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PRESIDENCY UNIVERSITY BENGALURU

 **SET A**

SCHOOL OF LAW

**END TERM EXAMINATION – MAY/JUNE 2024**

**Semester :** Semester VIII - 2020

**Course Code :** LAW405

**Course Name :** Insolvency and Bankruptcy Law

**Program :** BA LLB Honors

**Date :** June 21, 2024

**Time :** 1:00 PM - 4:00 PM

**Max Marks :** 100

**Weightage :** 50%

**Instructions:**

1. *Read all questions carefully and answer accordingly.*
2. *Question paper consists of 3 parts.*
3. *Scientific and non-programmable calculator are permitted.*
4. *Do not write any information on the question paper other than Roll Number.*

**PART A**

**ANSWER ANY FOUR QUESTIONS 4Q X 5M = 20 MARKS**

* 1. Explain the tests determining the insolvency under Insolvency and Bankruptcy code of India .

(CO1) [Knowledge]

* 1. Could you outline the procedural steps involved in the Fast Track Corporation Insolvency Resolution Process?
	2. Enumerate the steps involved in the initiation of liquidation for a corporate person.

(CO2) [Knowledge]

(CO3) [Knowledge]

* 1. Under IBC what is the penality anf punishment for false information by the Creditors .

(CO6) [Knowledge]

* 1. Outline the provisions of the UNCITRAL Model Law on Cross-Border Insolvency and its adoption worldwide.
	2. Explain the importance of Information utility in Resolution Process under IBC.

(CO4) [Knowledge]

(CO5) [Knowledge]

**PART B**

**ANSWER ANY FOUR QUESTIONS 4Q X 10M = 40 MARKS**

* 1. Evaluate the role of the Insolvency and Bankruptcy Board of India in setting and enforcing standards for Insolvency Professionals (IPs) and Insolvency Professional Agencies (IPAs).

(CO5) [Application]

* 1. Evaluate the challenges faced by liquidators in identifying and addressing Preferential Transactions, Undervalued Transactions, and Transactions defrauding Creditors.

(CO3) [Application]

* 1. Analyze the provisions of Section 29A of the Insolvency and Bankruptcy Code regarding the eligibility of promoters to participate in the liquidation process.

(CO3) [Application]

* 1. As an insolvency professional how would you evaluate the concept of a Bankruptcy Order and its significance in individual insolvency proceedings?

(CO4) [Application]

* 1. Being a lawyer practicing insolvency how do a comparative analysis on individual insolvency process of US, UK and India?

(CO4) [Application]

* 1. Evaluate if the powers given to (IBBI) is regulating insolvency proceedings are sufficient or do they need to bring about sufficient or do they need to bring about changes for their effective functions.

(CO5) [Application]

**PART C**

**ANSWER ANY TWO QUESTIONS 2Q X 20M = 40 MARKS**

* 1. You are a legal advisor representing a medium-sized manufacturing company that is facing financial distress and is considering initiating the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code 2016. Outline the steps involved in initiating and conducting the CIRP, including the filing of a petition with the National Company Law Tribunal (NCLT), appointment of an interim resolution professional (IRP), preparation of the resolution plan, and approval by the committee of creditors (CoC).

Critically analyse the Corporate Insolvency Resolution Process (CIRP) introduced under the Insolvency and Bankruptcy Code 2016, with a focus on its objectives, procedures, and outcomes.

(CO2) [Analysis]

* 1. **Case Study: Liquidation Process of Beta Electronics Ltd.**

**Background:** Beta Electronics Ltd., a medium-sized electronics manufacturing company, faced severe financial difficulties due to declining sales, mounting debt, and management inefficiencies. Despite efforts to restructure its operations and negotiate with creditors, Beta Electronics Ltd. failed to achieve a viable resolution plan under the Insolvency and Bankruptcy Code (IBC), 2016. Consequently, the company entered into liquidation proceedings supervised by the National Company Law Tribunal (NCLT).

**Role of the Liquidator:** Mr. Raj, a qualified insolvency professional, was appointed as the liquidator for Beta Electronics Ltd. His role encompassed various responsibilities outlined in the IBC, 2016, to ensure the orderly and efficient liquidation of the company's assets and distribution of proceeds to creditors. Mr. Raj's actions and decisions throughout the liquidation process were guided by the principles of transparency, fairness, and maximization of value for stakeholders.

