

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 4

Total number of printed pages : 19

NOTE : Answer **ALL** Questions.

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

(I) Background :

Phoenix Asset Management Ltd. (Phoenix) is an asset reconstruction company registered under the applicable laws of India. It acquired, by way of an assignment agreement, the outstanding receivables owed by Meridian Hospitality Ltd. (Meridian), a company engaged in the hotel and hospitality business from a consortium of four public sector banks. The assignment took place in January 2009.

Meridian had originally borrowed ₹ 180 crores from the consortium in March 2003 under a term loan agreement. The funds were used for the renovation and expansion of its flagship hotel property. Repayments were irregular from the outset, and by November 2008, the consortium banks collectively classified Meridian's loan account as a Non-Performing Asset (NPA). Shortly thereafter, the consortium assigned all outstanding receivables to Phoenix.

The shareholding of Meridian was held equally by two promoter entities, Crestwood Hotels Pvt. Ltd. and Pinnacle Resorts Ltd. each holding a 50% stake. Mr. Rajiv Bhatia served as the Chairman and Managing Director of Meridian as well as of both promoter companies.

(II) Settlement attempts and acknowledgments :

In March 2010, well within three years of the NPA declaration, Meridian wrote to Phoenix proposing a one-time settlement of the outstanding dues. In this letter, Meridian acknowledged that the aggregate outstanding liability, inclusive of principal and interest, stood at ₹ 195 crore as on 31 December 2009. It offered an upfront payment of ₹ 15 crores and committed to clearing the balance in instalments over 18 months.

A formal Settlement Agreement was executed between the parties on 15 April 2010. Under this agreement, Meridian acknowledged its total liability of ₹ 195 crores, agreed to pay interest at 20% per annum compounded monthly, made an upfront payment of ₹ 15 crores, and committed to clearing the balance by 30 September 2011. Between 2010 and 2013, Meridian made further part payments totalling approximately ₹ 48 crores through various demand drafts and cheques.

However, Meridian repeatedly sought extensions of time to pay the balance. In June 2012, it acknowledged an outstanding liability of ₹ 241 crore (principal and interest combined) and sought extension until March 2013. In September 2013, Phoenix revoked the Settlement Agreement after Meridian defaulted once again.

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From the financial year 2009-10 onwards, Meridian's audited annual financial statements consistently reflected the amounts owed to Phoenix as a liability. However, beginning from the financial statements for the year 2014-15, the notes to the accounts contained a qualification. While the principal amount owed to Phoenix was shown as a liability in the balance sheet, the notes stated that the Settlement Agreement had been revoked by Phoenix and that Meridian had been legally advised the applicable interest rate could not exceed 13% per annum, not the 20% claimed by Phoenix. The notes further stated that the question of the correct rate of interest was pending adjudication before the Debt Recovery Tribunal (DRT).

Phoenix issued a notice under the SARFAESI Act in October 2013 and took symbolic possession of the hotel property in February 2014. Phoenix also invoked the personal guarantee of Mr. Rajiv Bhatia in May 2015.

(III) The IBC, 2016 application and proceedings :

On 10 April 2018, Phoenix filed an application under Section 7(2) of the Insolvency and Bankruptcy Code, 2016 (IBC) before the National Company Law Tribunal (NCLT), seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against Meridian. In its application, Phoenix claimed a principal amount of ₹ 42 crore and interest of ₹ 178 crores calculated at 20% per annum, bringing the total claim to approximately ₹ 220 crores.

Meridian filed a miscellaneous application before the NCLT seeking dismissal of the petition on the ground that it was barred by limitation. Meridian argued that the NPA was declared in November 2008, that the limitation period of three years expired in November 2011, and that the IBC application filed in April 2018 was hopelessly late by nearly seven years. Meridian further contended that the financial statements contained a clear dispute as to the rate of interest and could not, therefore, be read as an unequivocal acknowledgment of liability sufficient to extend limitation.

