

NEW SYLLABUS

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Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 7

NOTE : Answer **ALL** Questions.

1. Read the following case study and answer the questions given at the end :

The Competition Commission of India (CCI) (Respondent) has ordered a probe against Google Inc. for allegedly abusing its dominant position in ‘On line search’ advertising on a complaint filed by Mr. Vishal Gupta, a businessman. Gupta has alleged that companies owned by him had been submitting advertisements in Google Adwords from January 2013 to October 2013, before the account was terminated by the Google. On 15th April, 2014, the Competition Commission of India (CCI) passed an order under section 26(1) of the Act basd on the prima-facie opinion, directing the Director General (DG) to investigate into the matter. The Google Inc. (Appellant) filed an application for receiving the investigation order as it was passed without, giving them an opportunity of hearing. The application was dismissed by Competition Commission of India (CCI) on 31st July, 2014 for the following reasons :

- (a) CCI was of the prima-facie view that a case for investigation under section 26(1) was made out.
- (b) Issues could be dealt with at a later stage post competition of the investigation.
- (c) In any event, the power of review was not conferred upon CCI under the Act and therefore, it is impersonable in law for a authority to review/recall its orders.
- (d) As there was no statutory provision for appeal against such an order, the appellants filed a writ petition before the Delhi High Court against the impugned order.

Appellant's Argument :

Applicant contended that CCI had ordered the investigation without affording an opportunity of hearing. The application for recalling the order was dismissed by CCI on grounds of lack of territorial jurisdiction. The appellant relying on Supreme Court's ruling in Competition Commission of India Vs. Steel Authority of India (SAIL) submitted that merely because Section 37 of the Act had been deleted by 2007 amendment to Act which took away the power of review does not mean that the power to recall an order also ceases, as recall and review are not the same.

Respondent's Argument :

Counsel for the respondent submitted that though CCI did have their power to review its order before 2007 amendment, but with the deletion of section 37 of the Act, the said power has been taken away. The scheme of the act does not permit review or recall of the orders. CCI also submitted that since investigation was at initial stage and not determinative in nature, the appellant would not suffer any prejudice and therefore, no right for hearing existed.

Respondent further submitted that the application was made only to receive complete hearing at initial stage, which can be entertained even at a subsequent stage. Power of substantial review is expressly prohibited, any interference in the investigation would only lead to unnecessary delay in the proceedings as CCI jurisdiction to deal with the matter is a mixed question of fact and law. The Act does not permit any interference in the investigation once set in motion. CCI classified that the applicability of Section 26(1) of the Act is at a preparatory stage and, therefore, not applicable.

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Questions :

- (a) Whether the Appellant is in order requesting the CCI of recall the investigation ?
(10 marks)
- (b) Whether CCI has inherent powers to recall/review its investigation orders in exercise of powers u/s 26(1) of the Act ?
(10 marks)
- (c) Whether any provision of the Act indicates that an order u/s 26(1) cannot be reviewed or recalled ?
(10 marks)
- (d) Whether writ petition filed against CCI order directing investigation is maintainable ?
(10 marks)
2. (a) Canara Bank had made an application before the CLB seeking relief against the Nuclear Power Corporation of Indian Ltd. which had refused in its books in the name of the Canara Bank bonds of the Nuclear Power Corporation purchased by the Canara Bank. The Standard Chartered Bank had also claimed ownership of the said bonds. The Canara Bank alleged that it had acquired the said bonds from the Andhra Bank Financial Services Ltd. through one of his broker. The application of the Canara Bank was pending disposal before the CLB when, on 25th January, 1994 the Special Court Act was amended by the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Ordinance, 1994 and Section 9(A) was introduced. Canara Bank and Nuclear Power Corporation took the stand that the application of the Canara

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Bank stood transferred to the Special Court by virtue of the provisions of section 9A(2) of the Special Court Act. The Standard Chartered Bank (Stan Chart) contended that the CLB retained the jurisdiction to deal with the application. Whether CLB has jurisdiction ?

