

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 16

NOTE : *Answer ALL Questions.*

1. (a) Read the following background information and answer the questions :

The Insolvency and Bankruptcy Code, 2016 (IBC, 2016) 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, Fraudulent and Extortionate (PUFE) Transactions) found by him during CIRP and Liquidation Processes before the Hon'ble Adjudicating Authority (AA), seeking appropriate relief permissible under the Code.

As of end of September 2024, 1,326 Avoidance Transaction Applications involving an amount of ₹ 3.76 lakh Crore have been filed with the AA. The AA, after consideration, can order for the amount to be clawed back. The IBC has led to a direct recovery of about ₹ 3.55 Lakh Crore due to Resolution and ₹ 10,446 Crore due to Liquidation till September, 2024. The Recovery from Avoidance Transactions will add to this recovery to the Creditors. Till September 2024, 338 Avoidance Transaction Applications have been settled by the AA ordering a claw back of about ₹ 7,516 Crore.

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.

The provisions for Avoidance Transactions aid in maximizing the value of the CD both ex-post (i.e., once the CD is in Insolvency) and Ex-ante. These provisions foster good Corporate Governance and deter solvent entities and market participants from engaging in activities involving diversion of funds from the CD. By annulling such transactions, the Code Aims to prevent the depletion of the Debtor's Assets and protect the interest of Creditors and other Stakeholders. They would act as an additional source of Recovery for the Creditors.

The Code calls upon the Resolution Professional/Liquidator, as the case may be, to bring to the knowledge to the Adjudicating Authority, transactions of Preferential. Undervalue, Extortionate, Fraudulent, or unlawful nature, if any, identified during the course of CIRP or Liquidation. Considering the huge sums involved in these transactions, provisions for the same, in IBC as well as on a global scale, is of utmost importance.

In ABC Bank Limited v. JIL, the NCLT Bench, dealt with a crucial aspect of Insolvency proceedings, that is, vulnerable transactions. The Resolution Professional (RP) of the Corporate Debtor filed application in relation to a mortgage of an immovable property belonging to the Corporate Debtor to secure the debt of a related party (that is, the Holding Company of the Corporate Debtor). The RP sought directions, inter alia so as to declare the transaction as Preferential, Undervalued and "Fraudulent and Wrongful" under the Code.

Facts in a decided case :

In ABC Bank Ltd. v. JIL, certain mortgages created by JIL in favour of the lenders of its Holding Company JAL.

- JIL was a special purpose Company promoted by JAL for certain design, engineering, development and construction projects. JAL held approximately 70% of the shares of JIL.
- JIL started facing financial difficulties and failed to honour its project completion deadlines. It also started defaulting on its loan payments due to its financial creditors. One of the lenders declared JIL as a Non-Performing Account (“NPA”) first and other lenders declared it as a NPA subsequently.
- JIL Mortgaged 800 plus Acres of unencumbered land owned by it to secure the debt of JAL, vide Mortgage Deeds entered on various dates.
- The NCLT Admitted an application filed by one of JIL’s Financial Creditors, IDBI Bank Ltd., for initiating Insolvency Proceedings under the Code, and appointed an Interim Resolution Professional (“IRP”).
- The IRP examined various transactions entered into by JIL with its promoter shareholders, pursuant to his duties as a Resolution Professional.
- The IRP, consequently filed an Application before the NCLT seeking declarations that the Impugned Transactions were :
 - (i) Fraudulent Transactions under Section 66 of the Code;
 - (ii) Preferential Transactions under Section 43 of the Code; and
 - (iii) Undervalued Transactions under Section 45 of the Code; and sought consequent reliefs (“Application”).

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In the light of the above information and with reference to the relevant provisions and decision of Adjudicating Authority (NCLT Bench) under IBC, 2016, answer the following Questions :

- (i) When shall a transaction entered by any Corporate Debtor be deemed as Undervalued ?
(3 marks)
- (ii) What are Extortionate Credit Transactions ?
(3 marks)
- (iii) What are the Powers of an Adjudicating Authority where a Corporate Debtor enters into Extortionate Transactions ?
(4 marks)
- (iv) Based on the decided case law, answer whether the Transaction in the above mentioned case a Preferential Transaction ?
(4 marks)
- (v) Based on the decided case law, answer whether the relief of “Ordinary Course of Business” available in the above-mentioned Case ?
(5 marks)
- (vi) Based on the decided case law, answer whether the Transaction was an Undervalued Transaction in the above-mentioned Case ?
(3 marks)
- (vii) Based on the decided case law, answer whether look-back period will be 1 Year or 2 Years in the above-mentioned Case ?
(5 marks)
- (viii) Based on the decided case law, answer whether the Transaction was to Defraud creditors in the above-mentioned Case ?
(3 marks)

- (b) Read the following background information and answer the questions :

Vikram Deshmukh was a successful businessman who had built his empire from scratch. He had a thriving construction business, Deshmukh Constructions, and was well-known for his innovative approach to architecture. His company was booming, and for years, his fortunes seemed unstoppable.

