

Answers

Answer 1

A person resident in India may acquire immovable property outside India, -

- (a) by way of gift or inheritance from a person referred to in sub-section (4) of Section 6 of the Act, or referred to in clause (b) of regulation 4 (acquired by a person resident in India 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;
- (c) jointly with a relative who is a person resident outside India, provided there is no outflow of funds from India;

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.

Thus, *Mr. Raees*, can purchase the property only in the name of the above mentioned relatives. Daughter's mother in law does not fall within the purview of the mentioned definition of relatives. Hence, this transaction is not valid.

Answer 2

According to Section 18, Mr. Madhyam as an Interim Resolution Professional shall perform the following duties:

- (a) collect all information relating to the assets, finances and operations of MMPL including information relating to:
 - Its business operations for the previous two years;
 - Its financial and operational payments for the previous two years ;
 - A list of assets and liabilities of MMPL as on the initiation date; and
 - Other specified matters;
- (b) receive and collate all the claims submitted by PNB and other creditors, pursuant to the public announcement made by him under sections 13 and 15;
- (c) constitute a committee of creditors;
- (d) monitor the assets of MMPL and manage its operations until a Resolution Professional (RP) is appointed by the committee of creditors;

- (e) file information collected with the information utility, if necessary (*not applicable in the present case study*); and
- (f) take control and custody of the assets over which MMPL has ownership rights like plot, factory building, debtors, etc.
- (g) perform such other duties as may be specified by IBBI.

Answer 3

Following actions can be taken against the persons involved in Money Laundering:-

- (a) Attachment of property under Section 5, seizure/ freezing of property and records under Section 17 or Section 18. Property also includes property of any kind used in the commission of an offence under PMLA, 2002 or any of the scheduled offences.
- (b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to fine [Section 4].
- (c) When the scheduled offence committed is under the Narcotics and Psychotropic substances Act, 1985 the punishment shall be imprisonment for a term which shall not be less than three years but which may extend up to ten years and shall also be liable to fine.
- (d) The prosecution or conviction of any legal juridical person is not contingent on the prosecution or conviction of any individual.

Answer 4

Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:-

- (a) A declaration from majority of the directors of the company verified by an affidavit stating
 - i. That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and
 - ii. That the company is not being liquidated to defraud any person.
- (b) The declaration shall be accompanied with the following documents, namely:
 - i. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.

- (c) After making the declaration the corporate debtor shall within four weeks -
- i. Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.
 - ii. Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

In the given situations, according to the above provisions, a declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company, is not in compliance as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further declaration that the company is not being liquidated to defraud any person is not given in the affidavit. The documents to be accompanied with declaration shall be as per the point (b) given above.

Where if the articles fixed the period of duration of continuation and that period expires, X Ltd. after making declaration, shall within 4 weeks pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration as fixed by its articles and appointing an insolvency professional to act as the liquidator.

Answer 5

As per the arbitration agreement, the disputes submitted/ proposed to be submitted to arbitration must be arbitrable. In other words that law must permit arbitration in that matter only which are capable of arbitration. There are certain disputes that the law retains exclusively for the court, and the same cannot be submitted for arbitration. The rationale is that given the nature of disputes, the courts are the only appropriate forum for adjudicating the matter.

In the given matter, it clearly reveals of non-performance of the duties of the Raman garments manufacturer within the specified timelines. To safeguard himself from the non-performance of the contract, took the cause of theft and setting of fires in the manufacturing unit. Accordingly in the given situation, the submitted disputes before arbitration is not arbitrable as they are the offences of criminal natures. Such types of disputes is to be tried by the court of proper jurisdiction.

Therefore the submission of the dispute in the situation to arbitration is invalid.