

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 28

NOTE : Answer ALL Questions.

1. Background :

You are a dynamic management consultant, extrovert, academically erudite, graduated from a top notch business school in Mumbai and subsequently qualified as a Company Secretary. With a keen interest in academic research, you also obtained a Doctorate Degree for your excellent research on the topic “Effectiveness of Insolvency and Bankruptcy Code, 2016– Empirical Evidence from India”.

You are known in the corporate arena as a renowned personality for your interactive deliberations in all gamut’s of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016). As an avid speaker, you passionately share your deep and incisive knowledge in India at various events organized by the ICSI, ICAI, Trade organizations and other reputed professional and academic Institutes.

You started a consultancy firm in Navi Mumbai and expanded your network by opening branches at Pune, Nagpur and Shimla in Himachal Pradesh. Your firm provides scratch to end business advisory solutions to listed and unlisted corporates. Your corporate clients are also spread across the Country and you have a sizeable team of professionals working under your entire advisory practice. To meet clients’ needs and to exceed their expectations is your primary goal.

: 2 :

Recently, you have been approached by ABT Techsoft Products Limited (ABT) a flagship Company of OM Group of Companies based out of Chennai to sort out/clarify certain matters concerning IBC, 2016 having a potential application for the Company and its subsidiary companies.

About ABT :

ABT is one of the India's start-up companies incorporated at Chennai in the year 2012. The main objects of the Company is to develop a niche, never invented before, customized software packages for two and three wheeler automobile manufacturers in India. It also caters to the various software needs of diverse global audiences. With its wide range of e-Commerce market place products, it assists prospects in establishing a successful e-Commerce business. Along with e-Commerce, web, and mobile software development, ABT also provides digital marketing, branding, and ORM services. The company became a listed entity, in the year 2017 and got its shares listed with the BSE and NSE.

Initial Interaction :

During your initial interactions with the top management, you highlighted the current state of affairs, compliance standards and regulatory assessment hygiene affecting the application of economic laws and regulations framed thereunder for the Company. Thereafter, you were ready for a detailed discussions with the Management.

The necessary data and other inputs for your consideration as given by the top management of **ABT including its subsidiaries are summarized in the following paragraphs** and the questions raised, clarifications sought etc., are summarized hereunder :

: 3 :

- (A) As at 31-03-2023, ABC Limited, a Wholly Owned subsidiary of ABT had the following debts :

| Creditors Name | Nature of Debt | Amount (₹ in Lakhs) |
|---------------------------|---|--------------------------------|
| A | Financial Debt | 300 |
| B | Financial Debt | 250 |
| C | Financial Debt. (Related Party)-Not regulated by the Financial Sector Regulator | 175 |
| D | Operational Debt | 175 |
| E | Operational Debt | 325 |

In view of the brunt of heavy losses and liquidity crisis, ABC Limited could not pay the above debts. As a result, Creditor 'D' filed an application with the Adjudicating Authority (NCLT) to initiate a Corporate Insolvency Resolution Process (CIRP) against ABC Limited and the application was accepted.

- (B) In terms of the relevant provisions of the IBC, 2016, a liquidation order was passed against **MNO Limited (Another Subsidiary of ABT and also being the Corporate Debtor)** by the Adjudicating Authority (NCLT). Mr. Arvind was appointed as the Liquidator by the NCLT. Upon resuming his mantle, Mr. Arvind started collecting claims from all the creditors within the time frame as prescribed in the IBC, 2016.

While initiating the liquidation process, Mr. Arvind proposed to include the equity shares of **another subsidiary company of MTPL as part of the liquidation estate** in relation to the Corporate Debtor. Besides this, one of the unsecured financial creditor demanded that, at the time of distribution of liquidation proceeds, his dues may be paid before the government dues are paid. Mr. Arvind also observed that pending legal proceedings against the Corporate Debtor, Q Limited, an Operational Creditor, has filed a case with the Arbitral Tribunal praying for an arbitral award against MNO Limited.

