

CA FINAL COURSE

CORPORATE AND ECONOMIC LAWS

Test-5 chapters 5, 6 (Economic laws)

CH-7(Module-1 company law)

Total Marks 50

Case Study-

A corporate insolvency resolution process, under the insolvency and bankruptcy code 2016 was initiated by M/s. A limited as a corporate debtor. The company was in default to its creditor and the assets were insufficient to meet the liabilities of the company.

Attempts to resolve the insolvency of the corporate debtor failed and in the last, it was decided to go for liquidation of the company. The balance sheet and additional information of A ltd. Are given below:

Key financial information

| Data | Amount (in crore) | Data | Amount (in crore) |
|-------------------------------|-------------------|----------------------|-------------------|
| Equity share capital | 11,000 | Land and building | 16,500 |
| Preference share capital | 3,800 | Fixture and fittings | 1,000 |
| Term loan | 1,500 | Stocks | 640 |
| Working capital loan | 1,200 | debtors | 550 |
| Unsecured financial creditors | 1,000 | Other current assets | 550 |
| Government dues | 400 | Cash | 175 |
| Workman dues | 240 | Accumulated losses | 2,350 |

$16,500 \times 70\% = 11,550$
 $1,000 \times 30\% = 300$
 $640 \times 65\% = 416$
 $550 \times 65\% = 357.5$
 550
 175
 $2,350$
12,806
175
13,000

| | | | |
|-----------------------|--------|--|--------|
| Employees liability | 300 | | |
| Operational creditors | 2,400 | | |
| | 21,840 | | 21,840 |

Additional information:

Creditors

(1) Term loan is secured against fixed charge on land & building and fixture & fitting. Bank A with an Rs. 800 crore term loan outstanding has first charge on the assets and bank B with Rs. 700 crore outstanding has second charge on the assets.

(2) Working capital loan is provided by the bank C and secured against a floating charge on debtors stock of the company.

(3) Unsecured financial creditors include a director X who owns 3 % of the share capital of M/S. A limited with an outstanding loan due to him of Rs. 50 crores.

Other liabilities:

(1) Workman dues represent amount payable for the period of 24 months preceding the liquidation commencement date.

(2) Employee liability includes Rs. 25 crore is outstanding for employees for a periods of 12 months.

(3) Last three years of tax assessment pending total demand raised by the department is Rs. 1200 crore. This has not been included in the balance sheet, but reflected as a contingent liability only. However, the liquidators has managed to get an assessment completion certificate and agreed to a final liability of Rs. 300 crore.

Fixed Assets & other Assets:

- (1) Land & building realized 70 % of book value and there would be a cost of R s. 175 crore in realizing the assets.
- (2) Fixtures & fittings would realize 30 % of book value, net of any realization cost. Stock, debtors & other current assets would realize 65% of book value.

Other information:

- (1) There was a pending insurance claim filled by the company for a quality breach by a supplier, which was not recorded in the books. The liquidator has managed to recover Rs. 150 crore from the insurance company.
- (2) Based on the amount realized & distributed , the cost of liquidation is computed to be Rs. 140 crore
- (3) The pending insolvency period cost payable is Rs. 80 crore, mainly including interim funding, remuneration of the IP and other such costs as permitted under the code.

The secured creditors have decided to relinquish their security interest to the liquidation estate and receive proceeds from the sale of the liquidation assets by the liquidator as per provisions laid under the insolvency and bankruptcy code, 2016 .

1. Total amount that can be realized by the liquidator (including cash available with the company) will be:

- (a) Rs. 13179.75 crores
- (b) Rs. 13004.75 crores
- (c) Rs. 19490.00 crores
- (d) Rs. 19315.00 crores

2. leases for the office premises had a lock in period of 10 years, out of which of three years have expired. The landlord has submitted a claim of Rs. 140 crore for the remaining seven years of the lease period. Rent claim for unexpired period of lease has to be considered at:

- (a) Rs.140 crores (amount calculated for 7 years)

- (b) Rs. 20 crores (amount calculated for 12 months)
- (c) Rs. 40 crores (amount calculated for 12 months)
- (d) Nil

3. Amount to be given to equity shareholders will be equal to:

- (a) Rs. 5619.75 crores
- (b) Rs. 1819.75 crores
- (c) Rs. 11,000 crores
- (d) Nil

(3 x 1 = 3 marks)

4. in the said case, Assume that A ltd. Has transferred an amount of Rs. 500 crores to its subsidiary abroad. The subsidiary has acquired assets for its business purposes. How will you, as the liquidator treat the assets of the subsidiary and the shares held in the subsidiary?

