

Indicative Model Question Paper
Professional Programme
Syllabus 2022
Insolvency & Bankruptcy Law and Practice

Time allowed: 3 hours

Maximum marks: 100

NOTE: Answer ALL Questions

Question No. 1

ABC Infrastructure Pvt. Ltd (Corporate Debtor) which is undergoing Corporate Insolvency Resolution Process. Insolvency Application being filed against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' or 'Code'), the Corporate Insolvency Resolution Process ('CIRP') has been initiated by the Adjudicating Authority (NCLT) against the Corporate Debtor vide order dated 22.12.2022 and an Interim Resolution Professional ('IRP') has been appointed.

A Committee of Creditors (COC) was constituted on 22.12.2023 comprising of State Bank of India and Bank of Baroda. The first meeting of COC was convened on 1.2.2023. COC in its very first meeting itself decided to liquidate the Corporate Debtor despite request made by the petitioner to explore the possibilities of its revival. The majority of COC view that there is no chance of revival or to restore the Company. It was noted that the Company (Corporate Debtor) is not a going concern for more than 5-7 years; there is only 10 employees in the company; there is no key Managerial Person available in the Company; the Corporate Debtor is out of business for the aforesaid period. Assets viz. liability and claims are not favourable for restart and revival of Corporate Debtor It is, thus, better to send the Company (Corporate Debtor) into liquidation rather than to spend unnecessary CIRP cost and prolong the matter. The financial creditors viz. Bank of Baroda and State Bank of India were of the aforesaid view and stated that two other companies of the same management are under liquidation and, in the said scenario, it is better to take company into liquidation.

The suspended Director of the ABC Infrastructure Pvt. Ltd (Corporate Debtor) expressed his view and request Committee of Creditors (COC) to explore opportunity to revive the Company rather than to go for liquidation initially. However, both the financial creditors viz. State Bank of India and Bank of Baroda were of the view that since there was no resolution plan received in other two

companies as well and as there is no operational activity for more than 5-7 years, the best possible way is to put the company into liquidation.

In the meantime, Resolution Professional (RP) informed the members of the COC about the letters received from three promoters showing their interest in Corporate Debtor and thus, to submit resolution plan and the request to COC to consider publication of Form-G positively, however, the proposal to approve Form-G, inviting for Expression of Interest and its publication was turned down, resolving that 'Form G and its publication are hereby not approved / rejected by Committee of Creditors'.

Resolution Professional (RP) informed the members of the COC about the letters received from three promoters showing their interest in Corporate Debtor and thus, to submit resolution plan and the request to COC to consider publication of Form-G positively, however, the proposal to approve Form-G, inviting for Expression of Interest and its publication was turned down, resolving that '*Form G and its publication are hereby not approved / rejected by Committee of Creditors*'.

Suspended director of ABC Infrastructure Pvt. Ltd approached the National Company Law Appellate Tribunal to set aside the decision taken by the Committee of Creditors (COC).

In view of the above facts, answer the following with reasons:

- (a) Whether exercise of discretion by COC under Section 33(2) of the I&B Code to directly liquidate the Company without even issuing Expression of Interest to invite interested bidders for its revival is valid.
- (b) Whether an admitted application may be withdrawn under section 7, 9 or 10 of the I&B Code?
- (c) Whether Commercial Wisdom of Committee of the Creditors (CoC) is paramount under the Insolvency and Bankruptcy Code, 2016?
- (d) Whether the committee of creditors shall comprise only financial creditors and not operational creditors of the corporate debtor?
- (e) Whether the committee of creditors empowers to replace of insolvency resolution professional under the I& B Code?

