containing the above strategies and submitted it to Ronit for his consideration. Later on, a meeting of committee of creditors was called by Ronit and the resolution plan was presented for its approval. The plan was duly approved by full majority. Thereafter, Ronit submitted the approved resolution plan to the NCLT for its approval.
Since the resolution plan was approved by the committee of creditors much before the statutory period of 180 days and also met the prescribed requirements, NCLT approved it and passed an order to this effect. Now the plan was binding on the MMPL and its employees, members, PNB and operational creditors as well as other stakeholders involved in the resolution plan.

I. Objective Type Questions (2 marks each)

Select the most appropriate answer from the options given for each question:

1. “Default” under the IBC is said to be occurred on the fulfillment of condition/s-
   (a) Debts becoming due and payable
   (b) Non-payment of the debt
   (c) Liability /obligation in respect of a claim which is due
   (d) Both (a) & (b)

2. In the case study PNB initiated Corporate Insolvency Resolution Process against MMPL for the default in the capacity of-
   (a) Corporate debtor
   (b) Operational debtor
   (c) Financial creditor
   (d) Resolution applicant

3. If the goods against which an advance payment is received from a foreign buyer are not shipped within one year and there exists no agreement regarding timing of shipment, the advance payment:
   (a) shall be refunded within reasonable time without prior approval of Reserve Bank.
   (b) Shall be refunded within one year from the date of receipt of advance payment without the prior approval of Reserve Bank
   (c) Shall be refunded within one year from the date of receipt of advance payment with the prior approval of Reserve Bank
   (d) Shall be refunded after one year from the date of receipt of advance payment on the basis of reasonable cause.

4. PNB through an assignment agreement, assigned here the debt to the X trust. X trust filed the petition for initiation of corporate Insolvency resolution process (CIRP) against MMPL. State the correct statement with respect to the competency of the X trust in the filing of the petition in the above situation-
   (a) X Trust is not a competent applicant as per section 6 of the IBC
   (b) X Trust is being authorized by the PNB to file an application
(c) X Trust in the capacity of financial creditor can file a valid petition.
(d) None of the above

5. As per the Insolvency & Bankruptcy Code, 2016, resolution plan is prepared by ----------- is submitted to -------------- for examination and submission to -------------- for approval.
   (a) Committee of Creditors, Adjudicating Authority, Resolution Professional
   (b) Resolution applicant, committee of creditors, Adjudicating Authority
   (c) Resolution applicant, Resolution Professional, Committee of Creditors
   (d) Committee of Creditors, Resolution Professional, Adjudicating Authority

6. The maximum duration during which the appointment of Interim Resolution Professional (IRP) is valid shall not exceed ------- days.
   (a) 10
   (b) 20
   (c) 30
   (d) 40

7. In the case study, the expenses of public announcement shall be borne by the-
   (a) MMPL
   (b) Ronit
   (c) Roopesh
   (d) PNB

8. In the case study, committee of creditors of MMPL was constituted on 17.3.2018. Time limit, within which the first meeting of committee of creditors should be held, is --------------.
   (a) 20.3.2018
   (b) 22.3.2018
   (c) 24.3.2018
   (d) 31.3.2018

9. Ronit, being an Insolvency Professional can be appointed as Resolution Professional, if:
   (a) he is eligible to be appointed as an independent director under section 149 of the Companies Act, 2013
   (b) he is not a related party of the corporate debtor
   (c) only (a)
   (d) Both (a) and (b)
10. MMPL finds material irregularity in exercise of the powers of the Ronit during the corporate insolvency resolution period. Remedy available to MMPL-
(a) File a complaint to the adjudicating authority
(b) Complain to the committee of creditor’s
(c) Complaint filed before the IBBI
(d) File an appeal against the order of adjudicating authority against the approval of resolution plan.

II. Descriptive Questions (10 marks each)

1. Suppose the resolution plan prepared by Rajneesh was delayed in approval by committee of creditors. Ronit, further presented the said resolution plan, before NCLT after 180 days of insolvency commencement date.

Answer the following-
(i) What step shall be taken by NCLT on such presented resolution plan.
(ii) What, if MMPL contravened the resolution plan which effected its employees and stake holders.
(iii) What consequences be there where liquidator continued the business of MMPL during liquidation process.

