

Total Marks - 60

Time allowed – 1.5 hours

Q1. M/s Jooly Private Limited (Corporate Debtor) is a company incorporated on 01.01.2005 under the provisions of Companies Act, 1956, having its registered office at Mumbai. The Authorised Share Capital of the company is Rs. 100, 00, 00,000/- and Paid up Share Capital of the company is Rs. Rs. 99, 00, 00,000/-.

M/s Jemmy Private Limited (Operational Creditor) is a company incorporated on 01.01.2006 under the provisions of Companies Act, 1956 having its registered office at Kolkata.

M/s Jooly Private Limited approached M/s Jemmy Private Limited for purchase of inputs for his production. It was specifically agreed that upon procuring the inputs by M/s Jooly Private Limited and raising of invoices by M/s Jemmy Private Limited , the entire payment for such invoices shall be made in a timely manner. As per the arrangement, the M/s Jooly Private Limited placed various purchase orders for supply of inputs . M/s Jemmy Private Limited supplied the goods as per the orders placed by M/s Jooly Private Limited and raised invoices against the said supply.

The invoices were duly acknowledged by M/s Jooly Private Limited and an amount as part payments were also made. But thereafter, inspite of various requests made and reminders sent by M/s Jemmy Private Limited, the M/s Jooly Private Limited had neither responded nor repaid the remaining claim.

On failure to pay the outstanding dues by the M/s Jooly Private Limited, the M/s Jemmy Private Limited sent a demand notice dated 01.01.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire outstanding payments of Rs. 10,00,000/- (Rupees Ten Lakhs) inclusive of interest within 15 days from receipt of the notice, failing which the M/s Jemmy Private Limited shall initiate the Corporate Insolvency Resolution process against the M/s Jooly Private Limited.

Despite the demand notice, the M/s Jooly Private Limited did not pay the amount demanded, neither raised any notice of dispute nor replied to the said notice. As a next action M/s Jemmy Private Limited filed an application before National Company Law Tribunal (NCLT), seeking to unfold the process of Corporate Insolvency Resolution Process (CIRP).

Based on the above facts, answer the following:

- (a)** Who can make application before the Adjudicating Authority on behalf of Operational Creditor and where to file such application to initiate the Corporate Insolvency process

in the given case and also state the documents needs to be attached with such application under Insolvency and Bankruptcy Code, 2016.

(5 MARKS)

(b) Who can appoint Interim Resolution Professional in case Resolution Professional is not appointed by the Operational Creditor? State the moratorium as envisaged under the provisions of Section 14(1) to (4) of the Insolvency and Bankruptcy Code, 2016 in relation to the Corporate Debtor.

(5 MARKS)

(c) Enumerate the duties of interim resolution professional during the Corporate Insolvency Resolution Process (CIRP) specified under Section 18 of the Insolvency and Bankruptcy Code, 2016.

(5 MARKS)

(d) i) Is there a specific form/format for the demand notice/ invoice demanding payment to be sent to corporate debtor under section 8?

(2 MARKS)

ii) Who will fix and bear the expenses/ cost incurred by the interim resolution professional?

(3 MARKS)

Q2.A. Sunta 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.

(6 MARKS)

Q2.B State the restrictions imposed on the bankrupt under section 141 of the Code from the bankruptcy commencement date.

(4 MARKS)

Q2.C. Quality Rubber Limited, a supplier of raw materials filed a petition before the NCLT for the recovery of Rs. 10,00,000 against Smart Latex Limited, the Corporate Debtor, has other financial creditors to the extent of Rs. 1,50,00,000 and they also joined together and filed petitions to NCLT. The CD has a total of 40 financial creditors and 2 operational creditors. Further, all the financial creditors are having equal voting rights/ shares.

Notice was issued on 1st August, 2019 for the conduct of the first meeting to be held on 5th August, 2019 at a common venue. The meeting was attended by all 40 financial creditors and 2 operational creditors. A resolution was passed to appoint Mr. Naveen as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting.

Decide in terms of the given information whether the resolution to appoint Mr. Naveen is valid? In light of the provisions of IBC, 2016 read with rules framed thereunder, explain the requirements of valid quorum for the conduct of the meeting.

(6 MARKS)

Q3.A. An insolvency resolution professional shall not outsource any of his duties and responsibilities under the Code. Comment.

(6 MARKS)

Q3.B. With the help of a decided case law, write down the principles that a resolution plan should comply with.

(6 MARKS)

Q3.C. 'The United Nations Commission on International Trade Law's, Model Law on Cross Border Insolvency do not lead to harmonization of Insolvency Laws enacted by the individual Countries'. Do you agree with this statement? Explain.

(6 MARKS)

Q3.D. i) What precautions should be taken by RP while finalizing minutes of Committee of Creditors?

ii) What precautions should be taken by IP while applying to NCLT for extension of time period by 90 days?

(6 MARKS)