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Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 4

Total number of printed pages : 20

NOTE : Answer **ALL** Questions.

1. Read the following case study and answer the questions that follow :

Arya is a Practicing Company Secretary and Insolvency Professional. She renders Corporate Advisory Services and very often delivers guest lectures in Financial Institutions, Banks and Management and Law Colleges on the topics of Corporate Insolvency, Restructuring and Fund Raising.

R. K. Institute of Management and Technology (RK-IMT) is a reputed management college in Jaipur. RK-IMT was established in the year 2000 and this year the college in completing its glorious 25 years. The RK-IMT planned for its Silver Jubilee and organized a whole week of celebrations. During this week the college organized various programs / activities viz: Sports Day, Debate Competition, Cultural Evening, Seminars, Workshop etc.

Arya was invited to address a seminar on the topic of Corporate Insolvency. Arya explained the objectives and purposes of the Insolvency and Bankruptcy Code, 2016 (IBC) and touched the key points relating to Financial Creditor, Operational Creditor, Corporate Debtor, Default, Initiation of Corporate Insolvency, Constitution of Committee of Creditors, and Insolvency Resolution Process Period etc. After delivering a thought-provoking lecture, Arya invited the audiences to raise queries on the topic.

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Vedika, a student of the college, was curious to know more about Insolvency Law. She exclaimed to know that the IBC is a totally new concept and prior to this enactment whether there was any such law on insolvency existed in India. Arya clarified the position.

Reyansh, an Associate Professor of the college, was curious to know that whether IBC is an effective recovery tool and the lending institution can effectively exercise its control over the debtor through the Resolution Professional. Arya again clarified the doubts of Reyansh referring the objectives and purpose of IBC.

As a lecturer of the Institute, Rohil shared his own experience, he booked a 2-BHK Flat in Swarnim Galaxy, a building project of Swarnim Builders Limited (Swarnim Builders), and paid upto 90% of the purchase price to the builder, Swarnim Builders, on various stages. Ten per cent (10%) of the purchase price was to be paid at the time of taking the possession which was due in December, 2023. However, the possession of the flat was not given by the Builder to him. Rohil is not the only allottee but all the other allottees who had booked the flat in the Swarnim Galaxy were not given the possession and the Builder was taking excuses by narrating false reasons. Rohil narrated the whole story before the Arya and requested if she could help him. Arya asked Rohil to let her know the details of the project and relevant information to proceed in the case.

Rohil meets Arya at her office and submits her the details of the project available with him. Arya studies about the project and also checks the financial statements of Swarnim Builders, which are filed with Registrar of Companies. On scrutiny of financial statements, Arya found out that Rishabh Suppliers Limited (RSL), one of the major suppliers of Swarnim Builders had supplied the construction materials to Swarnim Builders amounting to ₹ 15 crore. On

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scrutiny of RSL's financial statements, Arya has found out that RSL has assigned its book debts at a discount of 3% in favour of the Moon star Financiers Limited (MFL) a NBFC Company.

Based on the above factual background, answer the following questions :

(a) Vedika, student of RK-IMT, stated that the Insolvency and Bankruptcy Code, 2016 (IBC) has introduced the concept of the insolvency and bankruptcy in India for the first time in India and prior to the enactment of the IBC there was no codified law on this subject and the Courts were granting relief to the insolvent debtors as per the customs, usage and practices prevalent in the respective regions/states. Do you agree with the opinion of Vedika ? Comment.

(5 marks)

(b) Reyansh, Associate Professor, believed that the Insolvency and Bankruptcy Code, 2016 (IBC) is a recovery legislation for creditors. Discuss this statement in light of the decided case law.

(5 marks)

(c) Rohil had booked a flat from Swarnim Builders but the possession was not given to him on the due date. What shall be the status of Rohil in this case and whether he can initiate the insolvency proceedings against the Swarnim Builders ? Discuss the matter with decided case law.

(5 marks)

(d) In the given case, if Corporate Insolvency Resolution Process (CIRP) is initiated against Swarnim Builders, who can be a member of the Committee of Creditors (CoC) ? Whether Moon Star Financiers Limited (MFL), in whose favour the RSL has assigned

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its book debts, can be treated as Financial Creditor ? Explain the relevant provisions of the IBC.