Phoenix countered that its application was well within time. It relied on the audited balance sheet of Meridian for the financial year 2014-15, signed by Meridian's directors on 12 September 2015, which reflected Phoenix as a creditor and acknowledged Meridian's outstanding financial liability. Phoenix argued that this acknowledgment, made before the original limitation period had expired, created a fresh three-year limitation period running from 12 September 2015 to 12 September 2018. Since the application was filed on 10 April 2018, it was within this extended period.

Phoenix also argued that regardless of the caveats in the notes to accounts concerning the interest rate, the balance sheet clearly showed the jural relationship of debtor and creditor between Meridian and Phoenix, and the existence of financial liability. A dispute about the rate of interest was a dispute about quantum, not about the existence of the debt itself. Moreover, even if the parts payments made by Meridian were to be considered, they would first be appropriated towards interest and then towards principal, meaning a substantial principal remained outstanding.

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The promoter companies, Crestwood Hotels Pvt. Ltd. and Pinnacle Resorts Ltd., separately filed an appeal challenging the admission of the CIRP, arguing there was no subsisting financial debt and that the application was time-barred.

The NCLT rejected Meridian's limitation objection and admitted the application, appointing an Interim Resolution Professional. The matter was then appealed to the NCLAT, which set aside the NCLT's order, holding that the financial statements with caveated notes could not amount to an unequivocal acknowledgment under Section 18 of the Limitation Act and that the application was therefore barred by limitation.

Phoenix has now filed an appeal before the Supreme Court of India challenging the NCLAT's order.

Required :

(a) Meridian argues that the IBC application is barred by limitation because the NPA was declared in November 2008 and the application was filed only in April 2018, nearly ten years later. Is this argument correct ? What is the prescribed period of limitation for a Section 7 IBC application, and from which date does it begin to run ?

(5 marks)

(b) Phoenix relies on Meridian's audited balance sheet for 2014-15 as an acknowledgment of liability under Section 18 of the Limitation Act. According to Meridian, there is a variation of Rate of Interest charged by the bank. Can a balance sheet with a caveat about the rate of interest still qualify as an acknowledgment of debt ? What does the law require ?

(5 marks)

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(c) Meridian contended that it has paid over ₹ 48 crores to Phoenix and that this exceeds the original principal amount. It argued that no principal remains outstanding and therefore there is no financial debt. How did the court reacted with this argument ?

(5 marks)

(d) The NCLAT set aside the NCLT's order admitting the CIRP on the ground that the application was time-barred. Phoenix argued that the IBC is a beneficial legislation and must be construed liberally. Does the IBC as a beneficial statute have any bearing on how the law of limitation is applied to it ?

(5 marks)

(e) The promoter companies, Crestwood Hotels and Pinnacle Resorts have also filed an appeal challenging the admission of CIRP against Meridian. They argued that since there was a dispute on existence of financial debt, the NCLT should not have admitted the application. Is this a valid ground to challenge the admission of a Section 7 application ?

(5 marks)

2. (a) Please map the correct case references alongside the decision of the court(s) based on the judicial pronouncements indicated under choice(s).

Sl. No.	Decision	Choice No.	Case Reference
1.	NCLT and NCLAT cannot judicially innovate beyond the framework of the Insolvency and Bankruptcy Code while dealing with schemes of compromise and arrangement.	(a)	Laxmi Pat Surana Vs. Union Bank of India & Anr.

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2.	Timelines for submission of claims are directory, not mandatory. Delay alone cannot justify rejection of statutory dues; RP must verify and include them.	(b)	Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss ARC & Ors.
3.	Development rights are valuable commercial rights falling within the wide definition of “property” under Section 3(27) and are assets of the Corporate Debtor and are to be included in the Information Memorandum as long as they subsist.	(c)	Sunil Kumar Jain & Ors. Vs. Sundaresh Bhatt & Ors.
4.	Section 327(7) of the Companies Act excluding application of Section 326 & 327 are not arbitrary.	(d)	Abhishek Singh v. Huhtamaki PPL Ltd., & Anr.
5.	Section 7 application beyond three years from NPA is barred by limitation.	(e)	State Tax Officer vs. Rainbow Papers Ltd.
6.	The Corporate debtor is a statutory corporation and not Government. The dues are not payable into consolidated fund and hence cannot be treated as “Government dues” and as such they rank as secured creditor claims in liquidation.	(f)	Moser Baer Karamchari Union vs. Union of India.

