

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 4

Total number of printed pages : 20

NOTE : Answer **ALL** Questions.

1. (a) Read the following and answer the questions below based on the relevant case laws and the applicable provisions of the Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) and the Regulations made thereunder in this regard.

Facts of the case

Thakur Engineering Products Private Limited [“the company”] engaged in the business Industrial Machinery supplies. It got Machinery supplies worth ₹ 21,10,11,054/- from a supplier (‘Respondent’), which was due and payable by the company. Several cheques were issued by the company in favour of the respondent towards amounts payable for supplies, all of which were returned dishonoured for the reason “funds insufficient”.

As a result, the respondent issued a statutory demand notice under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (“NI Act”), calling upon the company and its three Directors, to pay the amount within 15 days of the receipt of the notice.

Subsequently, two cheques for a total amount of ₹ 90,80,123/- presented by the respondent for encashment were returned dishonoured for the reason “funds insufficient”. A second demand notice was therefore issued under the same Sections by the respondent, calling upon the company and the appellants to pay this amount within 15 days of the receipt of the notice.

Since no payment was forthcoming pursuant to the two statutory demand notices, two criminal complaints, were filed by the respondent against the company and the appellants under Section 138 read with Section 141 of the Negotiable Instruments Act before the Additional Chief Metropolitan Magistrate [“ACMM”]. Summons were issued by the ACMM to the company and the appellants in both the criminal complaints.

Meanwhile, as a statutory notice under Section 8 of the IBC, 2016 had been issued by the respondent to the company, and an order was passed by the Adjudicating Authority admitting the application under Section 9 of the IBC and directing commencement of the corporate insolvency resolution process with respect to the company, a moratorium in terms of Section 14 of the IBC was ordered.

Pursuant thereto, the Adjudicating Authority stayed further proceedings in the two criminal complaints pending before the ACMM. In an appeal filed to the National Company Law Appellate, Tribunal (‘‘NCLAT’’), the NCLAT set aside this order, holding that Section 138, being a criminal law provision, cannot be held to be a ‘‘proceeding’’ within the meaning of Section 14 of the IBC, 2016. In an appeal filed before the Court, the Court ordered a stay of further proceedings in the two complaints pending before the learned ACMM.

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Subsequent thereto, since a resolution plan submitted by the promoters of the company had been approved by the committee of creditors, the Adjudicating Authority approved such plan as a result of which, the moratorium order ceased to have effect. It may only be added that at present, an application for withdrawal of approval of this resolution plan has been filed by the financial creditors of the company before the Adjudicating Authority. Equally, an application to extend time for implementation of this plan has been filed by the resolution applicant before the Adjudicating Authority. Both these applications have yet to be decided by the Adjudicating Authority.

On the above background, referring the provisions of IBC, 2016 and applicable case laws answer following questions :

- (i) What is the main purpose of the moratorium under Section 14 of the IBC, 2016, and how did the Supreme Court apply it to Section 138 of the NI Act ?

(2 marks)

- (ii) Why did the Supreme Court classify proceedings under Section 138 of the NI Act as “criminal” for the purpose of the Section 14 moratorium ?

(2 marks)

- (iii) In a case with similar facts, Supreme Court made a landmark decision, how does this decision affect the creditors who have initiated Section 138 proceedings against a company undergoing Corporate Insolvency Resolution Process (CIRP) ?

(2 marks)

- (iv) If a personal guarantor for Thakur Engineering Products Private Limited had also issued a cheque which had bounced, would the Section 14 moratorium apply to the personal guarantor ? Why or why not ?

(2 marks)

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- (v) Whether arbitration proceedings are included under moratorium imposed under Section 14 ? Explain in detail with the relevant provisions of the IBC, 2016.

(4 marks)

- (vi) Whether moratorium imposed under Section 14 and 85 of IBC, 2016 are subject specific ? Whether Section 14(1) applies only to legal proceedings ? Explain in detail quoting the relevant provisions of the IBC.