- (C) A Financial Creditor, namely Mr. Z has filed an application before the Adjudication Authority (AA) (NCLT) for initiation of Insolvency Resolution Process against **MAPL (Corporate Debtor)** on 01-04-2023. As this application was pending for disposal by the AA, the Corporate Debtor has also made an application on 10-04-2023 to the AA for initiating Pre-Packaged Insolvency Resolution Process.
- (D) Another Financial Creditor namely Mr. E, through an assignment agreement, assigned his debt to a Trust. The Trust filed a petition for initiation of **Corporate Insolvency Resolution Process against the Corporate Debtor (MTPL)**.
- (E) Further, **ABT is considering the purchase** of used plant and machinery but of the latest technology from 'Four Spin Limited' which is undergoing a Corporate Insolvency Resolution Process (CIRP) in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016. ABT is waiting for the resolution plan to be unveiled through which they can understand which plant and machinery they can buy. But, in the mean-

: 5 :

time, an authorized Deputy Director from the office of the Enforcement Directorate (ED) conducted a 'Search and Seizure' at the premises of the Four Spin Limited and issued a provisional attachment order of 180 days under the relevant provisions of the prevention of Money Laundering Act, 2002, attaching properties of Four Spin Limited on the basis of findings during the search and seizure proceedings. In this order, the immovable and movable properties including plant and machinery were provisionally attached. The Insolvency Professional, **C.S. Sudha Kumar**, who was appointed as a Resolution Professional for CIRP of Four Spin Limited, opposed the order of provisional attachment of assets by ED on the grounds of declaration of moratorium by the Adjudicating Authority on the assets of Four Spin Limited as per the provisions of the IBC, 2016 and made an appeal seeking the release of assets.

- (F) **AFP Ltd (Corporate Debtor), an Associate Company of ABT** is classified as a Small Enterprise under Section 7 (l) of the Micro, Small and Medium Enterprises Development Act, 2006. It owes ₹ 60 lakhs to its creditors. Due to the brunt of deep rescission in the business, the Corporate Debtor was not in a position to recover money from Sundry Debtors as per the payment schedule and as result of which, it committed default in settling dues to the Sundry Creditors. The Corporate Debtor, eventually, decided to go for a 'Pre-Packed Insolvency Resolution Process (PPIRP)' under the IBC, 2016 and took recourse to the following steps to initiate PPIRP.
- (i) The Financial Creditors of the Corporate Debtor, not being the related parties, representing 66% in value of the financial debt due to them, proposed Ms. Jaiswithaa Iyer, the Insolvency Professional, to be appointed as a Resolution Professional to conduct PPIRP.

: 6 :

- (ii) The majority of the directors of the Corporate Debtor made a declaration that PPIRP is not being initiated to defraud any person and nothing more is contained in the declaration.
 - (iii) The members of the Corporate Debtor passed an Ordinary Resolution approving the filing of an application for initiating PPIRP. There were no further approvals obtained from the Financial Creditors/Board of Directors on any matters.
- (G) Kirutika Muralidharan, the financial creditor, was an investor and a debenture-holder of 'Optionally, Convertible Debenture Bond (OCBD) payable on maturity with redemption premium issued by **Q Limited (Corporate Debtor)**. The zero interest OCDB bonds amounted to ₹ 3 crore was matured in 2019. The Corporate debtor failed to discharge this liability on due dates. Kirutika Muralidharan, filed an application to initiate the CIRP before the NCLT.
- (H) M Fabrics Ltd, (Corporate Debtor), has defaulted in repayment of its loan of ₹ 300 lakhs obtained for its business purpose from a Financial Institution (Financial Creditor). Repeated follow up by the financial institution with the Corporate Debtor for repayment of dues did not evoke any meaningful response. In view of this, it was unanimously decided by the financial institution to apply to the NCLT for starting a CIRP against the Corporate Debtor. On filing of an application by the Financial Creditor, the CIRP was commenced, declaring a moratorium by an order of the Adjudicating Authority on 30th May, 2023 and Ms. Sowmya Ashwanth, was appointed as an Insolvency Resolution Professional. The High Court, having jurisdiction, in disposing of the pending petition of some other creditors which was filed prior to May 2023, passed an order for auction of the assets of the Corporate Debtor on 6th June, 2023.

With reference to the above data, answer the following :

: 7 :

- (a) In respect of the inputs given in Para-A above, briefly answer the following questions :
- (i) Who all will form part of the Committee of Creditors (CoC) from the list of creditors given ?
(2 marks)
- (ii) Whether the above Operational Creditors have a right to vote in the CoC meeting ?
(2 marks)
- (iii) What is the mandatory agenda that should be discussed in the first meeting of CoC ?
(1 mark)
- (iv) What shall be the quorum of the CoC meeting if it is conducted through video conferencing ?
(1 mark)
- (v) In respect of the inputs given in Para-B above under IBC, 2016, answer the following :
- (i) Whether the proposal of Mr. Arvind to include the equity shares of the Subsidiary Company of MTPL as part of liquidation estate tenable ?
(2 marks)
- (ii) How should Mr. Arvind deal with the demand of the unsecured financial creditor ?
(2 marks)

: 8 :

(b) (i) In respect of the inputs given in Para-C above under IBC, 2016, state which of the following act of the Adjudicating Authority shall be valid :

- (a) The Adjudicating Authority shall first dispose off the application of the Corporate Debtor.
- (b) The Adjudicating Authority shall first dispose off the application of the Financial Creditor.
- (c) The Adjudicating Authority shall dismiss both the applications and direct the Corporate Debtor to file a fresh application.
- (d) The Adjudicating Authority shall dismiss both the applications and refer the dispute to Arbitration.