2. Ronit in an examination of sale of property of MMPL finds that a transaction was made by the MMPL to Rama devi (the elder sister of Shyam) in 6 months preceding the Insolvency Commencement date, was undervalued.

Give the following answers in reference to the above situation-
(i) State the validity of the conduct of such transaction by MMPL to Ramadevi.
(ii) What will be the consequences when resolution professional determines such transactions undervalue and fails to report that same to NCLT?
(iii) What order NCLT shall pass when MMPL entered into an undervalued transaction?

3. (a) Discuss the legal position and liability of Mr. Shyam in the following given situations-

(i) Where Mr. Shyam fraudulently transferred his holding of shares in favour of his sister of Rs.1 lakh within 1 year immediately preceding the insolvency commencement date.
(ii) Mr. Shyam makes false entry in the books of account of MMPL to defraud creditors on insolvency commencement date.
(iii) Shyam permitted Shivam to provide information for initiation of CIRP which is false in material particular and omits material fact related to a books of accounts of a specified period in the application.

(b) What course of action can be taken by NCLT against the directors of the MMPL for transactions defrauding creditors?
QUESTION 3

During March 2017, XMC Pvt. Ltd., a car manufacturing company, launched its TXI model of car with a lot of advertisements and promotions in all types of media platforms, inter alia, highlighting the Ex-showroom price of the said car model in Mumbai as Rs. 6.25 lacs.

Mr. Nazir, a prospective buyer of the said model, visited an authorised dealer of XMC Pvt. Ltd., i.e., M/s Ratan Lal & Sons located at Bandra, Mumbai and after due consultation/discussion with the representatives of M/s Ratan Lal & Sons, booked a vehicle of the aforesaid model on 11th May, 2017 on payment of Rs. 100,000/- M/s Ratan Lal & Sons in turn provided the money receipt for the aforesaid transaction with serial number ABC/1010 as well as booking reference number 218/ 2017 to Mr. Nazir. He was assured by the representatives of M/s Ratan Lal & Sons that the booked vehicle will be delivered within three months from the date of booking i.e. by 10th August, 2017. However, the representative of M/s Ratan Lal & Sons have stated to Mr. Nazir that as per XMC Pvt. Ltd.’s policy, five months’ time is given in writing so as to keep some buffer for delays which may arise due to unforeseen exigencies or transportation of vehicle or other logistic problems. Mr. Nazir, inter alia, noted the conditions in the booking document that “the vehicle would be delivered within six months from the date of booking”. Believing the assurance given by the representative of M/s Ratan Lal & Son, Mr. Nazir accepted the terms of the booking and thought that he will get the vehicle within three months from the date of booking as assured by the representatives of M/s Ratan Lal & Son and in worst scenario he will get delivery of the vehicle within six months from the date of booking as per the terms and conditions of booking of the vehicle.

However, within three months of booking of the vehicle, M/s Ratan Lal & Son failed to deliver the vehicle to Mr. Nazir despite repeated request and after 10th August, 2017, Mr. Nazir contacted the representatives of M/s Ratan Lal & Sons many times for delivery of the vehicle and they kept on giving assurances that the delivery of the vehicle will be done within six months from the date of booking as per the conditions of booking. After five months, on 15th February 2018, Mr. Nazir written an e-mail to XMC Pvt. Ltd. highlighting the issue of delay in delivery of the booked vehicle, but did not get any response. Then he wrote an email to the President of XMC Pvt. Ltd. and got the reply that his grievances will be looked into by the sales team of the Company and the concerned dealer.

Despite the assurance of the president of XMC Pvt. Ltd., the booked vehicle was not delivered to Mr. Nazir. Rather, through M/s Ratan Lal & Sons, he was informed that due to delay in production of the said model, the Company is not able to deliver the same and he was asked to wait for some more time. Subsequently, he received a letter from XMC Pvt. Ltd wherein, inter alia, it was informed that due to unprecedented number of bookings for the said model the delivery of the car will be delayed for two months. Through the said letter, it was also informed that the price of the booked car will be revised and it will be effective from the date of booking by dealer to the customer.