(5 marks)

(e) Whether the Corporate Insolvency Resolution Process (CIRP) initiated against Swarnim Builders, is required to be completed within a fixed time frame ? If so, what is the time limit for completion of CIRP and whether any extension can be granted by the Adjudicating Authority ? Also specify the grounds of exclusion of certain period for the purpose of counting the total period of Insolvency Resolution Process.

(5 marks)

2. (a) Suruchi Fabrics Limited (SFL) availed term loan of ₹ 10 Crore and cash credit facility of ₹ 2 Crore from A-One Bank Ltd. Since the SFL was unable to service the loan, the Board of Directors of the company passed a resolution to initiate Corporate Insolvency Resolution Process (CIRP) and proposed the name of Aneri, an Insolvency Professional to act as Interim Resolution Professional (IRP). Apart from the credit facility from the A-One Bank, SFL have no other financial creditor. However, SFL have outstanding dues towards its operational creditors amounting to ₹ 25 Crore. Mathew is the Company Secretary of A-One Bank. Mathew's younger brother Thomas is the Chief Financial Officer in the SFL. Although Mathew and Thomas are brothers in relation, they are not in talking terms. Thomas joined the SFL after the loan was disbursed by the Bank.

In the first meeting of the Committee of Creditors (CoC) it was decided to change the existing IRP and to appoint Brijesh as Resolution Professional.

The Information Memorandum was prepared and expression of interest was invited for resolution plan.

Two Resolution Proposals were submitted, details of which are as under :

- (i) A company named as Dinesh Textiles Private Limited, submitted the resolution plan. Dinesh who is the Managing Director of the company holds 90% of the equity and rest 10% is in the name of his wife Neeta. Dinesh Textiles Private Limited has availed loan from another bank and his account has been classified as Non-performing Account by that bank.
- (ii) Harsh, another Resolution Applicant was convicted and remained in imprisonment for two years under the provisions of the Prevention of Money Laundering Act, 2002. He was released in December 2021.

On the above background, referring relevant case laws, provisions of the Insolvency and Bankruptcy Code, 2016 and Regulations made by IBBI, answer the following questions :

- (i) On the basis of the information given in the case whether SFL can initiate the corporate insolvency resolution process (CIRP) ? Refer relevant provisions of the Code.

(2 marks)

- (ii) Will your answer differ, if the SFL has not defaulted in servicing the credit facility granted by the A-One Bank but still want to initiate the CIRP ?

(2 marks)

- (iii) What would be your answer, if Thomas, who is the CFO (Key Managerial Personnel) in the SFL resigns before the initiation of the CIRP so as to give effect to the exclusion of 'related party' in terms of Section 5(24A) (b) of the Code ? Support your answer referring relevant case law.

(4 marks)

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(iv) In the given case, two resolution plans were received by the CoC. One from Dinesh Textiles Private Limited and another one from Harsh. Examine the validity of both the resolution plans.

(4 marks)

(b) An Asset Reconstruction Company (ARC) is a special type of financial institution that buys the debtors of the bank at a mutually agreed value and attempts to recover the debts or associated securities by itself.

The asset reconstruction companies or ARCs are registered under the RBI and regulated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002).

The ARCs take over a portion of the debts of the bank that qualify to be recognised as Non-Performing Assets. Thus, ARCs are engaged in the business of asset reconstruction or securitisation or both.

All the rights that were held by the lender (the bank) in respect of the debt would be transferred to the ARC. The required funds to purchase such debts can be raised from Qualified Buyers.

Based on the above information, answer the following questions :

(i) Who is a Qualified Buyer ?

(2 marks)

(ii) How ARCs can acquire rights or interest in financial assets from Banks or Financial Institutions ?

