

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 4

NOTE : Answer **ALL** Questions.

1. Facts of the case :

SB Pvt. Ltd. supplied raw materials worth ₹ 15 lakh in January 2018 to a company named MR Ltd. MR Ltd. issued two cheques for ₹ 10 lakh, dated 15th April, 2018 and ₹ 5 lakh, dated 1st June, 2018, in favour of SB Pvt. Ltd.

MR Ltd. had availed loan facility of ₹ 50 lakh from State Bank of India (SBI) and due to non-payment the account became Non-performing Asset (NPA) in the books of SBI. The SBI started recovery measures and lastly filed Corporate Insolvency Resolution Process (CIRP) against the MR Ltd. with the Adjudicating Authority (AA), The Adjudicating Authority admitted the CIRP filed by the SBI and the order of moratorium was passed under section 14 of the Insolvency and Bankruptcy Code, 2016 (the Code) on 6th June, 2018.

The first cheque of ₹ 10 lakh lodged by SB Pvt. Ltd. returned unpaid by its banker for the reason of insufficiency of funds. The SB Pvt. Ltd lodged a criminal complaint under section 138 of the Negotiable Instruments Act. 1881 (NI Act) against MR Ltd. and its directors in the competent court having jurisdiction on 1st June, 2018. (i. e. prior to declaration of moratorium by the AA).

The second cheque of ₹ 5 lakh was also returned unpaid for the reason of insufficiency of funds and again a second criminal complaint was lodged by the SB Pvt. Ltd. against the MR Ltd. and its directors on 15th June, 2018 (i.e after declaration of moratorium by the AA).

The MR Ltd. and its Directors moved before the Adjudicating Authority and argued that during the period of moratorium proceeding petition under Section 138 of NI Act was not maintainable. This was opposed by the SB Pvt. Ltd. but the Adjudicating Authority directed the SB Pvt. Ltd. to withdraw the complaint case filed under Section 138 of NI Act treating

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it as a proceeding filed after order of moratorium with observation that such action amounts to deliberate attempt on the part of SB Pvt. Ltd. and sheer misuse of the process of law.

Aggrieved from the order of the Adjudicating Authority, the SB Pvt. Ltd. preferred appeal before the National Company Law Appellate Tribunal (NCLAT). The NCLAT accepted the appeal and set aside the order of the Adjudicating Authority.

Based on the above facts, answer the following questions :

(a) Citing relevant case law elaborate the decision of the Adjudicating Authority ? State with reasons, if aggrieved party prefers an appeal, will they succeed.

(10 marks)

(b) Section 14 of the Code states that after declaration of the moratorium no legal action can be maintained against the Corporate Debtor. What will be your answer when :

(i) Criminal action under section 138 of NI Act filed before the declaration of moratorium; and

(ii) Criminal action under section 138 of NI Act filed after the declaration of moratorium.

(10 marks)

(c) What is effect of the declaration of the moratorium under section 14 of the Insolvency and Bankruptcy Code, 2016 ?

(10 marks)

(d) Adjudicating Authority appoints Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code-Enumerate his role, powers and duties.

(10 marks)

2. (a) Insolvency Professionals (IPs) are private persons, but are governed by Insolvency Regulator. Describe how the IPs are regulated ?

(6 marks)

(b) ESI Ltd. filed Corporate Insolvency Resolution Plan (CIRP) with the Adjudicating Authority, which was accepted, and Expression of Interest (EOI) was invited. One N Ltd. filed EOI. It was noticed that N Ltd was incorporated just 7 days before submission of the EOI as joint venture between AE Ltd and other two companies.

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It was further come to the notice that AE Ltd. was completely held by Sawant Seth (through various companies and a trust), said Sawant Seth was son of Ravi Seth, who was promoter of ESI Ltd.

You as a Resolution Professional in this case, what would you suggest the Committee of Creditors and Adjudicating Authority about the acceptance or rejection of the EOI. Give reasons and quote the decided case law.

(6 marks)

3. (a) WTC Ltd had been incurring losses since inception and was decided to wind up. The company had several pending litigation and that claim against the company exceeded 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 with the relevant provision under the Insolvency and Bankruptcy Code, 2016.
- (b) 'Liquidation is the last process, when the resolution plan fails'. What are the triggers when there is no alternate except to move for the liquidation ?

(6 marks each)

4. (a) 'Insolvency and Bankruptcy Code also regulates cross border transactions'—Elucidate the relevant provisions of Insolvency and Bankruptcy Code, 2016.
- (b) An application for Corporate Insolvency Resolution Process (CIRP) was filed by a Bank (being Financial Creditor) against RSI Ltd, which was admitted by the NCLT and an Interim Resolution Professional was appointed, the Committee of Creditors (CoC) was constituted. Vijay, who was a member of the suspended Board of Directors of RSI Ltd was neither allowed participation in CoC nor any information considered confidential was given, either by the resolution professional or the Committee of Creditors. Vijay made representations before the Adjudicating Authority to attend the meeting and for information/documents. Will Vijay succeed in his claim for attending the Meeting of Committee of Creditors and obtaining information about the CoC proceedings.

(6 marks each)

5. (a) Application for initiation of individual insolvency resolution process can be submitted by a debtor only in respect of debts which are not excluded debts. Which debts are to be treated as excluded debts ?
- (b) How an asset reconstruction company may acquire rights or interest in financial assets of any bank or financial institution ?

(6 marks each)

6. VN Pvt. Ltd. (VNPL) entered into a Sub-contract Agreement with KC Pvt. Ltd. (KCPL) to undertake road construction works. During the course of the project, disputes and differences arose between the parties and the same were referred for an Arbitration, Arbitration Award was delivered in favour of the KCPL. VNPL challenged the Award by making an appeal under Section 34 of the Arbitration and Conciliation Act, 1996. Meanwhile, VNPL sent a demand notice under the Insolvency and Bankruptcy Code and also initiated insolvency proceedings against KCPL. The KCPL claimed that there is a dispute and the award has been challenged and adjudication of which is pending.

NCLT as well as NCLAT admitted the insolvency petition stating that challenge of award could not be considered to be 'existence of dispute' under the Insolvency and Bankruptcy Code. The matter reached the Supreme Court.

What is 'dispute' within the meaning of the Insolvency and Bankruptcy Code, 2016 (IBC Code). Whether Award passed under Arbitration Act and challenged will be termed as existence of dispute under IBC Code. Comment with the help of decided case law.

(12 marks)