- (a) 100% of the assets of the foreign subsidiary of A ltd, is included for recovery in the liquidation.
- (b) 75% of the assets of the foreign subsidiary of A ltd, is included for recovery in the liquidation.
- (c) 50% of the assets of the foreign subsidiary of A ltd, is included for recovery in the liquidation.
- (d) Assets of the foreign subsidiary of A ltd. Is excluded for recovery in the liquidation. .

(2 marks)

MCQ's

1. Mrs. Komal and Mr. Rajesh, entered into an arbitration agreement for the disputes that arise, if any, in their business transactions. Due to a certain fault on the part of Mr., Rajesh, the dispute came before the arbitration for settlement. In the meantime, Mrs. Komal dies. Mr. Rajesh sheds of their liabilities on the plea that the arbitration agreement has come to an end with the death of the other party. Decide the affirmative statement in the given situation:

- (a) Arbitration agreement gets terminated due to death of the party.
- (b) It shall remain enforceable by or against the legal representatives of the deceased.
- (c) Since it is a private law between the parties, it will be terminated with the death of the party.
- (d) Both (a) & (c).

2. As per sec 8 of IBC, 2016, an operational creditor may, on the occurrence of a default, deliver a demand notice or copy of an invoice demanding payment of the amount involved in the default to unpaid operational debtor in such form and manner as may be prescribed .

The corporate debtor shall within a period of 10 days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor:

- (a) The existence of a dispute , if any
- (b) Record of the pendency of the suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute.
- (c) Both (a) and (b)
- (d) Either (a) or (b)

3. where any person pawns pledge or disposes of any property in circumstance which amount to an offence u/s 336, every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid. Shall be punishable

(a) With imprisonment for a term which shall not be less than 1 years but which may extend to 3 years and with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh.

(b) With imprisonment for a term which shall not be less than 3 years but which may be extend to 5 years and with fine which shall not be less than Rs. 3 lakh but which may extend to Rs. 5 lakh.

(c) With imprisonment for a term which shall not be less than 1 years but which may extend to 3 years or with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakh or both .

(d) With imprisonment for a term, which shall not be less than 3 years but which may extend to 5 years or with fine which shall not be less than Rs. 3 lakh but which may extend to Rs. 5 lakh or both.

4. An award under the provisions of arbitration and conciliation Act , 1996 is considered to be in conflict with the public policy of India , only if

(a) The making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(b) It is in contravention with the fundamental policy of Indian law.

(c) It is in conflict with the most basis notions of morality or justice

(d) Any of the above.

5. Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating CIRP with the adjudicating authority. Under what circumstance the adjudicating authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10?

(a) On an application made by the applicant with the approval of 66 % voting share of the committee of creditors.

(b) On an application made by the applicant with the approval of 75% voting share of the committee of creditors.

(c) On an application made by the applicant with the approval of 90% voting share of the committee of creditors.

(D) The adjudicating authority shall not allow the withdrawal of application after admission, as application can be withdrawn before its admission.

6. The advisory committee appointed by the tribunal shall consist of

(a) Not more than 6 members, being creditors and contributories of the company, or such other persons in such proportion as the tribunal may, keeping in view the circumstances of the company under liquidation, direct.

(b) Not more than 6 persons being official liquidator attached to the tribunal, nominee of secured creditors and a professional nominated by the tribunal.

(c) Not more than 12 members, being creditors and contributories of the company or such other persons in such proportion as the tribunal may, keeping in view the circumstances of the company under liquidation, direct.

(d) Not more than 12 persons being official liquidator attached to the tribunal, nominee of secured creditors and a professional nominated by the tribunal.

7. Smart automobiles limited and apex four wheelers limited entered into an agreement regarding annual maintenance services to be provided by smart automobiles for all vehicles within the state of Uttar Pradesh for five years . The agreement was containing a clause that in the event of a dispute between the parties the matter would be submitted to arbitration at the end of the fifth year, the service agreement was not renewed .decide whether the arbitration agreement should not be treated as terminated.