(3 marks)

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(c) “As an important stakeholder of the ecosystem, the Insolvency professionals are required to maintain fine balance between high degree of proficiency and ethical standards. Ethical standards largely entail commitment to excellence, preservation of reputation, and requires stringent compliance to statute without any consideration of undue favours or moral turpitude. The IP is expected to act in good faith in discharge of his dues, with utmost integrity, objectivity, independence, impartiality and should make earnest efforts to maximize the value of assets of the debtor. An IP needs to ensure that the Corporate Insolvency Resolution Process is run in a fair and objective manner in the best interest of the stakeholders. Thus, it is of utmost importance that the IPs maintain high standards of professional ethics, so as to maximise value for all stakeholders. The professionals are also expected to maintain the highest standards of professional competence and professional ethics while discharging their duties.”

Further to the above information, the following are few instances of Insolvency Professional Contraventions and his explanation thereon based on Professional and Ethical Practices of IPs. By citing the appropriate Sections of the IBC, 2016 Act / Regulations of IBBI, explain if the IP’s explanation is correct or otherwise.

(i) Case : Appointment of third valuer at the instance of CoC.

Contravention :

- RP appointed third valuer to determine fair value and liquidation value of the CD at the desire of CoC.

Submission by IP :

- The RP submitted that the third valuation was done for the satisfaction of the stakeholder only.

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- The decision of the CoC to get a third valuation done was in exercise of its commercial wisdom to better equip the CoC to take a final call on resolution plans.
- That the conduct of the third valuation at the desire of the CoC does not invalidate the decisions or actions taken by the RP and has not, in any way, affected the acceptance or rejection of resolution plan.

(4 marks)

(ii) Case : Failure to represent on behalf of the CD in an arbitration proceeding.

Contravention :

- Arbitration petition was filed by an Insurance Company against the CD. Matter was heard during CIRP and was awarded in favour of the CD. Consequently, the insurer handed a cheque of ₹ 8.3 Crore in the hands of the Ex-director of the CD, who accepted it as full and final settlement of the claim (thus foregoing an amount of ₹ 2.3 Crore), the correspondence in respect of claim by Insurance Company to the residential address of the Ex-Director instead of CD Address.
- The amount of ₹ 8.3 Crore was duly deposited by the Ex-director in the accounts of the CD. Only after the Investigating Authority raised its concern in this issue the RP filed application before NCLT claiming an additional amount of ₹ 2.3 Crore from insurer and initiated appropriate actions against the ex-director and promoter of the CD u/s 66 and 67 of the Code.

Submission by IP :

- The IP submitted that the ex-director and promoter never informed the RP regarding settlement of the insurance claim and had filed necessary affidavits in this regard in a wrongful and clandestine manner keeping the RP in dark. Dealings with the insurer in this regard were without the prior knowledge, consent or permission of the RP.
- Upon being aware of the claim settlement, RP took necessary actions to file claims against the insurer and promoter and ex-director, claiming the amount of ₹ 2.3 Crore.
- That the amount of ₹ 8.3 Crore was deposited by the Ex-director in the Company's account without RP's knowledge and the entire sum so received by the CD was utilised to maintain going concern.

(4 marks)

3. (a) The financial creditors initiated the corporate insolvency resolution process (CIRP) against Romi Digital Publications Ltd. (RDPL) under Section 7 of the Insolvency and Bankruptcy Code, 2016, since it defaulted in payment of the dues. Whereas the application for initiation of CIRP before the NCLT was under the 'pre-admission stage' the RDPL (the Corporate Debtor) started the process of settlement talks with the financial creditors. The RDPL requested before the NCLT that since matter is under negotiation with the financial creditors and likely to settle the matter through compromise with the financial creditors, within a period of 3 months, therefore the initiation of the CIRP may be kept in abeyance.

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Whether the NCLT can keep the matter of initiation of CIRP application of the financial creditors in abeyance looking to the fact that the corporate debtors is under the process of negotiations with the financial creditors ? Substantiate your answer with the decided case law.

(5 marks)

(b) In Corporate Insolvency Resolution Process (CIRP) the management of Corporate Debtors vests with the Resolution Professional whereas in case of Pre-packaged Insolvency Resolution Process (PPIRP) it vests with the Corporate Debtors itself. Elucidate this statement. Also discuss the circumstances when the management of the corporate debtors shall vest with the Resolution Professional in PPIRP.

