

ELECTIVE PAPER 6D – ECONOMIC LAWS

SUGGESTED SOLUTION – CASE STUDY 2

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (d) [Hint: As per regulation 4 (b) explanation (ii) of the FEMA (permissible capital account transaction) Regulation 2000.]
2. (c) [As per regulation of FEMA (Export of goods and services) regulation 2016]
3. (d) [Hint: Section 4 (2), proviso to (D) of clause (I) of the RERA, 2016]
4. (c) [Hint: Refer section 3]
5. (d) [Hint: Refer Part C of the Schedule to the Prevention of Money Laundering Act, 2002]
6. (c) [Hint: Refer Section 13 of Foreign Exchange Management Act 1999 along with Schedule III of the FEM (Permissible Current Account Transactions) Regulations, 2000]
7. (c) [Hint: Refer Section 6 of RERA, 2016]
8. (a) [Hint: As per Section 13 of RERA, 2016]
9. (b) [Hint: Section 6 Prohibition of Benaim Property Transactions Act, 1988]
10. (c) [Hint: Section 11 (4) read with section 89 of the RERA, 2016]

II. ANSWERS TO DESCRIPTIVE QUESTIONS

- 1 (a) As per section 13 (1) of the FEMA, 1999, If any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under this Act, or contravenes any condition subject to which an authorisation is issued by the Reserve Bank, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to two lakh rupees where the amount is not quantifiable.

Any Adjudicating Authority adjudging any contravention to above provisions, may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government

and further direct that the foreign exchange holdings, if any of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf.

According to the above provisions, Mr. Mehta will be penalized thrice of the extra amount (USD, 20,000) remitted above the prescribed limit (USD 2, 50,000). Hence liable to pay a penalty of USD 60,000 to the Government.

- (b) The second issue is related to sections 13(1A), 13(1C) & 37A of the FEMA Act, 1999 read with Regulation 5 of the FEM(Acquisition & transfer of immovable property outside India)Regulation , 2015.

As per section 13(1A), if any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be liable to a penalty up to three times the sum involved in such contravention and confiscation of the value equivalent, situated in India, of the foreign exchange, foreign security or immovable property.

13(1C) of FEMA says that if any person is found to have acquired any foreign exchange, foreign security or immovable property, situated outside India, of the aggregate value exceeding the threshold prescribed under the proviso to sub-section (1) of section 37A, he shall be, in addition to the penalty imposed under sub-section (1A), punishable with imprisonment for a term which may extend to five years and with fine.

According to Section 37A of the FEMA, 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:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.

As per regulation 5 of the FEM (Acquisition & transfer of immovable property outside India) Regulation, 2015, a person resident in India may acquire immovable property outside India jointly with a relative who is a person outside India. Provided there is no outflow of funds from India.

Since in the given case, Mr. Mehta remitted Foreign exchange to Sorav in excess to the limit prescribed under the FEMA. Sorav partially used USD 20,000 for medical treatment and rest USD 50,000 to purchase property outside India jointly with Mr. Mehta. So Both Mr. Mehta and his son Sorav will be liable under sections 13(1), 13(1A), 13(1C) of the FEMA, 1999.

2. (1) According to section 3(2) of the Real Estate (Regulating) Authority Act, 2016, no registration of the real estate project shall be required for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project. So Registration for the re-development of society (Royal Ashiana) was not required.
- (2) According to the above provision no registration is required when any project is renovated or repair or re-development and it does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project. However, in the given situation in the question, Mr. Mehta plans to develop it as a new society under new name with new allotments. So registration of the said project was necessaited as the Act.
- (3) As per the proviso to section 3(1) of the RERA, projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act. In the given case, where the project have been completed and obtained the certificate of completion before the commencement of RERA, such project shall not require registration.
- (4) As per the explanation to section 3 of the RERA, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each

phase separately. Therefore if the said project is to be developed in phases , it needs separate registration for each phase.

(5) As per Section 5 of the RERA, the Authority has to decide on the application within 30 days of its receipt. It further provides that in case the Authority fails to take a decision within the said period of 30 days the project shall be deemed to be registered.

3. (i) According to provision of Section 15 (1)

(1) Any contravention under section 13 may, on an application made by the person committing such contravention, be compounded within one hundred and eighty days from the date of receipt of application by the Director of Enforcement or such other officers of the Directorate of Enforcement and officers of the Reserve Bank as may be authorised in this behalf by the Central Government in such manner as may be prescribed."

(2) Where a contravention has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be initiated or continued, as the case may be, against the person committing such contravention under that section, in respect of the contravention so compounded.

As per the above mention provision Mr. Mehta will submit the application to the concerned authority for compounding of the offences committed in contravention to the FEMA Act.

(ii) The Section 5 of PMLA authorizes the Director or any other officer not below the rank of Deputy Director to attach the property. Section 8 of PMLA lays down an elaborate procedure for adjudication of complaint under Section 5 of PMLA. It calls for a show cause notice to be issued to the offender/ person from whom property has been seized, so as to give the person an opportunity to make a case against attachment. Such a person in order to avoid confiscation, can demonstrate the legitimate source of his income/earning or assets, out of which or by means of which he has acquired the property attached. The evidence on which he realized and other relevant information and particulars, and to basically convince the authority about the property which should not be declared to be the property involved in money laundering.

If the authority reached the conclusion that the offense has not taken place it shall order release of such property to the person entitled to receive it.

Hence as per the above provision, Mrs. Rama Devi aggrieved by the provisional attachment may file her objection before the adjudicating authority.