

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 12

NOTE : *Answer ALL Questions.*

1. Sober Ltd. (the Company) is engaged in the business of running hotel chains in India as well as outside India. Due to less demand faced during the pandemic, the Company was unable to meet its financial obligations. Financial creditors of the Company decided to file an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC). On 1st January, 2022, Corporate Insolvency Resolution Process ('CIRP') of the Company started and Shyam was appointed as an Interim Resolution Professional. The Company was subjected to parallel insolvency proceedings in India as well as Netherlands (where it had registered office). In the Netherlands, the Company was declared bankrupt and the Dutch trustee had been appointed to manage the estate of the Company. During the 1st meeting of the Committee of Creditors (CoC), Shyam was confirmed to act as Resolution Professional (RP). Considering the future potential in the Company, many strategic and financial investors expressed their interest in buying the Company including one of the members of the CoC who also submitted Expression of Interest to the RP. Shyam after due verification, published the final list of the prospective resolution applicants. One of the investors, Simba Ltd. wrote an email to Shyam stating that they also want to participate in the process and submitted all the required documents to Shyam for their name to get included in the final list of the prospective resolution applicants. Shyam refused to include their name in the final list stating that no provision exist under the IBC to include name of any party, once the final list of the prospective resolution applicants is published by the RP.

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During the CIRP process, Shyam had appointed two valuers to carry out valuation. The fair value given by Valuer 1 was ₹ 1,750 crore and Valuer 2 was ₹ 550 crore and liquidation value was ₹ 1,000 crore and ₹ 200 crore respectively. During the discussions with the valuers to understand the methodology adopted by them to carry out the valuation, Shyam realized that both the valuers have carried out valuation based on the internationally accepted valuation methods and have made certain assumptions while arriving at the final numbers. Lawyer of Shyam had suggested that since the valuation given by Valuer 1 is advantageous for the stakeholders, he can put the valuation report issued by Valuer 1 before the CoC. Shyam agreed and moved ahead accordingly.

During one of the meetings of the CoC, the financial creditors were deliberating on how to maximize the value of the Company and fetch a best possible resolution plan. In response, one of the members of the CoC requested the entire CoC to explore possibility of ‘Swiss Challenge’ to improve value of the resolution plans. However, none of the other members agreed stating that there is no provision under the IBC for exercising a ‘Swiss Challenge’.

When the final resolution plans had come, the RP after due verification and completing required formalities, had put-up all the plans on voting. The outcome of voting was as under :

| S. No. | Particulars | Voting result |
|--------|-------------------|---------------|
| 1 | Resolution Plan 1 | 56% |
| 2 | Resolution Plan 2 | 67% |
| 3 | Resolution Plan 3 | 67% |
| 4 | Resolution Plan 4 | 75% |

One of the members of the CoC suggested to carry out the voting again since the voting percentage of Resolution Plan 2 and 3 is same. The RP denied stating that once the voting is done, re-voting on the plans cannot be done again in the present scenario. Accordingly, Resolution Plan 4 was filed with the adjudicating authority for approval.

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The resolution applicant had mentioned in the Resolution Plan 4 to put ₹ 80 crore in the form of working capital as well as capital expenditure, once the company's handover formalities are completed. Even after 1 year of handover, the resolution applicant did not infuse the aforesaid amount. In fact, the resolution applicant requested the financial creditors to waive off the condition to infuse money for working capital and capital expenditure. Shyam being part of the monitoring committee, overseeing implementation of the resolution plan, expressed his concern on the request made by the resolution applicant citing violation of the provisions under the IBC.

Consider the above case and relevant provisions of the IBC, its rules and regulations made thereunder, answer the following questions :

- (a) Whether the IBC has provisions in relation to cross border insolvency ? If yes, elaborate based on decided case law how cross border insolvency in case of any cross-border cases can be achieved effectively.
- (b) Whether the contention of Shyam is correct that once the final list of prospective resolution applicants is published, name of any other party cannot be included in the list of prospective resolution applicants ? Suggest the plausible option if the name of any party has to be included after publication of the final list of the prospective resolution applicants.
- (c) Whether the following contentions of the CoC are correct ?
 - (i) In case two resolution plans receive the same votes, voting has to be done again.
 - (ii) There exists no provision to initiate 'Swiss Challenge'.
- (d) Whether the following actions of Shyam are in accordance with the IBC ?
 - (i) Accepting the valuation report given by Valuer 1 and moving forward ? If not, suggest an action plan to Shyam.
 - (ii) Expressing concerns on the request made by resolution applicant citing violation of the provisions under the IBC.

(10 marks each)

2. (a) Neeraj is a practicing company secretary and is acting as a resolution professional in Bom Ltd. Before practising as a company secretary, he was working as a DGM in Bank of Surat.