(5 marks each)

Question No. 2

In December 2023, Shri Shabir, a director shareholder and promoter of the NP Pvt. Ltd. approached the JR Pvt. Ltd and offered to sell the JR Pvt. Ltd 100% shares held with the NP Pvt. Ltd. along with all assets and liabilities of the NP Pvt. Ltd. by

executing a Share Purchase Agreement. The JR Pvt. Ltd has further stated that based on the representations, undertakings and assurances provided by the director of the NP Pvt. Ltd. the JR Pvt. Ltd agreed to acquire all assets and liabilities of the NP Pvt. Ltd as per its audited balance sheet dated March 31, 2023, after carrying out valuation of the shares of the NP Pvt. Ltd. for a lump sum consideration of Rs.5,00,00,000/-.

The JR Pvt. Ltd has further stated that it made an advance payment of Rs.1,50,00,000/- on 17.12.2023 out of the total amount of Rs.5,00,00,000/- to the NP Pvt. Ltd. and the said payment was made subject to execution of the share purchase agreement after due diligence to be carried out by the JR Pvt. Ltd regarding the assets, financial data and compliances of the Respondent. The NP Pvt. Ltd. had, at the time, agreed to provide all documents to the JR Pvt. Ltd, and according to him, the debt stands acknowledged as the same was reflected in the balance sheets of both the JR Pvt. Ltd and the NP Pvt. Ltd.

The JR Pvt. Ltd has further stated that the NP Pvt. Ltd. did not take necessary steps as agreed between the parties, despite receiving a payment of Rs.1, 50,00,000/- in accordance with the promised agreement. In view of such a situation, the JR Pvt. Ltd wrote many letters/reminders to the NP Pvt. Ltd. calling upon it to forward the title documents for due diligence and to also execute Share Purchase Agreement without any delay, but no steps were taken by the NP Pvt. Ltd. despite repeated reminders and hence, the JR Pvt. Ltd asked the NP Pvt. Ltd. to refund the amounts paid by him along with interest @ 18% p.a. The JR Pvt. Ltd has added that when the said amount was not refunded, the JR Pvt. Ltd filed a petition before Hon'ble NCLT under section 7 of the IBC.

The Learned NCLT, by the Impugned Order, has dismissed the section 7 petition holding that the amount in default is not a financial debt, without giving any reasoning.

In view of the above facts, answer the following with reasons:

- (a) Whether the amount of Rs. 1.50 crores paid by the JR Pvt. Ltd to Shri Shabir Director of the NP Pvt. Ltd constitute a financial debt as defined in IBC?
- (b) Whether the section 7 application filed regarding the purported financial debt deserved to be admitted?

(c) Whether JR Pvt. Ltd is using the section 7 petition as a tool for recovery of this time-barred debt which is not a financial debt, and certainly IBC is not meant to recovery of such debt.

(d) Whether “debt” and “default” as well as “financial debt” under the IBC are same?

(e) Whether Share Purchase Agreement and any amount transacted vis-a-vis such purported Share Purchase Agreement would constitute a financial debt?

(5 marks each)

Question No. 3

An Application was filed before National Company Law Tribunal(NCLT) on 30.10.2018 by State Bank of India (SBI) to seek an order for the ‘Consolidation’ of the Corporate Insolvency Resolution Process (“CIRP”) of (1) Videocon Industries Ltd. (VIL), (2) Videocon Telecommunications Limited (VTL), (3) KAIL Ltd. (KAIL), (4) Evans Fraser & Co. (India) Ltd. (Evans Fraser), (5) Millennium Appliances (India) Ltd. (Millennium Appliances), (6) Applicomp India Ltd. (Applicomp), (7) Electroworld Digital Solutions Ltd. (Electroworld), (8) Techno Kart India Ltd. (Techno Kart), (9) Trend Electronics Ltd. (Trend Electronics), (10) Century Appliances Ltd. (Century Appliances), (11) Techno Electronics Ltd. (Techno Electronics), (12) Value Industries Ltd. (Value Industries), (13) PE Electronics Ltd. (PE Electronics), (14) CE India Ltd. (CE India), and (15) Sky Appliances Ltd. (Sky Appliances). Each of these Companies were promoted by Dhoot Family and thus form part of the Videocon group of companies. The Videocon Group Companies are engaged in different types of businesses.