About the market and the state of competition

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As per Mr. Nazir, XMC Pvt. Ltd. is a big player in the car manufacturing market. Its financial strength and brand name is much more compared to other players in the market. Also, it commands largest market share in terms of sales and revenue compared to its competitors and in the last financial year XMC Pvt. Ltd. acquired a loss making car manufacturing company i.e. Trisha Ventures Pvt. Ltd. As per Mr. Nazir, XMC Pvt. Ltd. has taken recourse to terms and conditions of the booking documents to enforce price hike and also not honouring the commitment made for the delivery within the given time period despite repeated correspondence. XMC Pvt. Ltd. and its dealer at Mumbai M/s Ratan Lal & Sons started the gimmick of non-delivery due to production delay and started informing that there will be higher price of the vehicle. Mr. Nazir alleged that he and other similarly situated consumers are being not given with delivery of the vehicle in due time and the delay tactics done by XMC Pvt. Ltd. is to increase the price of the vehicle and to exploit the consumers by not giving the benefit of initial launch price which is not fair in a competitive market.

Concerns raised

As per Mr. Nazir, XMC Pvt. Ltd. has abused its powers to fix the price of the vehicle. It has initially priced attractively and launched with heavy advertisements and promotions to lure the customers and take maximum bookings by taking interest free amount of Rs. 100,000/- as booking amount. By doing this XMC Pvt. Ltd. has been able to not only generate huge amounts of cash which is interest free but also create buzz in the market because of publicity in the media regarding heavy bookings of the said vehicle. It is stated that XMC Pvt. Ltd. has arbitrarily increased the price of the vehicle to encash on the market demand. Not only that, the Company has also not passed on the benefit of recent GST reduction on the passenger cars by Government to the consumers in the said car model. However, it has passed on the benefit of the GST reduction on its other car models to the customers which are not in such demand. Most of the other car manufacturers have duly passed on the GST reduction to the customers. As per Mr. Nazir, XMC Pvt. Ltd. has indulged in unfair practices in connivance with its dealers by manipulating its delivery policy and price policy. After seeing huge response because of attractive initial offer price, it not only delayed in giving delivery of the booked car but also increased the price which is nearly two times of the offer price at the time of booking. It has not honored the commitment of delivery and price to the buyer who had booked on the very first day and first hour of the launch. Mr. Nazir stated that it is not just an individual issue but it involves the larger interests of car buyers, who do not have any recourse to effective mechanism against the abuse of dominant position by such auto manufacturers for imposing anti-competitive terms on the buyers.

Based on the above submissions Mr. Nazir alleged that the aforesaid conduct of XMC Pvt. Ltd. is not in tandem with the provisions of the Competition Act, 2002 and it has acted in a manner which can be termed as anti-competitive.
I. Objective Type Questions (2 marks each)

Select the most appropriate answer from the options given for each question:

1. Which of the following is the appropriate authority for redressal of the grievances of Mr. Nazir?
   (a) District Consumer Redressal Forum
   (b) Competition Commission of India
   (c) Car Manufacturers Association of India
   (d) Both (a) and (b)

2. Under which provisions of the Competition Act, 2002, the grievances of Mr. Nazir can be examined?
   (a) Prohibition of horizontal anti-competitive agreement under section 3(3) of the Competition Act, 2002
   (b) Prohibition of abuse of dominant position under section 4 of the Competition Act, 2002
   (c) Prohibition of vertical anti-competitive agreement under section 3(4) of the Competition Act, 2002
   (d) Regulation of combination under section 6 of the Competition Act, 2002

3. Mr. Nazir stated that “it is not just an individual issue but it involves the larger interests of car buyers, who do not have any recourse to effective mechanism against the abuse of dominant position by such auto manufacturers for imposing anti-competitive terms on the buyers”. What would be his prime intention in stating so?
   (a) The car manufacturer’s conduct towards him is exploitative
   (b) The car manufacturer is imposing anti-competitive terms on him.
   (c) The conduct of car manufacturer is not conducive to the market as it affects larger consumers’ interest.
   (d) All the above

4. Let, Mr. Nazir approached the Competition Commission India for his grievances and you are the person in the Commission to take a decision in the matter and according to you the matter pertains to abuse of dominance. What would be your sequence of analysis of the matter?
   (a) XMC Pvt. Ltd. is dominant or not
   (b) Whether the alleged conduct is abusive under section 4 of the Competition Act, 2002
(c) Whether XMC Pvt. Ltd. falls under the definition of enterprise as defined under the
Competition Act, 2002

(d) Define the relevant market where XMC Pvt. Ltd. is operating

5. Let Mr. Nazir approached the Competition Commission India for his grievances and you are the
person in the Commission to take a decision in the matter and according to you the matter
pertains to vertical restraint under section 3(4) of the Competition Act, 2002. What would be your
sequence of analysis of the matter?

