

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : Answer ALL Questions.

1. Facts of the case :

Richa Infrastructure Limited engaged in the construction of roads is in default in repayment of loans due to general slowdown in construction industry. Repeated follow-up by the financial institutions with the Corporate Debtor, 'Richa Infrastructure Ltd.' for submitting its specific plan for repayment of dues did not evoke any response.

One of the financial creditors filed a case against Richa Infrastructure Ltd. before the Debt Recovery Tribunal.

Richa Infrastructure Ltd. had issued some cheques to some Operational Creditors. All the cheques issued to creditors were dishonored/returned by the banker due to insufficient funds in the account. Consequently, Operational Creditors issued legal notices to Richa Infrastructure Ltd, with clear intimation that if due amount is not paid within 15 days from the date of receipt of legal notice, criminal complaint shall be filed against Richa Infrastructure Ltd. under the Negotiable Instrument Act, 1881 and criminal complaints were filed.

After a joint lenders meeting, all the financial institutions unanimously decided to apply under the provisions of the Insolvency and Bankruptcy Code, 2016 to the National Company Law Tribunal (NCLT) for starting the process of Insolvency Resolution. Their application was admitted by NCLT on 30th June, 2018 and orders were issued for commencement of a moratorium period of 180 days, appointment of an Interim Resolution Professional and issue of public announcement inviting claims from all concerned.

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After public announcement and the responses thereto, following details were brought out :

- (1) Financial debts due to unsecured creditors (F1) - ₹ 15 Crores.
- (2) Workmen's due for the period of 24 months preceding the liquidation commencement date (F2) - ₹ 25 Crores.
- (3) Debts due to a secured creditor who has relinquished his security (F3) - ₹ 30 Crores.
- (4) Amount due to the Central Government (F4) - ₹ 27 Crores.
- (5) Debts due to a secured creditor after the enforcement of security interest (F5) - ₹ 36 Crores.

Insolvency Resolution Professional (IRP) approached the promoters, directors and officials of Richa Infrastructure Ltd to provide the necessary information, documents, statutory records, books of accounts to verify the claims filed by creditors. The promoters, directors and officials of Richa Infrastructure Ltd. ignored the request of Resolution Professional.

M/s ANG & Associates, Chartered Accountants were the Statutory Auditors of Richa Infrastructure Ltd. They audited the accounts for the financial year end March, 2018 of Richa Infrastructure Ltd. and submitted the Annual Accounts for approval of the Board of Directors.

The Resolution Professional has appointed valuers and has received the valuation reports. The Resolution Professional then started the efforts to get resolution proposals.

However during the normal resolution process period of 180 days, no resolution proposal could be finalized. The Committee of Creditors decided that Resolution Professional should get the extension as per the provisions of Insolvency and Bankruptcy Code, 2016.

Based on the above facts, answer the following questions :

- (a) Can a Financial Creditor proceed against a Corporate Debtor under the Insolvency and Bankruptcy Code, 2016, when the matter is already pending before the Debt Recovery Tribunal ? Examine the issue with the help of decided case law/laws.

(8 marks)

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- (b) Is it necessary that application for extension of time period of 90 days must be filed before the completion of 180 days ? What precautions should be taken by Insolvency Professional while applying to NCLT for extension of time period by 90 days ? Examine the issue by referring to decided case law, if any.
(8 marks)
- (c) Can criminal proceedings under Section 138 of Negotiable Instrument Act, 1881 continue even after initiation of Corporate Insolvency Resolution Process ? Examine the issue by referring to decided case law, if any.
(8 marks)
- (d) Who will sign the Annual Financial Statements of the Corporate Debtor undergoing Corporate Insolvency Resolution Process ?
(8 marks)
- (e) Can IRP take action against employees of the Corporate Debtor in terms of employment agreement ?
(8 marks)
2. (a) XYZ Ltd. was intending to initiate voluntary liquidation proceedings. A declaration was made by way of affidavit by some of the directors of XYZ Ltd. stating that the company will be able to pay its debts in full from the proceeds that may be realized from its assets sold during the process of Voluntary Liquidation.
- (i) Can XYZ Ltd initiate Voluntary Liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016 ?
(2 marks)
- (ii) What are the documents required to accompany the declaration ?
(2 marks)
- (iii) What are the consequences, if the Articles of the Company fixed the period or duration for which company may be active and that period expires ?
(2 marks)
- (b) (i) What is the purpose of enactment of the Insolvency and Bankruptcy Code, 2016 ?
(3 marks)
- (ii) Can an assignee of Financial Contract make an application under Corporate Insolvency Resolution Process ?
(3 marks)

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3. (a) Liquidation of ABC Private Ltd. has been ordered by Adjudicating Authority, Mumbai vide its order dated 27th May, 2018. Amit Kumar was appointed as Liquidator of ABC Private Limited. The particulars relating to ABC Private Ltd. which has gone into liquidation are as follows :

Sl. No.	Particulars	Amount (₹)
1.	Amount realized from the sale of liquidation of assets	16,00,000
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 3 years preceding the Liquidation commencement date. The Income Tax payable is ₹ 25,000 in each Financial Year.	75,000
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 ABC Private Ltd. as a going concern.	25,000
8.	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen's salary is the same for each of the 30 months.	3,00,000
9.	Preference Shareholders	1,00,000
10.	Equity Shareholders	10,00,000

Distribute the proceeds among all categories of dues as per the priority order in terms of the provisions of the IBC, 2016. While distributing the proceeds, it may be presumed that the proportionate contribution of each in all categories to the fees payable to the Resolution Professional has been taken into account already and need not be recalculated.

