

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : *Answer ALL Questions.*

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

JCP Industries Ltd (JIL) was incorporated in the year 2011 with an authorized share capital of ₹ 2,000 crore having its registered office located in Mumbai with the main objects to carry out the business (a) manufacturing of heavy duty earth moving machinery and their spare parts (b) purchase, sale, construction of multi-story commercial and residential apartments under own name or as under Joint Development Agreements (c) Mining of minerals and thereafter refining and processing them for sale; and (d) doing the business in the hospitality sector by running and maintaining Hotels, Resorts and Budget Hotels. The paid-up share capital of the company as on date is ₹ 1,750 crore.

During the course of business, the company has approached various banks, state finance corporations and NBFCs for availing financial assistance in the nature of term loans and other facilities. However, based on the business plans and security offered, the finance proposal was approved by National Bank of India (the Bank) in the form of both fund based and non-fund based limits. The company during the course of its business operations was also availing credit for 90 days to 120 days from its creditors in connection with the purchase of raw material being used in the business of manufacturing heavy duty earth moving machineries, real estate, mining and hospitality sectors. The progress of the company since its incorporation till 31st March, 2019 was exceptional. However, because of certain transactions carried out by the directors with their relatives and other parties between 1st July, 2020 to 30th June, 2021 which were in the nature purchase of raw-material for different business segments of the company including the purchase of immovable properties as well as transferring and sale of goods and assets of the company to such related and other parties by giving

them preference over the other buyers ultimately resulted into mismatch in the cash flows and consequently resulted into losses to the company.

With an intention to grow organically, the company also incorporated a wholly owned subsidiary in the year 2017 under the name of JCP Buildcon Ltd (JAL) which was mainly engaged in the real estate business involving construction of apartments and flats in multi-story buildings under the Joint Development Agreements being entered into with the various parties including various State Governments under Housing Schemes. JAL entered into a tripartite Joint Development Agreement with Jaipur Development Authority (JDA) for construction of apartments and flats in multi-story buildings after development of land belonging to JDA. In an attempt to extend support to JIL, JAL had also mortgaged its assets in favour of banks in the month of August, 2018 when additional financial assistance was provided to JIL.

The financial condition of JIL started deteriorating after July, 2019 because of reduction in the business activities as well as default being committed in honoring the debt obligations towards banks, payment to trade creditors and delays in construction of apartments to be handed over to the buyers who had entered into agreements with the company and have paid almost 95% of the cost of the apartment.

The banks, trade creditors and buyers of the flats were constantly making follow up with the management but no reply was given to them by the management of JIL as well as JAL. National Bank of India during their internal review meeting informed their legal team that the promoter/directors may have siphoned off the money which was supposed to have been used for business purposes; since it appears to them that the amounts have been advanced to related parties and diverted towards a few suspicious transactions.

The bank despite the continuous follow up with the management and the Board of directors could not get any suitable response relating to the repayment plan to honor the debt obligations. Considering the situation and based on the recommendation of their legal department, the bank decided to take action against the company under the Insolvency and Bankruptcy Code, 2016 (the Code) and thus filed an application on 16th February, 2022 before the Adjudicating Authority (AA) for initiating Corporate Insolvency Resolution Process (CIRP). In the application, the Bank had proposed name of Robin to act as Interim Resolution Professional (IRP). Simultaneously, other lenders of JAL also submitted an application before the AA to initiate CIRP against JAL for default in repayment of their dues.

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After hearing the parties, the AA admitted the applications in the case of JIL and JAL on 25th April, 2022 and also confirmed the appointment of Robin as IRP in both the companies. In the case of JIL, Robin constituted a Committee of Creditors (CoC) on 15th May, 2022 and called first meeting of the CoC on 20th May, 2022. The constitution of CoC by Robin was challenged by the operational creditors as well as home buyers since their name was not included in the list of the CoC. Further, the members of the suspended Board of directors of JIL also challenged the actions of Robin who did not allow their participation in the first meeting of the CoC.

During the first meeting of the CoC in the case of JIL, Robin was confirmed to act as Resolution Professional (RP) by the CoC and was asked to invite the Expression of Interest (EoI) from the Resolution Applicants (RA) for submitting Resolution Plan.

Besides the above, JDA has also issued notice to JAL for taking over possession of the land given for the purpose of construction.