7.	All creditors (including Central and State Government or local authorities are bound by a resolution plan once approved under Section 31(1).	(g)	Victory Iron Works Ltd. vs. Jitendra Lohia & Anr.
8.	RERA decrees do not affect creditor classification. Claims of decree-holding homebuyers remain financial debts under IBC, entitled to parity in resolution plans.	(h)	Arun Kumar Jagatramka V. Jindal Steel and Power Ltd.
9.	The Liquidator is bound to adjudicate and verify each and every claim based on evidence of work performed during CIRP and entitlement is not automatic.	(i)	Vidarbha Industries Power Ltd. vs. Axis Bank Ltd.
10.	Payment of settlement amount during moratorium is not a violation of Section 14. It extinguishes liability and preserves value as Section 14 is meant to prevent dissipation of assets and does not bar genuine settlements.	(j)	Bank of Baroda & Anr. Vs. MBL Infrastructure Ltd., & Ors.
		(k)	Swiss Ribbons Pvt. Ltd. vs. Union of India.
		(l)	Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Pvt. Ltd.
		(m)	Vishal Chelani & Ors. Vs. Debashis Nanda.

(1 mark each Sub-Question = Total 10 Marks)

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- (b) How did the Supreme Court perceive Article 142 of the Constitution to order liquidation and what were the broader systemic reforms it suggested in the case of State Bank of India & Ors. v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr ?

(5 marks)

- (c) Mr. Bikram Kumar applied to the Insolvency and Bankruptcy Board of India (IBBI) for registration as an Insolvency Professional. During scrutiny, the Board discovered that Mr. Bikram Kumar had a prior criminal conviction for financial fraud and was subject to an existing restraint order issued by a regulatory authority. Additionally, concerns were raised regarding his negative net worth and questionable financial solvency. What would have been the criteria for the decision and for such rejection ?

(3 marks)

- (d) **Caselet :**

Aarna Ltd. (Company) is engaged in the manufacturing of Sponge Iron, IMT bars and Galvanized wires. It has availed various credit facilities from a total of 9 secured creditors with an outstanding debt of ₹ 100 crores.

Due to adverse market conditions, its financial position took a downturn and hence it filed a reference with the Board for Industrial and Financial Reconstruction (BIFR). The reference was duly registered. During the proceedings before BIFR, one of the secured creditors, after taking consent of the other creditors of the company, filed an application for abatement of the reference before BIFR.

Meanwhile, one of the unsecured creditors filed an application before BIFR for the impleadment in the proceedings. The BIFR dismissed the said application due to non-prosecution.

Subsequently, upon coming into force of the Insolvency and Bankruptcy Code (IBC), 2016, the company filed an application for initiation of Corporate Insolvency Resolution Process (CIRP) before National Company Law Tribunal (NCLT) on 09.12.2016. However, in the first meeting of the Committee of Creditors held on 05.01.2017, the financial creditors of the company decided to liquidate the company. Immediately after this decision, but before intimating the decision to the NCLT, one of the financial creditors of the company applied to Resolution Professional (RP) giving proof of his claim and seeking his inclusion in the Committee of Creditors.

Based on the above situation, answer the following questions :

- (i) Can the creditors initiate SARFAESI action against the company ?
 - (a) Yes, if they constitute more than 75% of the total financial debt.
 - (b) Yes, with the consent of the Liquidator.
 - (c) Yes, with the consent of the National Company Law Tribunal (NCLT).
 - (d) No, they cannot.

