

*Roll No.* .....

**OPEN BOOK EXAMINATION**

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

*Total number of printed pages : 7*

**NOTE :** *Answer ALL Questions.*

1. (A) Mr. K Sridhar and Mr. K. Murali are the Directors of M/s S & M Engineering Enterprises Limited (SMEEL). Unfortunately, being the victims of COVID 2019 pandemic, by both the brothers and their respective families, they could not concentrate on the day-to-day affairs of the business and in the short run, the top line and the bottom line of the business went southwards and ultimately, they had to face the brunt of huge debts.

An application for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s SMEEL under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) was moved by an 'Assignee' of an Operational Creditor for Non-payment of dues. The Adjudicating Authority admitted the application because there was no intimation of any dispute within the 10 days.

After following all the compliances prescribed under the IBC, 2016, the Adjudicating Authority passed an order to Liquidate the Corporate Debtor, on an intimation from the Resolution Professional to do so, as decided by the Committee of Creditors (CoC) by requisite voting, before the approval of the resolution plan.

The relevant information related to M/s SMEEL for the purpose of liquidation is produced as follows :

Liabilities	₹ in Lakhs	Assets	₹ in Lakhs
<b>Capital :</b>		<b>Fixed Assets :</b>	
Equity	300	Land and Buildings	350
Preference	200	Plant and Machinery	150
<b>Financial Creditors :</b>		<b>Current Assets :</b>	
Secured	250	Inventories	100
Unsecured	150	Trade Receivables	300
<b>Operational Creditors :</b>		Other Current Assets	50
Secured	60	Cash and Cash Equivalents	100
Unsecured	70	Fictitious Assets	190
Government Dues	50		
Workmen's Dues	80		
Employees Dues	80		
<b>Total</b>	<b>1,240</b>	<b>Total</b>	<b>1,240</b>

**Other Information :**

1. Workmen's dues represent the amounts payable for the period of 30 months preceding the liquidation commencement date.
2. Employee's liability includes ₹ 72 Lakhs outstanding to employees for a period of 12 months, preceding the liquidation commencement date.
3. Land and Buildings would realize 110% of its book value, Plant and Machinery would realize 60% of its book value, net of any realization cost. Inventories and Trade Receivables would realize 72% of its book value.

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4. The secured financial creditors worth ₹ 45 Lakhs decided to enforce their security interest in the other current assets and they could realize 80% of its value.
5. There has been a pending court case against the Company for use of child labour which could result in a penalty of approximately ₹ 30 lakhs. This has been reflected as a contingent liability only. It has been finally decided to pay ₹ 25 lakhs and settle the case.
6. Based on the amount realized and distributed, the cost of liquidation and insolvency period cost is computed to be ₹ 20 lakhs and ₹ 12 lakhs respectively.

In the light of the above inputs and with reference to the relevant provisions of the IBC, 2016, answer the following questions :

- (i) Whether the decision made by the Adjudicating Authority of admitting the application filed by the 'Assignee' of an Operational Creditor is valid in law ? (6 Marks)
- (ii) Explain distribution of proceeds from the sale of the liquidation assets as per the IBC, 2016. (5 Marks)
- (iii) State the order of priority with notes indicating the relevant Section of the Code in which the liquidator shall distribute the proceeds under the IBC, 2016. Briefly show the workings. (10 Marks)
- (iv) What are the circumstances, other than the situation mentioned in the case study, that may also have led the Adjudicating Authority to pass an order of Liquidation ? (4 Marks)

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- (B) Mr. Krish, an operational creditor, filed an application with the Adjudicating Authority (NCLT, Delhi) to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s Master Mind Limited, and the application was accepted. On 10th July 2023, NCLT Delhi appointed Mr. Aditya to act as an Interim Resolution Professional of M Limited. After the appointment, Mr. Aditya issued the public announcement on 12th July 2023, of the initiation of CIRP process and called for the submission of claims. On 20th July 2023, the Committee of Creditors was constituted by Mr. Aditya. Thereafter, Mr. Krish wants to withdraw his application under Section 12A of the Insolvency and Bankruptcy Code, 2016. However, Mr. Aditya denied filing a withdrawal application stating that the Committee of Creditors has already been constituted.

