

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. Images Gym Ltd. was granted credit facility of ₹ 100 lakh under consortium arrangements. Under the consortium, there were 5 five banks, and credit facility provided by the respective banks were as under :

A-One Bank Ltd.	-	₹ 45 lakh,
Best Bank Ltd.	-	₹ 20 lakh,
Good Deal Bank Ltd.	-	₹ 15 lakh,
Credit Arrangers Bank Ltd.	-	₹ 10 lakh and
Your Bank Ltd.	-	₹ 10 lakh

Among theses the A-One Bank Ltd. was the leader.

Images Gym Ltd. was engaged in the business of manufacturing and trading of Gym exercise machines. However, due to poor demand of the products, the company could not sell out the machines and as a result the account of the company with respective banks were classified as Non-performing Advances (NPAs).

Apart from credit facility from the above banks, the company was also having outstanding dues of the creditor, which the company was not able to pay-off. The total amount outstanding of such operational creditors amounted ₹ 30 lakh.

The company has also not paid the salary to its employees and workers for the last 6 months and the total dues amounted to ₹ 10 lakh.

The leader of the consortium filed Corporate Insolvency Resolution Process (CIRP) with the Adjudicating Authority (AA) and proposed the name of Saket Sharma, as Interim Resolution Professional (IRP).

The AA accepted the application and appointed Saket Sharma as IRP and put moratorium. The IRP constituted the Committee of Creditors (CoC) and first meeting of the CoC was called upon.

The operational creditors objected about the constitution of the committee and asked the IRP to include operational creditors also in the CoC, which the IRP denied.

The CoC observed that IRP is not discharging his functions properly and was reluctant in calling the expression of interest from Resolution Applicant(s), so they proposed for the change of the existing IRP and appointment of the new Resolution Professional (RP) named as Anubhav Dutt.

The RP called the expression of interest from the eligible applicants and each proposal was placed before the CoC, but no consensus had arrived at. The initial period of 180 days was going to elapse so the CoC through the RP sought extension which the Adjudicating Authority for further 90 days. The RP again called the expression of interest from other Resolution Applicants, but it was also not agreed upon by the CoC and after lapse of total 270 days, the Adjudicating Authority ordered for its liquidation and the present RP was appointed as Liquidator.

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The Liquidator sold off the assets of the Company and realised only ₹ 150 lakh, whereas the outstanding dues of the various stakeholders remained as under :

Dues of	₹ in Lakhs
Fee payable as Resolution Professional	10
Fee payable as Liquidator	10
Dues of the banks with interest	110
Outstanding from Operational Creditors	30
Dues of Govts.	15
Workmen's dues	10
Employee's salary	15
Equity shareholders	30
<b>Total</b>	<b>230</b>

Based on the above information, answer the following questions :

- (a) Mention the provisions relating to the constitution of the Committee of Creditors (CoC) under the Insolvency and Bankruptcy Code, 2016. In the instant case, the IRP did not include the Operational Creditors. Whether this action of the IRP was justified ?

(10 marks)

- (b) Comment on the following :

- (i) How the voting of share shall be determined in the meeting of the CoC, since in the given case the finance was made available under the consortium arrangement.
- (ii) What would have been the position of constitution of the CoC, if some of the operational creditor had assigned their rights in favour of the financial creditor ?

(7+3=10 marks)

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- (c) What is the meaning of 'Resolution Plan' and 'Resolution Applicant' ? List out the persons not eligible to be 'Resolution Applicant'.

(2+2+6=10 marks)

- (d) Explain relevant provisions for distribution of assets by the liquidator. How the liquidator will pay-off the dues in priority order of various stakeholders in the given case ?

(5+5=10 marks)

2. (a) Whether a foreign company can merge into an Indian company or vice versa ? Discuss the relevant provisions of the Insolvency and Bankruptcy Code, 2016.

(6 marks)

- (b) What do you mean by the Doctrine of Repugnancy ? Where a law, earlier enacted by any State, is now contradictory to the provisions of the Insolvency and Bankruptcy Code, 2016, then which law will prevail ? Write your answer with the decided case law.