(4 marks)

- (b) Answer the following questions :

- (i) Can a Resolution Professional withdraw or modify a successful Resolution Plan submitted with the Adjudication Authority ? Answer with suitable provisions of the IBBI Regulations and applicable case law.

(3 marks)

- (ii) In the context of Bankruptcy and Insolvency process under IBC, 2016, what is the Swiss Challenge method for making an auction to get the best available price ? Quoting applicable case laws, state whether Courts in India generally accept the adoption of this method in the Bankruptcy and Insolvency process under IBC, 2016.

(3 marks)

- (iii) During the course of Liquidation process, if a liquidator finds that some stocks of a Corporate Debtor is deteriorating very quickly and losing its present value, what are the various courses of action available for the Liquidator. Answer briefly quoting applicable case law.

(3 marks)

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2. (a) Kulu Floriculture Private Limited is in the business of floriculture. The investment in plant and machinery is of ₹ 15 lakhs only. It has availed term loan of ₹ 12 lakhs from a bank.

The company earned a good profit up to 2 years. However, in the current financial year, its turnover went down due to stiff competition from the local competitors. The loan outstanding of the company also reduced from ₹ 12 lakhs to ₹ 9 lakhs, but during the current year the company could not pay the instalment of the term loan, as a result its account was classified as Non-Performing Asset (NPA) in the books of the bank. The company decides to initiate Pre-Packed Insolvency Resolution Process (PPIRP) and sought an opinion from one of the Insolvency Professional (IP). The IP suggested to convene a meeting of the financial creditors. A declaration was also made by the directors in the meeting. The company also passed a resolution in the general meeting of the members.

Based on above background answer the following questions by selecting from the choices given for each question (Write the correct answer in full) :

- (i) For classification of any company as a MSME (Micro Classification) company the investment in Plant and Machinery should be :
- A. Not more than ₹ 25 lakh
 - B. Not more than ₹ 50 lakh
 - C. Not more than ₹ 75 lakh
 - D. Not more than ₹ 100 lakh

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- (ii) For initiation of the PPIRP the minimum amount of default should be :
- A. ₹ One Lakh
 - B. ₹ 5 Lakh
 - C. ₹ 7 Lakh
 - D. ₹ 10 Lakh
- (iii) Initiation of the PPIRP on the part of the corporate debtor is :
- A. Optional
 - B. Mandatory
 - C. Subject to approval by Adjudicating Authority
 - D. At the discretion of the Court
- (iv) In which form the company shall make an application for initiating PPIRP ?
- A. Form 1
 - B. Form 2
 - C. Form 3
 - D. Form 4
- (v) If in the given case, the company has no outstanding against the financial creditors, but is unable to pay the dues to the operational creditors. How the meeting shall be convened :
- A. The company shall convene a meeting of operational creditors
 - B. The company shall convene a meeting of workmen
 - C. The company shall convene a meeting of employees
 - D. The company shall convene a meeting of operational creditors who are not related parties of the corporate debtor

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- (vi) A declaration made by majority of the directors shall contain :
- A. The Corporate Debtor shall file an application for initiation within a definite time not exceeding 90 days
 - B. The PPIRP is not being initiated to defraud any person
 - C. The name of the IP approved by creditors to be appointed as the RP
 - D. All of the above
- (vii) The members of the Corporate Debtor shall pass a special resolution :
- A. Approving the solvency of the CD
 - B. Approving the filing of an application for initiating PPIRP
 - C. Approving the appointment of Insolvency Professional
 - D. Approving the appointment of authorised representatives of creditors
- (viii) Who shall prepare the Base Resolution Plan (BRP) under PPIRP ?
- A. The Corporate Debtor
 - B. The Insolvency Professional
 - C. The Committee of Creditors
 - D. The Resolution Applicant

(1×8 = 8 marks)

