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**TEST
SERIES**



SUGGESTED SOLUTION

CS PROFESSIONAL

Subject - Corporate Restructuring

Topic - Part-II Test-1 Chp-14 To 20

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Answer to Q1.A.

As per section 208(1) of the Insolvency and Bankruptcy Code, 2016, where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters —

- (a) a fresh start order process
- (b) individual insolvency resolution process
- (c) corporate insolvency resolution process
- (d) individual bankruptcy process
- (e) liquidation of a corporate debtor firm

As per section 208(2) of the Code, every insolvency professional shall abide by the following Code of Conduct —

- (a) to take reasonable care and diligence while performing his duties;
- (b) to comply with all requirements and terms and conditions specified in the byelaws of the insolvency professional agency of which he is a member;
- (c) to allow the insolvency professional agency to inspect his records;
- (d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and (e) to perform his functions in such a manner and subject to such conditions as may be specified.

(5 marks)

Answer to Q1.B.

Regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 deals with situations where either the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor.

Regulation 16 provides as follows:

- (1) Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up in accordance with this Regulation.
- (2) The committee formed under this Regulation shall consist of members as under:
 - (a) eighteen largest operational creditors by value: Provided that if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;
 - (b) one representative elected by all workmen other than those workmen included under sub-clause (a); and
 - (c) one representative elected by all employees other than those employees included under subclause (a).
- (3) A member of the committee formed under this Regulation shall have voting rights in proportion of the debt due to such creditor or debt represented by such representative, as

the case may be, to the total debt. Explanation – For the purposes of this sub-regulation, ‘total debt’ is the sum of-

- (a) the amount of debt due to the creditors listed in sub-regulation 2(a);
- (b) the amount of the aggregate debt due to workmen under sub-regulation 2(b); and
- (c) the amount of the aggregate debt due to employees under sub-regulation 2(c).

(4) A committee formed under this Regulation and its members shall have the same rights, powers, duties and obligations as a committee comprising financial creditors and its members, as the case may be.

(5 marks)

Answer to Q1.C.

Time limit for completion of resolution process.– Section 12(1) lays down that subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

Extension of time.– Section 12(2) provides that the resolution professional shall file an application with the NCLT to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if he is instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent of the voting shares.

The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 has amended sub-section (2) of section 12 of the Code to recalibrate voting threshold from seventy-five per cent to sixty-six per cent for extension of corporate insolvency resolution process period by committee of creditors.

On receipt of application, if the NCLT is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but such period cannot exceed ninety days.

[Section 12(3)]

Thus, section 12 prescribe a time limit of 180 days, extendable by a further 90 days, for the completion of corporate insolvency resolution process. The application for the extension can only be made by the resolution professional and has to be supported by a resolution passed at a meeting of the committee of creditors by a majority of 66 per cent of the voting shares.

Any such extension of the period of corporate insolvency resolution process under section 12 shall not be granted more than once.

(5 marks)

Answer to Q1.D.

Section 28 of the Code lists out certain actions that may be taken by the resolution professional only with the prior approval of the committee of creditors by a vote of 66 per cent of the voting shares. The aim of this section is to secure consent of the committee of creditors for certain specific matters. If the resolution professional takes any of the actions

listed in section 28(1) without obtaining the consent of the committee of creditors, such action shall be void. The resolution professional may also be liable to be replaced.

Section 28(1) provides that notwithstanding anything contained in any other law for the time being in force, the resolution professional, during the corporate insolvency resolution process, shall not take any of the following actions without the prior approval of the committee of creditors:

- (a) raise any interim finance in excess of the amount as may be decided by the committee of creditors in their meeting;
- (b) create any security interest over the assets of the corporate debtor;
- (c) change the capital structure of the corporate debtor, including by way of issuance of additional securities, creating a new class of securities or buying back or redemption of issued securities in case the corporate debtor is a company;
- (d) record any change in the ownership interest of the corporate debtor;
- (e) give instructions to financial institutions maintaining accounts of the corporate debtor for a debit transaction from any such accounts in excess of the amount as may be decided by the committee of creditors in their meeting;
- (f) undertake any related party transaction;
- (g) amend any constitutional documents of the corporate debtor;
- (h) delegate its authority to any other person;
- (i) dispose of or permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties;
- (j) make any change in the management of the corporate debtor or its subsidiary;
- (k) transfer rights or financial debts or operational debts under material contracts otherwise than in the ordinary course of business;
- (l) make changes in the appointment or terms of contract of such personnel as specified by the committee of creditors; or
- (m) make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.

Section 28(2) mandates that the resolution professional shall convene a meeting of the committee of creditors and seek the vote of the creditors prior to taking any of the actions under sub-section (1).

No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of sixty-six per cent. of the voting shares. [Section 28(3)]

(4) Where any action under sub-section (1) is taken by the resolution professional without seeking the approval of the committee of creditors in the manner as required in this section, such action shall be void. [Section 28(4)]

(5) The committee of creditors may report the actions of the resolution professional under sub-section (4) to the Board for taking necessary actions against him under this code. [Section 28(5)]

(5 marks)

Answer to Q2.A.

Section 32 of the Code deals with appeals from an order approving the resolution plan. Section 32 lays down that any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

3) According to section 61(3), an appeal against an order approving a resolution plan under section 31 may be filed on the following grounds:

- (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force,
- (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period,
- (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board,
- (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts, or
- (v) the resolution plan does not comply with any other criteria specified by the Board.