(2+4=6 marks)

3. (a) Financial Creditor of M/s XYZ Ltd. (Corporate Debtor) filed an application for Corporate Insolvency Resolution Process (CIRP) before the Adjudicating Authority and Interim Resolution Professional (IRP) was appointed. The IRP for the purpose of formation of Committee of Creditors (CoC), verified the claims submitted by the all the financial creditors and observed that all such financial creditors comes under the purview of related parties to the Corporate Debtor. Apart from the financial creditors there are 5 Operational Creditors only.

In the given situation, how the CoC will be formed ? Explain by quoting the relevant provisions contained in the Insolvency and Bankruptcy Code, 2016.

(6 marks)

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- (b) What are the powers of the disciplinary committee of Insolvency and Bankruptcy Board of India (IBBI) ? Also elaborate the circumstances when the IBBI can cancel or suspend the registration of an Insolvency Professional Agency (IPA).  
(3+3=6 marks)
4. (a) On what grounds, an aggrieved debtor or creditor, may make an application to the Adjudicating Authority against the action taken by the Resolution Professional under the Fresh Start Process ? Also elaborate the restrictions imposed on a debtor during moratorium period of Fresh Start Process.  
(3+3=6 marks)
- (b) Financial Creditors initiated Corporate Insolvency Resolution Process (CIRP) against a corporate debtor and invited the expression of interest (EOI) of Resolution Plan from the eligible persons. One company, showed interest and submitted the EOI, which was agreed upon by the Committee of Creditors (CoC) and proposal was submitted by the CoC with the Adjudicating Authority (AA). As per the Resolution Plan, the Resolution Applicant agreed to pay in cash to acquire the controlling stake in the Corporate Debtor to tune of 75% and the Operational Creditors will be paid in instalments in settlement of their claims stretchable upto the next 12 months. The AA accepted the Resolution Plan. However, the promoters of the Corporate Debtors and other Operational Creditors objected and appealed before the NCLAT raising the following points :
- (i) The promoters of Corporate Debtor contended that the Resolution Applicant is not eligible to submit the Resolution Plan, since its subsidiary company in the UK was fined by the English court under the provisions of UK Act, which provides for imprisonment for a term not exceeding 12 months or a fine or both. Hence in terms of Section 29A(d) of the Insolvency and Bankruptcy Code, 2016 (IBC) the Resolution Applicant is ineligible to submit the Resolution Plan.

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- (ii) The Operational Creditors also objected taking the plea that there was unfair distribution of settlement amount in instalments for their claims under the provisions of the IBC.

Explain with relevant case law, whether the Resolution Applicant was eligible to submit the Resolution Plan ?

(6 marks)

5. (a) WTC Ltd. had been incurring losses since inception and decided to wind up. The company had several pending litigations and that claim against the company, exceeded the value of its assets and thus, debt due to creditors could not be discharged in total. The company seeks your opinion for voluntary liquidation proceedings. Advise the company the relevant provisions under the Insolvency and Bankruptcy Code, 2016.
- (b) Mention the circumstances in which a Company may be wound up by Tribunal.

(6 marks each)

6. The Insolvency and Bankruptcy Board of India (IBBI) and Insolvency Professional Agencies (IPAs) have come across, some mistakes being committed by some of the Insolvency Professionals (IPs) in conduct of Corporate Insolvency Resolution Process (CIRP). These mistakes costs to the Corporate Debtor (CD) and to the economy, and often amounts to contravention of provisions of the law.

Explain in detail the mistakes committed by the Insolvency Professionals (IPs) with reference to the :

- (i) Accepting the assignment without having the Authorisation for Assignment (AFA),
- (ii) Fee payable to the IP,
- (iii) Appointment of Professionals and
- (iv) Appointment of Registered Valuers, by quoting the relevant provisions of the Insolvency and Bankruptcy Code, 2016.

(3 marks each, total 12 marks)

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