The list of creditors of these companies are: i. Dena Bank, ii. State Bank of India, iii. Allahabad Bank, iv. IDBI Bank, v. Indian Overseas Bank, vi. Jammu & Kashmir Bank, vii. Bank of Maharashtra, viii. Bank of Baroda, ix. United Bank of India, x. Canara Bank, xi. Syndicate Bank, xii. Infotel Business Solution Ltd., xiii. UCO Bank, xiv. ICICI Bank, xv. Corporation Bank, xvi. IFCI, xvii. Central Bank of India, xviii. Punjab National Bank, xix. Andhra Bank, xx. Vijaya Bank.

The SBI, pursuant to the order dated 24.10.2018 passed by the Hon’ble Principal Bench, NCLT, New Delhi, has filed this Application seeking the following reliefs: “....

(a) Order and direct substantive consolidation of the Corporate Debtors into a single proceedings solely for the purposes of CIRP in accordance with the provisions of the

Code, including but not limited to the acceptance, confirmation and all other actions with respect to the resolution plan for the Corporate Debtors and any and all amendments or modifications thereto, in such consolidated proceedings.

(b) Order and direct that solely for the purpose of the consolidated proceedings, all assets and liabilities of the Corporate Debtors are merged and are deemed to be the assets and liabilities of all the Corporate Debtors on a consolidated basis;

(c) Order and direct that solely for the purpose of the consolidated proceedings that all obligations and debts due or owing to or from any Corporate Debtor from or to any other Corporate Debtor are eliminated;

(d) Order and direct that solely for the purpose of the consolidated proceedings, any obligations of any Corporate Debtor and all guarantees thereof executed by one or more of the other Corporate Debtors are deemed to be one obligations of all the Corporate Debtors on a consolidated basis;

(e) That each and every claim filed in the individual proceedings of any of the Corporate Debtors is deemed filed against all the Corporate Debtors in the consolidated proceedings;

(f) That the appointment of a single common Resolution professional who will carry on the duties and perform the functions of a Resolution Professional in accordance with provisions of the Code for the consolidated proceeding;

(g) That a common COC may be constituted for all the Corporate Debtors so that the decision making process in relation to the CIRP may be done in an efficient manner and to diminish the scope of any conflicting decision;

(h) That September 25, 2018 shall be considered as the common insolvency commencement date for all the corporate debtors and therefore, the maximum period during which CIRP has to be completed in accordance with section 12 of the Code shall be computed from September, 25, 2018;

(i) That a comprehensive Resolution Plan dealing with all or a collection of the Corporate Debtors based on relevant factors including without limitation commonality of business may be formulated and approved by the COC and put up for approval before this Tribunal for its approval in accordance with the provisions of the Code.”

It is submitted by the Ld. Counsel for State Bank of India (SBI) that the business activities of each of the Corporate Debtors are inextricably interlinked and intertwined. There is tremendous interdependent amongst each of the Corporate Debtor. It is pleaded that pursuant to Rupee Term Loan Agreement dated August 8, 2012 (RTL Agreement) a consortium of banks and financial institutions led by the Applicant had agreed to grant a rupee terms loan to VIL, KAIL, Electroworld, Value Industries, Evans Fraser, Millennium Appliances, PE Electronics, Techno Electronics, Trend Electronics, Applicomp, Techno Kart, Sky Appliances and Century Appliances (RTL Obligors) under an “obligator” structure. The Rupee term loans under the RTL Agreement were to be utilized for the purposes of refinancing of existing Rupee debt of the RTL obligors, funding the capital expenditure in relation to the Ravva field and the capital expenditure in relation to the consumer electronics and home appliances business of the RTL Obligors and such other end users as permitted by the facility agreement under the RTL agreement.

