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Note : It is advisable to go through Economic Laws Question Bank for practice ,the same can be purchased from Apna mentor website.

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Prohibition of Benami Property Transactions Act,1988

Benami literally means 'without a name'. In this Act, the word "benami" is used to refer to a property/asset with no name attached to it i.e. **the actual owner is not the person who has the legal title to the property**. Here, property, shares, debentures, fixed deposits and bank accounts are held by one person for another. The former lends his name to the latter and is called a Benamidar; he does not have any beneficial interest in the property/asset. Benamidar is mere a name lender ,a mask who hides the real owner of the property.

The Benami Transaction (Prohibition Act, 1988) **The Benami Transactions (Prohibition) Act, 1988** was enacted to prohibit benami transactions and the right to recover property held benami and for matters corrected therewith or incidental thereto. **It extends to the whole of India including the State of Jammu and Kashmir w.e.f. 31.10.2019**

The Benami Transactions (Prohibition) Amendment Act, 2016 came into effect from **1st November 2016**. The act is going to be an important weapon to track black money supplementing the Income Declaration Scheme,2016 of the Income Tax Department.

Important Definitions

Section 2 (5) – Attachment

In an attachment, the person has to maintain status quo of the property. "Attachment" means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act

Section 8 – Benami Property

"Benami property" means any property which is the subject matter of a benami transaction and also includes the proceeds from such property. Benami property means property without a name. Here, the person who pays for the property does not buy it under his own name. The person who finances the deal is the real owner of the property. The person in whose name the property has been purchased is called the Benamidar . **The onus of proving that the apparent was not the real is on the party who claimed it to be so.**

Section 2(9) - Benami transaction -It means (MOST IMPORTANT)

1.a) a transaction where property is transferred or to held by one person and **the consideration for such property paid by another person and**

b) property held for immediate or future benefit of person who gave the consideration, EXCEPT WHEN PROPERTY IS HELD BY-

i) Karta or Member of HUF

ii) a person in **fiduciary capacity** for benefit of another person like trustee, partner, director of company or depository as agent of the actual buyer.

iii) an individual in name of **spouse and child**

iv) **Joint owners** (brother or sister, lineal ascendant or descendant).

2. transaction in **fictitious name**

3. transaction where owner of property **unaware or denies ownership**

4. transaction **where source of consideration is unknown**. (Not traceable)

Important Note :

Benami transaction shall not include any transaction under Section 53A of the Transfer of Property Act, 1882, if,

- (i) **consideration** for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property.
- (ii) **stamp duty** on such transaction or arrangement has been paid; and
- (iii) **the contract has been registered.**

Few Examples of Benami Transaction (Important for MCQs)

Sr. No	Example	Whether a benami transaction or not?
1.	Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 in the joint name of his brother and himself from his NRE account.	No as it comes under exception of benami transaction.
2.	Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 and paid 5,00,000 in by account payee cheque of his own account and rest in cash. The registry was done at a value of Rs 5,00,000 which was paid by cheque	Since the property is in the name of Mr. X and not in others name, it is not a Benami Transaction.
3.	Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 in the joint name of his brother and himself and made the payment from unknown source.	Yes, Since the source of payment is not traceable.
4.	Mr. X, a resident Indian is holding a property which is in the name of unknown person.	Yes, as the property is hold in name of fictitious name.

5.	Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 in the name of his wife from his NRE account.	No, as spouse comes under exception and payment source is also known.
6.	Mr. X, a non-resident Indian, purchased a flat for ₹ 10,00,000 and paid 5,00,000 in by account payee cheque of his own account and ₹ 2,50,000 cheque of other unknown person and rest Rs 2,50,000 in cash. The registry was done at a value of Rs7,50,000 which was paid by his own cheque and others cheque.	Since the cheque for ₹ 2,50,000 is from unknown person cheque, to that extent it may be a Benami Transaction.
7.	Mr. X, a resident Indian, purchased a flat for ₹ 10,00,000 in the name of his son a USA resident but he denies the ownership of the flat.	Yes, since the owner of property is unaware and denies the ownership.
8.	Mr. X, a resident Indian sold a flat which was not in his name and was in unknown person name. But deposited the sale proceeds in his own account.	Yes as Mr. X sold the benami property and such transactions are null and void.
9.	Mr. X, a resident Indian, a flat was purchased for ₹ 10,00,000 and payment was made by unknown person.	Yes, as consideration is paid by fictitious person .
10.	Property held by Rajesh in the name of his spouse and consideration paid out of known legal sources	No, as it comes under exception of benami and consideration paid out of legal sources

Important tests to determine whether a transaction is benami or not? (Important)

Bhim Singh & Anr vs Kan Singh (Supreme Court)

1. The burden to prove a transaction is benami or **not lies on the person who claims it to be benami.**
2. If consideration paid by different person other than in whose favour property is transferred, then **purchase is assumed to be for benefit of person who paid consideration.**
3. Intention of person **who paid consideration** is most important .
4. Intention is decided on **current circumstances ,relationship of parties, motives behind the transaction and their subsequent conduct.**

Section 2 (10) – Benamidar

"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.

Section 2 (12) - Beneficial owner

"Beneficial owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a Benamidar.

The beneficial owner provides or pays consideration for purchase of property. Beneficial owner can be any person.

Section 2 (16) Fair Market Value

"Fair market value (FMV)", in relation to a property, means—

- (i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
- (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as prescribed in Rule 3 of *Prohibition of Benami Transactions Rules, 2016*.

Section 2 (24) – Person

Individual +HUF +Company +AOP (Associate person) +BOI (Body of Individual) + every artificial judicial (body corporate).

Section 2 (26) – Property

"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

Section 2 (29) - Transfer – "Transfer" includes sale, purchase or any other form of transfer of right, title, possession or lien.

SECTION 3 - PROHIBITION OF BENAMI TRANSACTION

Before Amendment – No person shall enter into benami transaction .Punishment up to 3 years of jail, fine or both.

After Amendment – Rigorous imprisonment **up to 7 years** and **fine up to 25% of fair value of such property**.

Section 4 – Prohibition of Right to Recover Property Held Benami

- 1) **No right in property** which has been held benami .
- 2) **No defense** shall be allowed in respect of property held benami.

Section 5 - Property held in benami liable to confiscation- This is given in section 27.

Section 6- Prohibition on re-transfer of property by benamidar

If it is re-transferred then it will be **declared null and void** unless as per section 190 of Finance Act, 2016, where if undisclosed property could be disclosed then it will be valid.

ATTACHMENT, ADJUDICATION AND CONFISCATION

Various Authorities Involved

Sec	Authority	Who has powers?	Functions
Sec 2(19)	Initiating Officer	Assistant Commissioner/ Deputy Commissioner	Notice and attachment of property (Section 24)
Sec 2(4)	Approving Authority	Additional Commissioner or Joint Commissioner	Notice to furnish evidence (Section 24)
Sec 2(1)	Adjudicating Authority	AA appointed under Section 7 (1 chairperson and at least 2 other members. Commissioner of Income Tax or member of Indian Legal Service	Confiscation and vesting of property (Section 27)
Sec 2(2)	Administrator	Income Tax Commissioner	Possession and Management of Confiscated property
Sec 2(3)	Appellate Tribunal	Chairperson and at least 2 other members (1 judicial member and one Administrative member)	Hears appeals against order of Adjudicating Officer.

Section 24- Notice and Attachment of property involved in benami transaction (IMP)

There are 5 main steps-

- 1) **Step 1 -Initiating officer** shall give notice to the **Benamidar** as to why the property should not be treated as Benami Property.
- 2) **Step 2- Copy of notice** shall also be given to **Beneficial owner** ,if his identity is known.
- 3) **Step 3** – Where IO believes that Benamidar may alienate or transfer the property ,then with **prior approval of Approving authority** ,may attach the property on **provisional basis for 90 days from the last day of month in which notice was issued.**

The IO shall make inquiry and call for information, records and evidence. Further he shall pass an order of extension or revocation of Provisional Attachment order if already made ,or order of attachment ,if it was not done earlier with the notice **within 90 days from the last day of month in which notice was issued.**

Amendment for Nov 2020 (IMPORTANT)

([Explanation.—For the purposes of this section, in computing the period of limitation, the period during which the proceeding is stayed by an order or injunction of any court shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, ****the period of limitation referred to in sub-section (4) available to the Initiating Officer for passing order of attachment is less than thirty days, such remaining period shall be deemed to be extended to thirty days.**

Interpretation : It is simply saying that in computing the period of 90 days, if any stay order comes in between ,such period will be excluded and after removal of stay order ,**if that remaining period is less than 30 days, then such remaining period shall be deemed to be extended to thirty days.**(Note : It is extended to thirty days ,not by thirty days. there is a difference between by and to)

E.g. 90 days are getting over on 25.05.2020 , Stay removed on 10.05.2020 then in such case ,the remaining period is 15 days, so it will be extended to 30 days i.e.**09.06.2020** ,not 30 days after 25.05.2020.

Note : In simple words, we can say that to decide for extension ,check the remaining period (days after removal of stay to the date on which 90 days are getting over),if it is less than 30 ,increase such remaining days to 30 days, if it's 30 or more days ,no extension has to be done.)

- 4) **Step 5-** where the IO passes an order for continuing the provisional attachment or for provisionally attaching the property, then he shall **within 15 days from the date of attachment**, prepare a statement of case and submit it to Adjudicating Authority.

Interpretation : It is simply saying that in computing the period of 15 days, if any stay order comes in between, such period will be excluded and after removal of stay order, if that remaining period is less than 7 days, then such remaining period shall be deemed to be extended to 7 days.

Section 25- Manner of service of notice (sec 24 (1) and (2))

Method : Either by post or as a Summon by the court.

	In case of -	Notice to be addressed to -
(i)	An individual	such individual
(ii)	A firm	managing partner or the manager of the firm
(iii)	A Hindu Undivided Family	Karta or any member of such family
(iv)	A company	principal officer thereof
(v)	Any other association or body of individuals	principal officer or any member thereof
(vi)	Any other person (not being an individual)	person who manages or controls his affairs

Summon has mainly 5 characteristics-

- 1) Name of Authority who issued it.
- 2) Person name- against whom notice is served (beneficial owner or Benamidar)
- 3) Date and time
- 4) Place
- 5) Sign and stamp of issuing Authority.

Section 26- Adjudication of benami property

Step 1 : The Adjudicating Authority shall issue a notice to **benamidar, beneficial owner, any interested party including a banking company or any person who made claim in that property within 30 days of receipt** of notice under Section 24 to furnish documents/Particulars/Evidences.

Note : If property is held jointly by more than one person, **the AA shall serve notice to all persons holding the property**, although if notice is served on any one of the persons, the said notice **cannot be called as invalid on ground that it is not served to all persons holding the property.**

Step 2: The notice shall a period **not less than 30 days** to the person to whom notice is issued to furnish the information.

Step 3 : The AA shall –

- a) Consider the reply ,if received ,to the notice issued.
- b) Conduct inquiries and call for reports and evidence as it deems fit.
- c) Take into account all relevant material and give opportunity of being heard to the parties concerned and pass order
 - i) Revoking the attachment order of Benami property or confirming it.
 - ii) Treat only part of property as benami or
 - iii) Treat a new property as benami,if it has reasons to believe that it is benami
 - iv) It may strike out name of any party or add the name of party as joint owner, if its necessary for adjudication.

Note: No order shall be passed after the expiry of 1 year from the end of the month in which the reference under section 24 was received.

Amendment Nov 2020

In section 26 of the principal Act, in sub-section (7), with effect from the 1st day of September 2019, the following Explanation shall be inserted, namely:—

“Explanation.—For the purposes of this sub-section, in computing **the period of limitation (one year under 26 (7) ,** the period during which the proceeding is stayed by an order or injunction of any court shall be excluded.

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation available to the Adjudicating Authority for passing order is less than sixty days, such remaining period shall be deemed to be extended to sixty days.”.

Section 27- Confiscation and Vesting of benami property

- 1) Confiscation order passed by **the Adjudicating Authority** after giving the opportunity of being heard to the person concerned (Benamidar)
- 2) If any person held or acquired property from benamidar **for adequate consideration prior to issue of notice under section 24** without knowing it to be benami. **Rule 6 for confiscation won't apply here. (IMP)**
- 3) All rights and title vested in Central Government free from all encumbrances with no compensation.
- 4) Any transfer to any third person to defeat confiscation is Null and void.

Rule 6 for Confiscation

- i) **In case of immovable property- Issue of notice to CG /SG by authorized officer for Registration** of such confiscated property in name of CG/SG ,attach a copy of order at place of immovable property that it is confiscated.
- ii) **In case of Movable Property-The authorized officer** issue notice to

person who has custody of such movable property about confiscation. **If its liable to speedy and natural decay or its expenses for maintenance is likely to exceed its value**, with the leave of the concerned Adjudicating Authority, and **sell the property and deposit the sale proceeds** in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalized bank in fixed deposit and retain the receipt .

Section 28- Management of properties confiscation

- 1) Power of Administrator to receive and manage property confiscated.
- 2) Central government appoints Administrator (Notification in official Gadget).
- 3) Administrator may take measure as deem fit to dispose off such property.

Section 29- Possession of property

- 1) If confiscation order under section 27 has been passed, then Administrator shall proceed by notice in writing **,order within 7 days** of the date of service of notice ,to surrender or deliver possession of property.
- 2) If not complied, then Administrator give order for immediate possession of property.
- 3) Request police to take action.
- 4) Possession (forcibly acquires.)

Section 30

Section 30 (Amendment May 2020)

For the words "the Adjudicating Authority", the words "any authority" shall be substituted.

i.e. Now the amended provision says

The CG shall, by notification establish an Appellate Tribunal to hear appeals against the orders of any Authority under this Act.