Referring to the provisions of the Insolvency and Bankruptcy Code, 2016, answer the following with reference to the above facts :

- (i) Is Mr. Aditya right to deny Mr. Krish to file a withdrawal application with NCLT, Delhi ? Explain in detail.
- (ii) Would your answer differ in case the Committee of Creditors is not constituted ?
- (iii) Who is the authority to pass the final order of withdrawal application ?

(6+6+3 Marks = 15 Marks)

2. Write short notes on the following :

- (a) Jurisdiction of Civil Court under Insolvency Cases.
- (b) Will SARFAESI Act, 2002 prevail over Insolvency and Bankruptcy Code ? Explain with Decided Cases. (6 Marks each)

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3. (a) Are Winding-up and Dissolution Synonymous ? Explain the difference between a Company Winding-up as per IBC, 2016 and Companies Act, 2013. (6 Marks)
- (b) “The intent of fresh start process is to provide debtors with comparatively small debts, a chance to discharge off their debts and restart afresh without any liability. The fresh start process is an alternative to the insolvency and bankruptcy processes. To prevent and curb the abuse of this debtor centric process, the Code has aligned certain restrictions on the applicability and validity of fresh start process.”
- To support the eligibility of fresh start the applicant has to give affirmation, explain the contents of the affirmation. (6 marks)
4. (A) Answer the questions given at the end of the following three scenarios :
- (a) ABC Limited (Corporate Debtor) filed an application for initiating ‘Pre-Packaged Insolvency Resolution Process’ (PPIRP) on 1st March, 2024. While the application is pending, the Financial Creditor of the same Corporate Debtor has also filed an application for initiating Corporate Insolvency Resolution Process (CIRP).
- (b) An Operational Creditor of ABC Limited (Corporate Debtor) has filed an application on 1st March, 2024 for initiating CIRP against the Corporate Debtor and while the application is pending, the same Corporate Debtor has also filed an application for initiating PPIRP on 10th March, 2024.
- (c) A Financial Creditor of ABC Limited (Corporate Debtor) has filed an application on 1st March, 2024 for initiating CIRP against the Corporate Debtor and while this application is pending, the same Corporate Debtor has also filed an application for initiating PPIRP on 20th March, 2024.

Critically examine under IBC, 2016 as to whose application shall be disposed-off first by the Adjudicating Authority under the different scenarios as per the inputs given in para (a), (b) and (c) above. (6 marks)

(B) “The Insolvency and Bankruptcy Board of India (IBBI) and Insolvency Professional Agencies have come across; some mistakes being committed by some of the Insolvency Professionals (IPs) in conduct of Corporate Insolvency Resolution Process (CIRP). The mistakes costs to the Corporate Debtor (CD) and to the economy, and often amounts to contravention of provisions of the law. Insolvency Professional must refrain from accepting too many assignments.” Explain the Code of Conduct of Insolvency Professional in this regard by quoting with relevant cases. (6 marks)

5. (a) Mr. V. Ramaswamy is former Director of Corporate Debtor namely M/s Narmada Project Limited an application filed with Resolution Professional (RP) to provide ‘Resolution Plan’. But RP denied to provide ‘Resolution Plan’ to erstwhile Director of Mr. V. Ramaswamy and RP has contended that only the Members of CoC who is having Voting Rights are entitled to have Resolution Plans, as per CIRP Regulations. Whether the Resolution Professional Contention is Correct ? Explain with decided case in this regard. (6 marks)

(b) M/s ABC Assets Reconstruction Company incorporated in January, 2024 and Net Worth is ₹ 1,00,00,000/- and applied for Registration with Reserve Bank of India as an NBFC (Asset Reconstruction Company). During the Pendency of Registration Application, he wants to commence the Business of Securitization or Asset Reconstruction. Is it possible ? Under what grounds the Reserve Bank of India can reject the Application of M/s ABC Assets Reconstruction Company ? (6 marks)

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6. (a) “Companies through their Multi-layered Structures, move Cash and other Assets to other Jurisdictions, which creates hurdle in Regulating”. In this connection, explain the Model Law Conflicts, Interpretation, definition on “Foreign Proceeding” and its types.

(6 marks)

- (b) What challenges you foresee in implementation of the provisions of the Insolvency and Bankruptcy Code relating to Insolvency Resolution and Bankruptcy of Individual and Partnership Firms ?

(6 marks)

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