One of the constituents of the RTL is CE India. CE India, pursuant to indenture of mortgage dated March 20, 2013, created charge by way of mortgage over, inter alia, the Videocon brand, goodwill, trademarks and patents to secure the Rupee Term Loan facility granted to the RTL obligors pursuant to the RTL Agreement.

Another constituent of the agreement was Videocon Telecommunications Ltd. (VTL), which had availed of Rupee Term Loan facility from certain lenders including SBI pursuant to the terms and conditions of Rupee Facility Agreement dated May 31, 2010, as amended by the Agreement of Modification to the Rupee Facility Agreement dated August, 30, 2010 (collectively the “VTL Agreement”).

Some of the Corporate Debtors have also availed working capital facilities, most of which have been guaranteed by VIL.

Due to 'defaults' in the accounts of the Corporate Debtor, a “Joint Lenders’ Forum” (JLF) of the lenders of the RTL obligors and the lenders of VTL was constituted in accordance with RBI guidelines. Pursuant to the decision taken as part of the collective-action-plan by the combined JLF in its meeting held on June 04th 2016, it was decided to release proceeds received by VTL upon sale of Unified Access Services Licenses from the relevant escrow account and utilize the amount for servicing existing debt of VTL and the RTL obligors.

The lenders/banks have also agreed that security available to the lenders under the RTL Agreement will be shared on pari-passu basis with the lenders under the VTL agreement and further, the security available to the lenders under the VTL Agreement will be shared on pari-passu basis with lenders under the RTL Agreement.

VTL agreed by way of a Confirmation Agreement dated June 20, 2016 that it shall be deemed to be “Co-obligor” under the RTL Agreement. The RTL obligors agreed that each of the RTL obligors shall be deemed to be a “Co-obligor” under the VTL Agreement.

It is further noticed that on account of 'inter-linkage' and 'interdependence' in business and operations of the Corporate Debtors, they used to prepare 'consolidated financial statements' so as to give the overall financial position of the RTL obligors as a whole for the benefit of the various stake holders.

The lenders and other stake-holders of RTL obligors dealt with the RTL obligors a 'single-economic-unit' as per the “consolidated financial statements”.

Therefore, SBI submitted this Application before NCLT for substantive consolidation of CIRP of the corporate debtors. Another Application MA 1416/2018 is filed by the promoter of the Videocon group of companies Mr. Venugopal Dhoot seeking the similar relief of 'Consolidation' of CIRP i.e., commencement of Insolvency Process under Insolvency Code of all the group companies of Videocon which are undergoing insolvency. Mr. Venugopal Dhoot is a guarantor, shareholder and also the ex-managing Director/Chairman of the Videocon Group of Companies. The relief sought in this application is similar as was in the previous application MA 1306/2018 i.e., for the 'substantive consolidation' of the CIRP of the above stated 15 Corporate Debtors for a successful resolution and restructuring of Videocon Group of Companies. The facts of this case and arguments supporting the consolidation of CIRP of the Corporate Debtor in this application are no different than as stated in MA 1306/2018. Hence both these applications can be disposed of cumulatively.

In view of the above facts, answer the following:

(a) The Committee of the Creditors (CoC) plays a critical role in the Group Insolvency under the Code. Comment.

(b) Discuss the appointment of a single or common insolvency professional in Group Insolvency.

- (c) State the set of factors that the Adjudicating Authority taking into account while deciding companies belonging to the same group.
- (d) UNCITRAL Legislative Guide on Group Insolvency.
- (e) Discuss the cross-border group insolvency in the Indian context.

