

SOLUTION – CASE STUDY 3

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (b)

[Hint: As per Schedule I of PMLA, 2002 it is a predicate offence related to custom Act]

2. (b)

[Hint: Section 3 of the Prevention of Money-Laundering Act, 2002 states of commission of an offence of money-laundering.—Whosoever 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 proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering. Since Shalini's uncle has given the loan from the known sources of his income so he is not a part of this crime.]

3. (b)

[Hint: 2(fa) of PMLA, 2002]

4. (b)

[Hint: As per exception of Section 2 (9) (A) Neeraj is not liable for Benami Transaction as he stand in a fiduciary capacity for the benefit of other person.]

5. (a)

[Hint: Refer the schedule of PMLA, 2002]

6. (a)

[Hint: Refer Section 6 of the Prohibition of Benami Property Transactions Act, 1988]

7. (d)

[Hint: Refer Schedule I of FEM (Current Account Transaction) Rules, 2000]

8. (c)

[Hint: Refer section 2(v) of the RERA]

9. (b)

[Hint: Refer section 2(9) of the Prohibition of Benami Property Transactions Act, 1988]

10. (b)

[Hint: Refer section 4 of the Competition Act, 2002]

II. ANSWERS TO DESCRIPTIVE QUESTIONS

1. a. According to provision of the PMLA, 2002 the money earned by Neeraj is not from the legitimate sources. Since Neeraj forged the sign and seal of his Chief Engineer so the money earned by him is proceed of crime. According to Schedule Part A of Para 1 of PMLA, Neeraj has committed an offence under section 472 and 473 of Indian Penal Code. These Section deals with the offence of making or possessing counterfeit seal, etc., with intent to commit forgery. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467 of this Code and under any other section under this Code, or, with such intent, has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
- b. Neeraj is liable under the provision of PMLA Act. His act is covered under the provision of Part B of the Schedule. Part B of the Schedule refers to offence under the Customs Act, 1962. Section 132 of the Customs Act states that whosoever makes sign, or use or cause to be made, sign or use any declaration, statement or document in relation to customs knowingly or having reasons to believe that such declaration statement etc. is false shall be punishable for a term which may extend to two years or fine or both.
2. a. Neeraj has contravened the Prevention of Money Laundering Act under Part A Para 22 of the Information Technology Act 2000. According to the provision of Section 72 of Information of Technology Act 2000, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.
- Neeraj in the given case, without the consent of his Executive Director accessed the electronic records and passed on the official information to the vendor without permission. This information can produce large profits and legitimize the ill-gotten gains through money

laundering. Hence it is punishable under the Section 72 of the Information of Technology Act, 2000.

- b. The given issues falls within the ambit of the Prohibition of Benami Property Transactions Act, 1988. According to Section 2 (26) "Property" means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property.

According to Section 2 (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.

According to Section 2 (9) (B), a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or (D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious. Hence, according to all the above provisions, Neeraj has done Benami transactions. He has done the investment in the share as a Benamidar as he holds the share in the fictitious name of shareholders. Hence this is a Benami transaction and is liable for punishment under the Benami Transaction Act.

3. (i) (A) The term 'agreement' as defined in section 2 (b) of the Competition Act, 2002, includes any arrangement or understanding or action in concert.
- (i) whether or not such arrangement, understanding or action is formal or in writing, or
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings.

Thus an agreement between Shubh Ltd. and Mangal Ltd. satisfies the above ingredients of an agreement as per section 2 (e) of the Act, so agreement has appreciable effect on competition.

- (B) **Factors** to be considered:

- (1) creation of barriers to new entrants in the market.
- (2) driving existing competitors out of the market.
- (3) foreclosure of competition by hindering entry into the market.
- (4) accrual of benefits to consumers.

- (5) improvements in production or distribution of goods or provision of services.
- (C) **Orders of CCI:** If after enquiry by the Director General, the Commission finds the agreement entered into by Shubh Ltd. and Mangal Ltd. are in contravention of section 3, it may pass all or any of the following orders:
- (1) direct Shubh Ltd. and Mangal Ltd. to discontinue and not to re-enter such agreement.
 - (2) impose such penalty as it may deem fit which shall not be more than 10% of the average of the turnover for the last 3 preceding financial years, upon each of such person or enterprises which are parties to such agreement or abuse;
 - (3) direct that agreement shall stand modified to the extent and in the manner as may be specified in the order by the commission
 - (4) direct Shubh Ltd. and Mangal Ltd to abide by such other orders as the commission may pass and comply with the directions including payment of cost, if any.
 - (5) pass such other orders or issue such directions as it may deem fit.
- (ii) **Issue of equity shares to NRI's and transfer of shares by NRIs are capital account transactions.**

RBI may in consultation with the Central Government specify any class or classes of transactions which are permissible [Section 6(2)(a)].

According to Regulation 3(1) of the Foreign Exchange Management (Permissible capital Account Transactions) Regulations, 2000 issued by RBI, Investment in India by a person resident outside India is a permissible capital account transactions (Schedule II).

Further RBI is empowered under Section 6(3)(b) to prohibit, restrict or regulate, by regulations, transfer or issue of any security by a person resident outside India.

According to Regulation 5(3)(ii) of the said regulations a NRI may purchase shares of an Indian Company which is not engaged in Print Media Sector on non-repatriation basis without any limit (para 2 of Schedule 4). The shares may be issued by the company either by public issue or private placement. The only condition is that the amount of consideration for purchase of shares shall be paid by way of inward remittance through normal banking channels from abroad or out of funds held in NRE/FCNR/NRO/NRSR/N&NR account maintained with an authorized dealer or as the case may be with an authorised bank in India (Para 3 of Schedule 4).