(2 marks)

(ii) In respect of the inputs given in Para-D above under IBC, 2016, find out the correct statement :

- (a) Trust is out of purview of the provisions of the IBC, 2016.
- (b) The Trust may be authorized by the Financial Creditors to file an application.
- (c) The Trust in the capacity of a Financial Creditor, can file a valid application.
- (d) The Trust being an assignee, cannot file a Petition.

(2 marks)

: 9 :

- (iii) In respect of the inputs given in Para-E above, examine whether the appeal moved by C.S. Sudha Kumar, the appointed Resolution Professional of Four Spin Limited is tenable ? Whether the assets so provisionally attached shall be released or not and provisions of which Act/Code will prevail ? Provide your answer on the basis of the relevant case law as applicable to the facts of the case.

(6 marks)

- (c) (i) In respect of the inputs given in Para-F above, briefly answer the following questions :
- (a) Whether the act of the financial creditors proposing the name of Ms. Jaiswithaa Iyer as Resolution Professional is valid ?
 - (b) Whether the declaration made by the Board of Directors is in accordance with the provisions of IBC, 2016 ?
 - (c) Whether the resolution passed by the members of the Company is in compliance with the provisions of IBC, 2016 ?
 - (d) Are there any requirements to get the approval of the Financial Creditors/ Board of Directors on any other matters ? If yes, state the relevant provisions of the IBC, 2016.

(1.5×4 = 6 marks)

- (ii) In respect of the inputs given in Para-G above, briefly answer the following questions :
- (a) Whether Kirutika Muralidharan is eligible for filing an application for initiation of CIRP ?
 - (b) Whether the redemption of debenture bonds payable on maturity date amounts to a debt ?

(4 marks)

: 10 :

(d) In respect of the inputs given in Para-H above, briefly answer the following questions :

(a) Advise the financial creditor whether the order of the High Court is valid and can be challenged ?

(3 marks)

(b) Advise Ms. Sowmya Ashwanth on 'independence' with the corporate debtor.

(3 marks)

(c) In the light of the inputs given, advise M Fabrics Ltd. whether initiation of a CIRP can be made only by a financial creditor or can it be made by its corporate debtor also ?

(4 marks)

2. You are a corporate consultant and have been serving the corporate world for the past one decade. Academically erudite, you are an extrovert Company Secretary and also a qualified Insolvency Resolution Professional. With keen interest in academic research, you have mastered thoroughly, the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) and select Economic Laws.

SOSAAL Ltd. :

Recently, you have been approached by 'Step One, Step Ahead Automobiles Ltd' (SOSAAL) a listed entity, based out of Chennai, engaged in the manufacture of electric two and three wheeler with nearly 175 dealers across the country.

The CEO of the Company, Mr. Kirti Iyer, along with his senior management officials, has provided the following inputs for your understanding and thereafter, to provide relevant advice on the issues, in the light of the provisions of the IBC, 2016.

At a Board Meeting of SOSAAL held on October 2023, the Directors present at the Board Meeting reviewed and took note of the ageing schedule of the amounts receivable from various dealers of the company as under :

: 11 :

| Age | ₹ in Lakhs | Number of Dealers |
|-----------------|--------------|-------------------|
| 0 to 180 days | 1,505 | 135 |
| 180 to 720 days | 280 | 34 |
| > 720 days | 905 | 1 |
| Total | 2,690 | 170 |

The Chairman of the Audit Committee, a non-executive Independent Director, who was present at the Board Meeting, informed the Board, that the amounts receivable for more than 2 years is from a dealer, called “My Bike,” and the same is being followed up for payment on a regular basis. On this aspect, the other Independent Directors present at the Board Meeting wanted to explore the possibility of taking action against “My Bike” under the provisions of the IBC, 2016.

The CFO of the Company informed that the financial creditors of “My Bike” has already commenced the process of liquidation and the liquidator has reached out the CFO last week to understand the claims of SOSAAL against “My Bike”.