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- (ii) In case one of the secured creditors realizes its security interest and such realization is not sufficient to pay its outstanding debts, can he recover the balance amount ?
- (a) The balance amount will be ignored.
 - (b) The balance amount will be paid at par with dues to the Central Government and the State Government.
 - (c) The balance amount will be paid at with other secured creditors.
 - (d) The balance amount will be paid at par with unsecured creditors.
- (iii) In case the liquidation process is initiated, the unsecured creditor who filed an application before BIFR for impleadment shall be paid
- (a) as per claim accepted by the liquidator in accordance with priorities specified in the Insolvency and Bankruptcy Code, 2016.
 - (b) as per the amount of its claim before BIFR.
 - (c) as per the amount of its claim made before the liquidator.
 - (d) as per the order of Debt Recovery Tribunal.
- (iv) In case the secured creditor faces resistance from company for enforcement of security interest, such secured creditor may apply to :
- (a) Adjudicating Authority
 - (b) Debt Recovery Tribunal
 - (c) Liquidator
 - (d) High Court

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- (v) What is the priority of payment to workmen dues in case of liquidation ?
- (a) Pari passu with secured creditors and employees
 - (b) Pari passu with secured creditors and insolvency costs
 - (c) Pari passu with secured creditors
 - (d) Pari passu with financial creditors

(1 Mark Each = Total 5 Marks)

- (e) ANC Bank Ltd. filed a claim before the Liquidator of XYZ Pvt. Ltd., asserting itself as a secured creditor with a charge over the company's immovable property. The Liquidator questioned the validity of the security interest, as no records were available in any information utility.

ABC Bank thereafter produced a Certificate of Registration of Charge along with the original mortgage deed and sanction letter as supporting documents.

How can the existence of security interest be proved under IBBI (Voluntary Liquidation Process) Regulations, 2017 ?

(2 marks)

3. (a) From the following, indicate the assets of the corporate debtor which (i) can/cannot be used in liquidation. Substantiate your answer.
- (i) An IT services company has outstanding invoices worth ₹ 8 crores from various clients for software development services already delivered.

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- (ii) A pharmaceutical company owns several patents for drug formulations, registered trademarks for its brand names, and proprietary manufacturing processes developed in-house and registered in company's name.
- (iii) A stockbroking firm has deposited shares as collateral margin with a clearing corporation (like NSE Clearing Ltd.) to settle trades on behalf of multiple clients.
- (iv) A steel manufacturing company owns blast furnaces, rolling mills, and heavy machinery worth ₹ 50 crores, all of which are registered in the company's name and fully paid for.
- (v) Sharma is a 30% shareholder of an insolvent private limited company. He owns a personal apartment and a car registered in his own name, purchased from his personal savings.
- (vi) A diversified conglomerate holds a 25% stake in an associate company, PQR Ltd., which is neither a subsidiary nor controlled by it. It also holds mutual fund units and fixed deposits in its own name worth ₹ 15 crores.
- (vii) A logistics firm has taken 20 trucks on a long-term lease from a vehicle rental company with usage rights being conferred on the lessee.
- (viii) ABC Ltd., a holding company in India, is undergoing liquidation. It owns 80% of the shares of XYZ Pvt. Ltd. Bengaluru and also 60% of Global Tech Inc., San Jose, USA.

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- (ix) A construction company owes ₹ 1 crore to a cement supplier. However, the cement supplier also owes ₹ 40 lakhs to the construction company for a separate warehousing contract.
- (x) A hospitality company owns a five-star hotel building and the land on which it stands, both registered in the company's name.

(1 Mark Each = Total 10 Marks)

- (b) Guardian Insolvency Professional Agency (“Guardian”) obtained its certificate of registration from the Insolvency and Bankruptcy Board of India (“Board”) by submitting falsified compliance documents. Subsequently, Guardian repeatedly failed to adhere to Board regulations and contravened several provisions of the Insolvency and Bankruptcy Code, 2016. Upon receiving complaints, the Board initiated proceedings against Guardian. Before passing an order, the Board issued a show-cause notice, affording Guardian a reasonable opportunity of being heard, as mandated under the IBC.

Following due deliberation by whole-time members exclusively, the Board concluded that there were contraventions by Guardian which needs to be dealt punitively. What are the grounds on which the Board can take cognizance of ? Also, what action can the Board initiate.

(3 marks)

- (c) What are the punitive measures that can be administered by the Adjudicating Authority under the Code ?