(a) Arbitration agreement should be treated as terminated.

(b) Arbitration agreement should not treated as terminated.

(c) Arbitration agreement has perpetual validity, unless specifically terminated by the parties.

(d) Both (b) and (c)

8. How the resolution professional is appointed u/s 22 of IBC , 2016?

(a) The committee of creditors, may, in the first meeting, by a majority vote of not less than 75% of the voting share of the financial creditors, either resolve to appoint the IRP as a RP or to replace the IRP by another RP.

(B) The committee of creditors may in the first meeting, by a majority vote of not less than 75% of the voting share of the operational creditors, either resolve to appoint the IRP as or to replace the IRP by another RP.

(C) The committee of creditors, may, in the first meeting by a majority vote of not less than 66 % of the voting share of the financial creditors, either resolve to appoint the IRP as RP or to replace the IRP by another RP.

(D) The committee of creditors, may, in the first meeting by a majority vote of not less than 66% of the voting share of the operational creditors, either resolve to appoint the IRP as a RP or to replace the IRP by another RP.

9. XYZ limited is being wound up by the tribunal. All the assets of the company have been charged to the company bankers to whom the company owes Rs. 5 crores. the company owes following amount to others : dues to workers – Rs.1,25,00,000; taxes payable to government –Rs. 30,00,000 ; unsecured creditors –Rs. 60,00,000.

You are required to compute with the reference to the provisions of the companies act 2013 the amount secured creditors is likely to get if the amount realized by the official liquidator from the secured assets and available for distribution among creditors is only Rs. 4,00,00,000/-

(A) Rs. 4,00,00,000

(B) Rs. 3,60,00,000

(C) Rs. 3,20,00,000

(D) Rs. 2,00,00,000

10. M/S Systemek India private limited (appellant corporate debtor) has challenged the order dated 3rd July, 2018 passed by the adjudicating authority (National company law tribunal) Mumbai bench, in the National company law appellate tribunal (NCLAT) .

NCLT had admitted the application preferred by the appellant under section 10 of the insolvency and bankruptcy code, 2016 and an order of moratorium was passed and insolvency resolution professional was ordered to be appointed by the Id. Adjudicating authority (NCLT) .

The only grievance of the appellant in its challenge is that the movable and immovable property of guarantor (promoter) has been attached pursuant to a corporate insolvency resolution process initiated u/s 10 against of the appellant by the Id. Adjudicating authority

(NCLT) which is violative of section 14 (1) (c) of the insolvency and bankruptcy code, 2016 though the code prescribes a moratorium for certain types of transactions. Decide.

- (a) Appellant will not succeed as moratorium u/s 14(1) (c) of IBC, 2016 is limited to properties of corporate debtor, not its promoters.**
- (b) Appellant will succeed as moratorium u/s 14(1) (c) is also extended to properties of promoters**
- (c) Appellant will succeed as moratorium u/s 14(1) (c) is also extended to properties of promoters, if approved by adjudicating authority.**
- (d) None of the above.**

(10 x 1 = 10 Marks)

Q-1 A dispute has been aroused between the management of Paras furnishing ltd. And its labours. The dispute was to provide the basic facilities at the workplace, air-conditioning environment and hours of work. The management of the company sent an invitation to leader of the labour union to conciliate on the issues raised by the labours .the union leader accepted the invitation. . Examine the given situation and answer the following:

- (1) When the conciliation proceeding shall be said to be commenced in the given case?**
- (2) How the settlement agreement will be arrived at by the conciliators?**

(5 marks)

Q-2 Best bank a financial creditor sent a demand notice for a claim of Rs. 10.2 crores on XYZ ltd. a corporate debtor on 6th February, 2022. When the petition was filed before NCLT under insolvency and bankruptcy code, 2016 , best bank claimed that the XYZ limited has defaulted Rs. 29.8 crores instead of original amount of Rs. 10.2 crore . NCLT appointed an interim

insolvency resolution professional. XYZ Ltd. made a appeal with NCLAT demanding that the best bank claim is not maintainable as there is a difference in the amount mentioned in the demand notice and the application filled under the code. Decide whether the contention of XYZ limited is correct. Also state who can file corporate insolvency resolution process under the code.