During the course of discussion with the CFO, the Liquidator shared the following assets and liabilities of “My Bike” :

| | | (₹ in Lakhs) |
|----|--|--------------|
| 01 | Realizable value of Fixed Assets | 2,800.00 |
| 02 | Receivables from various customers | 225.00 |
| 03 | 50% of the receivables is not realizable | — |
| 04 | Cash and Cash Equivalents | 22.50 |
| 05 | Bank Loans taken from Bank A | 1,500.00 |
| 06 | Bank Loans taken from Bank B | 1,050.00 |

: 12 :

| | | |
|----|--|--------|
| 07 | Both the banks have relinquished their security interest and their securities have been realized by the Liquidator for inclusion in the Liquidation estate | — |
| 08 | Payable to SOSAAL (Operational Creditor) | 905.00 |
| 09 | Payable to ABC (Operational Creditor) | 75.00 |
| 10 | Outstanding wages to workmen (relate to the period of 24 months preceding to the date of commencement of liquidation) | 75.00 |
| 11 | Statutory Employer Contributions | 30.00 |
| 12 | Loan taken from Mr. X, the son of the Promoter Director, who attended the Board meetings to provide guidance/directions on policy matters. | 75.00 |

D Ltd. :

MNO Ltd filed a petition under Section 7 of the IBC, 2016 for initiation of CIRP against D Ltd (Corporate Debtor) and being a wholly owned subsidiary of SOSAAL.

The Adjudicating Authority admitted the petition vide its order dated 26-10-2022 and initiated CIRP by appointing Mr. GM as the Interim Insolvency Professional (IRP). The Insurance of the assets of the corporate debtor was lapsing on 18-12-2022.

: 13 :

Recognizing the urgent need to get the insurance renewed, in order to safeguard the assets of the corporate debtor, the IRP decided to take a new insurance policy at a higher premium as compared to the previous insurance policy without the consent of the Committee of Creditors (CoC). Accordingly, the IRP entered into a contract with the insurance company for taking a new policy.

You are requested to go through the above facts carefully and answer the following questions :

(a) Based on the details of assets and liabilities of “My Bike” shared by the liquidator, assuming no liquidation costs, examine and calculate the amount that is receivable by SOSAAL from “My Bike” in the light of the provisions of the IBC, 2016.

(7 marks)

(b) Identify the date of commencement of CIRP as per IBC, 2016 (Section) in relation to the CIRP initiated by MNO Ltd against D Ltd.

(2 marks)

(c) Examine whether Mr. GM (IRP) has the authority to take a new Insurance Policy of D Ltd. at a higher premium without the consent of the Committee of Creditors ?

(3 marks)

3. You are a part of a credible, practising firm of Company Secretaries Firm based out of Bengaluru. You are also a Director on the Board, Chairman and/or Member of Committees of the Board of many listed and unlisted entities.

During the month of September and October, 2023 you had been approached by the following entities/persons seeking your expert professional advice and the remedies to overcome the issues. The key facts of the matter to be resolved is as under :

: 14 :

Facts relating to ‘Gamma Limited’

There was a corporate insolvency resolution process against Gamma Limited by one of its Operational Creditor, Beta Limited. Mr. ‘M’ was appointed as the Interim Resolution Professional who is a partner of M & Company, a consulting firm, which had transactions of following amounts with Gamma Limited during the last five years :

| Financial Year | Turnover of M & Co. (₹ in Lakhs) | Total Amount of Transactions with Gamma Limited during each F.Y. (₹ in Lakhs) |
|-----------------------|---|--|
| 2018-2019 | 360 | 20 |
| 2019-2020 | 360 | 18 |
| 2020-2021 | 380 | 18 |
| 2021-2022 | 400 | 20 |
| 2022-2023 | 420 | 18 |

All the financial creditors of Gamma Limited were related parties and it had 28 operational creditors.

Facts relating to ‘Alfa Limited’ :

In view of the deep recession prevailing in the market for the past three years, M/s. Alfa Limited (Corporate Debtor), which was facing the brunt of financial crisis, could not pay salaries and wages to its workmen and employees for the past 6

: 15 :

months. The workmen and the employees, who are the members of a recognized Trade Union “Alfa Labour Federation.” made a complaint in this regard. Thereafter, the Trade Union approached and urged the Management of the Company in person and through representations in writing to settle the arrears of wages and salaries due to its members. The Corporate Debtor neither disputed nor took any actions to settle the amount. Under the circumstances, ‘Alfa Labour Federation’ filed an application before the Adjudicating Authority i.e. with the National Company Law Tribunal for initiating a Corporate Insolvency Resolution process under the Insolvency and Bankruptcy Code, 2016.