(5 marks)

(c) Bharti Gym Equipment Limited is a profit making, dividend paying company. In January 2024 the company decided to initiate voluntary liquidation proceedings. After completing the required process, the company filed an application before the NCLT which was accepted and with due process of law, it ordered for its liquidation. However, some of the shareholders of the company have not claimed the dividend declared by the company in previous years and were lying in the 'Unclaimed Dividend Account'. The Liquidator of the company wants to seek your advice on how to deal with such unclaimed dividend ? Give your answer in light of the provisions of the Code.

(5 marks)

(d) Pluto Infrastructures Limited filed an application for initiation of CIRP under Section 10 of the Code. The NCLT admitted the application and moratorium was imposed. Padam, an Insolvency Professional was appointed as Interim Resolution Professional (IRP) who was confirmed to continue as Resolution Professional in the first meeting of the Committee of Creditors (CoC). The Resolution Plan submitted by one of the Resolution Applicant was placed before the CoC and thereafter before the NCLT for its final approval. The NCLT observed that the Resolution Plan do not meet all the requirements as per the provisions of the Code and removed Padam and appointed another Resolution Professional. Aggrieved from the order to the NCLT, Padam preferred an appeal before the NCLAT taking the plea that NCLT have no powers to remove Resolution Professional since it vests only with the CoC. Whether NCLT is empowered to remove a Resolution Professional ? Substantiate your answer with the decided case law.

(5 marks)

(e) Reyas Paper Limited (RPL) was incorporated in 2005. The promoters of the RPL had put their maximum effort and energy for 10 years to set-up this paper plant. However, the RPL was unable to generate profits and could not pay off the dues of the financial creditor. The financial creditor initiated corporate insolvency resolution process against the company. In the absence of approved 'Resolution Plan' and 270 days having completed, the 'Adjudicating Authority passed an order of liquidation of the RPL.

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The promoter of the RPL preferred an appeal before the NCLAT requesting therein that the promoter should be given an opportunity to settle the dues through compromise or arrangement under Section 230 of the Companies Act, 2013. Whether the promoter's application to settle the dues through compromise or arrangement can be entertained after the order liquidation ?

(5 marks)

4. (a) PQR Private Limited (PQR) has requested the Managing Director of MNC Private Limited (MNC), who is good friend of PQ, who is Managing Director of PQR to invest in the shares of PQR. On the request of PQR, the funds were infused by the MNC, as share application money. In return, the PQR had allotted 3000 equity shares for an amount of ₹ 6.97 Lakh in the share capital of the PQR to the MNC. Subsequently, another sum of ₹ 1.32 Crore was paid as share application money by the MNC for allotment of equity shares as share application money. No shares were however allotted by the PQR but ₹ 40 Lakh was refunded by the PQR from the said share application money. The PQR was not able to refund the balance amount of ₹ 92 Lakh. The PQR not being in a position to refund the balance amount of share application money purportedly on account of liquidity crunch, instead agreed to allot shares for the balance amount subject to the MNC providing additional funds to the PQR. The MNC thereafter provided additional funds of ₹ 79.60 Lakh which were paid in several instalments. Since neither the shares were allotted nor the share

application money was refunded, the MNC sent a Demand Notice to the PQR for repayment of the share application money. Since the Corporate Debtors failed to repay the amount, the MNC filed an application under Section 7 of the Code before the Adjudicating Authority.

Whether the share application money which was deposited with the PQR by the MNC fell in the category of Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

(5 marks)

(b) DSP Private Limited (the Corporate Debtor) underwent a corporate insolvency resolution process (CIRP) in 09.12.2021 initiated by a financial creditor. A Resolution Plan was put forth by MM Limited, a Resolution Applicant which was approved by the Adjudicating Authority.

Prior to the commencement of the CIRP, on 20.10.2017 various First Information Reports (FIR) alleging offenses including cheating and criminal breach of trust were filed against the Corporate Debtor and its former promoters.

These offenses fell under the “schduled offenses” as per Prevention of Money Laundering Act, 2002 (PMLA). Consequently, an Enforcement Case Information Report (ECIR) was filed by the Enforcement Directorate (ED) on 08.03.2018. The ECIR estimated the “proceeds of crime” to be approximately ₹ 9000 Crore. As a result of the ECIR, the ED filed an “original complaint,” leading to attachment proceedings against the assets of the Corporate Debtor. This included four bank accounts and 14 flats constructed by the Corporate Debtor valued at ₹ 35 Crore referred to as the “Attached Properties”.