Bank of Surat contacted him to act as an Interim Resolution Professional (IRP) in the case of Bom Ltd. since he was known to the bank and his performance during the tenure with the bank was also satisfactory. Upon appointment as IRP in the case of Bom Ltd. he was informed by one of the members of the Committee of Creditors (CoC) that he has to disclose his details of the employment to the CoC to take informed decision as to whether he can continue to act in the capacity of the resolution professional in the case of Bom Ltd. During the 1st meeting of the CoC, he informed that the employment with Bank of Surat was 7 years ago and he is not under obligation to disclose now.

Further, during the same meeting of the CoC, an agenda item for appointment of technical consultant was being discussed and deliberated among the members of the CoC. Candidature of many reputed persons were put before the members by Neeraj for the consideration and one amongst them was Suraj (son of Neeraj). He made a detailed presentation on the achievements of Suraj and mentioned that he is willing to work at a nominal cost. The appointment of Suraj will be advantageous for the process considering that is known to Neeraj and is willing to quote a nominal fee.

In light of the above facts, discuss whether the conduct of Neeraj as resolution professional is proper ?

(6 marks)

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- (b) Ghanshyam is a well known jeweler in Delhi. He is known for selling best antique jewelry at an affordable price. Due to dispute within the partners, the business started suffering losses and lost credibility amongst the customers. Ghanshyam filed an application for his bankruptcy. Raman's appointment was confirmed by the Adjudicating Authority to act as bankruptcy trustee in this case. Bankruptcy commencement date was 1st January, 2022. Consider the facts below :

| S. No. | Event | Date |
|--------|--|--------------------------------|
| 1 | Notice sent by the Adjudicating Authority to creditors for inviting claims | 9 th January, 2022 |
| 2 | List of creditors was prepared by Raman | 15 th January, 2022 |
| 3 | Raman issued notice for calling meeting of creditors | 20 th January, 2022 |

Simba sent a letter to Raman expressing her wish to cast a vote in the meeting since her name was not appearing in the list of creditors prepared by Raman and accordingly notice of the meeting was not sent to her. Further, Pawan (father of Ghanshyam, whose name was included in the list of creditors) wished to cast his vote during the meeting. However, Raman refused stating he cannot cast vote during the meeting.

Consider the above facts and answer the following questions :

- (i) Whether the time lines mentioned above in the table are in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 ?
- (ii) Whether Simba and Pawan eligible to vote during the meeting of the creditors ?

(3 marks each)

3. Super Ltd. is engaged in the business of producing auto ancillary products and has a plant near Mumbai. As per the latest audited financial statements the turnover of Super Ltd. was ₹ 200 crore and investment in plant and machinery was ₹ 35 crore. Turnover and investment in plant and machinery never crossed ₹ 200 crore and ₹ 35 crore respectively. Due to reduction in the demand of the products by the auto companies, Super Ltd. started facing financial difficulties. It evaluated many options for rescuing the business and discussed on multiple occasions with the lenders.

In one of the consortium meeting, lenders decided to take action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI). During the said meeting one of the lenders holding 30% share in the consortium suggested that in the present circumstances it would be apt to proceed under the provisions of the Insolvency and Bankruptcy Code, 2016 (the Code) since the Code is one of the effective tools for resolution of the debt. However, due to the difference in opinion amongst the lenders few of them decided to move ahead under the SARFAESI and others decided to file an application under the Code. Legal counsel of Super Ltd. intervened and informed that once proceedings are initiated under both the laws, SARFAESI being an old law will prevail and the lenders may be in a position to quickly recover their outstanding dues. Considering the circumstances, Rohan, promoter of Super Ltd. suggested to provide one last chance to Super Ltd. to submit a resolution plan for its revival and requested the lenders to consider the Pre-Packaged Insolvency Resolution Process. Rohan is now fully active in

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the business and making all possible attempts for revival of Super Ltd. and Duper Ltd. (wholly owned subsidiary of Super Ltd.) which is also classified as non-performing asset for last 5 years. On the option given by Rohan, one of the lenders informed that law relating to Pre-Packaged Insolvency Resolution Process is still at a nascent stage and may take years to complete. In response, Rohan clarified that it may not take years, since the process of filing an application is very simple and no documents are required to be attached to the application. Therefore, the adjudicating authority will be in a position to quickly consider and dispose off the case.

Consider the above facts and answer the following questions :

- (i) Whether the contention of legal counsel of Super Ltd. is correct ? Discuss in light of the decided case laws(s).
- (ii) Whether Super Ltd. is eligible for getting resolved under the provisions of Pre-Packaged Insolvency Resolution Process ?
- (iii) Considering the timelines provided under the Code, whether the contention of one of the lenders that the process may take years to complete legally correct ?
- (iv) Whether the contention of Rohan is correct that no documents are required to be furnished along with the application ?