(a) Whether XMC Pvt. Ltd. and M/s Ratan Lal & Sons have entered into an agreement

(b) Whether XMC Pvt. Ltd. and M/s Ratan Lal & Sons are placed at vertical level.

(c) Whether there is any appreciable adverse effect on competition because of anti-
competitive agreement between XMC Pvt. Ltd. and M/s Ratan Lal & Sons.

(d) Whether XMC Pvt. Ltd. and M/s Ratan Lal & Sons have agreed on some issues which
are anti-competitive in terms of section 3(4) of the Competition Act, 2002.

6. If you think delineation of relevant market is necessary to examine the fact of the case, then
what should be the relevant product market in this case?

(a) Market for passenger car

(b) Market for dealership services for passenger car

(c) Market for motor vehicle

(d) Market for non-commercial passenger car

7. Mr. Nazir submitted that XMC Pvt. Ltd. is a dominant market player in the relevant market, if you
agree with his submission, what would be your reasoning?

(a) Market share of XMC Pvt. Ltd. is largest

(b) Competitors of XMC Pvt. Ltd. have lesser financial strength

(c) XMC Pvt. Ltd. is a known brand

(d) Consumers are dependent on XMC Pvt. Ltd.

8. Given the facts that XMC Pvt. Ltd. and M/s Ratan Lal & Sons, in connivance with each other,
have delayed the delivery of the booked passenger car to Mr. Nazir and revised the price of the
said car, it cannot be a case of cartelization. What would be the possible reason?

(a) The fact does not reveal any exclusive agreement between XMC Pvt. Ltd. and M/s Ratan
Lal & Sons.
The fact does not reveal any agreement of XMC Pvt. Ltd. with other car manufacture in fixing the price

The fact does not reveal that M/s Ratan Lal & Sons is involved in price fixation of delay in giving delivery of the car to Mr. Nazir

None of the above

9. In case the Competition Commission of India ordered that Mr. Nazir should approach in the appropriate forum, what would be your reaction?

(a) The Competition Commission of India is rightly ordered so because the allegations of Mr. Nazir do not raise any competition concerns in any market.

(b) The order of the Competition Commission of India should be challenged in National Company Law Appellate Tribunal as it failed to address the concerns of Mr. Nazir in terms of the provisions of Competition Act, 2002.

(c) Since it is grievance of an individual consumer, Consumer Redressal Forum is the appropriate authority to deal this matter.

(d) None of the above

10. If you think that XMC Pvt. Ltd. has abused its dominant position, then which of the following conduct of XMC Pvt. Ltd. is abusive in terms of Section 4 of the Competition Act, 2002?

(a) not giving delivery of the booked car within the assured time

(b) The President of XMC Pvt. Ltd. vide its mail to Mr. Nazir informed that the price of the booked vehicle will revised and it will be applicable on the date of invoice by dealer to the customer

(c) XMC Pvt. Ltd has not passed the benefit of tax deduction to the consumers

(d) None of the above.

II. Descriptive Questions (10 marks each)

1. Do you think that the concerns raised by Mr. Nazir can be examined through the provisions of the Competition Act, 2002? If yes, explain the steps through which the matter can be examined.

2. Do you think that not giving delivery of the booked car within the assured time without enabling provisions in the booking form is tantamount to imposition of unfair conditions and revision of price of the vehicle with effect from the date booking tantamount to imposition of unfair price on Mr. Nazir? Examine the given situations in terms of the provisions of the Competition Act, 2002.
3. What is relevant market? State the provisions of the Competition Act, 2002 to delineate the relevant market. Delineate the relevant market in the instant case.