

Insolvency and Bankruptcy Code 2016

Question 1

When will the provisions of insolvency and liquidation of corporate persons be applicable on a corporate person?

Answer

The provisions relating to the insolvency and liquidation of corporate debtors shall be applicable only when the amount of the default is one lakh rupees or more. However, the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Question 2

Who may initiate corporate insolvency process against a corporate person?

Answer

The corporate insolvency process may be initiated against any defaulting corporate debtor by -

- (a) Financial creditor,
- (b) Operational creditor
- (c) Corporate debtor

Question 3

What is the Insolvency Resolution Process for financial creditors?

Answer

A financial creditor either itself or along with other financial creditors may lodge an application before the Adjudicating Authority (National Company Law Tribunal) for initiating corporate insolvency resolution process against a corporate debtor who commits a default in payment of its dues.

The financial creditor shall along with the application give evidence in support of the default committed by the corporate debtor. He shall also give the name of the interim resolution professional.

Where the Adjudicating Authority is satisfied that a default has occurred and the application by the financial creditor is complete and there is no disciplinary proceedings

pending against the proposed resolution professional, it may admit such application made by the financial creditor. Otherwise, the application may be rejected. However, the applicant may rectify the defect within seven days of receipt of notice of rejection from the Adjudicating Authority.

Question 4

What is the Insolvency Resolution Process for operational creditors?

Answer

On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.

The corporate debtor shall within a period of ten days of receipt of demand notice notify the operational creditor about the existence of a dispute, if there is any and record of pendency of any suit or arbitration proceedings. He shall also provide the details of repayment of unpaid operational debt in case the debt has or is being paid.

After the expiry of ten days, if the operational creditor does not receive his payment or the confirmation of a dispute that existed even before the demand notice was sent, he may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

The Adjudicating Authority shall within fourteen days of receipt of the application, admit or reject the application. However, before rejecting the application, an opportunity shall be given to the applicant to rectify the defect within seven days of receipt of rejection.

Question 5

What is the procedure of Insolvency Resolution Process for a Corporate Applicant?

Answer

Where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

The corporate applicant shall furnish the information relating to books of account and other documents and a resolution professional shall be appointed as interim resolution professional.

The Adjudicating Authority may either accept or reject the application within fourteen days of receipt of application. However, applicant should be allowed to rectify the defect within seven days of receipt of notice of such rejection.

Question 6

What are the eligibility criteria for appointment of an Insolvency Professional as a Resolution Professional for a corporate insolvency resolution process?

Answer

As per **Regulation 3 of Insolvency and Bankruptcy (Insolvency Resolution) Regulation, 2016**, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency resolution process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor i.e.,

- He is eligible to be appointed as an independent director on the board of the corporate debtor u/s 149 of the Companies Act, 2013, where the corporate debtor is a company.
- He is not a related party of the corporate debtor.
- He is not an employee or proprietor or a partner of a firm of auditors or company secretaries in practice or cost auditors of the corporate debtor in the last three financial years. He is not an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years.

Question 7

Can an applicant withdraw its application for insolvency process?

Answer

Yes, as per Regulation 8 of Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 an applicant may withdraw application for insolvency process by making a request to the Adjudicating Authority. However, such a withdrawal may not be made after the application has been admitted by the adjudicating authority.

Question 8

Can an assignee of a financial contract make an application under corporate insolvency resolution process?

Answer

Yes, as per Regulation 4 of Insolvency and Bankruptcy (Adjudicating Authority) Rules, 2016 where an applicant of corporate insolvency resolution is an assignee or transferee of a financial contract the application shall be accompanied with a copy of the assignment or transfer agreement and other relevant documents as may be required to demonstrate the assignment or transfer.

Question 9

Can a financial creditor in respect of whom there is no default file an application of resolution?

Answer

Yes, a financial creditor for whom there is no default can still file an application against a corporate debtor provided, the corporate debtor has a default against some other financial creditor. However, in that case, he can only file joint application with the financial creditor for whom there is default.

Question 10

Nature India Limited filed a petition under the Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT) against Tulip Limited and the petition was admitted. After that, Nature India Limited wanted to withdraw the petition based on a settlement arrived between the parties. Whether it is permissible to withdraw the petition after it has been admitted? Decide.

Also explain the rules relating to the admission and rejection of application by an adjudicating authority under the Insolvency and Bankruptcy Code, 2016.

Answer

Withdrawal of Application/ Petition: As per the facts given in the question, Nature India Limited filed a petition under the **Insolvency and Bankruptcy Code, 2016** with NCLT against the Tulip Limited and the petition was admitted. After that Nature India Limited wanted to withdraw the same due to settlement between the parties.

As per Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the Adjudicating Authority may permit withdrawal of the application made under rules 4 (Application by financial creditor), 6 (Application by operational creditor) or 7 (Application by corporate applicant), as the case may be, on a request made by the applicant before its admission.