However, as the construction market became increasingly competitive, Vikram found himself facing immense financial pressures. He had invested heavily in land acquisitions and large-scale projects, but a sudden downturn in the economy left him unable to meet his obligations. The debts began to pile up, and creditors were knocking on his door.

One fateful day, unable to meet his financial obligations and faced with the possibility of bankruptcy, one of the financial Creditor's had filed for bankruptcy under the Insolvency and Bankruptcy Code 2016 (IBC, 2016). The date of filing marked the beginning of the legal process, and Vikram's business was soon under scrutiny by his creditors, including banks and other financial institutions. However, before the official bankruptcy commencement date arrived, a series of events transpired that would forever change Vikram's life.

In the weeks following his bankruptcy filing, Vikram found himself desperate to raise funds. He knew his business was struggling and feared that the creditors would seize his property once the bankruptcy proceedings began. In a bid to save some assets, he made a decision that would later become a point of contention, he sold a prime piece of commercial real estate to a buyer, Raghav, a well-known businessman in the city.

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Vikram presented the sale as an opportunity for Raghav, offering him the property at a fair price. Raghav, a seasoned entrepreneur, did his due diligence and was satisfied with the terms of the transaction. Both parties agreed to the sale, and the deal was completed in good faith.

Raghav had no reason to suspect that Vikram was in financial distress or that the transaction could be problematic.

On the above background answer the following questions :

- (i) One of the Creditors of Deshmukh Constructions, approached you as a Company Secretary to give opinion on the genuineness of above transaction as per the IBC, 2016.

(6 marks)

- (ii) Under what circumstances transactions will not be referred to as Preferential Transactions ?

(4 marks)

2. (a) TechWave Private Limited is a small Company, which found itself in a difficult financial situation, unable to pay off its debts. It was struggling, with creditors knocking at its doors, but its total debt was not large—just under ₹ 1 crore. So, the company decided to voluntarily go for Corporate Insolvency Resolution Process (CIRP) to try to find a way out of its troubles.

The case was brought before the National Company Law Tribunal (NCLT), the Adjudicating Authority (AA). The company with its relatively small debt, needed a quicker resolution. The Adjudicating Authority, seeing the nature of the case and the total debt, thought that a faster process would be better for everyone involved—the creditors, the company, and the economy.

In the light of above information, answer the following questions stating the relevant provisions of the IBC, 2016 :

- (i) What are the timelines for Fast Track Corporate Insolvency Resolution Process as prescribed under IBC, 2016 ?
- (ii) What are the maximum debt limits for a company to be eligible for the Fast-Track process under Section 55 of the IBC ?
- (iii) How did the decision to use a fast-track process benefit both the company and its creditors in the given case ?

(2 marks each)

- (b) XenZee Ltd. was undergoing insolvency proceedings under the Corporate Insolvency Resolution Process (CIRP), and Raveendra, the appointed Resolution Professional (RP), was overseeing the entire process. Raveendra, known for his diligence and expertise, was focused on moving the process forward without delays.

As part of his responsibilities, Raveendra needed to convene a Committee of Creditors (COC) meeting to discuss the future steps regarding the resolution of the company's debt. With time running out and the need for urgent decisions, Raveendra set the meeting date for five days later. He quickly crafted a detailed notice for the meeting, ensuring that it contained all the necessary information, including the date, time, location (or virtual meeting link), and agenda.

To expedite communication, Raveendra chose to send the notice via e-mail. He attached the agenda and meeting details in an editable document and sent it to all members of the COC, ensuring that the notice was dispatched within the required timeframe. The clock was ticking, and Ravi was confident that the 5-day notice period would meet the legal requirements for calling the meeting.

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However, as the day of the meeting drew nearer, Sharma, one of the creditors, raised a concern. He questioned the validity of the notice, specifically pointing out that it had been sent in an editable format and whether the 5-day notice period was sufficient. Sharma was unsure if Raveendra's approach adhered to the strict guidelines outlined under the Insolvency and Bankruptcy Code (IBC). As a Company Secretary provide your view.

(6 marks)

3. As per Section 240A of the IBC, 2016, which was introduced by the 2018 Amendment to the Code, makes an exception for MSMEs from Section 29A, which specifies the Non-MSME Corporate persons not eligible to be resolution applicants, implying that the Code will apply to MSMEs and that MSMEs are eligible to be Resolution Applicants. But, given an MSME's low Capital and simplified Company structure, it might not be very practical to provide for Resolution under the Code, particularly through CIRP.