APPEALS

Section 46 -Appeal to Appellate Tribunal

- i) **Who can file Appeal ? Any Person including Initiating Officer**
- ii) **Against whom order appeal filed? Against the order of Adjudicating Authority**
- iii) **Time -Limit within 45 days from the date of order under Section 26,the AT may entertain any appeal after 45 days, if it is satisfied that the appellant had sufficient cause .**

Insertion of Section 46(1A) - Appeals to Appellate Tribunal (May 20 Addition)

Any person aggrieved by an order passed by the authority under **section 54A** may prefer an appeal in such form along with such fees, as may be prescribed, to the Appellate Tribunal against the said order **within a period of forty-five days from the date of that order.**

Section 47 – Rectification of mistakes

The Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, **within a period of 1 year from the end of the month in which the order was passed.**

Section 49 – Appeal to high court

- i) **Who can file Appeal ? Any Party**
- ii) **Against whom order appeal filed? Against the order of Appellate Tribunal**
- iii) **Time -Limit within 60 days from the date of order of AT on question of law, the High Court may entertain any appeal after 60 days, if it is satisfied that the appellant had sufficient cause .**
- iv) The High Court shall follow the same procedure as mentioned in the provisions of the Code of Civil Procedure, 1908.

Section 50- Special Court

There will be some court to look after matter. They are as follows-

- 1) Control government plus chief justice of high court, designate session court which turns to special court.
- 2) Criminal possession court (CrPC, 1973). There will be investigation, enquiry and trial (guilty or not).
- 3) Special court not to take cognizance of any offence **except complaints from authority or any officer of Central government.**
- 4) Conclusion of Trial by special court **within 6 months** from the date of filing of the complaint.

Section 53 -Penalty for benami transaction

Offence	Where any person enters into benami Transaction
Motive	(a) to defeat the provisions of any law or (b) to avoid payment of statutory dues or (c) to avoid payment to creditors.

Who is punishable	(a) the beneficial owner, (b) benamidar and (c) any other person who abets or induces any person to enter into the benami business Shall be guilty of the offence of benami transaction.
Punishment	(a) rigorous imprisonment for a term which shall not be less than 1 year, but which may extend to 7 years and (b) shall also be liable to fine which may extend to 25% of the fair market value of the property.
Sanction Required	Prosecution shall be instituted only after the previous sanction of the CBDT Competent Authority. (Section 55) Amendment May 2020 in Section 55 For the word “Board”, the words “competent authority” shall be substituted. “competent authority” means a Commissioner, a Director, a Principal Commissioner of Income-tax or a Principal Director of Income-tax as defined in clause (16), clause (21), clause (34B) and clause (34C), respectively, of section 2 of the Income-tax Act, 1961. The implication of this change is that Now prosecution shall be initiated against any person in respect of any offence under Sections 3, 53 or Section 54 with the sanction of competent authority. Now sanction of CBDT is not required.

Section 54 – Penalty for false information

Any person who is required to furnish information under this act knowingly gives false information, then he/she shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten per cent of the fair market value of the property.

Section 54A -Penalty for failure to comply with notices or furnish information (w.e.f.01.09.2019)

1 Any person who fails to-

- i comply with summons issued under sub-section (1) of section
- ii 19; or furnish information as required under section 21

shall be liable to pay penalty of twenty-five thousand rupees for each such failure

2 The penalty under sub-section (1) shall be imposed by the authority who had issued the summons or called for the information.

- 3** No order under sub-section (2) shall be passed by the authority unless the person on whom the penalty is to be imposed has been given an opportunity of being heard: Provided that no penalty shall be imposed if, such person proves that there were good and sufficient reasons which prevented him from complying with the summons or furnishing information.

IMPORTANT CASE LAWS KEY TAKEAWAYS

Case Law 1: Smt. P. Leelavathi vs V. Shankarnarayana Rao

Key takeaway: In the case of *Binapani Paul v. Pratima Ghosh* the court had held that “the source of money had never been the sole consideration, and is only merely one of the relevant considerations but not determinative (deciding) in character.” “It is true that, at the time of purchase of the suit properties, some financial assistance was given by Late G. Venkata Rao. However, as observed by this Court in the aforesaid decisions, that cannot be the sole determinative factor/circumstance to hold the transaction as benami in nature.

It is not a benami transaction. Only financial assistance by the father in purchasing of the property will not confer it to be a benami transaction.

Case Law 2: Bhim Singh v. Kan Singh

Key takeaway: Two kinds of benami transactions are generally recognised in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. The second case which is loosely termed as benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner

The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and upon the intention of the person who has executed the conveyance in the latter case.

An order is passed directing the defendant to deliver possession of the suit house to plaintiff No. 2 (Bhim Singh Son) as Bharat Singh who purchased the property and handed the pattas (title deeds) to Bhim Singh, his intentions were clear to give property to Bhim Singh's Son and to pay profits to him at the rate of Rs. 50/- per month from September 20, 1956 till today .

Case Law 3: Niharika Jain W/o Shri Andesh Jain Vs Union of India

Key takeaway: Whether amendments in section 3 of Prohibition of Benami Transaction are “retrospective” or “prospective” in nature?

While holding the said sub-section (3) as prospective, the Rajasthan High Court observed that-Unless a contrary intention is reflected, a legislation is presumed and intended to be prospective.

Where an amendment affects rights or imposes obligations or casts a new duties or attached a new disability is to be treated as prospective; **Accordingly, the Rajasthan High Court threw the entire transactions entered by the petitioner before amendment out of the purview of Benami Act.**

REAL ESTATE REGULATION ACT, 2016

{Summary Compilation of Important Areas}

Parties Involved

1. Promoters
2. Allottees {Buyer of Projects}
3. Real Estate Agents { Negotiators}

Important Features of the Act

- i. The Act applies to **both residential and commercial properties.**
- ii. Builders would be liable for any structural defects brought to his notice **within 5 years from the date of possession.**
- iii. **70%** of the amount must be kept in a designated account in a scheduled bank exclusive for the current project.
- iv. Exemption from registration:
 - a. Projects being developed on land **less than 500 square metres.**
 - b. Number of units **does not exceed 8 (All phases). Phases will be checked in total, not individually, if the project is being done in multiple phases.**
 - c. Obtained completion certificate for the project before commencement of the Act.
 - d. Renovation/ Repair of the project which does not involve marketing, advertisement and selling or new allotment.
- v. Application or booking fee **cannot be more than 10%** of the cost of the apartment, plot or building, as the case may be.
- vi. Every allottee shall take physical possession **within two months** of the occupancy certificate issued for the said apartment.
- vii. If there is Alteration in sanctioned plan by promoters, **written consent by 2/3rd of allottees.**
- viii. In case, a **buyer has been deceived into purchase through false representation or advertisement, he has an option to exit the project. The developer, in such case, will have to return the money along with interest.**
- ix. If there is **delay in giving possession**, allottee shall be entitled to claim **refund of amount** paid along with **interest and compensation** as prescribed.
- x. Carpet area has now been defined in the Act. Now the promoter cannot charge the buyers on the basis of super built up area.

Note : **Completion certificate vs Occupancy certificate**

⇔ Occupancy certificate relates to permitting the occupation of the apartment/building , which has provision for civic infrastructure such as water, sanitation and electricity and is habitable.

- ⇔ Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

Registration of a Real Estate Project under RERA

Section 3-Prior Registration of Property under RERA

1. RERA came into force on **1/5/2016**. All undergoing projects which have not obtained completion certificate would have to obtain registration within **3 months**.
2. All Real Estate Agents are also required to get registered with authority to facilitate purchase/sell of project under RERA.
3. If the project is developed in **multiple phases**, every phase is to be considered as a separate project and **separate registration is to be obtained for every phase**.
4. The registration obtained is valid for a period specified by builder in the application form.
5. Exemption from Registration
 - ⇔ Proposed Area of land does **not exceed 500 sq m** or
 - ⇔ Proposed no. of **apartments/unit** does **not exceed 8**
 - ⇔ **Renovation/Repair/Redevelopment** of **project** where **no** marketing/advertising/selling/new allotment is involved.

Section 4-Promoter to apply to the Authority for Registration

The Promoter should accompany the following details with the application process submitted to the Authority for Registration

- (a) Details of enterprise
- (b) Sanctioned Plan/Layout Plan and specification of proposed project
- (c) Details of projects launched in the last 5 years
- (d) Names and address of Promoters
- (e) Names and address of Real estate agents
- (f) Number, type and Carpet Area of Apartments
- (g) **Declaration verified by affidavit** that
 - he has legal title to the land on which development is proposed
 - land is free from all incumbrance
 - time period within which he undertakes to complete the project
 - **70 % of amount realised** would be kept in **scheduled bank** to cover cost of construction and land cost & **withdrawal of money shall be on completion basis after certifying it by Engineer, Architect and Chartered Accountant.**

The promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

 - He shall get his accounts audited by a CA in Practice **within 6 months** after end of every Financial Year.

Section 5-Authority to Grant Registration

- The authority shall grant or reject registration within **30 days**.

- If no communication is made by the authority within 30 days, it shall be deemed that Authority has given the registration.
- **Within 7 days after the expiry of 30 days**-Registration No, Login ID and password shall be given to the promoter.
- No Registration shall be cancelled by the Authority before giving **opportunity of being heard** to the promoter.

Section 6-Extension of Registration

- The Registration granted under Section 5 can be extended by the Authority on an application made by the promoter due to **force majeure**{unforeseen circumstances like fire, flood, earthquake etc} and on payment of prescribed fees.
- The registration granted shall be extended for a period **not exceeding 1 year**.
- No application for extension of registration shall be cancelled by the Authority before giving **opportunity of being heard** to the promoter.

Section 7-Revocation of Registration

Registration granted shall be revoked on the following 3 grounds after giving opportunity of being heard

- Promoter makes a default in complying with requirement of **Act, Rules or Regulations**.
- Promoter **violates any of the terms of conditions of the approval** given by the competent authority.
- Promoter is involved in any kind of **unfair practice or irregularities**.

Section 19 Rights and Duties of Allottees

1. **To make timely payments**. He is liable to pay interest to the promoter for delay in payment. However, the rate of interest cannot be more than what the allottee is entitled from the promoter for delay in possession.
2. Every allottee shall take **physical possession** of the apartment, plot or building etc **within a period of 2 months** of the occupancy certificate issued for the said apartment, plot or building.

Provisions relating to Real Estate Agents{Section 9 and 10}

Section 9 -Registration of Real Estate Agents

1. No real estate agent shall facilitate the sale or purchase of any real estate project registered under RERA without obtaining registration under this Section.
2. The Real Estate Agent shall make an **application in writing** for registration to the Authority.
3. The Authority shall be within the prescribed time period **accept or reject the application**.
4. No application shall be rejected by the Authority without giving **opportunity of being heard**.

Section 10 - Functions of Real Estate Agents

1. No real estate agent registered under section 9, shall facilitate the sale or purchase of any real estate project which is not registered under RERA.
2. Every real estate agent shall **maintain and preserve such books of accounts, records and documents** as may be prescribed.
3. No real estate agent shall engage himself in any kind of **unfair trade practices** {Example, giving false and misleading information}.

Disputes and Appeals under RERA

1. Any dispute between the allottee and promoter shall be referred to the Real Estate Regulatory Authority.
2. Authority also has the power to levy penalties on promoters, real estate agents and allottees for contravention of the Act.
3. If any person is aggrieved by the order of Authority, **appeal may be made to Appellate Tribunal within 60 days** { 60 days extension is possible on genuine grounds}.
4. AT shall make endeavour to dispose off the matter in 60 days.
5. If any person is aggrieved by the order of Appellate Tribunal, **appeal may be made to High Court within 60 days** { 60 days extension is possible on genuine grounds}.

Important Penalties under RERA

1. On Promoters

- ⇨ **Section 59 - If promoter fails to obtain registration under section 3, penalty up to 10 % of project cost shall be levied.**

If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with **imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent.** of the estimated cost of the real estate project, or with both.

- ⇨ **Section 60 - If promoter contravenes Section 4 or provides false information made thereunder, he shall be liable to a penalty which may extend up to 5 % of project cost.**
- ⇨ **Section 61 - If promoter contravenes any other provisions of this Act or rules or regulations made thereunder other than Section 3 and 4, he shall be liable to a penalty which may extend up to 5 % of project cost**
- ⇨ **Section 63 - If promoter fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to 5 % of cost of the project.**
- ⇨ **Section 64 - If promoter fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, he shall be punishable with**

imprisonment which may extend **up to 3 years** or **with fine for every day** during which such default continues, which may cumulatively extend **up to 10 %** of estimated cost of the project, or both.

2. On Real Estate Agents

- ⇨ **Section 62- If any real estate agents fails to comply with provisions of Section 9 and 10, he shall be liable to pay a penalty of Rs. 10,000 for every day during which such default continues , which may cumulatively extend up to 5 % of cost of the project.**
- ⇨ **Section 65 -If any real estate agent fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues , which may cumulatively extend up to 5 % of cost of the project.**
- ⇨ **Section 66- If any real estate agent fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, he shall be punishable with imprisonment which may extend up to 1 year or with fine for every day during which such default continues, which may cumulatively extend up to 10 % of estimated cost of the project, or both.**

3. On Allottees

- ⇨ **Section 67- If any allottee fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues , which may cumulatively extend up to 5 % of cost of the project.**
- ⇨ **Section 68-If any allottee fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, he shall be punishable with imprisonment which may extend up to 1 year or with fine for every day during which such default continues, which may cumulatively extend up to 10 % of estimated cost of the project, or both.**

Note : For easy learning of penalties

If Promoters, Real estate agents and Allottees-If anyone fails to comply with decision of RERA (Authority) -Penalty for every day subject to maximum of 5 % of the cost of the project. (NO IMPRISONMENT)

If Promoters, Real estate agents and Allottees-If anyone fails to comply with decision of Appellate Tribunal -Penalty for every day subject to maximum of 10 % of the cost of the project. IMPRISONMENT can be extended up to 3 years for Promoters and up to 1 year for Real estate agents and allottees respectively or with both penalty and imprisonment.

3.COMPETITION ACT, 2002

● Definitions:

Page
| 3.1

Agreement

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.

Cartel

includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

Enterprise

- ⊙ means a person or a department of the Government.
- ⊙ engaged in any activity (production, storage, supply, distribution, service etc.
- ⊙ Investment-directly or through subsidiary.
- ⊙ **Not including sovereign functions provided by the central govt- atomic energy, currency, defence and space.**

Consumer

Buyer of Goods

↓
Buys any goods for a consideration.

Including user of such goods.

whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hires of avails of any services

↓
hires or avails of any services for a consideration.

and **includes any beneficiary of such services.**

whether such hiring or availing of services is for any commercial purpose or for personal use.