(2 marks)

- (d) Define the term ‘Control’ in the context of insolvency proceedings.

(2 marks)

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- (e) Rajesh Kumar, a textile merchant, was adjudicated bankrupt following insolvency proceedings. Anand was appointed Bankruptcy Trustee to administer the estate.

Upon assuming office, Anand identified several urgent matters : the business required temporary continuation to maximise asset recovery; outstanding debts owed to Rajesh needed arbitration; certain creditors sought compromise arrangements; and a mortgageable property existed suitable for raising funds towards debt settlement. Additionally, a contractual option over a warehouse formed part of the estate apart from other issues.

Before proceeding further, Anand wants to convene a meeting of the creditors.

In such a situation, elucidate which are the acts of the Bankruptcy Trustee that require prior approval from creditors ?

(5 marks)

- (f) Explain briefly on “Actions to avoid acts detrimental to creditors.”

(3 marks)

4. (a) PQR Manufacturing Limited, a company engaged in the production of industrial equipment, defaulted on its financial obligations and insolvency proceedings were initiated against it before the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016. A Resolution Professional was subsequently appointed to manage the affairs of the company and examine its financial records.

While reviewing past transactions, the Resolution Professional discovered that approximately one year before the commencement of insolvency proceedings, the company had transferred a valuable warehouse property to another company closely connected with its promoters. The property, which had a significantly higher market value, was transferred for a consideration for below its estimated worth.

The Resolution Professional also observed that such transfer was not part of the ordinary course of business of the company and that the transaction had the effect of substantially reducing the asset base available to creditors during the insolvency process.

The transferee company, however, argued that the transaction was a valid commercial arrangement entered into with the consent of the management of the corporate debtor.

In light of these facts, examine whether the Resolution Professional can challenge such a transaction before the National Company Law Tribunal. Also explain the possible powers of the tribunal if it finds that the transaction was detrimental to the interests of the creditors.

(5 marks)

- (b) A public sector bank, acting as a financial creditor, filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against a corporate debtor due to default in repayment of financial debt.

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Along with the application, the bank proposed the name of Mr. Rajiv Sharma, a registered Insolvency Professional, to be appointed as the Interim Resolution Professional (IRP).

The corporate debtor objected to this proposal and contended that Mr. Sharma had earlier served as a senior employee of the same bank for nearly four decades before his retirement and continued to receive pensionary benefits from it. According to the debtor, such long association with the financial creditor could create a reasonable apprehension of bias, and therefore the IRP might not act independently while conducting the insolvency resolution process.

The financial creditor, however, argued that Mr. Rajiv Sharma was a duly registered Insolvency Professional under the Insolvency and Bankruptcy Code and that mere past employment with the creditor cannot automatically disqualify him from being appointed as IRP.

Assuming that the adjudicating authority accepted the objection and directed substitution of the proposed IRP, and the matter subsequently travelled in appeal up to the National Company Law Appellate Tribunal and later to the Supreme Court of India, analyse how the issue regarding independence and eligibility of the Interim Resolution Professional would be decided at each stage of the proceedings.

(8 marks)

- (c) Omega Infotech Private Limited, a corporate debtor, filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of the Corporate Insolvency Resolution Process (CIRP). The company submitted all required documents, including financial statements and evidence of default.

However, certain creditors opposed the application, alleging that :

- Investigations were pending against the promoters for financial irregularities.
- There were allegations of fraud and mismanagement, and
- The application was filed to escape liability.

The Adjudicating Authority, taking note of these allegations, refused to admit the application, stating that the conduct of the promoters and pending investigations made the case unsuitable for initiation of CIRP.

Omega Infotech Private Limited challenged this decision before the appellate authority, arguing that the application met all statutory requirements and that such external factors should not influence admission under the Code. Examine the case study and provide your expert view and quote the relevant case laws in support of your answer.

(6 marks)

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- (d) “A resolution application may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum. The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan.”

Explain the important requirements of the ‘Resolution Plan’ that are submitted by the Prospective Resolution Applicants.

(6 marks)

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