- (b) Violet Corp Limited (VCL) carries on the business of specialised chemicals used in synthetic dyes and its businesses have spread across the globe. Due to environmental impact its products lost markets and started facing financial difficulties. The Purple Bank of India (PBI) one of its financial creditors had filed an application under Section 7 of the IBC, 2016 against VCL. The Adjudicating Authority passed order against VCL initiating the Corporate Insolvency Resolution Process (CIRP) in the middle of 2022. However, before kickstart of the aforesaid CIRP, one more Bankruptcy proceeding was initiated against its overseas assets provided as security to a foreign Bank in a European country, and a **Trustee** was appointed by the European court having jurisdiction over its overseas properties. The Trustee has approached Adjudicating Authority (NCLT) to recognize their proceedings and to halt Indian proceedings.

However, The NCLT declined to accept/consider the application and declared that their proceedings as null and void, mentioning their reasons/observations. Aggrieved by the decision, the Trustee made an appeal before the NCLAT to consider their appeal and prayed relief as stated above.

In this background, state the decision for denial by the NCLT and also the decision of the NCLAT by citing appropriate case law in this regard.

(6 marks)

- (c) Kapil Kumar, a prominent businessman, had provided personal guarantees to several financial institutions for loans extended to his company, “KK Enterprises Limited”, institutions invoked Kapil’s personal guarantees and initiated insolvency proceedings against him under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), specifically

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under the provisions related to personal guarantors to corporate debtors. Kapil challenged the validity of these proceedings, arguing that the notification bringing personal guarantors within the ambit of the IBC was arbitrary and discriminatory.

On this background, mentioning relevant provisions of the IBC, 2016 and applicable case laws answer the following questions :

- (i) What is the significance of Section 1(3) of the IBC, 2016 in this case ?
(1 mark)
- (ii) According to the Supreme Court's ruling in a case with similar facts, what is the nature of a personal guarantor's liability and what did the Supreme Court rule about the validity of the November 15, 2019 notification issued by the Ministry of Corporate Affairs under IBC, 2016 ?
(2 marks)
- (iii) What is the effect of the Supreme Court ruling on financial Creditors (Banks and Financial Institutions) ?
(1 mark)
- (iv) What are the implications of the judgment for Corporate Debtor in a similar case ?
(1 mark)
- (v) Which other provision (of a commercial law) had a significant bearing on the decision of the Supreme Court in the above case ?
(1 mark)

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- (d) “Resolution Professional/Liquidator is facing possibility of physical assault and non-co-operation from the various participants of the Corporate Insolvency Resolution Process/Liquidation.” In the above situations whether Resolution Professional (RP)/Liquidator can seek police protection by obtaining order from Adjudicating Authorities (AA). Referring relevant case law brief whether AA has power to direct the police authorities to assist the Resolution Professional or Liquidator and also brief on the powers of AA under the above circumstances.

(5 marks)

3. (a) Bhuj Tools Co. Private Limited, was incorporated in the state of Gujarat with an authorised and fully paid-up equity share capital was 20,00,000 equity shares of ₹ 10 each, stood at ₹ 2 Crore.

The promoters would not want like to carry on the business anymore and decided to Voluntarily Liquidate the business of the Company. The Company being closely held, the Shareholders of the Company has passed necessary resolution to liquidate the Company and appointed one Parikh as Liquidator.

The 20,00,000 equity shares are held by the 4 persons :

Tessilis Technology, Italy	15,80,000
P Dave	2,00,000
Shah	2,00,000
Girija Kapadia	20,000
Total number of equity shares of ₹. 10 each fully paid up	20,00,000

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The Balance Sheet as on Liquidation commencement date was as follows :

Surplus in the Profit & Loss account was ₹ 76,52,277

The Asset side shown as :

Bank & Cash ₹ 94,48,300

Short Term Advances ₹ 2,03,977

Total : ₹ 96,52,277

Expenses Paid	₹	₹
1. Liquidation Fee		11,62,000
2. Newspaper publications		6,900
3. Prof Fee–FEMA	25,000	
4. RoC compliance	11,200	
5. GST, Income Tax, Audit etc.,	1,77,000	
6. Accounting Expenses	17,700	
7. NCLT Application Fee	28,000	2,58,900
8. Misc. Expenses		20,500
Total Expenses made		14,48,300

Out of the Assets, Short Term Advances considered not realisable. Based on the above facts and information answer the following questions :

- (i) Calculate the final amount available for distribution to the shareholders.