Goods

Means goods as defined in the Sale of Goods Act, 1930 and includes—

- (A) Products manufactured, processed or mined.
- (B) Debentures, stocks and shares **after allotment**.
- (C) In relation to goods supplied, distributed or controlled in India.

Person

Includes-individual, HUF, company, firm, AOP, BOI, corporate established under any law, body cooperate, co-operative society, local authority, any other artificial judicial person.

Section 3- Anti Competitive Agreements

Agreements between persons or enterprises including cartels

- ⊙ directly or indirectly determines purchase or sale price
- ⊙ directly or indirectly results in bid rigging or collusive bidding
- ⊙ limits or controls production, supply, markets, technical development, investment or provision of services;
- ⊙ shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- ⊙ shall be presumed to have an appreciable adverse effect on competition and regarded as void.

Section 4- Abuse of Dominant Position

- ⊙ No enterprise shall abuse its dominant position
- ⊙ There shall be abuse of dominant position if
 - (a) Unfair or discriminatory condition is imposed **including predatory pricing**
 - (b) Limits or restricts- production, scientific or technical development,
 - (c) Indulges in practices resulting in **denial of market access,**
 - (d) forceful **supplementary obligations** having no connection with subject matter of contract
 - (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Section 3(4)-Agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) “tie-in arrangement” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods.
- (b) “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought.

(e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

● **What is combination? (SECTION-5)**

-Acquisition/Control/Merger/Amalgamation

Ⓐ **Individual(Acquirer plus enterprise acquired)**

<u>LOCATION</u>	→	<u>ASSETS</u>	→	<u>TURNOVER</u>
In India	→	Rs 2000 Crore	→	Rs 6000 Crore
In India or outside India	→	>1000 million US \$(of which at least Rs 1000 crore in India).	→	> 3000 million US\$(of which atleast Rs.3000 Crore in India).

Ⓑ **Group**

<u>LOCATION</u>	→	<u>ASSETS</u>	→	<u>TURNOVER</u>
In India	→	Rs 8000 Crore	→	Rs 24000 Crore
In India or outside India	→	>4000 million US \$(of which atleast Rs 1000 crore in India).	→	>12000 million US\$(of which atleast Rs.3000 Crore in India).

● **Regulation of combinations(SECTION-5)**

- No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- Any person or enterprise proposes to enter into combination shall give notice to competition commission in prescribed form within 30 days of:
 - ✦ Approval of BOD of proposal relating to merger or amalgamation.
 - ✦ Execution of any agreement relating to acquisition or acquiring control.



Factors to be considered by Commission while determining whether enterprise enjoys dominant position:

- Market Share
- Size of enterprise/Competitor.
- Economic power.
- Monopoly exercised.
- Dependence of consumers.
- Countervailing buying power.
- Relative advantage by way of economic development.
- Other factors.

The Commission shall, while determining the “relevant geographic market”, have due regard to all or any of the following factors, namely:

- (a) Regulatory trade barriers.
- (b) Local specification requirements.
- (c) National procurement policies.
- (d) Adequate distribution facilities.
- (e) Transport costs.
- (f) Language.
- (g) Consumer preferences.
- (h) Need for secure or regular supplies or rapid after-sales services.

The Commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:

- (a) physical characteristics or end-use of goods;
- (b) price of goods or service
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products



● IMPORTANT POWERS OF CCI:

- ↳ Powers of Civil Court
- ↳ Inquire into certain agreements or dominant position of enterprise Suo moto or on complain received.
- ↳ Power to call upon experts from various fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it.
- ↳ If after enquiry by the Director General, the commission finds that the agreement entered are in contravention of Section 3, it may pass all or any of the following orders.
 - (a) Direct to discontinue and not to reenter such agreement.
 - (b) impose penalty up to 10% of average turnover for last 3 preceding FY's.
 - (c) Direct to modify the agreement.
 - (d) Give directions including payment of costs.

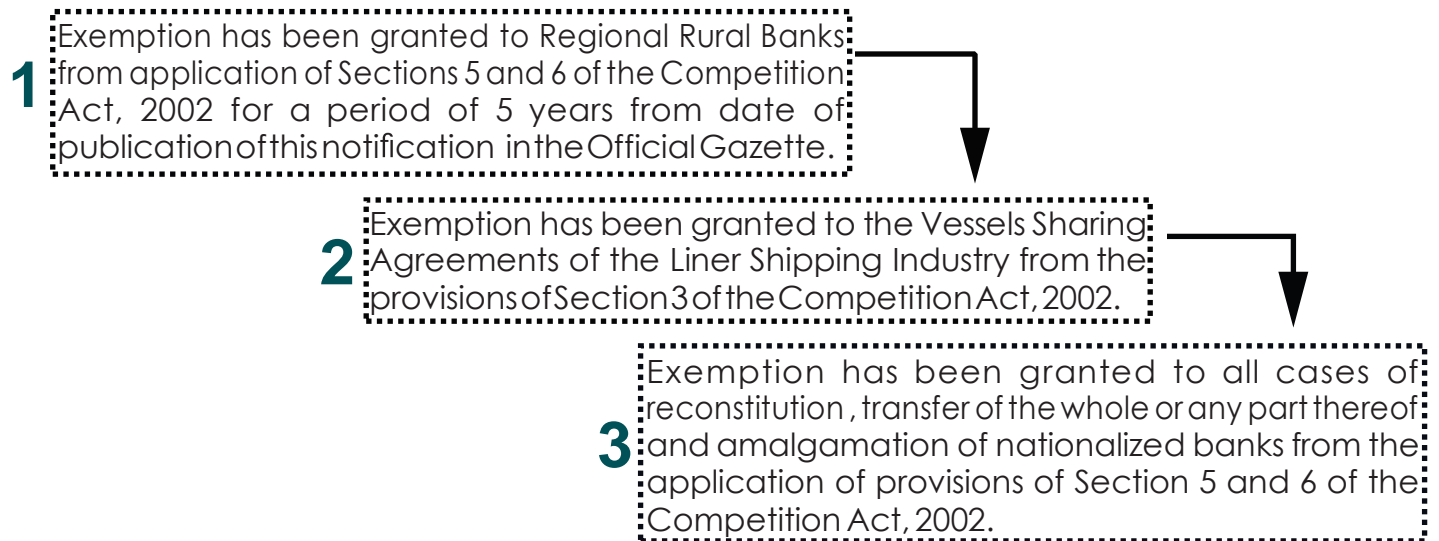
● CHAIRMAN AND MEMBERS OF CCI (IMPORTANT PROVISIONS)

<p>A)The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in various fields.</p> <p>B)Term of office of Chairperson and other Members</p> <ul style="list-style-type: none">⊙ 5 years⊙ Max age - 65 years	<p>C)Resignation shall be valid from : (Section 11)</p> <p>expiry of three months from the date of receipt of such notice or</p> <p>b) until a person duly appointed as his successor enters upon his office or</p> <p>c) until the expiry of his term of office</p> <p>d) he is permitted by the Central Government, whichever is earliest.</p> <p>Removal-4 grounds- insolvent, convicted of moral turpitude, paid employment, acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or) has so abused his position as to render his continuance in office prejudicial to the public interest; or mentally become incapable.</p> <p>Whenever CG forms an opinion that any commission has acquired financial interest in any enterprise or abused his position, it shall make a reference to Supreme Court. The S.C. shall hold an enquiry and then report that the member in question ought to be removed from his office</p>	<p>D) Restriction on employment of Chairperson and other Members</p> <ul style="list-style-type: none">⊙ 2 years from the date on which they cease to hold office of, any enterprise which has been a party to a proceeding before the Commission under this Act. <p>Exception:</p> <ul style="list-style-type: none">a) employment under the Central Government or a State Government.b) local authority.c) statutory authority or any corporation established by or under any Central, State or Provincial Actd) Government company.
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● Factors that the Competition Commission of India shall consider while determining whether and action has appreciable adverse effect on competition in India?

- Creation of barriers to new entrants in the market.
- Driving existing competitors out of the market.
- Foreclosure of competition by hindering entry into the market.
- Accrual of benefits to consumers.
- Improvements in production or distribution of goods or provision of services .

● RTP MAY 2018:



Amendment through RTP MAY 2020

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019, w.e.f. 15th August, 2019

1. Insertion of Regulation 5A : Notice for approval of combinations under Green Channel

GREEN CHANNEL FAST TRACK APPROVAL OF COMBINATION UNDER COMPETITION ACT, 2002 – Done as a part to improve Ease of Doing Business in India.

(1) For the category of combination mentioned in **Schedule III**, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV.

(2) Upon filing of a notice under sub-regulation (1) and acknowledgement thereof, the **proposed combination shall be deemed to have been approved by the Commission** under sub-section (1) of section 31 of the Act:

Provided that where the Commission finds that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is **incorrect**, the notice given and the approval granted under this regulation shall be **void ab initio** and the Commission shall deal with the combination in accordance with the provisions contained in the Act:

Provided further that the Commission shall give to the parties to the combination an **opportunity of being heard** before arriving at a finding that the combination does not fall under Schedule III and/or the declaration filed pursuant to sub-regulation (1) is incorrect.”;

Analysis of Regulation 5A

Regulation 5A provides for a "**green channel**" for obtaining an approval from the CCI ("Green Channel Route") in relation to specified transactions which may constitute a combination i.e. **Companies don't have to wait for 30 days for approval from CCI. It will be provisionally approved on the same day as Form I is submitted to the CCI.** The CCI has emphasized that the Green Channel Route is predominantly aimed to sustain and promote a speedy, transparent and accountable review of combination cases, create a culture of compliance, and support economic growth. The parties are given a **provisional approval to the combination**, subject to the CCI analysing the combination. If any information in the application is incorrect, such provisional approval shall be **void-ab-initio**.

SUMMARY NOTES OF ECONOMIC / ALLIED LAWS

By CA Sanidhya Saraf

Extra Readings for more clarity :

Note : Schedule III [See sub-regulation (1) of Regulation 5A]

The Amendment has listed out various criteria in relation to the combinations that would be eligible to apply through the Green Channel Route in terms of Schedule III of the Amendment. The eligibility conditions mandate that the parties to a combination, being the acquirer and the target company and/or their respective group companies do not have any overlaps, horizontal, vertical or complementary, i.e.:

Considering all plausible alternative market definitions, the parties to the combination, their respective group entities and/or any entity in which they, directly or indirectly, hold shares and/or control:-

- (a) do not produce/provide similar or identical or substitutable product(s) or service(s);
- (b) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are at different stage or level of production chain; and
- (c) are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are complementary to each other.

Note 1 : After the issuance of the Guidance notes, the term 'overlap' includes:

- (i) direct or indirect shareholding of more than 10%;
- (ii) a right which is unavailable to an ordinary shareholder (some commercial advantage for example), and
- (iii) a right to appoint a director or an observer in another undertaking.

Note 2 : The updated 'Notes to Form-I' clarify that complementary products/services are those which are combined and used together (for example, printers and ink cartridges), and that the competition assessment for such products would be undertaken in a manner similar to vertically related products.

If they fulfil the criteria under Schedule III ,then only green channel Route will be applicable on them .

2. In regulation 13, of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, following are the amendments-(a) **For sub-regulation (1A), the following sub-regulation shall be substituted, namely:** - "(1A) A summary of the combination, not containing any confidential information, in not more than 1000 words, comprising details regarding: (a) name of the parties to the combination; (b) the nature and purpose of the combination; (c) the products, services and business(es) of the parties to the combination; and (d) the respective markets in which the parties to the combination operate, shall be filed for the purpose of publishing the same on the website of the Commission";

(b) sub-regulation (1B) shall be omitted.

Note : It's a factual amendment in Regulation 13 (1A) ,earlier the words were 2000.

SUMMARY NOTES OF ECONOMIC LAWS/ALLIED LAWS

PREVENTION OF MONEY LAUNDERING ACT

Definitions:

Money Laundering

- In the PMLA, 2002, money laundering has been defined as “any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property”.
(Section 3)
- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in process of money laundering shall be punished as:-
 - ⊙ 3 years to 7 years imprisonment and fine.
 - ⊙ 3 years to 10 years imprisonment and fine if offence is committed under Narcotics and Psychotropic substances Act, 1985 **(Section 4)**.

Proceeds of Crime

Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property **or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.**

Scheduled offence

- (a).** The offences specified under Part A of the Schedule; or
- (b).** The offences specified under Part B of the Schedule if the total value involved in such offences is **ONE CRORE** or more.
- (c).** The offences specified under Part C of the Schedule.

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a prerequisite for initiating investigation into the offence of money laundering.

SUMMARY NOTES OF ECONOMIC LAWS/ALLIED LAWS

Property

“Property” means any property or assets of every description, whether **corporeal (material object)** or **incorporeal, movable or immovable, tangible or intangible** and includes **deeds and instruments evidencing title** to, or **interest** in, such property or assets, **wherever located**. Further, property includes, property of any kind used in the commission of an offence under this Act or any of the scheduled offences [Section 2(1)(v)].

Payment System

“Payment system” means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement services or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

Process of Money Laundering

- (a). Placement:- **introduces the illegal funds into the financial systems.**
- (b). Layering:- **a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin**
- (c). Integration:- The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc.

Only I can change my life. No one can do it for me.

SUMMARY NOTES OF ECONOMIC LAWS/ALLIED LAWS

Obligations of Banks/FI (Section-12)

- ✘ Maintain record of all transactions prescribed to reconstruct individual transaction.
- ✘ shall **verify the identity of its clients.**
- ✘ They shall maintain record of documents evidencing identity of its clients and beneficial owners (KYC Norms) for 5 years **after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.** (including accounts files and business files)
- ✘ **identify the beneficial owner**
- ✘ furnish prescribed information to the director of Financial Intelligence unit.

Monetary fine if above info not submitted on directors/EE's of reporting entity



● **Provision of appeals:**

- (a) Appeal against the order of Adjudicating Authority to the Appellate Tribunal within 45 days accompanied by such fee prescribed.
- (b) AT may condone the delay if sufficient cause.
- (c) AT may confirm/modify/set aside the order.
- (d) Appeal against the order of AT may be filed to High Court within 60 days of communication of decision of AT.
- (e) HC may condone the delay maximum by further 60 days.