Considering the above facts answer the following questions :

- (a) The AA on admitting the application for CIRP against the corporate debtor and confirming the appointment of IRP is also required to issue various other orders as per the Code. State the necessity of making such further orders by the AA against the corporate debtor when the order for initiating CIRP stands approved and appointment of IRP has also been made.
- (10 marks)
- (b) (i) JIL had also taken loan on the strength of property mortgaged by JAL. Examine and state whether such transaction would be treated as a preferential transaction and whether the creditors of JIL will be treated as “*Financial Creditors*” of JAL since JAL had provided the securities for funding given to JIL.
- (7 marks)
- (ii) State what will be the fate of the registration, licenses, grants and other benefits availed by JIL after the Insolvency Commencement Date.
- (3 marks)
- (c) (i) JAL had entered into tripartite Joint Development Agreement for development of land belonging to JDA. State whether moratorium will apply on such tripartite Joint Development Agreement and whether the owner of land being JDA after service of termination notice can repossess the land despite that the corporate debtor was having interest in it ?

(7 marks)

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- (ii) Whether the operational creditors and the home buyers who have paid advances in the building project of JIL can raise objection for not including them in the list of CoC prepared by Robin for the purpose of voting on the agenda items ?

(3 marks)

- (d) Examine the correctness of the following statements by giving brief reasons in respect of each of the following independent cases in the context of facts in the aforesaid case study, provisions of the Code as well as the decided case laws :

- (i) Role of the RP is adjudicatory in nature.
 (ii) The CoC can have sub-committees and can also delegate the power to approve the resolution plan.

(2 marks each = 4 marks)

- (iii) There is no demarcation between the Secured and Unsecured, Financial and the Operational creditors under the Code.
 (iv) The objection raised by the members of the suspended Board of directors to include them in CoC and to get the copy of resolution plan of the company is not maintainable.

(3 marks each = 6 marks)

2. Ruby and Emerald Pvt. Ltd (REPL), incorporated on 1st April, 2013 has its registered office in Surat. Gems and Gems Pvt. Ltd (GGPL), incorporated on 11th September, 2014 has its registered office in Jaipur. REPL was approached by GGPL for procuring its goods which can be used as raw material in the factory of REPL. It was agreed through a contract between REPL and GGPL that upon procurement of the goods entire payment shall be made by REPL within 10 days of issuance of the tax invoice. The transaction was smoothly going between REPL and GGPL without any delays in supply of goods and payment. Owner of REPL died due to cardiac arrest and the business operations of REPL were severely affected. REPL started supplying faulty goods to its customers and the quality of raw material being supplied by the suppliers also deteriorated gradually. As on 2nd January, 2021, there were no dues outstanding towards GGPL and balance confirmation from GGPL was also taken by REPL. However, between 3rd January, 2021 and 31st May, 2021 various transactions happened between REPL and GGPL. GGPL requested for the payments multiple times for such transaction between 3rd January, 2021 and 31st May, 2021; however, GGPL kept supplying goods in good faith based on relationship with REPL. REPL neither responded to requests

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of GGPL nor stopped buying goods from them. Because of the long overdue from REPL, GGPL sent a demand notice on 16th June, 2021 through their lawyer to make the payment of entire outstanding to the tune of ₹ 1,25,00,000/- exclusive of interest @ 15% p.a. within 10 days from the receipt of the notice, failing which GGPL will take suitable actions under the law. No communication whatsoever was received from REPL. Therefore, as per the directions of the lawyer, GGPL filed an application to initiate Corporate Insolvency Resolution Process (CIRP) against REPL. Also, they have sent a letter to the power company to disconnect the supply of electricity to REPL considering that they are not in a position to pay their dues.

Considering the above facts answer the following questions :

- (a) State whether GGPL can file an application to initiate CIRP against REPL. State the documents that are required to be attached with such application as per Insolvency and Bankruptcy Code, 2016. (6 marks)
- (b) GGPL missed to mention the name of Interim Resolution Professional (IRP) in its application. Can this mistake lead to rejection of their application ? (3 marks)
- (c) Examine whether the power company can disconnect the electricity supply based on the letter received from GGPL, being an applicant who initiated CIRP ? (2 marks)
- (d) Whether moratorium as envisaged under the Insolvency and Bankruptcy Code, 2016 is applicable in the present case ? (1 mark)
3. (a) Multi-National Companies (MNCs) can operate their business in different countries because of availability of talented manpower, skilled workforce, infrastructural facilities as well as government support. Many such companies are also doing business outside India because of the locational advantages and benefits offered by the governments in different countries. Such companies have assets located outside India as well. When such companies are unable to repay their debts, the financial institutions face a lot of difficulties and encounter bottlenecks since the lawyer of one such financial institution has mentioned during the board meeting that there exists no provision with respect to cross border insolvency under the Insolvency and Bankruptcy Code, 2016 (the Code).