Facts relating to ‘Big Rammy Limited’ :

The following particulars relates to Big Rammy Ltd which has gone into Liquidation :

| Sl No. | Particulars | Amount in ₹ |
|---------------|--|--------------------|
| 1. | Amount realized from the sale of liquidation of assets | 14,00,000 |
| 2. | Secured creditor who has relinquished the security | 5,00,000 |
| 3. | Unsecured Financial Creditors | 4,00,000 |
| 4. | Income tax payable within a period of 2 years preceding the liquidation commencement date | 50,000 |
| 5. | Cess payable to state government within a period of one year preceding the liquidation commencement date | 20,000 |
| 6. | Fees payable to Resolution Professional | 75,000 |

| | | |
|----|---|-----------|
| 7. | Expenses incurred by the resolution professional in running the business of the Big Rammy Limited ongoing concern | 25,000 |
| 8. | Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month | 3,00,000 |
| 9. | Equity shareholders | 10,00,000 |

Based on the above inputs, you are requested to go through the following queries meticulously and answer the following questions :

- (a) In which of the following options, Mr. M would have been ineligible to be appointed as the Interim Resolution Professional of Gamma Limited :
- (i) M & Company would have entered into transaction(s) of further amount of ₹ 1 Lakh or more with Gamma Limited during any of the last 5 financial years.
- (ii) M & Company would have entered into transaction(s) of further amount of ₹ 2 Lakhs or more with Gamma Limited during any of the last 3 financial years.
- (iii) M & Company would have entered into transaction(s) of further amount of more than ₹ 3 Lakhs with Gamma Limited during the last 3 financial years.
- (iv) M & Company would have entered into transaction(s) of further amount of more than ₹ 4 Lakhs with Gamma Limited during the last 3 financial years.

(2 marks)

: 17 :

(b) In respect of the facts relating to Alfa Limited examine in the light of the decided case law and the provisions of the Insolvency and Bankruptcy Code, 2016 the following :

(i) Validity of the Application

(ii) What will be “Initiation date” for initiating the Corporate Insolvency Resolution process ?

(4 marks)

(c) In respect of the facts and figures given related to Big Rammy Limited, state the priority order in which the liquidator shall distribute the proceeds under the Insolvency and Bankruptcy Code 2016.

(6 marks)

4. Samanvithaa Textiles Ltd (STL), with roots dating back to 1975 manufacturing coarse woollen blankets, has evolved into a leading manufacturer of the finest fabrics in India under the brand name “Samanvithaa”. Reckoned for its pioneering innovations and having enjoyed the patronage of millions of consumers, ‘Samanvithaa’ is amongst the trusted brands in India offering an exquisite range of shirting and suiting fabrics across a plethora of options such as worsted fabrics, cotton, wool blends, linen and denim.

STL has proposed an expansion plan to enter into the business of hosiery garments at a project cost of ₹ 300 crore to be funded through promoters contribution, internal accruals and bank finance to the tune of ₹ 40 crore for importing and installing high technology machinery. The company approached its bankers and a consortium of bankers sanctioned a term loan of ₹ 40 crore and ₹ 10 crore towards working capital limits.

In consortium of bankers, the lead banker was Star Bank of India. The other bankers and their proportion of share of lending is as under :

| Name of the Bank | Term Loan (₹ in Crore) | Working Capital (₹ in Crore) | Total (₹ in Crore) | % of Share |
|--------------------|---------------------------|---------------------------------|-----------------------|------------|
| Star Bank of India | 15 | 10 | 25 | 50 |
| Fine Bank | 5 | 0 | 5 | 10 |
| Orient Bank | 7 | 0 | 7 | 14 |
| Flex Bank | 8 | 0 | 8 | 16 |
| Good Bank | 5 | 0 | 5 | 10 |
| Total | 40 | 10 | 50 | 100 |

The machineries were imported and installed. The company started producing hosiery garments for men's wear in premium category, office wears and casuals. The company created a niche in the market for its finest fabrics, variety and affordable pricing.

In March 2020, the brunt of COVID-19 pandemic that spread all over the world, had a severe impact on the company's operations as well due to closure of the production unit for more than a year, skilled labours migrating to their home town, the distribution channel getting effected, lack of demand in most of the urban areas etc. As a result, the cash flows of the company mismatched and the term loan account and cash credit working capital account was classified as Non-Performing Accounts.

At the consortium meeting, the member banks decided to take recourse to legal actions against the borrower company and they issued a recall notice followed by a legal notice from an Advocate.

: 19 :

STL requested the bankers to provide some time to pay the overdue interest on the credit facilities and to regularize the account thereafter. The consortium of bankers agreed to provide one and half years' time to regularize the account. Despite giving one and half years' time to the Company, the situation did not improve and it went from bad to worse.