Since in the given instance, Nature India Limited wanted to withdraw the petition after it was admitted by the adjudication authority. So it was not permissible to withdraw the petition after been admitted.

Provisions related to admission or rejection of application by an adjudicating authority in the Insolvency and Bankruptcy Code, 2016-

The Adjudicating Authority shall, on the receipt of the application within the given time period under the relevant provisions, ascertain the existence of a default and pass the order **[under Section 9(5) of the IBC, 2016]**.

Where the Adjudicating Authority is satisfied, either—

Admit application when -

- a default has occurred and,
- and the application is complete
- no disciplinary proceedings pending against the proposed resolution professional

Reject application when-

- default has not occurred or
- the application is incomplete
- any disciplinary proceeding is pending against the proposed resolution professional
- rejecting the application, give a notice to the applicant to rectify the defect.

Further, the Adjudicating Authority shall communicate order of admission or rejection of such application within given time, as the case may be

Question 11

Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under the Insolvency and Bankruptcy Code, 2016 on default of the debtor in India. It moved a petition u/s 9 of the Code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it could not submit a "Certificate from a financial institution" as required under the Code. Whether the petition is permissible under the Insolvency and Bankruptcy Code, 2016? Decide.

Answer

As per the definition of the Creditor given in **Section 3(10) of the Insolvency and Bankruptcy Code, 2016**, it means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder. So, Standard International Ltd. is a creditor under the purview of the Code.

As per the facts given in question, Standard International Ltd., is a foreign trade creditor. He wanted to file a petition under the under **Section 9 of the Insolvency and Bankruptcy Code, 2016** for commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India.

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority. Being a foreign trade creditor, Standard International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution. So, Petition under Section 9 of the Code is not permissible.

Question 12

State the manner of initiation of corporate insolvency resolution process by financial creditor under the Insolvency and Bankruptcy Code, 2016.

Answer

Initiation of corporate insolvency resolution process by financial creditor.

Section 7 of the Insolvency and Bankruptcy Code, 2016 state the manner of initiation of corporate insolvency resolution process by financial creditor. According to the provision, a financial creditor either by itself or jointly with other financial creditors may file an application against a corporate debtor before the Adjudicating Authority (Tribunal) when a default has occurred.

The financial creditor shall, along with the application furnish the following information—

- (a) **record of the default** recorded with the information utility or such other record or evidence of default as may be specified;
- (b) **the name of the resolution professional** proposed to act as an interim resolution professional; and
- (c) **any other information** as may be specified by the Board.

The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application.

Commencement of corporate insolvency resolution process: The corporate insolvency resolution process shall commence from the date of admission of the application. The Adjudicating Authority shall communicate— the order to the financial creditor within seven days of admission or rejection of such application and to the corporate debtor.

Question 13

Is there any time limit for completion of the Insolvency Resolution Process?

Answer

Section 12 of the Code states that any 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 the process.

However the National Company Law Tribunal (NCLT) may on an application made by the resolution professional, under a resolution passed by the Committee of Creditors, by a vote of 75% of voting shares, after consideration provide one extension which shall not extend more than 90 days.

Question 14

State the circumstances when persons are not entitled to make an application to initiate corporate insolvency resolution process.

Suppose a corporate debtor has committed a default and is undergoing a corporate

insolvency resolution process. A corporate applicant Mr. X thereof files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. State whether he (Mr. X) is entitled to make an application to initiate corporate insolvency resolution process?

Answer

Persons not entitled to make application.

The following persons shall not be entitled to make an application to initiate 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 before the date of making of an application under this Chapter; or
- (d) a corporate debtor in respect of whom a liquidation order has been made.

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor. **[Section 11]**

As per the facts corporate applicant Mr. X seems to be a separate individual and not a corporate applicant in respect of such corporate debtor who is undergoing a corporate insolvency resolution process. So he shall be entitled to make an application to initiate corporate insolvency resolution process.

Question 15

Wisdom Ltd. Commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. State the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process?

Answer

In the given problem, on commission of default by the Wisdom Ltd., Mr. F filed an application for initiating corporate insolvency resolution process before adjudicating authority. Further, Mr.X another financial creditor moved an application for initiation of insolvency resolution process against the Wisdom Ltd.

According to the **section 6 of the Code**, where any corporate debtor commits a default, a financial creditor, Operational creditor or the Corporate debtor itself may initiate insolvency resolution process against such corporate debtor.