(5 marks)

Q-3 Clarks limited has made default in filing financial statement and annual return for a continuous period of 4 financial years ending on 31st march, 2022. The registrar of companies having jurisdiction approached the central government to accord sanction to present a petition to tribunal (NCLT) for the winding up of the company as per the above ground under section 272 of the companies act, 2013.

Examine the validity of the ROC move, explaining the relevant provisions of the companies' act, 2013 .state the time limit for passing an order by the tribunal under section 273 of the companies Act, 2013?

(5 marks)

Q-4 Mr. jayraj Mehta, a stock market investor had filed a complaint against regency securities (P) ltd. regarding unauthorized trading and the case was referred to the arbitration. The arbitral tribunal passed the award in favour of regency securities (P) ltd. Which was received by Mr.jayraj on 25th may. 2022. Regency securities (P) ltd. Enforced the said award on 30th June, 2022 by selling the securities of Mr. Jayraj in its demat account.

Mr. Jayraj after issuing prior notice to regency securities (P) Ltd. made an application with the civil court on 15th July 2022 under section 34 of the arbitration and conciliation act, 1996. In the

said application, Mr. Jayraj complained that the award has been improperly enforced and an application for recovery of the sold securities was also made along with main application. However, no stay application was made on the enforcement of order as the lawyer of Mr. Jayraj said that there is automatic stay on the enforcement of the award on filing of application under section 34.

In the context of aforesaid case –scenario, please answer to the following questions:

- (1) Whether regency securities (P) LTD. Can be considered to have properly enforced the arbitral award?
- (2) Whether the contention of lawyer of Mr. Jayraj is correct?

(5 marks)

Q-5 in view of the deep recession prevailing in the market for the past three years , M/S infra limited (corporate debtor) , which was facing the brunt of financial crisis , could not pay salaries and wages to its workmen and employees for the past 6 months. The workmen and the employees, who are the members of a recognized trade union Infra labor federation, made a complaint in this regard. thereafter , the trade union approached and urged the management of the company in person and through representation in writing to settle the arrears of wages and salaries due to its members the corporate debtor neither disputed nor took any actions to settle the amount . Under the circumstances, infra labour federation filed an application before the adjudicating authority i.e. With the National company law tribunal for initiating a Corporate Insolvency resolution Process under the Insolvency and Bankruptcy code, 2016.

In the light of the provisions of the Insolvency and Bankruptcy code, 2016, examine the following:

- (1) Validity of the application.

(2) What will be the “initiation date” for initiating the corporate insolvency resolution process?

(5 marks)

Q-6 By an order dated 25th June, 2022. NCLT had ordered for winding up of kamath Trading Limited. Consequently, Official liquidators took control for the assets and other records of the Company. During the winding up proceedings, the official liquidators came across a transaction where some of the properties of the company was sold to a small private company. Mr. Nag, who was interested in that small private company, happened to be the brother of director of kamath trading limited. The sale of the said properties took place on 20th march, 2022 at a price which was Rs. 58 lacs less than the market price. In the light of the facts given above, examine, with references to relevant provisions of the companies act, 2013 what action the tribunal can take in this regard?

(5 marks)

Q-7 Abhi limited entered into an agreement with Atulya gas limited for purchase of natural gas, which is not specified as an essential supply. On failure of abhi limited to make payments. Atulya gas limited issued notice to abhi limited that further supply of gas would be stopped if payment are not made immediately. On further non-payment, Atulya gas limited filed a petition before NCLT for initiating corporate insolvency resolution process against abhi limited. On 15th march, 2022 the petition was admitted. On 30th April, 2022, Atulya gas limited disconnected gas supply to Abhi limited for non payment . As a result of disconnection of gas supply, operations of Abhi limited came to a halt . The resolution professional filed a petition to NCLT seeking atulya gas limited to resume the supply of natural gas, as natural gas was an important material for production of electricity by Abhi limited.

Referring to the provisions of insolvency and bankruptcy code, 2016, answer the following:

- (1) When the moratorium period will expire in this case?
- (2) Whether resolution professional will be successful in his petition filed with NCLT?

(5 marks)