(3 marks each)

4. (a) Raghu owns a toy shop at the ground floor of his house in a remote village in the state of Chhattisgarh. He deals in selling toys for kids below 5 years. Due to short circuit in his house, all the toys were destroyed and he could not recover any of them and suffered a huge loss. He used to purchase the toys from his savings

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as well as the borrowings from the local lenders. His total outstanding borrowings from the lenders were ₹ 39,000 including a loan amounting to ₹ 7,000, he obtained for his elder daughter for her studies. His annual income never exceeded ₹ 50,000 and only owns a house which is worth ₹ 20,000. He is also liable to pay a fine to the local court because of the electricity theft he committed 2 years back. Given his financial condition he has still not paid the said fine amounting to ₹ 5,900.

He is now contemplating filing an application before the relevant adjudicating authority for a fresh start process. His wife who is a teacher in a local school has suggested him to nominate her brother Karan, resident of Raipur, to act as a resolution professional and assist Raghu in filing an application for fresh start process. During the discussions between Raghu and Karan, Karan mentioned that in one of the large case, disciplinary committee of the Insolvency and Bankruptcy Board of India has initiated proceedings against him. However, since this is a small case within the family, he can act as resolution professional.

Considering the above facts, answer the following questions :

- (i) Whether Raghu is eligible for making an application for a fresh start process ?
- (ii) Compute total eligible qualifying debt.
- (iii) Whether the contention of Karan to act as resolution professional is correct ?

(2 marks each)

- (b) In respect of an order of the adjudicating authority regarding approval of the resolution plan it was informed by a practicing lawyer to Rinku that appeal before the National Company Law Appellate Tribunal (NCLAT) can only be filed within 30 days of the receipt of the order in case of matters other than approval of the resolution plan. Once the resolution plan is approved by the adjudicating authority, it cannot be challenged at all.

Examine the correctness of the statement made by the practicing lawyer in light of the provisions of the Insolvency and Bankruptcy Code, 2016.

(6 marks)

5. (a) Ram and Suman are 3rd year law students. During a joint discussion on the process of law making, both of them were debating and discussing on the Insolvency and Bankruptcy Code, 2016 (the Code). Ram said that finance minister is the sole authority to decide on what should form part of any law and approves the construct of the sections based on the suggestions given by the employees working in the Ministry of Finance. However, Suman had altogether a different perspective and said that law making is a structured process and, in many situations, proper committees are formed which are headed by an eminent person in the relevant field to give recommendations to the government.

Provide any six suggestions made by the committee which was set up to study corporate bankruptcy legal framework in India and whose report formed a basis for promulgation of the Code.

(6 marks)

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(b) Rubin, a practicing lawyer has made the following observations :

| Scenario | Observations made by Rubin on eligibility to initiate corporate insolvency resolution process (CIRP) |
|---|--|
| A Ltd. who owes ₹ 5 crore from B Ltd. under a contract for supply of goods | A Ltd. is eligible |
| C Ltd., undergoing CIRP, intends to file an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code) against an outstanding amounting to ₹ 70 crore from a debtor | C Ltd. is not eligible |
| B Pvt. Ltd. has lent money to Z Ltd. Total outstanding amount including interest is ₹ 95 lakh | B Pvt. Ltd. is eligible |

Examine whether the observations are in accordance with the provisions of the Code ?

(6 marks)

6. (a) Whether the application for initiating fast track insolvency resolution process can be made in respect of the following companies ? Examine.

| S. No. | Scenario |
|--------|--|
| 1 | A Ltd., an unlisted company having assets amounting to ₹ 99 lakh as per latest audited financial statements of the immediately preceding financial year. |
| 2 | Network LLP which was incorporated in the year 2005 having peak turnover of ₹ 20 crore in the FY 2012-13. Network LLP's business is such that it generates very high employment. |
| 3 | B Pvt. Ltd. was demerged in the year 2005 from Cable Ltd. B Pvt. Ltd. clocked peak turnover of ₹ 22 crore in FY 2011-12 and is engaged in the business which results in the improvement and development of products. |
| 4 | A Ltd., a listed company having assets amounting to ₹ 55 lakh as per latest audited financial statements of the immediately preceding financial year. |
| 5 | Tom Pvt. Ltd. is having paid up capital of ₹ 35 lakh. It has turnover amounting to ₹ 1 crore as per the profit & loss account for the immediately preceding financial year. |
| 6 | Z Ltd., a dormant company is having assets amounting to ₹ 6.5 crore as per the last available financial statements. |

(6 marks)

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- (b) Legal consultant of Keval Ltd. has informed to the Board of directors that the company cannot evaluate voluntary liquidation just to save cost and time involved in ensuring compliances irrespective of the fact that presently the company does not have any business.

Examine the contention of the legal consultant in light of the relevant case law.

(6 marks)