(6 marks)

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- (b) (i) In an Insolvency Resolution Process, a secured creditor enjoys preferential treatment in the process when compared to other categories of creditors. What are the rights of a secured creditor ?

(4 marks)

- (ii) What shall be treated as Debt under the Code ?

(2 marks)

4. (a) Naveen Kumar, a Financial Creditor filed an Insolvency Application under Section 7 of Insolvency and Bankruptcy Code, 2016 against M/s ABC Private Ltd, Corporate Debtor (Defaulter) before the National Company Law Tribunal on 1st July, 2018. National Company Law Tribunal after satisfying that the default has occurred and the application is complete in all respects and all the related compliances have been met, admitted the application, by an order passed on 10th July, 2018 and appointed Kamal Kishore as Interim Resolution Professional (IRP).

As per the Insolvency and Bankruptcy Code, 2016, state the following :

- (i) Initiation date for the Corporate Insolvency Resolution Process.
- (ii) Date of commencement of Insolvency.
- (iii) Date of issuance of Public Announcement.
- (iv) Tenure of Interim Resolution Professional.
- (v) Last Date for Creditors to file their Claims.
- (vi) Calculate Time Period for the completion of the Insolvency Resolution Process by the NCLT.

(1 mark each ×6=6 marks)

(b) (i) Under what circumstances Debtor is not entitled to make an application to the NCLT ?

(3 marks)

(ii) What is the relevant period for avoiding any undervalued transactions ?

(3 marks)

5. (a) If there is NO Financial Creditor, how will the Committee of Creditors be constituted ?

(4 marks)

(b) What will be the consequence if Demand of Debt is disputed ?

(4 marks)

(c) What shall be included in “Financial Information” as defined under IBC, 2016 ?

(4 marks)

6. (a) General Car Company (GCC) is a manufacturer of passenger cars. It sells the cars through single brand dealerships across different cities. Because of its inability to compete in the market and continuous losses, GCC has decided to exit the passenger car business and notified its dealers about shutdown of passenger car manufacturing and sales in India.

Pioneer Cars Ltd. is a passenger car dealer for GCC in Kanpur with an office cum showroom and having three service centers in Kanpur. Pioneer Cars Ltd. has Bank Loan from ABC Bank (B1) and DEF Bank (B2) for ₹ 10 Crores and ₹ 7 Crores

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respectively. The promoters cum directors of Pioneer Cars Ltd. have also given their Personal Guarantee to the bankers along with mortgage charge on the office premises cum showroom of Pioneer Cars Ltd. Pioneer Cars Ltd. failed to repay the amount borrowed from the Banks. The banks have issued notice to Pioneer Cars Ltd. On receipt of the notice makes the representation that due to the present market conditions, the company is not able to repay the loan amount to the Banks.

One of the Operational Creditors, M/s Radha Automobiles Private Ltd. having an outstanding payment of ₹ 1 Crore has filed an application to initiate insolvency process under the Insolvency and Bankruptcy Code, 2016.

The NCLT has admitted the Insolvency Application and appointed Ranjeev Kumar Singh, Insolvency Resolution Professional as Interim Resolution Professional. The NCLT has declared moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016.

Subsequently, M/s Radha Automobiles Private Ltd. was informed by the consultant about the Fast Track Insolvency Process. M/s Radha Automobiles Private Limited want to convert the existing Resolution Process to Fast Track Corporate Insolvency Resolution Process.

Pioneer Cars Ltd. has contested the application for 'Conversion of the Corporate Insolvency Process' into 'Fast Track Corporate Insolvency Resolution Process'. The promoters and directors have taken a stand that Resolution Process cannot be initiated against them before the NCLT for Corporate Insolvency Resolution Process and it should be filed before Debt Recovery Tribunal.

Question :

Examine whether the NCLT has power to convert the ‘Corporate Insolvency Resolution Process’ as a ‘Fast Track Corporate Insolvency Resolution Process’, under Insolvency and Bankruptcy Code, 2016 as request by M/s Radha Automobiles Ltd. Explain with the help of decided case law(s).

(6 marks)

- (b) “A domestic business may have foreign branches or subsidiaries, or a foreign business may have domestic branches or subsidiaries. Foreign creditors may have valid claims in domestic bankruptcy cases, and domestic creditors may have valid claims in foreign bankruptcy cases”.

Elucidate with reference to the objectives and scope of Model Law developed in this regard ?

(6 marks)

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