Note-Money Laundering does not only mean siphoning of funds but also means conversion of money which is illegally obtained by placing the funds into the financial system.

SUMMARY NOTES OF ECONOMIC LAWS/ALLIED LAWS

● Provision regarding special courts:

- ⊙ Special Court Constituted under this Act is the authority to take cognizance of offence for which accused is committed upon a complaint made.
- ⊙ **The Special Court cannot take cognizance of any offence under the Act, unless a complaint in writing is made by:**
 - (a) The Director, or
 - (b) Any officer of CG/SG authorized in writing by CG by general or special order.

● Nature of offence:

Cognizable and Non-bailable.

Exceptions where Special Court may direct to release the person on bail

- (a) Age <16 years or
- (b) Accused is Woman or
- (c) Sick or infirm person.
- (d) **Accused either on his own or along with other co-accused of money laundering a sum of < 1 cr may be released on bail.**

● Attachment of property involved in Money Laundering:

1

The Investigating Authority can Provisionally attach Property { i.e. proceeds of crime } if he has any reason to believe that the person who is found in possession of any proceeds of crime and such proceeds of crime are likely to be concealed or transferred or dealt with in unlawful manner.

2

Such property can be provisionally attached **for a period of 180 days**. { For the purpose of computing the period of 180 days, the period during which the proceedings under this section is stayed by the high court shall be excluded }.

● Remedy against provisional attachment of property:

The process of appeals as discussed above shall apply.

SUMMARY NOTES OF ECONOMIC LAWS/ALLIED LAWS

● **Recovery of fine or penalty:**

If any fine or penalty imposed by the Adjudicating Authority under the POMLA Act, is not paid within 6 months from the date of imposition of fine or penalty, the Director or any other officer of the Adjudicating Authority authorized by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax 1961 for the recovery of arrears and the concerned person shall have all the powers of the Tax Recovery Officer.

● **Punishment for false information or failure to give information:**

1	2	3
Any person willfully or maliciously giving false information- Liable for imprisonment for a term which may extend to 2 years or fine which may extend to Rs 50,000 or both.	Punishment for refusing to produce books, sign any statement, answer any question put before by the Authority exercising power- Penalty of Minimum Rs 500, Maximum-Rs 10000 for each default or failure.	No penalty shall be levied by the authority on any person before giving the opportunity of being heard.

● **Procedure to collect evidence if evidence is available in a foreign country (Contracting State) with which agreement has been entered for exchange of information:**

- 1** The investigating officer or any officer superior in Rank may place the request to the Special Court.
- 2** The Special Court on being satisfied that the evidence is required in connection with the Investigation, may issue a letter of request to a court or an authority in the Contracting State to deal with such a request and to forward the required evidence after examining the facts and circumstances of the case.

SUMMARY NOTES OF ECONOMIC LAWS/ALLIED LAWS

Amendment in section 8 vide Finance Act, 2019, w.e.f. 20-3-2019

Where the Adjudicating Authority decides that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under section 5(1) or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

- a continue during investigation for a period not **exceeding three hundred and sixty- five days**{ **Earlier it was 90 days**} or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case
- b become final after an order of confiscation is passed

Explanation

For the purposes of computing the period of three hundred and sixty- five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

Insertion of section 11A vide the Aadhaar and Other Laws (Amendment) Act, 2019, w.e.f. 25-7-2019

Every reporting entity shall verify the identity of its clients and the beneficial owner, by

- a authentication under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 **if the reporting entity is a banking company**; or
- b offline verification under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016
- c use of passport issued under section 4 of the Passports Act, 1967
- d use of any other officially valid document or modes of identification as may be notified by the Central Government in this behalf

The use of modes of identification under sub-section (1) shall be a voluntary choice of every client or beneficial owner who is sought to be identified and no client or beneficial owner shall be denied services for not having an Aadhaar number.

If, for identification of a client or beneficial owner, authentication or offline verification is used, neither his core biometric information nor his Aadhaar number shall be stored.

5) Insolvency and Bankruptcy Code 2016

Note : It is a summary notes for IBC,2016.It's highly advisable to go through sections in detail before referring this file.

What is Insolvency and Bankruptcy?

The term insolvency is used for both individuals and organizations . For individuals, it is known as **bankruptcy** and for corporate it is called **corporate insolvency** i.e. when an individual or company are not able to pay the debt in present or near future and the value of assets held by them are less than liability. If untreated, insolvency will lead to bankruptcy for non-corporates and liquidation of corporates.

Insolvency is a situation which arises due to **inability to pay off the debts due to insufficient assets**, bankruptcy is a situation wherein application is made to an authority declaring insolvency and seeking to be declared as bankrupt, which will continue until discharge.

Purpose/ Preamble of IBC

“consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for **maximization of value** of assets of such persons, to **promote entrepreneurship, availability of credit** and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an **Insolvency and Bankruptcy Board of India**, and for matters connected therewith or incidental thereto”.

Extent and Commencement of The Code

As per **Section 1** of the Insolvency and Bankruptcy Code, it extends to the whole of India except Part III (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm) which excludes the state of Jammu and Kashmir. **(However, now even Part-III is applicable to Jammu & Kashmir w.e.f. 18th March 2020).The Code came into an enforcement on 28th May 2016.**

Distinct Features of The Code

It is a **comprehensive law**, the code has withered away multiple laws covering recovery of debts and insolvency and liquidation process and presents **single platform** for all the reliefs relating to recovery of debts and insolvency, it provides a **time-bound resolution (180 days, extension 90 days)** and defines **fixed time of 330 days (other 60 days are provided to complete legal proceedings)** frames for insolvency resolution of companies and individuals, **fast track resolution** of corporate insolvency within **90 days**. It has been drafted to provide **one window clearance**. There is a **clear and unambiguous process** to be followed by stakeholders, **shift of control from shareholders and promoters to creditors**. One chain authority, **NCLT for companies and DRT (Debt Recovery Tribunal) for individuals**. It **protects the interests of workmen and employees**. It provides new authority '**Insolvency and Bankruptcy Board of India**' to regulate professionals, agencies, partnership firms and individuals.

A unique feature of code is **establishment of Information Utilities** which are intended to function as a databank to collect, collate and disseminate financial information and to facilitate insolvency resolution.

Structure of The Code

Part I - Preliminary (Sec 1-3),

Part II- Insolvency Resolution & Liquidation for Corporate Persons (Sec 4-77),

Part III- Insolvency Resolution & Bankruptcy for individuals and Partnership firms (sec 78-187),

Part IV- Regulation of Insolvency Professionals, Agencies, & Information Utilities (sec 188-233),

Part V- Miscellaneous (sec 224-255)

Five Pillars of the Code

- I. **Insolvency Professionals**- The role of IP encompasses a wide range of functions adhering to procedure of law, accounting and finance related functions,
- II. **Insolvency Professional Agencies**- To enroll and regulate insolvency professionals as its members. They are registered with IBBI.
- III. **Information Utilities**- To collect, collate, authenticate and disseminate financial information of debtors in centralized electronic data bases at all times,
- IV. **Insolvency and Bankruptcy Board of India**-The Code provides for establishment of a Regulator who will oversee these entities and to perform legislative, executive and quasi-judicial functions. **Also, referred as “Board” in the act.**
- V. **Adjudication Authority**- The AA for corporate insolvency and liquidation is **NCLT** and **DRT** for Individuals and Partnership firms. Appeals arising out of NCLT orders lie to NCLAT and thereafter to SC of India.

Applicability of the Code?

Companies, Individuals, Partnership firms, LLP's , Notified Entities ,**Personal Guarantors to Corporate Debtors w.e.f. 1st day of December,2019**

Non-Applicability of the Code? (IMP)

The Code is not applicable to corporates in finance sector. Section 3(7) of Insolvency & Bankruptcy Code, 2016 states that "**Corporate person" shall not include any financial service provider.**

Thus, the Code does not cover Bank, Financial Institutions, Insurance Company, Asset Reconstruction Company, Mutual Funds, Collective Investment Schemes or Pension Funds. It implies that IBC Code, 2016 cannot be initiated against these institutions even if they have made a default. However, NBFC is engaged in various activities and hence NBFC is not ipso facto excluded from definition of 'corporate person' under section 3(7) of Insolvency Code. **NBFC can be a 'corporate debtor'** [Jindal Saxena Financial Services v. Mayfair Capital (2018)]

Amendment Nov 20 :Applicability of IBC ,2016 on NBFC: The Central Government in consultation with the Reserve Bank of India notifies that the insolvency resolution and liquidation proceedings of the Non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet shall be done according to IBC,2016

Amendment Nov 20 Enhancement in the minimum amount of default to ₹ 1 crore .

Note : Previously ,this minimum amount was ₹ 1 Lakh only.

Note : Provisions of this Code to override other laws: Section 238 of the Code, 2016 states that the Code shall have overriding effect over other laws.

Comprehensive Flow of Corporate Insolvency Process

- I. Filing of application before NCLT, Admission or Rejection of application.
- II. Moratorium and Public Announcement
- III. Appointment of Interim Resolution Professional
- IV. Formation of Committee of Creditors
- V. Appointment of Resolution Professional
- VI. Submission of Resolution Plan -Approval of Resolution Plan
- VII. Consequences of non-submission of the Resolution Plan

Important Definitions

1. [Section 3(1)] - **Board** means the Insolvency and Bankruptcy Board of India (IBBI) established under section 188(1)

2. **Section 5 (12) – Definition of Insolvency Commencement Date** **Amendment Nov 20**

“Insolvency commencement date” means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be.

~~Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority; (omitted)~~

Effect : Now, the insolvency commencement date is the date on which application is admitted by the NCLT.

3. [Section 5(7)] **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.**
4. [Section 5(20)] **Operational creditor** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

Who can initiate Corporate Insolvency Resolution Process? (Section 6)

The financial Creditor, Operational Creditor and the corporate debtor itself.

Initiation of CIRP by Financial Creditor (Section 7)

Default should be occurred, *** **Amendment Nov 20** FC either by itself or jointly with other FC may file an application for initiation of corporate insolvency process before AA,FC shall along with application furnish record of default, name of resolution professional proposed to act as IRP.

AA shall within **14 days** of receipt of application, **ascertain existence of default**, AA may accept or reject application after determining whether any disciplinary proceeding is pending against proposed IRP. **If the AA rejects the application**, AA shall give a notice to the applicant **to rectify the defect** in his application **within 7 days** of receipt of such notice from the Adjudicating Authority.

*** **Filing of application in certain special cases**

- i) **Where the FC relates to Section 21(6A) (a) ,(b) i.e. Security/deposit holders /Debenture holders** – The application can be filed jointly by **100** of such creditors of same class or **10% of the total no.of creditors** in the same class, **whichever is less.**
- ii) **Where the FC relates to allottees under a real estate project**– The application can be filed jointly by **100** of such allottees of same class or **10% of the total no.of allottees** in the same class, **whichever is less.**

Note : According to the existing provision, even one deposit holder or one debenture holder or one home buyer could have filed an Insolvency application under IBC Code, which was felt to be effecting the interest of the other creditors or other home buyers who are allottees in other real estate projects of the same corporate debtor.

After the said Amendment, a single home buyer or one deposit holder or one debenture holder cannot file the IBC Case against the builder and disrupt the Company's functioning.

Initiation of CIRP by Operational Creditor (Section 9)

Default should be occurred, Operational Creditor shall first send a **demand notice** and copy of invoice to corporate debtor, on receipt of notice , **the corporate debtor is either required to pay off within 10 days or give notice of dispute**, **After expiry of ten days, if operational creditor does not receive payment or notice of dispute it may file an application before AA for initiating process.**

Along with application it shall furnish copy of record with information utility confirming that there is no payment of unpaid operational debt, and any other proof. An operational creditor initiating a corporate insolvency resolution process , **may** propose a resolution professional to act as an IRP.

AA shall within **14 days** of receipt of application, **ascertain existence of default**, AA may accept or reject application after determining whether any disciplinary proceeding is pending against proposed IRP. **If the AA rejects the application**, AA shall give a notice to the applicant **to rectify the defect** in his application **within 7 days** of receipt of such notice from the Adjudicating Authority.

Initiation of CIRP by Corporate Applicant (Section 10)

“Corporate applicant means – (a) Corporate debtor, or (b) a member or partner of the corporate debtor who is authorized to make an application for the CIRP under the constitutional document of the corporate debtor; or (c) an individual who is in charge of **managing the operations** and resources of the corporate debtor; or (d) a person who has the **control and supervision over the financial affairs** of the corporate debtor;

Default should have occurred, application should be made to AA with prescribed books and documents, name of IRP should also be proposed in application, AA shall **within 14 days approve/ reject application**, in case of rejection ,notice shall be given within 7 days to rectify any defect, if any.

Persons not entitled to make application (Section 11)

The following persons shall not be entitled to make application if –

- a) CD is **undergoing** a CIRP.
- b) CD has **completed CIRP 12 months preceding the date of making application**.
- c) CD's **liquidation order** has been made.
- d) **CD or FC has violated any terms of resolution plan** which was approved 12 months before the date of making application for CIRP.

Note 1 :A Corporate debtor **includes its corporate applicant**.

Note 2 : Amendment Nov 20 -It is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor." (IMPORTANT)

Effect : This step is likely to enhance the maximization of value of a corporate debtor as it would be now able to recover its debts from its creditors ,which will ultimately serve the objective of the code.

Here, (CD- Corporate Debtor ,FC-Financial Creditor)

Time Limit for completion of CIRP (Section 12)

The corporate insolvency resolution process shall be completed within a period of 330 days (**180 days + 90 days extension + 60 days for completing the pending litigation**) from the date of admission of the application to initiate such process.

New timeline

$$180 \text{ days} + 90 \text{ days} + 60 \text{ days} = 330 \text{ days}$$

Note : The amendment is effective from 16th August,2019.This date is important as on this date, IBC cases have to be checked and **if the case had already crossed 330 days** ,then only 90 days will be given to complete its CIRP. **It's a transitional measure only.**

Withdrawal of application admitted under Section 7,9,10 (Section 12A)

The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of **90% voting share of the committee of creditors.**

Declaration of moratorium and public announcement (Section 13)

The Adjudicating Authority, after admission of the application, shall, by an order—

- Declare Moratorium under Section 14
- Cause a public announcement of the initiation of corporate insolvency resolution process and call for submission of claims, and appoint an interim resolution professional.