In view of this situation, the consortium of bankers decided to proceed under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI). The member banks authorized Star Bank of India to initiate action and take possession of the secured assets and also take control of the management of the affairs of the company.

Accordingly, a demand notice was issued under Section 13(2) of SARFAESI, 2002 to repay the entire outstanding of the bankers within a given period, lest, the bank shall exercise its powers given under SARFAESI, 2002 to take possession of the secured assets of the borrower. After the lapse of the specified period as mentioned in the notice, the bankers took possession of the secured assets which were exclusively mortgaged with the financial creditor since the corporate debtor failed to repay the debts due.

After following the procedure as mentioned in SARFAESI, the banker made an advertisement for sale of the secured assets by way of e-auction. The secured assets were successfully auctioned for ₹ 35 crore and the successful bidder deposited 25% of the bid amount (₹ 8.75 crore) instantly and the balance of 75% (₹ 26.25 crore) of the bid amount was supposed to be deposited within 15 days by the successful bidder.

In the meanwhile, STL filed an application under Section 10 of the IBC, 2016 on the premise that upon committing a default, the corporate applicant itself can file an application for initiating Corporate Insolvency Resolution Process (CIRP) before the NCLT.

The application filed by the company was admitted by the NCLT and it declared a moratorium under Section 14(1) of the IBC, 2016 and appointed a Resolution Professional (RP).

: 20 :

Subsequently, the financial creditors (all the members of the consortium) filed a claim of ₹ 65 crore with the RP. The operational creditors who supplied the raw materials to the company, also lodged their claim for ₹ 5 crore. Besides, the employees and labour's whose wages and salaries were due, also filed their claim of ₹ 0.75 crore.

The RP admitted the claim and constituted the Committee of Creditors (CoC) which was comprising of the bankers only. The operational creditors and the employees raised the issue before the RP for inclusion of their names as a member of CoC. However, the RP refused to entertain their request for inclusion of their names in the CoC, but he allowed them to only attend the CoC meeting, if they wish so.

However, after receipt of the balance 75% of the bid amount, the Bankers filed a revised claim of ₹ 38.75 crore (₹ 65 Crs.(-) ₹ 26.25 Crs. = ₹ 38.75 Crores) post disclosing that the bankers had realized the collateral security through e-auction of the secured assets of the corporate debtor.

Thereafter, the company being the corporate debtor filed an application in the NCLT requesting to set aside the sale made by the bankers since moratorium was imposed. The NCLT set aside the sale made by the bankers in the light of the initiation of CIRP and moratorium was imposed.

Aggrieved by the order of the NCLT, the bankers filed an appeal in the NCLAT, New Delhi.

On the basis of the above inputs, answer the following :

- (a) In the given case, who shall be the members of the Committee of Creditors ?
(1 mark)
- (b) The Resolution Professional has included only the bankers as members of the CoC.
- (i) Whether the operational creditors have the right to be a member of the CoC ?
(4 marks)
- (ii) What would be your answer, if in any case there are no financial creditors and only operational creditors are there ?
(2 marks)

: 21 :

- (c) The Bankers have already received 25% of the bid offer and remaining 75% was to be payable within 15 days by the successful bidder. Meanwhile the corporate debtor initiated CIRP. Since the sale exercise through auction was already initiated by the bankers prior to initiation of CIRP, by the corporate debtor, whether such sale transaction will be nullified in light of declaration of moratorium by the Adjudicating Authority? Elaborate in the light of the decided case law.

(5 marks)

5. You have recently joined as a partner in Sam and Jay Associates, a reputed firm of Company Secretaries, based out of Delhi. The senior partner of the Firm, Ms. Anju has deputed you to attend and provide your expert advisory services to one of its key clients, namely SCL Ltd. which is one of the companies closely monitored by the equity analysts and other stakeholders. The chief promoter directors of the Company were two brothers namely Mr. Narayanan (Chairman) and Mr. Shankara (Managing Director).

Considering the regulatory set-up in India, including the litigation settlement process and the penalties for non-compliances have been made more severe, the top Management wants to keep the Company free of any non-compliances given the multiple challenges impacting the organization.

Upon your visit to the company, the MD briefed you about the company and stated the facts of the situation affecting the provisions of the IBC, 2016 as hereunder :

SCL Ltd is involved in Engineering, Textiles and Chemicals businesses being the growth sectors of the economy. In order to reduce the existing debts and to make the company work efficiently in terms of liquidity and solvency, SCL Ltd, in the year 2013, took loans from consortium of Indian banks such as ABC State Bank with an exposure of ₹ 1,250 crore followed by Bank of Ajmer (₹ 1,000 crore), P & G National Bank (₹ 800 crore) and RV National Bank (₹ 750 crore). Going forward, as the Company wanted to venture into Telecommunication and DTH services in India, it approached foreign banks and obtained

loans from Global Bank of UK (₹ 700 crore), Bank of Netherlands (₹ 450 crore) and Chartered Bank of America (₹ 350 crore). All the loans were personally guaranteed by Mr. Narayanan and SCL Ltd assured the banks to pay all the dues outstanding on time. The company as per their commitments, repaid the instalment on time.

