

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

Pine Food Industries Limited (“PFIL”) is one of the top FMCG player and listed entity in India. It is a leading manufacturer and marketer of various edible oils, food products and eatables. Its Authorized Capital is Rs. 252.00 crore and Paid-up Capital is Rs. 65.00 crore. PFIL has borrowed from various Banks and Financial institutions in India and its borrowings were around Rs. 12,000 Crore.

Due to unprecedented crash in global prices of the oil seeds coupled with falling revenues in the oil business gave a crippling blow to PFIL.

AB Bank and BC Bank filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) for initiating the insolvency resolution process against PFIL (hereinafter called as the Corporate Debtor (“CD”)). After hearing both the parties, National Company Law Tribunal (“NCLT”) admitted the petition filed. The Financial Creditor proposed the name of Kapoor to act as Interim Resolution Professional (“IRP”).

An application was filed before NCLT by one of the creditors who made a claim before the Resolution Professional (“RP”) stating that the CD owed to pay USD 10.00 crore, based on the Bills of Exchanges, ordering the CD to pay this creditor for the goods supplied by another party. On making of such claim before the RP, it has been rejected by him saying that it is not a Financial Debt as it is an Operational Debt therefore, it could not be considered as Financial Debt as claimed by applicant therein.

Vijay Kumar Jain, suspended Director of the CD, filed an application before the NCLT under section 60(5) of the Code seeking an order for setting aside the decision taken by the Committee of Creditors (“CoC”) disallowing the erstwhile representatives of the Corporate Debtor including Vijay to participate in the CoC meetings; declare that the CoC meeting is *non est*; direct the RP to ensure active participation of the applicant in the meetings of CoC; provide all the documents and information to the applicant.

RP filed application in NCLT under section 43(1) of the Code for seeking reversal of the amounts that were debited from the current accounts of the CD maintained with XYZ Bank which had been debited by the XYZ Bank before the insolvency commencement date and were utilized against the payment of the dues owed by the CD to a Bank in relation to the Letter of Credit issued by them.

The RP submits that the payment of the impugned amount lead to preferential treatment towards XYZ Bank by the CD as such payment has the effect of putting Respondents (i.e. XYZ Bank) in a beneficial position than it would have been in liquidation of the CD in accordance with Section 53 of the Code. It is further stated by the RP that the payments of the impugned amount by the Corporate Debtor were not in the “ordinary course of business” of the CD.

NCLT, vide its order, held that the respondent Bank, which had debited an amount aggregating to Rs. 65.98 crores from the current accounts of the Corporate Debtor is directed to reverse the said amount within 30 days from the date of the said order. Since the resolution plan is already submitted and under examination of the CoC without consideration of this amount, therefore the appropriation of this amount will be decided by the CoC. XYZ Bank filed appeal in NCLAT against the order of NCLT.

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The main plea taken by the Appellant Bank is that the RP before filing an application under Section 43(1) of the Code formed no independent opinion nor afforded an opportunity to the Appellant to explain about the transactions in question.

The RP called for Expression of Interest (“EOI”). 28 prospective resolution applicants showed their interest out of which two prospective resolution applicants were rejected as one was disqualified under Section 29 A of the Code (being related party) and the other was a financial investor who did not meet the criteria in the EOI evaluation parameters.

The applicant reviewed the four Resolution Plans submitted by the Resolution Applicants and found that only the plans submitted by 2 Resolution Applicants (RA1 and RA2) provided for the corporate insolvency resolution of the Corporate Debtor as a whole and on a going concern basis.

The RP filed application under section 30(6) of the Code, seeking order for approval of the resolution plan for the Corporate Debtor submitted by the consortium led by PAL (RA2) as approved by the members of Committee of Creditors (CoC). The said resolution plan was approved by a vote share of 96.85%. RP filed application in NCLT for approval of Resolution Plan.