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Examine the correctness of the above statement made by the lawyer and comment on whether the Code prescribes the procedure to deal with Cross Border Insolvency cases.

(6 marks)

- (b) Examine under the provision of the Insolvency and Bankruptcy Code, 2016 and the decided case law(s) about the correctness of the following statement :
- “Resolution Plan under Corporate Insolvency Resolution Process generally aims that the corporate debtor should be liquidated whereas the resolution plan should comply with certain principles other than that of liquidation”.*

State all principles other than that of liquidation which a resolution plan should have complied with.

(6 marks)

4. (a) Examine and state in the context of provisions of Insolvency and Bankruptcy Code, 2016 and the decided case law that *“no suit or proceedings in a civil court or any other authority in any matter on which the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT) hold jurisdiction under the Insolvency and Bankruptcy Code, 2016 are maintainable against the corporate debtor”.*

- (b) ABC Pvt. Ltd. is a corporate debtor against whom the Corporate Insolvency Resolution Process (CIRP) as per Insolvency and Bankruptcy Code, 2016 (the Code) was in progress pursuant to an order of National Company Law Appellate Tribunal (NCLAT). However, the corporate debtor being aggrieved from the order of NCLAT filed an appeal before the Supreme Court on the principle of natural justice pleading that no notice of appeal was served upon him.

Consider the above facts and based on the decided case law(s), state whether the ground taken by the appellant being the corporate debtor for filing an appeal before the Supreme Court as per the Code is maintainable ?

(6 marks each)

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5. Insolvency and Bankruptcy Code, 2016 (the Code) primarily focus on resolution of the corporate debtor but where the resolution plan fails as the Committee of Creditors (CoC) do not approve the resolution plan and no other way can be adopted then the ultimate resort is the liquidation and dissolution of the corporate debtor. However, even in the case of liquidation of corporate debtor as held by the Supreme Court the liquidator can sale the business of the corporate debtor as a 'going concern'. The liquidation process under chapter – III of Part – II of the Code is being regulated by the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the order of liquidation is also being passed by the Adjudicating Authority (AA).

A resolution professional is being appointed by AA to act as liquidator. However, occasions may arise where the appointed liquidator can be threatened and may not be allowed to enter the premises of corporate debtor to carry out his functions or the appointment of the liquidator is challenged by CoC after the order of liquidation is passed by the AA. Despite the order of liquidation the entire assets of the corporate debtor do not constitute liquidation estate assets.

Consider the above facts and answer the following questions :

- (a) Based on the applicable case law(s) state the protection, if any, made available to the liquidator when he is not being allowed to enter the premises of the corporate debtor to carry out his functions with the threat of his life.
(3 marks)
- (b) Can CoC challenge the appointment of liquidator after passing of the order of liquidation by the Adjudicating Authority ?
(3 marks)
- (c) Despite the liquidation estate comprising assets held by the corporate debtor, certain assets have to be excluded from the liquidation estate assets. Specify all such assets.
(6 marks)

6. (a) Raman is acting as Resolution Professional (RP) during the Corporate Insolvency Resolution Process (CIRP) of Delta Ltd. Subsequently, Raman was also appointed as Interim Resolution Professional (IRP) of Sigma Ltd. (a wholly owned subsidiary of Delta Ltd). There was a pre-existing commercial dispute between Delta Ltd. and Sigma Ltd. which was not pursued by the lenders of Sigma Ltd. prior to commencement of CIRP of Delta Ltd. as well as Sigma Ltd. However, during the first meeting of the Committee of Creditors (CoC) of Sigma Ltd. the members of CoC asked Raman to file an application before the Adjudicating Authority in connection with recovery of dues from Delta Ltd. In response to this Raman informed to the members that since he will be filing the application against Delta Ltd. where he himself is an RP; therefore, he proposes to increase his fee to Rs. 1 crore per month from Rs. 3 lacs per month citing complexity in managing the legal issues.

Considering the above facts, state whether the actions of Raman to continue to act as RP/IRP as well as demanding higher fees is in accordance with the Insolvency and Bankruptcy Code, 2016 ?

(6 marks)

- (b) Regulation 37 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the provisions of the Insolvency and Bankruptcy Code, 2016 are silent on the measures for the operational and financial restructuring of the corporate debtor. Regulation 37 was substituted and amended from time to time vide various notifications so that the corporate debtor to be saved from liquidation.

Considering the above, explain in brief the concept about the operational and financial restructuring and what does a resolution plan should demonstrate for the corporate debtor. Also, state the broad categories under which a corporate restructuring may be carried out in relation to a corporate debtor.

(6 marks)