Moratorium (Section 14) (IMPORTANT)

After the commencement of corporate insolvency resolution, a calm period for **180 days** is declared, during which all suits and legal proceedings etc. against the Corporate Debtor are kept in abeyance to give time to the entity to resolve its status. **It is called the Moratorium Period.**

Following acts will be prohibited during moratorium period:-

- (i) the **institution of suits or continuation of pending suits** or proceedings against corporate debtor.
- (ii) **transferring, encumbering, alienating or disposing** off by the corporate debtor **any of its assets** or any legal right or beneficial interest therein.
- (iii) Any **action to foreclose, recover or enforce any security interest** created by the corporate debtor in respect of its property including any action under the **SARFAESI Act,2002.**
- (iv) **the recovery of any property by an owner or lessor** where such property is occupied by or in the possession of the corporate debtor.

Amendment Nov 20

Note : **Supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period subject to the condition that there is no default in payment of current dues.**

Analysis: It means that supply of the critical goods and services will not be suspended but the corporate debtor has to make payment for such critical supplies **DURING THE MORATORIUM PERIOD. If it fails to make payment for such critical supplies, it might get terminated.**

Note 1: The provision of section 14(1) of the Code is not applicable on a surety in a contract of guarantee to a corporate debtor. Thus, recovery proceedings, insolvency resolution process or bankruptcy proceedings against **surety (guarantor) can be initiated even if moratorium is granted to corporate debtor.**

Note 2 : The order of moratorium shall have effect from the date of such **order till the completion of the corporate insolvency resolution process. Moratorium period shall cease when AA approves the resolution plan or passes an order for liquidation of corporate debtor.**

Appointment and tenure of Interim Resolution Professional (Section 16)

Amendment Nov 20

The Adjudicating Authority shall appoint an interim resolution professional **on the insolvency commencement date. ~~within fourteen days from the insolvency commencement date.~~**

Term-IRP shall continue till appointment of resolution professional

Effect : It has been done to expedite the CIRP as to IRP will be appointed on the same date as when the insolvency commences i.e. the date on which the application is admitted by NCLT ,so it **has removed the 14 days window period now.**

Exception : What if Operational Creditor don't propose the name of IRP while filing application under Section 9 ,in such as a case ,AA will ask IBBI (Board) to recommend name of IRP and within 10 days the board has to do so. So, it's clear that here IRP can't be appointed on the same date on which application is admitted.

Hence, in this case the date of admission of application (Insolvency Commencement Date) and Date of appointment of IRP will differ.

Appointment of Resolution Professional (Section 22)

- 1. The First Meeting shall be held within 7 days of constitution of committee of creditors.**
- 2. In the first meeting, the CoC may, by majority vote of not less than 66 % of the voting share of FC, either appoint the IRP as RP or replace IRP by another resolution professional.**

Eligibility for Resolution Professional (Regulation 3)

An insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process **if he and all partners and directors of the insolvency professional entity of which he is the insolvency professional entity of which he is partner or director are independent of corporate debtor.i.e.**

1. He is eligible to be appointed as an **independent director** on board of corporate debtor u/s 149 of companies act,2013 where corporate debtor is a company.
2. He **is not a related party** of corporate debtor,
3. He is **not an employee or proprietor or a partner** of a firm of auditors or CS in practice or cost auditors of the corporate debtor in **last 3 FYs**
or He is not an employee or proprietor of **legal or consulting firm** that has or had any transaction with Corporate debtor amounting to **5% or more of gross turnover** of such firm in **last three FYs**

Functions of Resolution Professional- The resolution professional shall conduct entire process and manage operations of corporate debtor , shall exercise powers and perform duties as are vested or conferred on IRP.

Appeal can be made against approval of resolution plan if any criteria is not fulfilled. The committee of creditors may approve a resolution plan by a vote of not less than 66% of voting share of financial creditors. The resolution professional shall submit resolution plan as approved by CoC to AA, further AA may approve or reject the resolution plan.

Committee of Creditors (Section 21)

The committee of creditors shall comprise of **all financial creditors** of corporate debtor.

Where financial creditors don't exist, where the corporate debtor has no financial debt or where all financial creditors are related parties of corporate debtor, the committee shall be formed comprising of **18 largest operational creditors by value (in case less than 18, include all), 1 representative elected by all workmen, 1 representative elected by all employees.**

Meeting of Committee of Creditors (Section 24)

Important Points:

- i) **Quorum for the Meeting-**A meeting of committee of creditors shall quorate if members represent **at least 33% of voting rights** are present either in person or by video/ audio means, if requisite not fulfilled, meeting cannot be held and shall automatically stand adjourned at same time and place on next day.
- ii) **Voting share-**Where corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each shall be part of creditors and **their voting share shall be determined on basis of financial debts owed to them.**
Where **any person is a financial creditor as well as operational creditor** such person shall be a financial creditor, to the extent of financial debt owed by corporate debtor and shall be included in committee of creditors, with voting share proportionate to extent of financial debts owed to such creditor.
- iii) All decisions of committee of creditors shall be taken by a vote not less than **66%** of voting share of financial creditors.

- iv) **No right of vote to directors, partners and representatives of OC ,they can only attend meetings of CoC.**
- v) **A related party** to whom a corporate debtor owes a financial debt **shall not have any right** of representation , participation or voting in a meeting of the Committee of Creditors

Right to ask for financial information of CD

The CoC has right to ask for furnishing any financial information in relation to corporate debtor at any time during the corporate insolvency resolution process ,RP shall make any financial information available within a period of **7 days of such requisition.**

Approval of committee of creditors (66%) for certain actions of resolution professional such as raise any interim finance, create any security interest over assets of corporate, change capital structure of corporate debtor, record any change in ownership interest of corporate debtor, undertake related party transaction, etc.

Note : CoC may take decision **(66%) to liquidate corporate debtor** , any time after its constitution under sub-section (7) of section 21 and **before confirmation of resolution plan** , including at any time before preparation of information memorandum.

Person not eligible to be Resolution Applicant (Section 29A)

Undischarged insolvent, willful defaulter as per RBI guidelines, imprisoned for 2 years or more, disqualified u/s 164, prohibited by SEBI, has been promoter/ in management or control of corporate debtor where preferential/ undervalued/extortionate credit transactions has taken place , or has executed an enforceable guarantee in favor of a creditor, has a connected person which has defaulted as per above provisions.

Note- It is strictly advisable to go through section 29A from main notes.

Submission and Approval of Resolution Plan (Section 30,31)

Approval of Resolution Plan by the CoC- **66% voting share .The AA may approve the RP if it meets requirements of Section 30.** The Resolution Plan shall provide for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

- i) The amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- ii) The amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53,

whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (7) of section 53 in the event of a liquidation of the corporate debtor.

Liability of prior offences etc. (Section 32A) (NEW INSERTION)

Section 32A provides that Corporate Debtor shall not be prosecuted for an offence committed **prior to commencement of Corporate Insolvency Resolution Process (CIRP)** once Resolution Plan has been approved by Adjudicating Authority (AA). **There cannot be any attachment or confiscation of assets of Corporate Debtor, as otherwise same will defeat objects of the Code.**

It provides that no action shall be taken against property of Corporate Debtor covered under such a Resolution Plan.

Liquidation Process**Circumstances under which AA may pass a liquidation order**

- The AA may order for liquidation of corporate debtor in cases where before expiry of Insolvency Resolution Process or **within 180 days** of initiation of CIRP or fast track corporate insolvency process u/s 56, **the AA does not receive Resolution Plan.**
- If CoC before expiry of resolution process intimate the AA of their decision approved by not less than 66% of voting share that they have passed an order of liquidation of corporate debtor,
- Where **resolution plan is contravened** by concerned corporate debtor, any person other than debtor whose interests are affected may make an application.

Once AA passes an order of liquidation, a **moratorium** is imposed on pending legal proceedings against corporate debtor, and assets of debtor vest in liquidation estate.

Where AA passes an order for liquidation, **the resolution professional** appointed for corporate insolvency resolution process subject to submission of a **written consent by resolution professional** to AA in specified form, act as **liquidator** for purpose of liquidation unless replaced by AA.

To be a **liquidator**, a person should be **independent of corporate debtor. (Regulation 3 conditions, same as RP, that will be checked for Liquidator too)**

The liquidator has the **power** to verify all claims of creditors, to take all assets, property, effects and actionable claims of corporate debtor into his custody, to evaluate the assets and property of corporate debtor, to carry out business of corporate debtor for its beneficiary liquidation, to make progress report of corporate debtor.

For purpose of liquidation, liquidator shall form an estate of assets, which will be called **liquidation estate**, includes tangible and intangible assets, asset that may or may not be in possession of corporate debtor, assets subject to determination of ownership by court or authority, etc.

Assets not forming part of liquidation estate Assets owned by a **third party** in possession of corporate debtor, **personal assets** of any shareholder or partner of a corporate debtor, assets of any **Indian or foreign subsidiary**, assets in **security collateral** held by financial service providers and subject to netting and set off in multi-lateral trading or clearing transactions, any other assets as may be specified by board. **(IMP FOR MCQ)**

The liquidator shall receive or collect claims of creditors within a period of **30 days** from date of commencement of liquidation process. The liquidator shall communicate his decision of admission or rejection of claims to creditor and corporate debtor **within 7 days** of such admission or rejection of claims. **A creditor may appeal to AA against decision of liquidator rejecting its claims within 14 days.**

Distribution Order (Section 53)

- i) The insolvency resolution **process costs and liquidation costs** paid in full ,
- ii) **Workmen dues** for period of **24 months** preceding liquidation commencement date , and debts owed to **secured creditors** in the event such secured creditors has relinquished security, shall rank equally,
- iii) wages and unpaid dues owed to employees other than workmen for period of **12 months** preceding liquidation commencement date,
- iv) **Financial debts owed to unsecured creditors,**
- v) Amount due to CG and SG and debts owed to secured creditors for any unpaid amount after enforcement of security interest, shall rank equally,
- vi) remaining debts and dues, preference shareholders and equity shareholders or partners, a case maybe.

Voluntary Liquidation Process

Section 59 of Code empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings . Any corporate person registered as a company shall meet conditions such as declaration from majority of directors of company verified by affidavit stating that they have made a full inquiry into the affairs of company and **company is not being liquidated to defraud any person**, the declaration shall be accompanied with **documents namely**, audited financial statements and a record of business operations of previous two years or period since incorporation whichever is later, a report of valuation of assets of company, prepared by registered valuer.

After making declaration, **within four weeks, pass a special resolution** at a general meeting, stating the company should be liquidated voluntarily and insolvency professional to act as liquidator may be appointed.

Fast-track CIRP (Section 55 to 58)

Eligible Corporate Debtor : A Small Company, a startup or an **Unlisted company with total assets not exceeding 1 crore in the immediately preceding FY.**

A fast track insolvency resolution is a process wherein process shall be completed in an expeditious manner within **90 days** from insolvency commencement date (extension by AA of **not exceeding 45 days** , such extension shall not be granted more than once).

Validity of Undervalued and Overvalued Transaction with Related Parties If corporate debtor enters into undervalued or overvalued transactions with its related parties, the resolution professional may report about such transactions to NCLT and **NCLT may declare such transactions null and void and may reverse such transactions.**

6. Foreign Exchange Management Act, 1999

Important definitions:

<p>Person [Section 2(u)]</p>	<p>"person" includes-</p> <ul style="list-style-type: none"> (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and (vii) any agency, office or branch owned or controlled by such person;
<p>Person Resident in India [Section 2(v)]</p>	<p>"person resident in India" means-</p> <ul style="list-style-type: none"> (i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include- <ul style="list-style-type: none"> (A) a person who has gone out of India or who stays outside India, in either case- <ul style="list-style-type: none"> (a) for or on taking up employment outside India, or (b) for carrying on outside India a business or vocation outside India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period; (B) a person who has come to or stays in India, in either case, otherwise than- <ul style="list-style-type: none"> (a) for or on taking up employment in India, or (b) for carrying on in India a business or vocation in India, or (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;
	<ul style="list-style-type: none"> (ii) any person or body corporate registered or incorporated in India, (iii) an office, branch or agency in India owned or controlled by a person resident outside India, (iv) an office, branch or agency outside India owned or controlled by a person resident in India;

Important clarification in PRI given in study material

If a person comes in India on 1st June 2019 for employment, business or circumstances which indicate his intention to stay in India for an uncertain period, he will be a resident from 1st June 2019.

Residential status is not for a year. It is from a particular date that a person will be a resident or a non-resident. This is different from income-tax law. Under income-tax law, a person has to pay tax. Even if his status is known at the end of the year, it will only affect his tax. It will not affect his transactions. FEMA is a regulatory law. One has to know the person's status at the time of undertaking a transaction.

Author Note : This view taken by ICAI is highly debatable. As per the author's opinion , the condition of 182 days in previous year must also be complied .