(3 marks)

- (ii) Prepare a shareholder-wise distribution schedule showing the amount to be distributed to each shareholder and the percentage of the amount available for each shareholder out of the total amount.

(6 marks)

- (iii) What forms and returns to be filed with Registrar of Companies and within what period at the commencement of Voluntary Liquidation. Whether any change will happen in the Company status in the MCA 'Master data', upon approval of this forms, if so, what status will be shown in the MCA portal.

(3 marks)

- (iv) Whether the Company need to file Annual forms after commencement of Voluntary Liquidation but before receiving the final order from NCLT.

(2 marks)

- (v) Upon receipt of order from National Company Law Tribunal, whether any communication to be made to Registrar, if yes, indicate the form and also brief when the dissolution status of the Company will appear in the MCA portal.

(2 marks)

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(b) Match the following dictum/issue involved with the case law(s) based on ratios/decisions pronounced under IBC, 2016 :

Sl. No.	Case Title	Sl. No.	Issue
1.	Shivam Water Treaters Private Limited Vs. Union of India, Secretary to Government, Ministry of Corporate Affairs	A	The Court noted that the purpose of the IBC is solitary as it has been enacted to ensure that an industry under distress does not fade into oblivion and can be reviewed by virtue of the resolution plan.
2.	Swiss Ribbons Pvt Ltd and Another Vs. Union of India and Others	B	The Operational Creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedure
3.	Ultra Tech Nathdwara Cement Ltd Vs. Union of India and Others	C	The Court held that Article 19(1)(g) has not been infringed but has been saved by Article 19(6) as the Amendment Act is made in public interest, and it cannot be said to be unreasonable restriction on the Petitioners' fundamental rights under Article 19(1)(g)

4.	Pioneer Urban Land and Infrastructure Limited and Another Vs. Union of India and Others	D	The 'right to sue' accrues when a default occurs
5.	Arcelor Mittal India Pvt Ltd Vs. Satish Kumar Gupta and Others	E	The Adjudicating Authority observed that the resolution plan cannot be considered at the stage when the CoC has, by majority decision, decided to proceed with liquidation
6.	K. Kishan Vs. Vijay Nirman Company Limited	F	The Ministry of Corporate Affairs, Government of India stated that the Directorate of Enforcement has no jurisdiction to attach the property of the Corporate Debtor, which is undergoing corporate insolvency resolution process
7.	State Bank of India Vs. Coastal Projects Ltd.	G	The Ministry of Corporate Affairs, Government of India stated that the Directorate of Enforcement has no jurisdiction to attach the property of the Corporate Debtor, which is undergoing corporate insolvency resolution process

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8.	B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates	H	The High Court was requested not to enter into the debate pertaining to the validity of the Insolvency and Bankruptcy Code, 2016 or the constitutional validity of the NCLT
9.	The Deputy Director, Directorate of Enforcement Vs Axis Bank and Others	I	It would render the remedy of appeal inefficacious and a circuit Bench be established at every place where aggrieved party could avail of his remedy. On this point, the Attorney General assured the Court that judgement of Madras Bar Association will be followed and Circuit Benches will be established as soon as it is practicable
		J	The Court held that the Bonafide third party claimant has a legitimate right to proceed ahead with enforcement of its claim in accordance with law notwithstanding the order of attachment under PMLA

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		K	It was held that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage
		L	Provisions of Section 7 of the code are not unconstitutional, and the principles of natural justice are implicit in Section 7 of the code
		M	It felt that the latter action (that is attachment under PMLA) is not rendered irrelevant or unenforceable

(1×9=9 marks)

4. (a) Two appeals were preferred by the management of a Corporate Debtor (CD) against two orders wherein the Adjudicating authority had passed orders of liquidation under Section 33(1) of the Insolvency and Bankruptcy Board Code 2016 of companies with certain directions to the liquidator.