The attachment was initially provisional under Section 5 of the PMLA on 14.02.2019 and later confirmed by an order dated 05.08.2019 passed by the Adjudicating Authority. The attachment persisted even after the initiation of the CIRP and continued after the approval of the Resolution Plan.

MM Limited, the Resolution Applicant had filed Writ Petition in the High Court against the Adjudicating Authority under the PMLA, 2002 and the Deputy Director, Enforcement Directorate to quash the ECIR, the orders attaching the Attached Properties and the “original complaint”, based on which the attachment was effected as they relate to the Corporate Debtor and its assets and to release the Attached Properties.

On the above background, referring to the High Court’s decision state whether the NCLT has the jurisdiction to direct the Enforcement Directorate to release the attached properties once the Resolution Plan in respect of said Corporate Debtor is approved ?

(5 marks)

(c) The City Development Authority (CDA / Lessor) entered into a lease deed with ABC Private Limited (the Corporate Debtor / Lessee) in respect of a piece of land for the purpose of constructing residential flats according to the setbacks and building plan approved by the lessor.

The lessee was to pay the lease premium of ₹ 24.29 Crore, out of which 10% i.e. ₹ 2.42 Crore was paid by the lessee to the lessor with a moratorium of 24 months from the date of allotment and after the expiry of moratorium period, the balance 90% premium i.e. ₹ 21.86 Crore of the plot along with interest was to be paid in the manner provided in the lease deed.

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In the meantime, an application filed under Section 7 of the Code against the Corporate debtor was admitted on 10.10.2019. The CDA put up its claim of ₹ 32.96 Crore assessed on 10.10.2019 to the RP on 31.12.2019.

The RP invited for Expression of Interest (EOI) and Resolution Plans were submitted by few Resolution Applicants. Resolution Plan submitted by the consortium of home buyers' association, namely, Crossroad Welfare Society was approved by the CoC and thereafter, the RP filed an application before the Adjudicating Authority seeking its approval. The said application is pending.

Meanwhile, CDA submitted a letter dated 04.06.2021 to the RP highlighting its dues towards lease premium calculated from 11.10.2019 to 30.06.2021 amounting to ₹ 16.15 Crore, which is payable within a period of 15 days. However, the said dues were not paid within the stipulated period, therefore, the CDA presumed that the RP has declined the same and filed the application before the Adjudicating Authority on 27.09.2021.

The Adjudicating Authority stated that in terms of explanation of Section 14(1) of the Code, the applicant is entitled to get lease premium amount as well as lease rent arising for the use or continuation of the lease during the moratorium period and in case of non-payment the moratorium benefit will not apply for the suspension or termination of lease. The Adjudicating Authority ordered that the Resolution Professional has failed to pay the lease premium and lease rent due to the CDA, therefore, the

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Resolution Professional is directed to make the payment of the lease amount within 6 months or else include the said amount as Insolvency Resolution Process Cost under Regulation 31 of the IBBI (Insolvency Resolution Process of Corporate Person).

On the above background, state whether the Adjudicating Authority has rightly applied the explanation under Section 14(1)(d) of the Code for the purpose of directing the Resolution Professional to pay the lease premium amount and the lease rent to the CDA ?

(5 marks)

(d) The Insolvency and Bankruptcy Code, 2016 (IBC/Code) creates an ecosystem for maximizing the value of assets of the corporate debtor (CD) and balancing the interests of all stakeholders in a time-bound manner. A significant value of insolvent entities is often locked in assets underlying avoidance transactions which are undertaken by the CD prior to the initiation of the Corporate Insolvency Resolution Process (CIRP). The resolution professional (RP) or the liquidator is obliged to file applications, in respect of avoidance transactions (preferential, undervalued, extortionate and fraudulent transactions) found by him during CIRP and liquidation processes before the Hon'ble Adjudicating Authority (AA), seeking appropriate relief permissible under the Code. While the RP/Liquidator may have filed an application with the AA based on his determination, it may not always be possible for the AA to consider and dispose