PTR:

The Reserve Bank notifies debit cards, ATM cards or any other instrument by whatever name called that can be used to create a financial liability, as 'currency' **Current Account Transactions (Section 5)**

Schedule 1-Rule 3	Schedule 2-Rule 4	Schedule 3-Rule 5
Prohibited Cuat's	CG approval needed	RBI approval needed
<p>Transaction specified in Sch 1 or Travel to Nepal /Bhutan or transaction with person resident in Nepal/Bhutan.</p> <p>Remittance of</p> <p>a) income from racing /riding</p> <p>b) purchase of lottery tickets, banned /prescribed magazines, football pools, sweepstakes etc.</p> <p>c) interest income on funds held in Non-Resident</p>	<p>Remittance of</p> <p>a) freight of vessel chartered by a PSU</p> <p>b) Multi-modal transport operators to their agents abroad</p> <p>c) hiring charges of transponders by TV channels/Internet Service Providers.</p> <p>d) container detention charges exceeding the rate prescribed by Director General of Shipping</p> <p>e) prize money/sponsorship of sports activity</p>	<p>1. Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess of the said limits for the following purposes shall require prior approval of RBI.</p> <p>Private visits to any country (except Nepal and Bhutan).</p> <p>Gift or Donation.</p> <p>Going abroad for employment</p> <p>Emigration</p> <p>Maintenance of close relatives abroad,</p> <p>Business travel, or attending a conference or specialized training or for maintenance expenses of a patient going abroad for</p>

<p>Special Rupee (Account) Scheme.</p> <p>d) Dividend by a company to which requirement of dividend balancing is applicable.</p> <p>+ Payment of</p> <p>a) Commission on exports-towards equity investment in J.V./WOS abroad in Indian Co's</p> <p>b) Commission on exports under Rupee State Credit Route except commission up to 10% of invoice value of tea and tobacco.</p> <p>c) Call back services of Telephone</p>	<p>abroad by a person other than International / National / State Level sports bodies, if the amount involved exceeds USD 100,000.</p> <p>f) Remittance for membership of P&I Club</p> <p>+ Cultural Tours</p> <p>+ Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding USD 10,000) by a State Government and its Public Sector Undertakings</p> <p>+ Payment of import through ocean transport by a Govt. Department or a PSU on c.i.f. basis (i.e. other than f.o.b. and f.a.s. basis</p>	<p>medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.</p> <p>+ Meeting expenses for medical treatment abroad</p> <p>+ Studies abroad</p> <p>+ Any other current account transaction</p> <p>Exceptions:</p> <p>a) higher exchange facility can availed under Liberalized Remittance Scheme for emigration/ medical treatment / education if so required by a country of emigration, medical institute offering treatment or the university, respectively</p> <p>b) a person who is a resident but not permanently resident in India and is a citizen of foreign state (other than Pak) or Indian citizen on deputation of such foreign country may make remittance up to his net salary.</p>
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2. Facilities for persons other than individual-

The following remittances by persons other than individuals shall require prior approval of RBI.

- Donations **exceeding one per cent** of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less, for:-

(a) creation of Chairs in reputed educational institutes,

(b) to funds (not being an investment fund) promoted by educational institutes;
and
(c) to a technical institution or body or association in the field of activity of the donor Company.

- ❶ Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more.
- ❶ Remittances exceeding five per cent of investment brought into India or US\$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.
- ❶ Remittances exceeding US\$ 10,000,000 per project for any consultancy services in respect of infrastructure projects and US\$ 1,000,000 per project, for other consultancy services procured from outside India.

Infrastructure project' is those related to –Power, Telecommunication, Railways, Roads including bridges, Sea port and airport, Industrial parks, and Urban Infrastructure (water supply, sanitation and sewerage)

No person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank;

Provided that Schedule II and III Rule shall not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account of the remitter.

CAPITAL ACCOUNT TRANSACTIONS:

Section 2(e)-Definition

"capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub-section (3) of section 6 i.e. transfer of share, deposits between PRI and PROI, transfer of immovable property export, import or holding of currency or currency notes; borrowing; lending .

Any PROI cannot establish a place of business of India without the prior approval of RBI. For such approval, application shall be made in Form No. FNC 1.

The following are the objects for which RBI permits companies engaged in manufacturing and trading activities abroad to set up a Branch Office in India.

1. Consultancy.

2. Import/Export Trading activities.

3. Software Development.

4. Sales & After Sales Service/Technical support to products supplied by partners/group activities.

5. Promote technical collaborations between Indian Companies and Overseas Companies.

6. R&D in areas where parent company is engaged.

Schedule I

See Regulation 3

Classes of capital account transactions of persons resident in India

- a) Investment by a person resident in India in **foreign securities**.
- b) **Foreign currency loans** raised in India and abroad by a person resident in India.
- c) Transfer of **immovable property outside India** by a person resident in India.
- d) **Guarantees** issued by a person resident in India in favor of a person resident outside India
- e) Export, import and holding of **currency/currency notes**.
- f) **Loans and overdrafts** (borrowings) by a person resident in India from a **person resident outside India**.
- g) Maintenance of **foreign currency accounts** in India and outside India by a person resident in India
- h) Taking out of **insurance policy** by a person resident in India from an insurance company outside India
- i) **Loans and overdrafts** by a person resident in India to **a person resident outside India**.
- j) **Remittance outside India of capital assets** of a person resident in India.
- k) Undertake **derivative contracts**.

Schedule II

See Regulation 3

Classes of capital account transactions of persons resident outside India

- a) **Investment in India by a person resident outside India**, that is to say,
 - i) **issue of security** by a body corporate or an entity in India and investment therein by a person resident outside India; and
 - ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.
- b) Acquisition and transfer of **immovable property in India** by a person resident outside India.

- c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- d) Import and export of currency/currency notes into/from India by a person resident outside India.
- e) Deposits between a person resident in India and a person resident outside India.
- f) Foreign currency accounts in India of a person resident outside India.
- g) Remittance outside India of capital assets in India of a person resident outside India.
- h) Undertake derivative contracts

Transactions with no restrictions

- Amortization of loan and
- Depreciation of direct investments in ordinary course of business.
- When drawl is of the purpose of repayment of loan instalments

Prohibited Capital Account Transactions

No person resident outside India shall make 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 –

- a) in the business of chit fund, or
- b) as Nidhi Company, or
- c) in agricultural or plantation activities or
- d) in real estate business, or construction of farm houses or
- e) in trading in Transferable Development Rights (TDRs).

Note- Registrar of Chits or an officer authorized by SG in this behalf, may in consultation with SG, permit any chit fund to accept subscriptions from NRI's. NRI's shall be eligible to subscribe, through banking channel and on non-repatriation basis to such chit funds, without limits subject to conditions stipulated by RBI from time to time.

For the purpose of this regulation, 'real estate business' shall not include development of townships, construction of residential/commercial premises, roads or bridges and bridges and Real Estate Investment Trusts (REITs) Regulations 2014".

Section 7-Export of Goods and Services

1. Every exporter of goods shall furnish to the Reserve Bank or to such other authority a declaration in such form and in such manner as may be specified, containing true and correct material particulars, including the amount representing the full export value
OR

If the full export value of the goods is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions, expects to receive on the sale of the goods in a market outside India.

Note-Such declaration should contain true and correct material particulars.

2. Export declaration should be submitted in the following forms;

Form	When it is applicable
a)	Form EDF -Export Declaration Form for all types of export of goods from Non-EDI ports (Non-EDI means where bills are generated manually)
b)	Form Softex - Export of software in single or in bulk

1. Export without furnishing declaration

a)	trade samples of goods and publicity material supplied free of payment;
b)	personal effects of travelers, whether accompanied or unaccompanied;
c)	ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for military, naval or air force requirements.
d)	goods or software accompanied by a declaration by the exporter that they are not more than five lakhs rupees in value;
e)	by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value;
f)	aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling /repairs, within a period of six months from the date of their export;
g)	goods imported free of cost on re-export basis;
h)	Goods sent outside India for testing subject to re-import into India;
i)	Replaced goods exported free of charge in accordance with provisions of Exim.
j)	defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from an authorized dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.

Period within which export value of goods/software to be realized: -	
	The amount representing the full export value of goods or software exported shall be realized and repatriated to India within nine months from the date of export.
	Provided that where the goods are exported to a warehouse realization period is 15 months.
	Provided further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorized dealer may, for a sufficient and reasonable cause shown, extend the said period of nine months or fifteen months, as the case may be.

Section 9-Exemption from realization and repatriation in certain cases.- The provisions of sections 4 and 8 shall not apply to the following, namely:-

- (a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify; **(Every resident can hold foreign currency up to 2000 US \$ and foreign coins without limit)**
- (b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify;
- (c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;
- (d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from;
- (e) foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

(f) such other receipts in foreign exchange as the Reserve Bank may specify.

Contraventions and Penalties in Brief

Section No.	Contravention	Quantum of Penalty
Section 11	Authorized person contravenes any direction by RBI or failure to file any return as directed by RBI	<ul style="list-style-type: none"> ❶ Up to ₹ 10,000. ❷ If continuing offence additional penalty up to ₹ 2,000 per day.
Section 13	Of any provision of the Act, or any rule, regulation, notification, direction or order or of any condition subject to which an authorization issued	<ul style="list-style-type: none"> ❶ Up to three times, the sum involved, if it is quantifiable. ❷ If not quantifiable up to ₹ 2 lacs. ❸ If continuing, further penalty upto ₹ 5,000 per day after first day.
Section 14	Failure to pay penalty as above <ul style="list-style-type: none"> - where demand is of an amount exceeding ₹ 1 crore. - in any other case 	Civil imprisonment. <ul style="list-style-type: none"> Upto 3 years ❶ Upto 6 months.

Section No.	Obligation	Time Limit
Section 14	Full penalty to be paid	Within 90 days from the date on which notice for payment of penalty is served.
Section 15	Compounding of Contravention under section 13	Within 180 days of receipt of application by Directorate of Enforcement.
Section 16	Complaint under section 16(1) to be dealt by Adjudicated	Within 1 year of receipt of complaint.

Section 17	Appeal to Special Director (Appeals)	Within 45 days from receipt of order.
Section 19	Appeal to Appellate Tribunal	Within 45 days from receipt of order.
Section 19(5)	Appeal to be dealt with by Appellate Tribunal	Will try to dispose of the appeal within 180 days from receipt of appeal.
Section 35	Appeal to High Court	Within 60 days of communication of order or decision.

Compounding of Offences (Section 15)

Contraventions that can be compounded	Contravention punishable u/s 13 can be compounded.
Time limit for compounding	The Compounding Authority shall compound the offence within 180 days from the date of application.
Authorities appointed for compounding	RBI if contravention is related to foreign exchange or foreign security and Directorate of Enforcement if related to any other contravention.
Amount must be quantifiable	No contravention shall be compounded unless amount involved in such contravention is quantifiable.
Similar offences	Similar offences cannot be compounded within 3 years.

Some important regulations

1. Issue of equity shares to PROI is a permissible CAT. NRI may purchase shares of an Indian Company which is not engaged in Print Media Sector on non-repatriation basis without any limit.
2. NRI may transfer shares of Indian Companies to another NRI by way of sale. (Not gift)
3. NRI may transfer shares of Indian Companies to PRI by way of gift.

Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015 w.e.f. 21.01.2016

Acquisition and Transfer of Immovable Property outside India:-

1. A person resident in India may acquire immovable property outside India, -
 - (a). by way of gift or inheritance from a person on or before 8th July 1947 and continued to be held by him with the permission of the Reserve Bank.
 - (b). by way of purchase out of foreign exchange held in Resident Foreign Currency (RFC) account maintained in accordance with the Foreign Exchange Management (Foreign Currency accounts by a person resident in India) Regulations, 2015;

©. jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;

2. A person resident in India may acquire immovable property outside India, by way of inheritance or gift from a person resident in India who has acquired such property in accordance with the foreign exchange provisions in force at the time of such acquisition.

3. A company incorporated in India having overseas offices, may acquire immovable property outside India for its business and for residential purposes of its staff, in accordance with the direction issued by the Reserve Bank of India from time to time.

Explanation:

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

Space for notes:

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6

Foreign Exchange Management Act, 1999

Addition/Changes in FEMA

- Section 6
- Overseas Direct Investment { Study Material }
- External Commercial Borrowings { RTP May 2020 }
- Import of Goods and Services { Study Material }
- Borrowing and Lending in Foreign currency by persons other than authorized dealer

Section 6 of the Foreign Exchange Management Act, 1999 vide Finance Act, 2015 w.e.f. 15.10.2019.

Amended section with the changes marked in bold, is as follows:-

- 1** Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.
- 2** The Reserve Bank may, in consultation with the Central Government, specify-
 - a** any class or classes of capital account transactions, involving debt instruments, which are permissible
 - b** the limit up to which foreign exchange shall be admissible for such transactions.
 - c** any conditions which may be placed on such transactions.

[Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

2A The Central Government may, in consultation with the Reserve Bank, prescribe—

- a) any class or classes of capital account transactions, not involving debt instruments, which are permissible.
- b) the limit up to which foreign exchange shall be admissible for such transactions; and
- c) any conditions which may be placed on such transactions.

For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

In a nutshell, RBI has the power to specify class of transactions involving debt instruments as Capital Account Transactions and CG has power to specify class of transactions as Capital Account Transactions, not involving debt instruments. {Earlier such classification was not there. RBI exercise the power to specify class of transactions as capital account transactions for both debt and non-debt instruments}.

Section 6 (3) has now been omitted.

Overseas Direct Investment (ODI)

Relevant Definitions:

"Direct investment outside India" means investments, either under the Automatic Route or the Approval Route, by way of:

- a Contribution to the capital or subscription to the Memorandum of a foreign entity, or
- b purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, signifying a long-term interest in the foreign entity (JV or WOS)

However, it does not include Portfolio investment

'Joint Venture'

means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country in which the Indian Party makes a direct investment.

"Wholly Owned Subsidiary (WOS)"

means a foreign entity formed, registered or incorporated in accordance with the laws and regulations of the host country, whose entire capital is held by the Indian Party.

"Indian Party"

means a company incorporated in India or a body created under an Act of Parliament or a partnership firm registered under the Indian Partnership Act, 1932, or a Limited Liability Partnership (LLP), registered under the Limited Liability Partnership Act, 2008, making investment in a Joint Venture or Wholly Owned Subsidiary abroad, and includes any other entity in India as may be notified by the Reserve Bank.

NOTE

In the definition of Indian Party, resident individual is not covered. Resident individual will be separately covered later on.



“Host Country”

means the country in which the foreign entity receiving the direct investment from an Indian Party is registered or incorporated.

“Financial Commitment”

means the amount of direct investment by way of contribution to equity, loan and 100 per cent of the amount of guarantees and 50 per cent of the performance guarantees issued by an Indian Party to or on behalf of its overseas Joint Venture Company or Wholly Owned Subsidiary.

Please Note

An Indian Party can make overseas direct investment in any bonafide activity. Real Estate and Banking business are prohibited sectors for overseas direct investment.

A resident individual may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India. However, the limit of overseas direct investment by the resident individual is prescribed by RBI under the Liberalized Remittance Scheme.



Mode of direct investment outside India

a Automatic route for direct investment or financial commitment outside India

Under the Automatic route, an Indian Party does not require any prior approval from the Reserve Bank for making overseas direct investment in a JV/WOS abroad. He should approach an Authorized Dealer Category -1 bank with prescribed application and documents.