Everything went on well but from 2019, due to heavy losses, the company defaulted in paying instalment to all the Indian as well as Foreign banks. Due to the brunt of tough competition in telecommunications market and entry of new giants in the market, the rates of voice call and data plans reduced considerably. In view of the continued defaults, the Banks started sending reminders to SCL Ltd to clear off of their respective dues.

RV National bank had a warehouse in Kolkata which it seized in the insolvency proceedings from Amaze Ltd. The said bank tried to sell the property at market price to recover the loan amount but it was all in vain. After many failure attempts to sell the property, the bank decided to lease the premises. SCL Ltd had come to know about it and approached the Bank in May 2018 to take the premises on lease at an annual lease rent of ₹ 1.50 crore.

As SCL Ltd incurred losses from the year 2019, it defaulted in paying lease rentals for the last four years which amounted to ₹ 6 crore. SCL Ltd tried to sell its assets to various companies, including its rival Tele Tones Company, to clear the debts but the deals could not crystallize as expected. Later, the insolvency proceedings against SCL Ltd started on a plea filed by a Korean telecoms company after the company failed to clear its dues. The application filed under Section 7 of IBC, 2016 was admitted and an Interim Resolution Professional (IRP) who subsequently became the Resolution Professional (RP) was appointed. The Banks decided to enforce the personal guarantee provided by Mr. Narayanan. But he contended that the demand is not maintainable in view of the ongoing Corporate Insolvency Resolution Process (CIRP).

: 23 :

The Committee of Creditors (CoC) final meeting was scheduled to be held on 25th March 2021, but amid the nation-wide lockdown due to COVID pandemic, it got cancelled. As per the order of NCLT, CoC needs to complete the entire process by 30th March, 2021 and the resolution professional needs to file the resolution plan with the NCLT by 2nd April, 2021. Subsequently, in compliance with the NCLT order, a meeting of CoC was duly conveyed and a resolution plan was submitted by the resolution professional. Both the chief promoter directors of SCL Ltd contended that they were not invited for the meeting of CoC and the notice for the meeting and the draft resolution plans were not shared with them by the resolution professional which is not in accordance with the IBC, 2016 and a reference was drawn to the judgement of Honourable Supreme Court of India in Civil Appeal 8430 of 2018 as was held in the matter of Mr. Vijay Kumar Jain.

In the light of the above inputs, answer the following questions with respect to the Constitution of Committee of Creditors (CoC) and matters connected therewith :

(a) All the four Indian banks, as a consortium gave loans to SCL Ltd. examine as to how they will form part of Committee of Creditors and how their voting shares would be determined ?

(3 marks)

(b) RV National Bank is a financial as well as an operational creditor of SCL Ltd. Can RV National Bank club both the debts and claim it as a financial debt ?

(3 marks)

(c) The Banks decided to enforce the personal guarantee provided by Mr. Narayanan. But he contended that the demand is not maintainable in view of the ongoing CIRP. Evaluate.

(3 marks)

: 24 :

- (d) In the opinion of the Resolution Professional, participation of both the promoter directors of SCL Ltd as member of the suspended Board of Directors is not mandatory in the CoC under the IBC, 2016. Whether the contention of the Resolution Professional is correct vis-a-vis the judgement of the Honourable Supreme Court as was held in the matter of Mr. Vijay Kumar Jain (Civil Appeal No. 8430 of 2018). Explain briefly.

(3 marks)

6. (a) You are known in the corporate arena as a renowned personality for your interactive deliberations in all gamuts of the Insolvency and Bankruptcy Code, 2016 and mandate best advisory/reporting practices to a variety of large, reputed, listed and unlisted companies including multi-national companies in the Country. Your institution deserves credit for making this possible.

Last week you were invited for a deliberation and brainstorming session on IBC, 2016 at an event organized under the auspicious of ICSI, Kolkata. The participants were mainly from corporates, bank officials, students of reputed educational institutions and practising finance and legal professionals.