(5 marks each)

Question No. 4

The Insolvency and Bankruptcy Code, 2016 (Code) provides for a time-bound, market mechanism for reorganisation and insolvency resolution of persons (companies, limited liability partnerships, partnership and proprietorship firms and individuals) in financial distress. The objective of such reorganisation and resolution is maximisation of value of assets of the persons to promote entrepreneurship, enhance availability of credit, and balance of the interests of all stakeholders. The resolution process typically begins with admission of an application filed by an entitled stakeholder in the event of a threshold amount of default. The Code envisages a calm period when the stakeholders endeavour to resolve the stress without fear of recovery or enforcement actions. In case of corporate insolvency, the creditors assess the viability of the corporate debtor (CD) and endeavour to rescue it through a resolution plan. There are two broad processes for resolution corporate stress: (a) Corporate insolvency resolution process (CIRP) resolves stress either through a resolution plan rehabilitating the CD or liquidation of the CD; and (b) Pre-packaged insolvency resolution process (PPIRP) either resolves stress through a resolution plan or closes without resolution. In case of individual insolvency, the debtors and creditors negotiate a repayment plan, which is implemented under the supervision of a resolution professional (RP).

A bankruptcy process, entailing sale of the assets of the debtor, arises on failure of either the insolvency resolution process or implementation of repayment plan. The Code envisages a fresh start process to discharge individuals, with extremely limited means, of their debt, where the chance of recovery is very less compared to the efforts involved. In sync with its objectives, the Code provides for clawing back the value lost in avoidance transactions. In liquidation waterfall, Government stands at the bottom of the list, even below unsecured financial creditors. In case of bankruptcy, the Government stands at the bottom of the list, just above unsecured

creditors. The Code has overriding effect over other laws in case of any conflict or inconsistency.

Micro, small, and medium enterprises (MSMEs) are critical for India's economy. They contribute significantly to gross domestic product and provide employment to a sizeable population. The COVID-19 pandemic has impacted their business operations and exposed many of them to financial stress. Resolution of their stress requires different treatment, due to the unique nature of their businesses and simpler corporate structures. Therefore, it was considered expedient to provide an efficient alternative insolvency resolution process under the Code for corporate MSMEs, that ensures quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses, and which preserves jobs. Accordingly, President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th April, 2021 to introduce PPIRP under the Code for this purpose. PPIRP is built on trust and honours the honest MSME owners by enabling resolution when the company remains with them. PPIRP is available for resolution of stress of corporate MSMEs. It is available as an alternate option, should the stakeholders like to use it. It is available for resolving stress where default is at least ₹ 1 crore for which CIRP is available. Unlike CIRP, it is also available in respect of defaults where default is at least ₹ 10 lakh, and defaults that arose between 25th March, 2020 to 24th March, 2021.

PPIRP has the features, which make a CIRP sacrosanct, and has the rigour and discipline of the CIRP. It is informal up to a point and formal thereafter. It blends debtor-in-possession with creditor-in-control. It is neither a fully private nor a fully public process - it allows the company, if eligible under section 29A, to submit the base resolution plan (BRP) which is exposed to challenge for value maximisation. It safeguards the rights of stakeholders as much as in CIRP and has adequate checks and balances to prevent any potential misuse. It entails a limited role of the courts and IPs. Unlike CIRP, it does not yield if there is no resolution plan. Though PPIRP and CIRP are alternate options, some stakeholders may opt one over the other in certain circumstances.

Governing Framework The provisions governing PPIRP are available in: (i) the Insolvency and Bankruptcy Code, 2016, as amended by the Insolvency and Bankruptcy (Amendment) Ordinance, 2021; (ii) the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021; and (iii) the Insolvency and

Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021.

In view of the above facts, answer the following:

- (a) State the eligibility for Pre-packaged Insolvency Resolution Process (PPIRP) under the Code.
- (b) Discuss the procedure for file an application for initiation of Pre-packaged Insolvency Resolution Process (PPIRP).
- (c) As an Insolvency Professional, draft a base resolution plan for MSME under Pre-packaged Insolvency Resolution Process (PPIRP).
- (d) Enumerate the circumstances under which Pre-packaged Insolvency Resolution Process (PPIRP) closes.
- (e) Discuss the role of the Resolution Professional after their nomination is approved but before the application is filed?

(5 marks each)