* + 1. Asset Identification and Valuation: The first task undertaken by Mr. Raj was to conduct a comprehensive inventory of Beta Electronics Ltd.'s assets, including manufacturing equipment, inventory, intellectual property rights, and real estate properties. Professional appraisers were engaged to assess the value of these assets to determine their market worth and potential realization in the liquidation process.
		2. Preservation and Management of Assets: Mr. Raj took immediate steps to safeguard and preserve Beta Electronics Ltd.'s assets pending their liquidation. This involved securing physical assets, maintaining insurance coverage, and preventing any unauthorized disposal or encumbrance of company property. He also assumed control over the company's operations to ensure continued business continuity during the liquidation process.
		3. Debt Recovery and Creditor Claims: As the liquidator, Mr. Raj was responsible for verifying creditor claims and adjudicating disputes regarding the priority and validity of claims. He meticulously reviewed the claims submitted by creditors, categorized them based on their nature and priority, and initiated recovery actions against defaulting debtors to maximize creditor recovery.
		4. Sale and Disposal of Assets: Mr. Raj formulated a comprehensive strategy for the sale and disposal of Beta Electronics Ltd.'s assets to maximize realization and optimize creditor recovery. This involved soliciting bids from potential buyers, conducting auctions, and negotiating favorable terms for asset sales. Assets were sold individually or in bulk, depending on market demand and value considerations.
		5. Distribution of Proceeds: Once the assets of Beta Electronics Ltd. were liquidated, Mr. Raj oversaw the distribution of proceeds to creditors in accordance with the waterfall mechanism prescribed by the IBC, 2016. Priority was given to secured creditors, followed by operational creditors, and finally, unsecured creditors and shareholders. Mr. Raj ensured transparency and fairness in the distribution process, providing regular updates to stakeholders and facilitating resolution of any disputes or objections.

**Outcome:** Through diligent efforts and meticulous management by Mr. Raj, the liquidation process of Beta Electronics Ltd. was completed in a timely manner, with maximum value realized for creditors and stakeholders. Despite the unfortunate outcome of liquidation, Mr. Raj's role as the liquidator under the IBC, 2016, helped mitigate losses, preserve creditor interests, and uphold the integrity of the insolvency resolution framework. His professionalism, expertise, and commitment to ethical conduct exemplified the vital role of the liquidator in facilitating the orderly winding-up of insolvent companies under the IBC, 2016.

Analyse the legal and regulatory framework governing the powers and functions of a liquidator under the Insolvency and Bankruptcy Code, 2016, and its implications for insolvency resolution practices.

(CO3) [Analysis]

* 1. ‘Taste Bud’ was a restaurant located at leased premises in New Delhi. It had a great reputation, award-winning chefs and tastefully designed interiors. Much of its business came from executive lunches and dinners. Following the opening of ‘Heavens’, another excellent restaurant in the nearby vicinity, trading losses were incurred by Taste Bud and eventually the business became insolvent. Efforts to either have the rent reduced or to sell the business were unsuccessful. Suppliers of food, beverages and utilities were unpaid for supplies provided in the previous 45- 60 days, amounting to around Rs.90,000. There were rental arrears for one month amounting to Rs.50,000 towards landlord Mr. Deepak (the landlord had received advance rent for three months, lease deed provided for one- month rent as security and one-month rent as advance).

Taste Bud also had a secured creditor, ‘Secure Bank’. The bank indicated that it did not wish to appoint a receiver/ file for insolvency as the accounts were regularly maintained. Taste Bud was managed by Mr. Kapil, as a sole proprietor. He employed a staff of 10 people, including a chef, an assistant chef, six waiters and two house-keeping staff. The salaries due to these employees were paid in half since the past three months.

In light of the above, answer the following questions:

1. Whether Taste Bud can apply for fresh start process? Give answer with citing reasons.
2. In priority of payment of debts who will be paid before the wages and unpaid dues of employees of the bankrupt? How the priority is decided under the IBC 2016?
3. Who can initiate an insolvency resolution process in this case? Give reasons.
4. In the above situation if a bankruptcy order is passed against Taste Bud, who shall prepare the list of creditors? Mention provisions of IBC 2016 in this regard?
5. Analyse the effect of Bankruptcy Order on secured creditors under the IBC 2016.

(CO4) [Analysis]