While the said application was pending for consideration before the NCLT, Hon’ble Supreme Court, in Vijay Kumar Jain Vs. Standard Chartered Bank & Ors pronounced the judgment. Under the Judgment of Hon’ble Supreme Court, the approval of the NCLT to the resolution plan of RA2 was interdicted. In compliance of the above-mentioned Hon'ble Supreme Court order, NCLT by its order directed as follows :

“Resolution Professional is directed to comply with the directions of the Hon’ble Supreme Court and submit the report within the stipulated time as provided by the Hon'ble Supreme Court.”

Thereafter, NCLT approved the Resolution Plan submitted by RA2 and passed orders and directions on the reliefs and concession sought.

Since in Para 38, NCLT in their order rejected some of the relief sought, RA2 moved to NCLT for modification of order of NCLT.

In the application filed, RA2 had sought substitution of Para 38 of the order of NCLT approving the Resolution Plan of RA2 as under :

Existing Para

“38. Any relief sought for in the Resolution Plan, where the contract/agreement/understanding/proceedings/actions/notice etc is not specifically identified or is for future and contingent liability, is at this moment rejected.”

Proposed Para

“All claims that were either not filed or not admitted during CIRP in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 shall stand extinguished. Further, claims admitted/verified by the Resolution Professional shall stand settled and extinguished as per the Resolution Plan.”

Resolution Plan approved by NCLT of RA2 leads to a 60% haircut for the lenders. RA2 completed its acquisition of PFIL.

Referring decided case and relevant provisions of the Insolvency and Bankruptcy Code (IBC), 2016 and Rules and Regulations made thereunder, answer the following questions :

- (a) Whether formation of Joint Lender Forum will have any bearing over filing of this case or not ? Brief, referring the provisions of IBC, 2016, who can initiate the case under the Code.
- (b) In the instant case explain whether Vijay Kumar Jain succeeded in his contention. Referring Supreme Court’s decision, discuss the role and position of suspended Board of Directors in the Committee of Creditors.
- (c) Explain the decision of NCLAT in the aforesaid case filed by XYZ Bank for Section 43 transactions. Referring relevant provisions, brief against whom the application under Section 43 of the IB Code can be filed and what orders can be passed thereunder.
- (d) Whether Resolution Applicant has powers to request for modification of NCLT’s Order on Resolution Plan. Discuss whether NCLT has powers to modify or revise its own order made under the IB Code.

(10 marks each)

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2. (a) ABC Housing Ltd had initiated Corporate Insolvency Resolution Process against XYZ Infrastructure Ltd. (Corporate Debtor) under Section 7 of the Insolvency and Bankruptcy Code, 2016. The National Company Law Tribunal has dismissed the application as not maintainable in view of the fact that the winding-up proceeding against the Corporate Debtor had already been initiated by the High Court. Referring relevant case explain whether an application under Section 7 of the Code is maintainable when winding-up proceeding against the Corporate Debtor has already been initiated ?
- (b) A Suspended Director of a Corporate Debtor, on whom Corporate Insolvency Resolution Process (CIRP) is ordered by National Company Law Tribunal (NCLT) made a police complaint against a Resolution Professional to stop his actions. Resolution Professional contended that all allegations made by suspended Director is frivolous and are made only to hinder him from doing the duty as Resolution Professional. The Resolution Professional filed an application with NCLT praying protection. Referring relevant provisions and decided case clarify whether suspended Director of a Corporate Debtor can file a police complaint against Resolution Professional, if not who can initiate action against the Resolution Professional for alleged wrong doings.
- (6 marks each)
3. (a) ‘Corporate Restructuring is an inorganic business strategy where one or more aspects of a business are redesigned to improve commercial efficiency, manage competition effectively, drive faster pace of growth, ensure effective utilization of resources, and fulfilment of stakeholders’ expectations. It serves different purposes for different companies at different points of time and may take up various forms.’ – Brief on External and Internal Restructuring through Resolution Plans.
- (b) Whether the promoters can claim that ‘they should have been given an opportunity to settle the dues, if Committee of Creditors did not find any resolution plan as viable and feasible.’ Citing relevant decision whether the claim of the promoters is tenable and within the objects of the IBC, 2016.

