

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 6

NOTE : Answer **ALL** Questions.

1. Read the following carefully and answer the questions given at the end :

BSC Bank filed an application for initiating Corporate Insolvency Resolution Process (CIRP) against one of its borrower company M/s Moon Storm Pvt. Ltd., in the National Company Law Tribunal (NCLT). The NCLT allowed the application and passed order for commencement of CIRP. Rohit has been appointed as Interim Resolution Professional (IRP) and moratorium was declared.

The Committee of Creditor (CoC) was constituted and Rohit was appointed as Resolution Professional by CoC. Meetings of the CoC was convened from time to time and expression of interest for Resolution Plan was invited from various parties via public notice. However, no Resolution Plan was received during the currency of 180 days period. Hence, NCLT on the recommendation of RP extended the initial time period from 180 days to 270 days. Since, no one had shown the expression of interest even during the extended period of 270 days, the CoC appointed another Resolution Professional (RP) after the expiry of 270 days.

When the matter of resolution could not be completed within the extended time. NCLT, extended the period of CIRP by further period of 90 days after the expiry of 270 days by exercising the power conferred under Section 55 of Insolvency and Bankruptcy Code,

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2016 by treating the matter as 'Fast Track Corporate Insolvency Resolution Process' and also determined the 'Corporate Insolvency Resolution Process fee' and the 'Cost' incurred and payable to the Resolution Professional.

Aggrieved from the said order of the NCLT, the Resolution Professional preferred appeals against the order of the NCLT.

In light of the above facts, answer the following questions :

- (a) Whether the NCLT has power to convert the CIRP as a 'Fast Track Insolvency Resolution Process' under Section 55 of the Insolvency and Bankruptcy Code, 2016 ?
- (b) Whether Committee of Creditors has jurisdiction to replace the Resolution Professional after completion of 270 days.
- (c) Whether the NCLT is empowered to decide the resolution cost, including the resolution fee payable to the Resolution Professional.
- (d) How is the fast track process different from the Corporate Insolvency Resolution Process under Chapter II of Part II of the Insolvency and Bankruptcy Code, 2016.

(10 marks each)

2. (a) One of the leading Bank granted credit facility to Invent Ltd. and on default in making repayment by the Company, the Bank filed an application for initiation Corporate Insolvency Resolution Process (CIRP). Before the National Company Law Tribunal (NCLT), the Company argued that as its liabilities stood suspended pursuant to a relief order passed by Government of Maharashtra under Maharashtra Relief Undertaking (Special Provisions Act), 1958 (MRU Act) no amounts were due and payable by

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it to Bank and hence, the application for CIRP under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) could not be admitted. Under the MRU Act, the State Government may take over management of undertaking and impose moratorium in the same manner as contained in IBC, 2016.

Examine in the light of decided case, whether the CIRP application filed by the Bank under IBC, 2016 will prevail ?

(6 marks)

- (b) You are appointed as Resolution Professional by Committee of Creditors. You have made a public announcement inviting Expression of Interest. Based on your invitation few Parties have submitted Resolution plans. As per the provisions of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) Resolution Plans submitted should satisfy few criteria. As a Resolution Professional brief the criteria for a valid Resolution Plan under IBC, 2016.

(6 marks)

3. (a) After acceptance of the application for initiating Corporate Insolvency Resolution Process (CIRP) by National Company Law Tribunal (NCLT), the powers of the Board of Directors of the Company (Corporate Debtor) is suspended. The Company wants to make an appeal against the order of the NCLT. Whether the suspended Board of the Company can make appeal ? Elucidate quoting relevant case law, if any.

(6 marks)

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- (b) An Operational Creditor of a Company has made an application to National Company Law Tribunal (NCLT) for initiating Corporate Insolvency Resolution Process (CIRP) for non-payment his dues for long time. The NCLT ordered for commencement of CIRP. During the course of CIRP period Corporate Director has agreed to settle the dues of Operational Creditor and requested him to withdraw the CIRP. Whether NCLT may allow the withdrawal of application admitted under Insolvency and Bankruptcy Code, 2016 in the above case. Will your answer differ, if the above application is made by Financial Creditor and subsequently Corporate Debtor settle its dues ?

(6 marks)

4. (a) 'The United Nations Commission on International Trade Law's, Model Law on Cross Border Insolvency do not lead to harmonization of Insolvency Laws enacted by the individual Countries'. Do you agree with this statement ? Explain.
- (b) A Director of a Private Limited Company, which is already in Corporate Insolvency Resolution Process has approached you to file an application for Bankruptcy for himself. Explain him the present status of applicability of the Insolvency and Bankruptcy Code, 2016 (IBC 2016) and also list out the prohibitions for individuals on declaration as Bankrupt under the IBC 2016.

(6 marks each)

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5. (a) The M Ltd. (Corporate Debtor - CD) was engaged by 'BB' TV for conducting tele-voting for one of its prime program. M Ltd. in turn sub-contracted the work to the K Ltd. (Operational Creditor - OC) and issued purchase orders between October and December, 2013 in favour of the K Ltd.

The bills so raised were payable within 30 days of receipt by the M Ltd. It is pertinent to note here that a Non-Disclosure Agreement (NDA) was executed between the parties (CD and OC) on 26th December, 2014 with effect from 1st November, 2013. In view of non-payment of dues, a demand notice dated 23rd December, 2016 was sent by the OC under Section 8 of Insolvency and Bankruptcy Code, 2016. To this notice, the CD responded that there exists serious and bona fide disputes between the parties and that nothing was payable as the OC had been told on 30th January, 2015 that no amount would be paid to the OC since it had breached the NDA.

Based on the above facts examine by quoting relevant case, if any whether breach of Non-Disclosure Agreement amounts to default ?

- (b) 'Integrity, objectivity and Independence are the primary criteria to be appointed as Resolution Professionals' — Elucidate the statement highlighting few important code of conduct for Insolvency professionals under the Insolvency and Bankruptcy Code, 2016.

(6 marks each)

6. You have been invited to attend a Committee of Creditors meeting in which you are proposed to be appointed as Resolution Professional. At the Meeting, the Interim Resolution Professional has informed the Committee that certain ‘preferential transactions’ and ‘undervalued transactions’ might have taken place in the Corporate Debtor.

Write a brief note to the Committee of Creditors about ‘preferential transactions’, ‘undervalued transactions’, relevant time of such transactions and exceptions to such transactions as per the provisions of the Insolvency and Bankruptcy Code, 2016.

(12 marks)

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