All the transactions relating to investment in a JV/WOS must be routed through one branch of the authorized dealer to be designated by the Indian Party.

The total financial commitment(FC) of Indian Party in overseas JV/WOS shall not exceed 400 % of its networth { as per the last audited Balance Sheet}. { Currently 400 % has been revised to 100 percent by RBI but not yet notified by ICAI. Please check the RTP before your attempt to confirm whether there are changes applicable for your exams}.

Net worth here means aggregate of paid up capital and free reserves.

FC made out of balances held in EEFC account of the Indian Party or out of the funds raised through ADR's/GDR's will not be taken into consideration for the purpose of the aforesaid calculation.



However, if the financial commitment exceeds USD 1 (one) billion (or its equivalent) in a financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit given under the automatic route.

Overseas JV/WOS shall carry out bonafide activity permitted as per the laws of the host country.

Indian Party shall not be on the Reserve Bank's exporter's caution list/list of defaulters/under investigation by the Director of Enforcement or any investigative agency or regulatory authority.

ODI in Pakistan is allowed under the approval route only. ODI in Nepal can be only in Indian Rupees. ODI in Bhutan is allowed only in Indian Rupees and in freely convertible currencies.

In a nutshell, The total financial commitment of the Indian Party in JV/WOS in any country is upto USD 1 (one) billion { or 100 million } (or its equivalent) in any one financial year or 400 % of networth whichever is lower and investment is a lawful activity permitted by a host country.

b

Approval Route

Prior approval of the Reserve Bank would be required in all other cases of direct investment (or financial commitment) abroad.

Reserve Bank would, inter alia, take into account the following factors while considering such applications.

- Prima facie viability of the JV / WOS outside India.
- Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment)
- Financial position and business track record of the Indian Party and the foreign entity; and
- Expertise and experience of the Indian Party in the same or related line of activity as of the JV / WOS outside India

Prohibitions on direct investment in abroad by an Indian party

- 1** Indian Parties are prohibited from making investment (or financial commitment) in foreign entity engaged in real estate (meaning buying and selling of real estate or trading in Transferable Development Rights (TDRs) but does not include development of townships, construction of residential/commercial premises, roads or bridges) or banking business, without the prior approval of the Reserve Bank.
- 2** An overseas entity, having direct or indirect equity participation by an Indian Party, shall not offer financial products linked to Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of the Reserve Bank.

Meaning of Financial Commitment {Understanding with help of a case study}

The total financial commitment of the Indian Party in all the Joint Ventures/ Wholly Owned Subsidiaries shall comprise of the following:-

- a** 100% of the amount of equity shares and/or Compulsorily Convertible Preference Shares (CCPS);
- b** 100% of the amount of other preference shares
- c** 100% of the amount of loan
- d** 100% of the amount of guarantee (other than performance guarantee) issued by the Indian Party
- e** 100% of the amount of bank guarantee issued by a resident bank on behalf of JV or WOS of the Indian Party provided the bank guarantee is backed by a counter guarantee / collateral by the Indian Party
- f** 50% of the amount of performance guarantee issued by the Indian Party.

CASE STUDY 1:

- An Indian Company {I Ltd} formed a WOS in USA {U Ltd, an Limited Liability Company}.
- I Co remitted sum as under to U Co on various dates:-
 - Subscription to Equity Shares-USD 100
 - Subscription to Redeemable Preference Shares-USD 250
 - Extended Corporate Guarantee on behalf of U Co with Midtown Mutual Bank to the extent of USD 50 (value of loan extended by the Bank to U Co)
 - Performance Guarantee on behalf of U Co-USD 50

Question

What is the Financial Commitment of I Co?

Answer

Financial Commitment of I Co is USD 100(Equity) + USD 250(Preference Shares) + USD 50 {Corporate Guarantee} + USD 25 { Performance Guarantee}=USD 425.

CASE STUDY 2:

1 Can an Indian Party issue performance guarantee in favour of overseas JV/WOS?

Yes, the Indian Party is permitted to issue performance guarantee and 50 % of the amount of the performance guarantees will be reckoned for the purpose of computing financial commitment.

2 Can an Indian Party extend guarantee to an overseas entity without any equity participation in that entity?

No, Indian Party can extend Loan and guarantee to an overseas entity only if there is already an existing equity participation by way of direct investment.

3 Can an Indian Party make foreign direct investment in real estate?

Real Estate sector and Banking are the prohibited sectors for overseas investment. { Real estate business means buying and selling of real estate or trading in transferable development rights but does not include development of township, construction of residential/commercial premises, roads and bridges.

4 Can ECB raised be utilized for ODI?

Yes, ECB raised can be utilized for ODI.

Overseas Direct Investments by resident individuals

Resident individuals may make overseas direct investment in the equity shares and compulsorily convertible preference shares of a Joint Venture (JV) or Wholly Owned Subsidiary (WOS) outside India.

The limit of overseas direct investment by the resident individual shall be within the overall limit prescribed by the Reserve Bank of India under the provisions of Liberalised Remittance Scheme {LRS}, as prescribed by the Reserve Bank from time to time. { i.e. USD 2,50,000 per Financial year}

Investment from EEFC and RFC Account shall also be included in the limit of USD 2,50,000 under the provisions of LRS.



External Commercial Borrowing

- New Guidelines w.r.t ECB were introduced in the Revised Study Material for May 2020 and Nov 2020.
- However, within 2 months of issue of new edition, the guidelines have been again Amended in RTP for May 2020.
- The guidelines for ECB has been given in a very detailed manner in RTP. However, a few guidelines have been simplified in this amendment sheet and a few has been omitted from this Amendment Sheet and the amendment sheet has been strictly made from Exam point of view. Student can refer May 2020 RTP for more details.
- It has been decided, in consultation with the Government of India, to rationalise the framework for ECB and Rupee Denominated Bonds in light of the experience gained to improve the ease of doing business.

Meaning of ECB's

ECB's are commercial loans raised by eligible resident entities from recognized non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc.

The term 'All-in-Cost' includes rate of interest, other fees, expenses, charges, guarantee fees whether paid in foreign currency or Indian Rupees (INR) but will not include commitment fees, pre-payment fees / charges, withholding tax payable in INR.

Salient features of the New Guidelines

- Merging of Track 1 and II as "Foreign Currency Denominated ECB" and merging of Track III and Rupee Denominated Bonds framework as "Rupee Denominated ECB"
- List of Eligible borrowers has been expanded to include all entities eligible to receive FDI. Additionally, Port Trust, Units in SEZ, SIDBI, EXIM Bank, registered entities engaged in micro-finance activities and non-government organizations can also borrow under this framework.
- The lender shall be resident of FATF {Financial Action Task Force} or IOSCO {The International Organization of Securities Commissions} compliant country. Multilateral and Regional Financial Institutions, Individuals and Foreign branches/subsidiaries of Indian banks can also be lenders.
- Minimum Average Maturity Period will be 3 years for all ECB's. However, in special cases it may be different.



Framework on Raising Loans through ECB's

The framework for raising loan through ECB comprises of the following 2 options:-

- 1 FCY denominated ECB {Foreign currency risk is involved}
- 2 INR denominated ECB {Foreign currency risk is not involved}

Eligible Borrowers

All entities eligible to receive FDI are eligible to raise funds via ECB. Further, the following entities are also eligible to raise ECB:

- Port Trusts
- Units in SEZ
- SIDBI
- EXIM Bank

Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/cooperatives and Non-Government Organisations (permitted only to raise INR ECB).

↓ **Minimum Average Maturity Period.**

↑ **Minimum Average maturity period will be 3 years.**

Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity.

Category	MAMP
ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year	1 Year
ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans	5 Year
ECB raised for working capital purposes or general corporate purposes & on-lending by NBFCs for working capital purposes or general corporate purposes.	10 Year
ECB raised for repayment of Rupee loans availed domestically for capital expenditure & on-lending by NBFCs for the same purpose	7 Year
ECB raised for repayment of Rupee loans availed domestically for purposes other than capital expenditure & on-lending by NBFCs for the same purpose	10 Year



Available routes for raising ECB

a Automatic Route

- No approval of RBI is needed to raise funds via ECB upto USD 750 million or equivalent per Financial Year.
- The application to raise funds under Automatic Route shall be examined by Authorized Dealer Category -I Bank.
- The designated AD Category 1 bank while considering the ECB proposal is expected to ensure compliance with applicable ECB guidelines.
- ECB liability -equity ratio for ECB raised under the Automatic Route cannot exceed 7: 1

b Approval Route-To raise funds , above exceeding the limits given in automatic route, borrowers shall approach RBI to seek its approval. RBI shall submit the proposal before the Empowered Committee set by RBI . The RBI shall take a final decision based on the recommendation of Empowered Committee.

NOTE

Authorized Dealer category 1 banks are basically authorized money changers approved by RBI under section 10 of FEMA,1999.Examples-SBI,Canara Bank, Axis Bank.

Negative List w.r.t ECB

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- Real estate activities
- Investment in capital market
- Equity investment
- Working capital purposes
- General corporate purposes
- Repayment of Rupee loans

NOTE

However if the ECB was raised specifically for Working Capital Purposes/General corporate Purposes/Repayment of Rupee Loans, the proceeds realized can be utilized for the same

Hedging Provisions w.r.t. ECB

- The entities raising ECB are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.
- Infrastructure space companies shall have a Board approved Risk management policy.

- Further, such companies are required to mandatorily hedge 70 per cent of their ECB exposure {principal as well as the coupon} in case the average maturity of the ECB is less than 5 years.
- Overseas investors are eligible to hedge their exposure in Rupee through permitted derivative products with AD Category I banks in India.

Change of currency of borrowing

- Change of currency of ECB from one freely convertible foreign currency to any other freely convertible foreign currency as well as to INR is freely permitted.
- Change of currency from INR to any freely convertible foreign currency is not permitted.

Loan Registration Number

- Funds can be raised via ECB Route only after obtaining the Loan Registration Number from the Reserve Bank.
- To obtain the Loan Registration Number, borrowers are likely to submit duly certified FORM ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category 1 Bank.
- AD Category 1 bank will forward one copy to the concerned department in RBI.

Monthly Reporting of Actual Transactions

The borrowers are required to report actual ECB transactions through FORM ECB 2 Return through the AD Category 1 bank on monthly basis so as to reach DSIM {Department of Statistics and Information Management} within seven working days from the close of month to which it relates.

Changes, if any, in ECB parameters should also be incorporated in FORM ECB 2 Return.

Late submission fee for delay in reporting

S.L. NO	Type of return/form	Period of delay	Applicable LSF
1	Form ECB 2	Upto 30 calendar days from due date of submission	INR 5,000
2	Form ECB 2/Form ECB	Upto 3 years from due date of submission	INR 50,000 per year
3	Form ECB 2/Form ECB	Beyond 3 years from due date of submission	INR 1,00,000 per year



Standard operating procedure (SOP) for untraceable entities

The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

Definition of untraceable entities

Any borrower who has raised ECB will be treated as 'untraceable entity', if entity/auditor(s)/director(s)/ promoter(s) of entity are not reachable/responsive/reply in negative over email/letters/phone for a period of not less than two quarters with documented communication/ reminders numbering 6 or more and it fulfills both of the following conditions:-

a

Entity not found to be operative at the registered office address as per records available with the AD Bank or not found to be operative during the visit by the officials of the AD Bank or any other agencies authorised by the AD bank for the purpose;

b

Entities have not submitted Statutory Auditor's Certificate for last two years or more;

Action

The followings actions are to be undertaken in respect of 'untraceable entities';

a

File Revised Form ECB, if required, and last Form ECB 2 Return without certification from company with 'UNTRACEABLE ENTITY' written in bold on top. The outstanding amount will be treated as written-off from external debt liability of the country but may be retained by the lender in its books for recovery through judicial/ non-judicial means;

b

No fresh ECB application by the entity should be examined/processed by the AD bank.

c

Directorate of Enforcement should be informed whenever any entity is designated 'UNTRACEABLE ENTITY'; and

d

No inward remittance or debt servicing will be permitted under auto route

Conversion of ECB into equity

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions;-

o

The activity of the borrowing company is covered under the automatic route for FDI or Government approval is received.

- The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under FDI policy.
- Applicable pricing guidelines for shares are complied with
- If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with

Security for raising ECB

AD Category I banks are permitted to allow creation/cancellation of charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised/ raised by the borrower, subject to satisfying themselves that:-

- the underlying ECB is in compliance with the extant ECB guidelines.
- there exists a security clause in the Loan Agreement requiring the ECB borrower to create/cancel charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/financial securities/issuance of corporate and/or personal guarantee, and
- No objection certificate, as applicable, from the existing lenders in India has been obtained in case of creation of charge.

ECB Facility for Startups

Framework

AD Category 1-banks are permitted to allow Startups to raise ECB under the automatic route.

Eligibility

An entity recognised as a Startup by the Central Government as on the date of raising ECB.

Recognized lender

Lender/Investor shall be resident of FATF compliant country.

Forms

The borrowing can be in form of loans or non-convertible , optionally convertible or partially convertible preference shares.

Maturity

Minimum Average maturity period will be 3 years.



Currency

The borrowing should be denominated in any freely convertible currency or in Indian Rupees or a combination thereof.

Amount

The borrowing per Start-up will be limited to USD 3 million or equivalent per financial year either in INR or any convertible foreign currency or a combination of both.

End Uses

For any expenditure in connection with business of the borrower.

Security

The choice of security to be provided to the lender is left to the borrowing entity. Security can be in the nature of movable, immovable, intangible assets (including patents, intellectual property rights), financial securities etc. However, issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by Indian banks, all India Financial Institutions and NBFC's is not permitted.

ECB facility with Oil Marketing Companies

- Public sector Oil Marketing Companies can raise ECB's for working capital purposes with minimum average maturity period of 3 years from all recognized lenders under the Automatic Route without mandatory hedging and individual limit requirements.
- The overall ceiling for such ECB's shall be USD 10 billion or equivalent.