In addition to the raised default threshold from ₹ 1 Lakh to ₹ 1 Crore which then effectively excluded MSMEs from the Code's provisions, a more practical approach to resolving Stressed Assets was needed. Therefore, a new concept of the Insolvency Resolution Process known as the PPIRP was introduced by the Ordinance on 4.4.2021.

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Consequently, an efficient alternative Insolvency Resolution Process known as Pre-Packaged Insolvency Resolution Process (PPIRP) was introduced under the IBC, 2016 aiming to achieve swifter, cost-effective, and value-maximizing outcomes for all stakeholders involved while minimizing disruptions to business continuity and preserving jobs.

Based on the above facts answer the following Questions :

- (a) Elucidate the merits of the Pre-Packaged Insolvency Resolution Process (PPIRP) in comparison to the Corporate Insolvency Resolution Process (CIRP).
- (b) Briefly explain the main differences between the Corporate Insolvency Resolution Process (CIRP) and the Pre-Packaged Insolvency Resolution Process (PPIRP).
- (c) What are the prerequisites for Pre-Commencement in the context of the Pre-Packaged Insolvency Resolution Process ?

(4 marks each)

4. Voluntary Liquidation pursuant to section 59(7) of IBC, 2016-Solvent Company Voluntary liquidation is a process of winding up voluntarily without the Court / NCLT intervention. Members of the Company and Creditors, if any, will appoint a liquidator to liquidate all assets and pay to all its creditors. Surplus amount, if any, after meeting all costs and expenses shall be distributed to the members as per the mechanism provided in Section 53 of IBC, 2016. Voluntary liquidation process has to be completed as per Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. With amendment to IBBI regulations for voluntary liquidation dated 31.1.2024, the process for voluntary liquidation has become more transparent, efficient and faster. These amendments have also brought some additional safeguards to protect interest of stakeholders.

Based on the above facts answer the following Questions :

- (a) What are the new timelines under different circumstances as per amended Regulations ? In case, if the timelines exceeded what are the further course of action available for the Liquidator.

(4 marks)

- (b) Is the Company required to continue with ROC Filings Post Commencement of Voluntary Liquidation ?

(2 marks)

(c) What effects do Voluntary Liquidation Procedures have on Existing Contracts ?
(2 marks)

(d) What are the various Intimations to be made upon the Company moving into Voluntary Liquidation ?
(4 marks)

5. (a) Arun Verma had built a name for himself as one of the most reputable Insolvency Professional in the city. With years of experience in handling bankruptcy and insolvency cases, he was the go-to expert for several high-profile businesses in financial distress. His reputation for efficiently managing complex insolvency cases was unmatched.

But behind his professional facade, a series of ethical missteps were quietly beginning to surface.

It all started with a case that came across his desk a few months ago—The Patel Group of Industries, a well-known manufacturing company, was facing severe financial troubles and had entered into insolvency proceedings. Arun was appointed as the Insolvency Resolution Professional (IRP) by the National Company Law Tribunal (NCLT). The pressure to resolve the case efficiently and to maintain his high standing in the industry weighed heavily on him.

What the stakeholders, including the creditors and shareholders, did not know, however, was that Arun was not as transparent as he should have been. He had been accepting additional fees from the debtor company, outside of the formal arrangement, which was against the professional conduct expected of someone in his position. Arun had a habit of not disclosing these additional payments to the NCLT or other involved parties.

But that wasn't all. As the case progressed, Arun found himself entangled in a web of favors that went beyond monetary transactions. During meetings with senior executives of Patel Group, he began accepting expensive gifts, ranging from luxury watches to designer handbags, as a form of gratitude for his services. To make matters worse, at the same time, he accepted lavish hospitality, including stays at five-star hotels and exclusive dinners, all paid for by the very company whose insolvency he was supposed to manage impartially.

At first, Arun believed these small indulgences were harmless. "After all," he thought, "it's just a token of appreciation. Everyone does it." But soon, these "tokens" began to blur the line between ethical practice and corruption. Arun had become too comfortable with the perks and began to overlook the conflict of interest they created. He was no longer just the impartial professional managing an insolvency case; he had become a part of the very company he was meant to oversee.

The tipping point came when one of the creditors raised a red flag. They had noticed some irregularities in the fees Arun had been receiving, particularly a lack of transparency in the invoices submitted by Arun. A detailed investigation by the creditor revealed that Arun had indeed been taking payments beyond what was disclosed to the NCLT and had been accepting personal gifts and excessive hospitality from the Patel Group, which could create a bias in his professional decisions.

The creditor filed a formal complaint with the Insolvency and Bankruptcy Board of India (IBBI), which led to a thorough investigation into Arun's practices. Who was once a respected professional was now under scrutiny for violating the principles of transparency, integrity, and fairness.

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In the light of above information, answer the following questions stating the relevant provisions of the IBC, 2016.

- (i) What are the guidelines about Remuneration, Gifting and other income by Resolution Professional.