(6 marks each)

4. (a) A German Company (Operational Creditor) filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 against PQR Private Limited (Corporate Debtor) alleging that the 'Corporate Debtor' committed default in making the payment of certain operational dues. The Adjudicating Authority (National Company Law Tribunal), admitted the application. Before, National Company Law Appellate Tribunal (NCLAT), the Corporate Debtor has raised the question of jurisdiction of the National Company Law Tribunal in entertaining the application Under Section 9 of the IBC, 2016. The Corporate Debtor referred to the Agreement reached between the parties and submitted that as per the Agreement and as the Office of the Respondent is in Germany, any suit or case is maintainable only in the Courts at Germany. No case can be filed in any Court in India. Discuss with reasoning whether the contention of the Corporate Debtor is correct.
- (b) A Financial Creditor filed an Application for a declaration that the Resolution Applicant, ABC Ltd and its promoters have knowingly contravened the terms of the resolution plan, having failed to implement the same and for the reinstatement of the Committee of Creditors (CoC) to run the Corporate Debtor, as a going concern. Referring relevant case explain whether the Financial Creditor will succeed.
- (6 marks each)*
5. (a) MNO Private Limited has stopped its business operations and management has no further intention to continue its business operations. The Company has Assets in excess of Liabilities and hence, proposed Voluntary Liquidation of the Company as per the Provisions of IBC, 2016. You are proposed to be appointed as Liquidator for the Voluntary Liquidation. The Directors have approached you to know the prescribed timelines for completion of Voluntary Liquidation Process. The Extra-ordinary General Meeting to approve the Voluntary Liquidation is proposed on 1st July 2021. Prepare

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a timeline mentioning the probable date for the following activities as per the IBC, 2016 and Regulations made thereunder :

- (i) Voluntary Liquidation Commencement date
- (ii) Date of Public Announcement
- (iii) Intimation of Special Resolution for Voluntary Liquidation to IBBI and RoC
- (iv) Receipt of claims and preparing list of stakeholders
- (v) Submission of Preliminary Report
- (vi) Distribution of Assets.

(6 marks)

- (b) National Company Law Tribunal (NCLT) has initiated CIRP on application of one of Operational Creditors of DOP Ltd. A Resolution Professional was appointed after all processes as per the Law. Two viable Resolutions Plans (Plan A and Plan B) were received. Committee of Creditors comprises of Three Financial Creditors. As per Regulations of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, what is the approval status of Resolution Plans (Plan A and Plan B) for various instances of Voting outcome as mentioned below ?

Voting Outcome in different scenarios	% of votes in favour of		% of votes against	
	Plan A	Plan B	Plan A	Plan B
1	52	64	48	36
2	64	78	36	22
3	78	78	22	22

Also clarify the requisite voting percentage and tie-breaker formula as per the aforesaid Regulations.

(6 marks)

6. A Resolution Professional appointed under Insolvency & Bankruptcy Code, 2016 (IBC, 2016), placed before the Committee of Creditors (CoC), a Consortium of Banks, a Resolution Plan submitted to him. The CoC approved the Resolution Plan and National Company Law Tribunal (NCLT), sanctioned it. As the Liquidation Value is not sufficient and there is a hair-cut involved in the dues payable to the secured financial creditors, nothing is provided for the Operational Creditors under the Resolution Plan. The Operational Creditor aggrieved by the decision of the NCLT filed Appeal before National Company Law Appellate Tribunal (NCLAT). The contention of the Operational Creditor is that the Resolution Plan approved is not in compliance with the provisions of the Insolvency and Bankruptcy Code, 2016 and the Regulations made thereunder :
- (a) Referring suitable case law answer whether the contention of Operational Creditor is Correct.
- (b) Will your answer be different if it is a Liquidation case, listing out the order of priority in case of corporate persons, explain the position of the unsecured Financial creditor and unsecured Operational creditor of a Corporate Debtor under Liquidation ?

(6 marks each)