ECB by entities under restructuring/ECB facility for refinancing stressed assets:

- An entity which is under a restructuring scheme/ corporate insolvency resolution process can raise ECB only if specifically permitted under the resolution plan.
- Eligible borrowers under the ECB framework, who are participating in the Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016 as resolution applicants, can raise ECB from all recognised lenders, except foreign branches/subsidiaries of Indian banks, for repayment of Rupee term loans of the target company. Such ECB will be considered under the approval route.
- Eligible corporate borrowers who have availed Rupee loans domestically for capital expenditure in manufacturing and infrastructure sector and which have been classified as SMA-2 or NPA can avail ECB for repayment of these loans under any one time settlement with lenders.
- The applicable MAMP will have to be strictly complied with under all circumstances.



Contravention of ECB Guidelines and Transparency Requirement

For providing greater transparency, information with regard to the name of the borrower, amount, purpose and maturity of ECB under both Automatic and Approval routes are put on the RBI's website, on a monthly basis, with a lag of one month to which it relates.

The primary responsibility for ensuring that the borrowing is in compliance with the applicable guidelines is that of the borrower concerned. Any contravention of the applicable provisions of ECB guidelines will invite penal action under the FEMA.

Import of Goods and Services

Import

The term 'Import' means bringing into India any goods or services.

Governing Regulation

Section 5 of FEMA Act 1999, read with Foreign Exchange Management (Current Account Transaction) Rules, 2000.

Guidelines to be remembered

- 1 The Authorised Dealer {AD} shall adhere to "Know Your Customer" (KYC) guidelines issued by RBI while undertaking import transactions.
- 2 AD may allow remittance for making payments for imports into India, after ensuring that all the requisite details are made available by the importer and the remittance is for bonafide trade transactions as per applicable laws in force.
- 3 AD should ensure that the importer furnishes evidence of import viz., as in IDPMS, Postal Appraisal Form or Customs Assessment Certificate, etc., and satisfy himself that goods equivalent to the value of remittance have been imported. AD should ensure that all import remittances outstanding on the notified date of IDPMS are uploaded in IDPMS (Import Data Processing and Monitoring System)
- 4 A person resident in India may make payment for import of goods in foreign exchange through an international card held by him/in rupees from international credit card/ debit card through the credit/debit card servicing bank in India against the charge slip signed by the importer, or as prescribed by Reserve Bank from time to time



5 Any person resident in India may also make payment **In rupees** towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India who is on a visit to India; **by means of a crossed cheque or a draft** as consideration for purchase of gold or silver in any form imported by such person

6 A company or resident in India may make payment in rupees to its non-whole time director who is resident outside India and is on a visit to India for the company's work and is entitled to payment of sitting fees or commission or remuneration, and travel expenses to and from and within India . However such payment shall be in accordance with Memorandum of Association or Articles of Association or any agreement entered into by it or any resolution passed in General Meeting or by BOD.

7 Time Limit for Settlement of Import Payments:-

a remittances against imports should be completed not later than **six months from the date of shipment**, except in cases where amounts are withheld towards guarantee of performance, etc.

b Deferred payment arrangements (including suppliers' and buyers' credit) up to five years, are treated as trade credits.

8 Extension of Time for settlement of Import Payments

a AD can consider granting **extension of time for settlement of import dues up to a period of six months at a time (maximum up to the period of three years)** irrespective of the invoice value for delays on account of disputes about quantity or quality or non-fulfilment of terms of contract; financial difficulties and cases where importer has filed suit against the seller.

b However, Extension cannot be granted by the AD, if the import transactions are under investigation by Directorate of Enforcement / Central Bureau of Investigation or other investigating agencies.

c While considering extension beyond one year from the date of remittance, the total outstanding of the importer does not exceed USD one million or 10 percent of the average import remittances during the preceding two financial years, whichever is lower.

9 Import for Foreign Exchange into India

a A person may **send into India** , without limit , foreign exchange in any form (other than currency notes, bank notes and travellers cheques).



b

A person may **bring into India** from any place outside India, without limit, foreign exchange (other than unissued notes). However, on arrival in India, a declaration must be given to custom authorities about the same. However, declaration is not needed if aggregate value of the foreign exchange in the form of currency notes, bank notes or travellers cheques brought in by such person at any one time does not exceed USD 10,000 and/or the aggregate value of foreign currency notes (cash portion) alone brought in by such person at any one time does not exceed USD 5,000.

10 Import of Indian Currency and Currency Notes

a

Any person resident in India who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (**other than from Nepal and Bhutan**), currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.25,000 (Rupees twenty five thousand only)

b

A person may bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India for any amount in denominations upto Rs.100/- {The reason for the same is that post demonetization Nepal Government has banned the notes of Rs 200, 500 and 2000}.

11 Issue of Guarantees by an Authorised Dealer in favour of importer

a

An authorized dealer is permitted to provide a guarantee in respect of any debt, obligation or other liability incurred by a PRI as an importer, in respect of imports undertaken on deferred payment terms in accordance with approval of RBI.

b

It is also clarified that AD may give a guarantee , Letter of Undertaking or Letter of Comfort in respect of any debt, obligation or other liability incurred by a person resident in India and owned to a overseas supplier of goods, banks, or financial institution in respect of permitted import of goods.

c

AD, may subject to the directions of RBI also permit a person resident in India to issue corporate guarantee in favour of an overseas lessor for financing import.

d

An AD may also give guarantee in favour of a service importer upto USD 1,00,000 if such service importer is a PSU or a department/undertaking of Government of India /State Government and upto USD 5,00,000 if such service importer is other than PSU or a department/undertaking of Government of India /State Government.

Borrowing and Lending in Foreign currency by persons other than authorized dealer

Borrowing in foreign currency by persons other than an authorised dealer: The circumstances and the conditions regarding borrowing in foreign currency by persons other than an authorised dealer are mentioned below:

i For execution of projects outside India and for exports on deferred payment terms: A person resident in India may borrow, whether by way of loan or overdraft or any other credit facility, from a bank situated outside India, for execution outside India of a turnkey project or civil construction contract or in connection with exports on deferred payment terms, provided the terms and conditions stipulated by the authority which has granted the approval to the project or contract or export is in accordance with the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.

ii For imports: An importer in India may, for import of goods into India, avail of foreign currency credit for a period not exceeding six months extended by the overseas supplier of goods, provided the import is in compliance with the Export Import Policy of the Government of India in force.

iii Borrowing by resident individual: An individual resident in India may borrow a sum not exceeding US\$ 250,000/- or its equivalent from his close relative outside India, subject to the conditions that:-

- a** the minimum maturity period of the loan is one year.
- b** the loan is free of interest; and
- c** the amount of loan is received by inward remittance in free foreign exchange through normal banking channels or by debit to the NRE/FCNR account to the non-resident lender.

Lending in foreign currency by persons other than an authorised dealer: The circumstances and the conditions regarding lending in foreign currency by persons other than an authorised dealer are mentioned below:-

i Lending to WOS / JV: An Indian entity may lend to its wholly owned subsidiary or joint venture abroad constituted in accordance with the provisions of Foreign Exchange Management (Transfer or issue of foreign security) Regulations, 2000.

ii Lending by Select Institutions: Export Import Bank of India, Industrial Development Bank of India, Industrial Finance Corporation of India, Industrial Credit and Investment Corporation of India Limited, Small Industries Development Bank of India Limited or any other institution in India may extend loans to their constituents in India out of the foreign currency borrowings raised by these institutions with the approval of the Central Government for the purpose of onward lending.



Lending by Indian companies to their employees: Indian companies in India may grant loans to the employees of their branches outside India for personal purposes provided that the loan shall be granted for personal purposes in accordance with the lender's Staff Welfare Scheme/Loan Rules and other terms and conditions as applicable to its staff resident in India and abroad.



Probable Questions



- Time limit for settlement of import payments and extension of the same.
- What are the routes available for raising ECB's?
- Can ECB raised be utilized for real estate activities?
- Short Note on ECB facility for start up's
- Who are the eligible borrowers to raise funds via ECB route?
- Can ECB raised be utilized for ODI?
- What is the total financial commitment that a Indian Party can make in its overseas JV/WOS?
- Modes of Direct Investment outside India?
- Which authority can prescribe capital account transaction's for Non-debt instruments?



SPACE FOR NOTES

CA FINAL ELECTIVE PAPER 6D : Economic Laws

15 Important Case Laws : KEY TAKEAWAYS

Note : Refer Economic Laws Case Laws “detailed and summary files” available on Telegram channel for better understanding) The important case laws are given here for quick revision only although it is highly recommended to read at least **summary file**) Here, Case Laws are numbered according to as given in Summary File.

Chapter & Relevant Section	Case Law no.	Name & Ruling Authority	Key Takeaways
Competition Act,2002 Section 2(r) Relevant Market	5	Re: House of Diagnostics LLP and Esaote Asia Pacific Diagnostic Pvt. Ltd Competition Commission of India	Relevant market was in question as CCI majority and CCI Chairperson has different opinions ,although the majority view will prevail but dissenting opinion is also published .CCI found the relevant market to be the ‘market for dedicated standing/tilting MRI machines in India’ (‘Relevant Market’) whereas CCI Chairperson considered the market to be all MRI Machines. Abuse of dominance is to be checked upon How the relevant market has been defined.
Competition Act,2002	9	CCI vs Bharti Airtel Ltd Supreme Court	The Supreme Court clarified that the jurisdiction of the CCI is not excluded by the TRAI Act. The Supreme Court grants to the CCI a ‘follow- on’ jurisdiction. CCI could exercise jurisdiction only after proceedings under the TRAI Act had concluded/attained finality
RERA,2016	1	M/s M3M India Pvt. Ltd. & Anr. v. Dr. Dinesh Sharma & Anr Delhi High Court	The RERA and Consumer Protection Act,1986 are concurrent . It means that home buyers can commence proceedings under CPA,1986 against developers even after commencement of RERA.
RERA,2016	5	Simmi Sikka v. M/s Emaar MGF Land Ltd. Haryana RERA	RERA is applicable to all the projects whether registered or unregistered, it’s just that few are not required to be registered but

			<p>these are within the ambit of the Act.</p> <p>All real estate projects are covered for land title defect liability.</p>
<p>Insolvency and Bankruptcy Code,2016</p> <p>Section 8 Insolvency resolution by operational creditor</p>	3	<p>Macquarie Bank Limited vs Shilpi Cable Technologies Ltd</p> <p>Supreme Court</p>	<p>“An operational creditor may on the occurrence of a default deliver a demand notice” under Section 8 of the Code must be read as including an operational creditor’s authorized agent and lawyer.”</p> <p>Hence, the court concluded that a lawyer on behalf of the operational creditor can issue a demand notice of an unpaid operational debt.</p>
<p>Insolvency and Bankruptcy Code,2016</p> <p>Section 14 - Moratorium</p>	5	<p>State Bank of India vs. V. Ramakrishnan</p> <p>Supreme Court</p>	<p>Section 14 of the Insolvency and Bankruptcy Code, 2016, which provides for a moratorium for the limited period, on admission of an insolvency petition, would not apply to a personal guarantor of a corporate debtor. <i>Personal guarantor has to pay for debts due without any moratorium applying to save him.</i></p>
<p>Insolvency and Bankruptcy Code,2016</p> <p>Section 24- Meetings of CoC</p>	7	<p>K. Sashidhar vs. Indian Overseas Bank & Ors</p> <p>Supreme Court</p>	<p>It clearly means that amendment made by way of reducing the voting share to 66% from 75 % while passing of a resolution plan by CoC is not applicable for the decisions made by CoC earlier. (before the amendment came.) <i>NCLAT could not have examined the case on the basis of the amended provision.</i></p>

Prevention of Money Laundering Act, 2002	2	M/s. PMT Machines Ltd. vs The Deputy Director, Directorate of Enforcement, Delhi Appellate Tribunal	The attachment order was passed in relation to mortgaged properties in favour of banks, which were not purchased from "proceeds of crime" , as they were purchased and mortgaged with the banks prior to the crime period. ED is allowed to attach other private properties and all other assets of the alleged accused. The Appellate Authority of the Prevention of Money Laundering Act, 2002 (PMLA) has upheld the prevalence of the IBC over the provisions of PMLA.
Prevention of Money Laundering Act, 2002	4	Chhagan Chandrakant Bhujbal vs. Union of India and Ors Bombay High Court	No authorization of the Central Government is required for Directors, Deputy Directors and Assistant Director whereas, in respect of other officers, such authorization may be necessary. They are authorised to arrest and initiate proceedings for attachment of property and to launch prosecution in the designated Special Court for the offence of money laundering, if they have reasonable belief to do so based upon the material in their possession.
FEMA,1999 Section 13 -Power to impose fine	5	Mr. S. Bhaskar vs Enforcement Directorate FEMA Karnataka High Court	The power of confiscation conferred under 13 (2) is in addition to the power to impose penalty under 13(1).It means penalty and confiscation of currency/security/money or property can be done by AA simultaneously.
FEMA,1999	7	Vodafone International Holding (VIH) v. Union of India (UOI) Supreme Court	The Supreme court held that in Indian revenue authorities do not have jurisdiction to impose tax on an offshore transaction between two non-residents companies where in controlling interest in a (Indian) resident company is acquired by the non-resident company in the transaction.

FEMA,1999	8	Kanwar Natwar Singh vs Director of Enforcement & Anr. Supreme Court	The noticee is not entitled to demand to furnish all the documents in possession of the Adjudicating Authority including those documents upon which no reliance has been placed. Supply of relied upon documents would serve the purpose of principles of natural justice.
Prohibition of Benami Property Transactions Act, 1988 Section 2(9) - Benami Transaction	2	Smt. P.Leelavathi vs V. Shankarnarayana Rao Supreme Court	Only financial assistance by the father in purchasing of the property will not confer it to be a benami transaction.
Prohibition of Benami Property Transactions Act, 1988 Section 2(9) - Benami Transaction	7	Bhim Singh v. Kan Singh Supreme Court	The intention of the transferor matters .An order is passed directing the defendant to deliver possession of the suit house to plaintiff No. 2 (Bhim Singh Son) as Bharat Singh who purchased the property and handed the pattas (title deeds) to Bhim Singh,his intentions were clear to give property to Bhim Singh's Son.
Prohibition of Benami Property Transactions Act, 1988	9	Niharika Jain W/o Shri Andesh Jain Vs Union of India Rajasthan High Court	The Rajasthan High Court threw the entire transactions entered by the petitioner before 2016 amendment out of the purview of Benami Act. A legislation is presumed and intended to be prospective.