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Prior to this, two separate appeals were preferred by resolution applicant(s) in respect of the ‘Corporate Insolvency Resolution Process’ (CIRP) initiated against the above said corporate debtor wherein opportunity was given to them to submit better revised resolution plan(s) and the ‘committee of creditors’ were directed to consider them. However, subsequently, the resolution applicants withdrew their appeals.

Sekar, the appellant, raised concerns regarding the actions of the Liquidator, Amit, specifically regarding the handling of asset sales.

The core issue was whether the liquidator had acted in accordance with the provisions of the IBC and the associated regulations, particularly regarding the maximization of asset value and the exploration of options like “going concern” sales.

The appellant argued that the liquidator’s actions, such as selling spare parts, were detrimental to the company’s value and that a “going concern” sale should have been prioritized.

On the above background referring the relevant case law(s) and provisions of the IBC, 2016 and regulations made thereunder answer the following questions :

- (i) What are the primary duties of a liquidator under Section 35 of the IBC, 2016 ?
- (ii) What is the significance of “going concern” sales in the liquidation process ?

- (iii) How does Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016, impact the liquidator's actions ?
- (iv) In the given case, what concerns were raised by Sekar regarding the liquidator's actions ?
- (v) What is the role of Section 230 of the Companies Act 2013, in the liquidation process ?
- (vi) What was the overall outcome of the court's rulings in this case ?
- (vii) How does this case contribute to the interpretation of the liquidator's powers and duties under the IBC, 2016 ?
- (viii) What are the implications of this case for future liquidation proceedings ?
- (ix) What is the importance of maximising the value of the corporate debtors' assets during liquidation ?
- (x) What is the difference between selling assets in piecemeal, and selling the company as a going concern ?

(1×10=10 marks)

- (b) Comment on the correctness of the following factual situations or statements referring applicable provisions of the IBC, 2016 and Regulations made thereunder :
 - (i) In a Corporate Insolvency Resolution Process, there were no Financial Creditors and only there were 25 Operational Creditors and Employees and workers. Out of 25 Operational Creditors, 10 Operational Creditors formed a committee within themselves including the 5 representatives of workers and employees.

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- (ii) Unlike a civil law, SARFAESI Act, 2002 does not provide any option to apply for Caveats before the Courts.
- (iii) Can the Secured Creditor prematurely close any in-built compensation clause to the directors, managerial personnel of the borrower as per their contractual agreement under SARFAESI Act ?
- (iv) A debtor having income of ₹ 6,000 per month and asset base of ₹ 25,000 the debtor is embarrassed with huge debts, he wants to file an application for fresh start under the IBC, 2016.
- (v) One of the Financial Creditor to a Corporate Debtor has claimed that “the IBC, 2016 cannot prevail over the SARFAESI Act, 2002 as the later act also a special act and having non obstante provisions”

(5×2=10 marks)

- (c) As a part of ‘professional ethics’ prescribed by the IBBI, for registered Insolvency Professionals, charging a “Success Fee” in CIRP/Liquidation assignments (which denotes fee maximization policy in common parlance) is not an ethical practice and Resolution Professionals are barred from indulging in it.

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So, Resolution Professionals shall restrict themselves, to the fees fixed by the Committee of Creditors/Stakeholders Consultation Committee/Adjudicating Authority under the IBC 2016.

Referring to Regulations/Guidelines issued by IBBI in this regard, explain the exceptions, if any in the aforesaid general principles.

(5 marks)

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