At the time of brainstorming session, you raised the following queries and the views expressed by the participants are as under :

| Sl. No. | Queries Raised by You | Options expressed by the Participants |
|---------|--|---|
| 1. | Which one is a prerequisite for preparation of a resolution plan ? | <p>(a) Receipt of resolution plan(s) from financial creditors of the corporate debtor.</p> <p>(b) Valuation of liquidation estate by at least three registered valuers.</p> |

: 25 :

| | | |
|----|--|--|
| | | <p>(c) Formation of Committee of Creditors.</p> <p>(d) Vetting of default from at least one information utility.</p> |
| 2. | Who shall prepare the list of creditors after passing of the bankruptcy order ? | <p>(a) Bankruptcy Trustee.</p> <p>(b) Adjudicating Authority.</p> <p>(c) Insolvency Professional Entity.</p> <p>(d) Information Utility.</p> |
| 3. | A Committee of Creditors comprises of | <p>(a) Financial and Operational Creditors.</p> <p>(b) Secured creditors only.</p> <p>(c) All financial creditors.</p> <p>(d) Independent financial creditors only.</p> |
| 4. | A final meeting of the CoC is scheduled to be held on 25th October, 2023. Is it necessary to hold the meeting in person or can it be organized otherwise ? | <p>(a) Since it is a final meeting, everyone needs to be present in person.</p> <p>(b) Meeting in person is not necessary and it can be held via video conferencing.</p> |

| | | |
|----|---|--|
| | | <p>(c) Only the resolution plan can be discussed via video conferencing and voting needs to be done in person.</p> <p>(d) With the prior permission of the NCLT, the Resolution Professional can hold the meeting via video conferencing.</p> |
| 5. | Whether home buyers can initiate CIRP proceedings under the IBC, 2016 ? | <p>(a) No. Home buyers cannot do so.</p> <p>(b) Yes. Home buyers are included in the definition of financial creditors. Hence, they can do so.</p> <p>(c) Home buyers are neither financial creditors nor operational creditors. Hence, they cannot do so.</p> <p>(d) None of the above.</p> |
| 6. | A registered Trade Union was formed for the purpose of | <p>(a) As Financial Creditor.</p> <p>(b) As an Operational Creditor.</p> |

: 27 :

| | | |
|--|---|--|
| | <p>regulating relationship between workmen and their employer.</p> <p>Such Trade Union can initiate CIRP against the company on behalf of its members</p> | <p>(c) Trade Union cannot initiate a CIRP.</p> <p>(d) A trade union is neither a financial creditor nor an operational creditor.</p> |
|--|---|--|

Based on the given inputs, answer the following question :

In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, only one option is correct out of the four options expressed by the participants for each query raised. You are requested to choose the correct option.

(1×6=6 marks)

- (b) Roots Infra Ltd, (Operational Creditor) (OC) entered into a lease agreement for 10 years in respect of an office building measuring 16,000 sq. ft. belonging to Sharp Ltd (Corporate Debtor) (CD). A sum of ₹ 3 crores was paid as interest free security deposit by the OC. The lease was terminated on the expiry of the lease period and accordingly, the CD was liable to refund the security deposit. The CD did not refund the security deposit. On a mutual understanding, both the OC and the OD entered into a Memorandum of Settlement (MoS) whereby it was agreed that the CD would refund the security deposit in three annual instalments. The CD paid the first annual instalment. Despite several oral and written request and reminders, the CD failed to pay the balance two annual instalments. In such circumstances, the OC issued a notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) to the CD to settle the balance ₹ 2 crores based on the MoS as

: 28 :

operational debt within 10 days from the date of receipt of notice. Despite this, the CD again failed to refund the security deposit claimed as the defaulted amount. Having no other alternative, the OC filed a petition initiating Corporate Insolvency Resolution process against the CD.

You are requested to analyse the about facts and arrive at a correct conclusion as to whether the petition by the OC is maintainable under the provisions of IBC, 2016.

(3 marks)

- (c) Mr. 'S' submitted his candidature for being a resolution applicant of AC Ltd. in pursuant to an invitation made for the names of prospective resolution applicants under the relevant provisions of the Insolvency and Bankruptcy Code, 2016, by Mr. 'A', the resolution professional. Mr. 'S' is a spouse of sister of Mr. 'V' who is going to be involved in the management of AC Ltd. as a director at the time of implementation of the resolution plan and Mr. 'S', being a person resident in India was convicted under the provisions of FEMA Act, 1999, for an act specified under the Twelfth Schedule of the IBC, 2016, with imprisonment for 2.5 years and only 1 year and 3 months has expired from the date of his release of imprisonment, for not paying penalty which arose due to bringing into India from Canada during his temporary visit, 2,00,00,000 worth Indian currency notes.

In the light of the given facts, examine whether Mr. 'S' is eligible to be a resolution applicant ?

(3 marks)

————— o —————