(3 marks)

Answer to Q2.B.

Section 240 of the Insolvency and Bankruptcy Code enables Insolvency and Bankruptcy Board of India (IBBI) to formulate and enforce regulations broadly covering the following matters:

1. Regulating all matters related to insolvency and bankruptcy process.
2. Setting out eligibility requirements of insolvency intermediaries i.e., Insolvency Professionals, Insolvency Professional Agencies and Information Utilities.
3. Regulating entry, registration and exit of insolvency intermediaries.
4. Making model bye laws for Insolvency Professional Agencies.
5. Setting out regulatory standards for Insolvency Professionals.
6. Specifying the manners in which information utilities can collect and store data.

Similarly, powers and functions of IBBI are detailed in Section 196 of the of the Insolvency and Bankruptcy Code empowering the IBBI with same powers as vested in a civil court under Code of Civil Procedure 1908 (CPC) for discovery, summoning, examination of witnesses or documents.

(3 marks)

Answer to Q2.C.

“A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets including but not limited to the following:

- (a) transfer of all or part of the assets of the corporate debtor to one or more persons;
- (b) sale of all or part of the assets whether subject to any security interest or not;
- (ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;

- (c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons
- (ca) cancellation or delisting of any shares of the corporate debtor, if applicable;
- (d) satisfaction or modification of any security interest
- (e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;
- (f) reduction in the amount payable to the creditors;
- (g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor
- (h) amendment of the constitutional documents of the corporate debtor;
- (i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
- (j) change in portfolio of goods or services produced or rendered by the corporate debtor;
- (k) change in technology used by the corporate debtor; and
- (l) obtaining necessary approvals from the Central and State Governments and other authorities.”

(3 marks)

Answer to Q2.D.

Section 12A was added by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018. The newly added section 12A provides that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be specified.

Before admission of the application, however, the Adjudicating Authority may permit withdrawal of the application on the request of the applicant under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Form FA given under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is required to be filed for withdrawal of the CIRP.

(3 marks)

Answer to Q2.E.

The following persons shall not be entitled to make application to NCLT for initiation of corporate insolvency resolution process:

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or (
- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months preceding the date of making application; or
- (d) a corporate debtor in respect of whom a liquidation order has been passed so that finality of the liquidation order is ensured.

For making an application, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

(3 marks)

Answer to Q3.A.

Section 101 provides that an order admitting an application for insolvency resolution has the effect of a fresh moratorium from the date of such admission for a period of one hundred and eighty days, or up to the date on which an order approving the repayment plan is passed by the adjudicating authority under section 114, whichever is earlier. On the passing of such order, irrespective of the acceptance or rejection of the application, the interim moratorium under section 96 comes to an end.

Duration of moratorium – Sub-section (1) of section 101 provides that when the application is admitted under section 100, a moratorium shall commence in relation to all the debts and shall cease to have effect at the end of the period of one hundred and eighty days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under section 114, whichever is earlier.

Effect of moratorium – According to sub-section (2), during the moratorium period: (a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; (b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and (c) the debtor shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficial interest therein;

Moratorium to operate against all partners of firm – Sub-section (3) provides that where an order admitting the application under section 96 has been made in relation to a firm, the moratorium under sub-section (1) shall operate against all the partners of the firm.

Exclusion of certain transactions – According to sub-section (4) of section 101, the provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(5 marks)

Answer to Q3.B.

The terms 'person' and 'corporate person' have been used differently at different places in the Insolvency and Bankruptcy Code, 2016.

Though the definitions of 'person', are wide, it will have to be read in context in which the word 'person' has been used. The following definition of 'person' may not apply at each place, where the word person has been used. "Person includes individual, HUF, Company, Trust, Partnership, LLP and any other entity established under the Statutes. It also includes a person resident outside India (Section 3(23) of the Insolvency and Bankruptcy Code, 2016).

"Corporate Person" means a company as defined in section 2(20) of the Companies Act, 2013, a limited liability partnership as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2009, or any other persons incorporated with limited liability

under any law for the time being in force but shall not include any financial service provider vide section 3(7) of Insolvency and Bankruptcy Code, 2016.

In the definition of 'person' the word individual has been used but in the word 'corporate person' such word has not been used. Corporate person, includes person, as has been included in the word person with limited liabilities excluding financial service provider, as defined in section 3(7) of the Code.

Definition of Corporate Person completely excludes financial service providers. The reasons are that they are regulated by specialized agency. Thus, the Code does not cover Banks, Financial Institutions, Insurance Companies, ARCs, Mutual Funds or Pension Funds, etc.

(5 marks)

Answer to Q3.C.

Section 24 of the Code prescribes the following modalities for the meeting of the committee of creditors.

(1) The members of the committee of creditors may meet in person or by such other electronic means as may be specified. [Section 24(1)]

(2) All meetings of the committee of creditors shall be conducted by the resolution professional. [Section 24(2)]

(3) The resolution professional shall give notice of each meeting of the committee of creditors to: (a) members of committee of creditors, including the authorised representatives referred to in subsections (6) and (6A) of section 21 and sub-section (5), (b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be, (c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten percent of the debt [Section 24(3)]

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings. The absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting. [Section 24(4)]

(5) Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors: Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor. [Section 24(5)]

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor. [Section 24(6)]

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board. [Section 24(7)]

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified. [Section 24(8)]

Regulation 18 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides that a resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights.

(5 marks)