of the application during the tenure of the CIRP or the liquidation process. Section 26 of the Code clarifies that the filing of an avoidance application by the RP shall not affect the proceedings of CIRP. Avoidance applications and CIRP are a separate set of proceedings and avoidance applications can be continued post-completion of CIRP. The IBC provides that the resolution / liquidation process should not be held up if avoidance transaction applications are pending. During CIRP, if the decision on avoidance transactions is pending before resolution is finalised, the amount would claw back to CD for the benefit of creditors. The CIRP Regulations mandate that a resolution plan should contain the details of the party / person who will pursue these avoidance transactions after the approval of the resolution plan, who will get the proceeds and the manner in which the proceeds, if any, from such proceedings will be distributed. Consequently, after the resolution plan is approved, the RP has no role in pursuing these transactions and creditors/successful resolution applicant (SRA) will have to make their own arrangements to pursue them before the AA.

The amount clawed back would reflect in higher bids. In cases where decision on avoidance transactions is not available, the avoidance transactions being assets of the CD, could be permitted by the CoC to be bid by prospective resolution applicants (PRAs) in the resolution plan. In case the CoC decides to assign the avoidance transactions to a resolution applicant (RA), the specifics of avoidance transactions should be made explicit in the Information Memorandum (IM) and Request for Resolution

Plan (RFRP), allowing prospective RAs to account for the value of avoidance transactions while submitting their plan. The CoC in the resolution plan should not give the proceeds of avoidance transactions to the RA without detailing such transactions in the IM or RFRP and without transparent bidding for such transactions. Another option could be to invite bids for avoidance transactions separately after obtaining the approval of AA and the amount recovered could be appropriated by the creditors post-approval from the AA.

Since avoidance transactions involve significant sums and potentially result in large recoveries, creditors should keep these avoidance transactions to themselves and benefit from the upside.

XYZ Company Limited, who is now under CIRP, The Committee of Creditors on the advice of Resolution Professional as appointed Forensic Auditor to track the transactions and to identify whether any transactions had been done in violations of the Code. The Transactional Auditor has identified few of the transactions under Sections 43, 45, 66 and 50 of the IBC, 2016. Before, the Transactional Auditor submit his report, the Resolution Professional as a Company Secretary sort your suggestions on how the following “Transactions” be divided under four separate categories viz., (a) Preferential Transactions (b) Undervalued Transactions (c) Fraudulent Transactions and (d) Extortionate Transactions, based on the above information.

List of transactions (assume that these transactions are carried within the timelines specified under the Code) :

- (i) Payment to unsecured family loans during the look back period, while the debt of secured creditors is outstanding.
- (ii) Payment of old operational creditors (other than regular business payments against supply of goods or services), while the debt of secured creditors or unsecured financial creditors are outstanding.
- (iii) Payment to an Unsecured Financial Creditor, may be as per pre-fixed loan instalments, while the debt of secured creditors is still outstanding.
- (iv) Sale of fancy and expensive cars owned by the Corporate Debtor to related parties or unrelated parties at a value which is much less than the market value of the car.
- (v) Six months before initiation of Corporate Insolvency Resolution Process, the Managing Director has availed a private finance of ₹ 5 Crore from his relative at the interest rate of 60% p.a. and repayable within 5 years.
- (vi) Payment to those creditors who have security of post-dated cheques signed by the directors.

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- (vii) Payment of old tax dues where there exists a risk of prosecution without any order from a court or authority.
- (viii) Transfer of good franchisees to another person at a value which is much lower than the actual value.
- (ix) Transfer of shares of subsidiary companies where the business is lucrative at a price which is less than the actual value.
- (x) Corporate Debtor had bought new Machinery worth ₹ 2 Crore, just one year before initiation of Corporate Insolvency Resolution Process (CIRP), the Chairman of the Company, in order to protect the machinery being part of CIRP, transferred the same to a Company in which majority stake is held by his brother's son for a value of ₹ 50 Lakh payable in 2 instalments.

Write the transaction and then identify the category of each of the transaction.

(1×10=10 Marks)

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