(6 marks)

- (b) What is the degree of proof required to hold brokers/sub-brokers liable for fraudulent/manipulative practices under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations and/or liable for violating the code of conduct specified in Schedule II read with Regulation 9 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ? (Conduct Regulations 1992).

(6 marks)

3. (a) The appellant was arrested on 25th March, 2015 in relation to an offence alleged to have been committed under Section-3 of the Prevention of Money Laundering Act 2002. (hereinafter Referred to as “PMLA”). The appellant is the Chairman of XYZ Real Estate Construction Ltd. a public company incorporated in the year 1999 and registered under the Companies Act, 1956. Certain non-convertible debentures were issued by the XYZ by ‘Private Placement method.’ No advertisements etc. were issued to the public. The said debentures were issued to the employees of the company and to their friends and associates after fulfilling the formalities for private placement of debentures. Thus the appellant collected money by issuing secured debentures by way of private placement in compliance with the guidelines issued by the Securities and Exchange Board of India from time to time. Further the appellant had floated as much as 27 companies and routed the monies collected by his front companies through these companies. Whether appellant entitled for bail ?

(6 marks)

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- (b) The appellant awarded the work order for transportation to Respondent on 28th July, 1992 and an agreement was entered into between the appellant and respondent No. 1 on 24th February, 1993 which was to expire on 31st March, 1993. But owing to circumstances, the work was extended several times and the contract was finally completed on 23rd October, 1997. Issues arose as to the rate of escalation based on the base year 1992 or 1994. Respondent submitted final bill having three annexures out of which first two were admitted, however, the appellant rejected the third one which was as to deciding the base year for calculating escalation. Analyse the problem.

(6 marks)

4. (a) The appellant was the successful bidder in a work contract which was challenged by the respondent. In the proceedings, the appellant filed an affidavit to the effect that nearly 85% of the work had been completed. However, the High Court found the statement made in the affidavit to be false after causing an inspection by an advocate. Then the High Court imposed a cost of ₹ 10 lakh on the appellant for filing a false affidavit.

Analyze the case whether the court was correct in imposing fine on appellant.

- (b) A company having registered office at Aurangabad and the workman appointed in Aurangabad transferred to Pondicherry. Pondicherry establishment was closed and the workman was terminated. The workman raised dispute and filed complaint at Aurangabad but it was rejected on the ground of lack of Jurisdiction.

Whether it was correct ?

(6 marks each)

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5. (a) 'No recovery under section 31, sub-section (10) of the SARFAESI Act shall be enforced by an other of the Bank authorised in this behalf certifying that the person in default has failed to pay the recoverable sum.' Explain the non-applicability of the provisions of SARFAESI Act,
- (b) Every company including its holding or subsidiary and a foreign company defined under clause (42) of section 2 of the Companies (Corporate Social Responsibility Policy), Rules, 2014 shall comply with the provisions of section 135 of this Act. Describe the various activities to be undertaken by a company under this Act.
- (c) 'Corporate Governance failures manifested in Ranbaxy Laboratories Board's failure to Check fraud, absence of the adequate risk management system and unethical practices.' Discuss how the above factors have affected company's status.
- (d) A Bank clerk fraudulently withdraws money from customer's account. The management dismisses the employee from services of Bank and withholds retirement benefits and adjusts against the loss caused. Net amount is paid to the employee after adjustment. Examine whether Bank's action is correct.

(3 marks each)

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6. For preparing a strategy for success a business needs to be clear about what it wants to achieve. Kellogg also prepared successful strategy by setting aims and objectives. Among these aims and objectives Kellogg's objective was to sponsors swimming programmes, involve in community programmes and have effective external communication.
- Analyze the Kellogg's strategic focus behind it and long-term benefit to be achieved by implementing this strategy.

(12 marks)