(2 marks)

- (ii) How did Arun Verma's acceptance of gifts and hospitality affect his professional duties ?

(1 mark)

- (iii) What were the consequences of Arun Verma's unethical behaviour in the insolvency case ?

(3 marks)

- (b) Crest Assets Reconstruction Company (Crest ARC) came into existence with the vision of one man — Anil Mehta. Anil, a seasoned professional with years of experience in banking and finance, had seen firsthand the devastating impact of distressed assets and non-performing loans (NPAs) on both financial institutions and businesses. Instead of seeing these bad loans as a burden, Anil recognized their potential for recovery and renewal.

Driven by this insight, Anil set out to create Crest ARC, a company dedicated to reviving distressed assets and helping struggling businesses get back on their feet. His vision was simple : to create a bridge between troubled companies and the financial institutions holding their NPAs. He saw this as an opportunity to not only recover bad loans but also provide these companies with a second chance at life.

Early Years : Steady Growth and Success

The first few years were a period of remarkable success and earning profit continuously except last financial year for Crest ARC. With a highly skilled and motivated team, Crest quickly earned a reputation in the industry for identifying undervalued and distressed assets with the potential for recovery and their net owned fund is ₹ 1.5 crore. They had a knack for taking struggling businesses, carefully managing them, and bringing them back to profitability.

Thanks to their strategic vision and a well-executed business model, Crest ARC became a trusted partner for many financial institutions. Banks and other lenders sought them out to help restructure and recover their NPAs. As the years went by, Crest's track record became solid—consistently profitable, and recognized for the value it created by turning around distressed businesses.

Anil and his team felt a sense of pride as they watched the company grow. Crest had become a name associated with success in asset reconstruction, and the future looked bright. With a clear path ahead, Crest ARC was poised to continue its upward trajectory, helping more institutions and companies recover from financial distress.

However, for Crest ARC to expand and operate at a larger scale, they needed official recognition from the regulatory authorities. That recognition came in the form of registration under Section 3 of the SARFAESI Act, 2002. This registration would grant Crest the legal right to buy, reconstruct, and manage distressed assets from financial institutions, thus allowing them to fully function as an Asset Reconstruction Company (ARC).

Now as a company secretary provide your view about registration under section 3 of SARFESAI Act as follow :

- (i) What financial criteria does Crest ARC need to meet to gain official registration under Section 3 of the SARFAESI Act, 2002 ?

(2 marks)

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- (ii) What is the significance of "Net Owned Fund" in the context of Crest ARC's application for registration under the SARFAESI Act ?

(2 marks)

- (iii) How does the loss in the last financial year impact Crest ARC's application for registration under Section 3 of the SARFAESI Act ?

(2 marks)

6. There was a major steel manufacturing company called 'Tough Steel Industries Limited' ('Tough Steel' or 'the Company'). For many years, Tough Steel was a leading name in the steel industry, known for producing high-quality steel that was used in critical infrastructure projects worldwide. However, over time, Tough Steel found itself in serious financial trouble due to a mix of rising production costs, market volatility, and mismanagement. As a result, the company defaulted on its massive debt obligations, putting its future at risk.

Faced with growing debt and no way to repay it, Tough Steel was forced into the insolvency resolution process under the Insolvency and Bankruptcy Code (IBC). A Resolution Professional (RP) was appointed to manage the proceedings and oversee the search for a solution. Several potential buyers came forward with offers to resolve the insolvency, but one stood out: Steel Global, an international steel conglomerate, which presented an offer that could clear all of Tough Steel's debts and inject fresh capital to restore the company.

The Committee of Creditors (CoC), which included both financial and operational creditors, had to approve the resolution plan. However, a key issue emerged : who should have the final say in approving the resolution plan? Was it the financial creditors, who had the largest share of Tough Steel's debts, or should operational creditors, who provided goods and services to the company, have a more significant influence ?

In the light of the above case study inputs and referring to the decisions of applicable case laws with reasons and the provisions of Insolvency and Bankruptcy Code ,2016 (IBC, 2016) and the Regulations made thereunder, answer the following questions :

- (i) In the Tough Steel insolvency case, how did the legal framework of the Insolvency and Bankruptcy Code (IBC) influence the decision-making powers of the Committee of Creditors (CoC), particularly regarding the voting rights of financial creditors versus operational creditors in approving a resolution plan ?
- (ii) What are the potential implications for the insolvency resolution process if operational creditors are granted equal voting rights to financial creditors in the Committee of Creditors (CoC), and how could this shift affect the approval process of resolution plans in future cases ?
- (iii) How does the role of the Resolution Professional (RP) in the Tough Steel case demonstrate the balance between independence and stakeholder influence in recommending a resolution plan, and what legal challenges could arise if their recommendation is contested by creditors with differing interests ?

(4 marks each)

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