But as per **Section 13 of the Code**, once an application is admitted by the Adjudicating authority, it shall by an order declare a moratorium for the purposes referred to in section 14. Then causes a public announcement of the initiation of CIRP by IRP and call for the submission of claims under section 15 and appoint an IRP in the manner as laid down in section 16 of the Code. Public announcement lays down all the relevant information related

to the CIRP. So that the all creditors entitled under the law can raise their claim in this case. So, no further application for initiation of CIRP against the same debtor (i.e, Wisdom Ltd.) can be initiated. So, Mr. X, cannot file an application on initiation of CIRP, however, is entitled under the law to raise his claim in this case against the Wisdom Ltd.

Question 16

M/s TAS Constructions Private Limited, an operational creditor on 2nd April, 2018 being the default date issued a demand notice through speed post to M/s Dheeraj Constructions Private Limited, an unpaid operational/corporate debtor demanding payment of its invoice dated 19th March, 2018 for ₹5,60,000 (15 days payment terms) towards supply of certain works contract services as per the provisions of section 8(1) of the Insolvency and Bankruptcy Code, 2016 and rules framed there under/s

Dheeraj Constructions Private Limited on receipt of the demand notice informed the operational creditor, that vide their e-mail dated 30th March, 2018, addressed to the company and all its directors, they have disputed the invoice on the quality of the services rendered and were withholding payment till the dispute is settled but without initiating any legal proceedings under any law for the time being in force. The operational creditor on expiry of the period of 10 days from the date of delivery of the demand notice and non-payment of its dues approached the Adjudicating Authority for the initiation of the corporate insolvency resolution process under section 9(1) of the Insolvency and Bankruptcy Code, 2016. Will the application of the operational creditor filed under section 9 (1) read with section 8(2) (a) of the Insolvency and Bankruptcy Code, 2016 be permitted?

Answer

The given problem is based on **Section 9(1) of the Insolvency and Bankruptcy Code, 2016**. According to the provision, after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating corporate insolvency resolution process.

However, as per Section 8(2)(a) of the Code, the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor about existence of dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.

Facts given states that the Dheeraj Constructions Private Limited on receipt of the demand notice, informed M/s TAS Constructions Private Limited (Operational Creditor) that through email dated 30th March, 2018, addressed the company and all its directors, of the dispute on the invoice and withholding of the payment till the settlement of the dispute.

The provision of **Section 8(2)(a)** envisages existence of dispute, if any and record of the pendency of the suit or arbitration proceedings filed by the Corporate Debtor before receipt of such notice or invoice in relation to such disputes: thus existence of disputes and record of pendency of the suit or arbitration proceedings both are to be filed. Whereas,

Section 5 (6) defines 'disputes' as disputes includes a suit or an arbitration proceedings relating to:

- (a) The existence of the amount of the debt
- (b) The quality of goods or service or
- (c) The breach of the representation or the warranties.

The Supreme Court has settled the position in the case of Mobilox Innovations Private Limited Vs. Kirusa Soft Ware Private Limited and Innoventive Industries Vs ICICI Bank by deciding that "and" used in Section 8(2)(a) has to be read as disjunctively and "and" to be read as "or" else, the purpose of the IBC will be defeated.

Hence, the requirement of Section 8, to bring to the notice of the operational creditor about an existence of dispute only and not along with the record of the pendency of the suit or arbitration proceedings as settled by the Supreme Court in the cases referred above filed before the receipt of such notice or invoice in relation to such dispute have been complied with and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute, have been complied with.

So, the application of M/s TAS Constructions Private Limited (Operational Creditor) shall not be permitted under **Section 9 of the Insolvency and Bankruptcy Code, 2016** as Dheeraj Construction Private Limited has complied the provisions of Section 8(2)(a) of the IBC, 2016.

Question 17

What is the effect of order of moratorium?

Answer

- (a) Moratorium has been explained in **Section 14 of the Code**, during the moratorium period the following acts shall be prohibited:
- (b) The institution of suits or continuation of any pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (d) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002
The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Question 18

M/s Systemtek India Private Limited (Appellant-Corporate Debtor) has challenged the order dated 3rd July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai, in the National Company Law Appellate Tribunal (NCLAT).

NCLT had admitted the application preferred by 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 Ld. 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 under section 10 against the Appellant by the Ld. 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.

Answer

As per the given facts in the question, Appellant, M/S Systemtek India Private Limited, challenged the order passed by the NCLT on the ground stating that the movable and immovable property of guarantor (Promoter) has been attached pursuant to a Corporate Insolvency Resolution Process initiated under Section 10 of the Code against the Appellant.

As per Section 14(1) of the Insolvency and Bankruptcy Code, 2016, on the Insolvency commencement date, the NCLT shall by order declare moratorium prohibiting certain acts by /against the Corporate Debtor. According to clause (c) of the said provision, the order prohibits any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.

The word 'its' used in clause (c) of sub-Section (1) of Section 14 of IBC, 2016, refers to corporate debtor and not the guarantors.

In view of this, the Order of NCLT under **Section 14(1)(c) of IBC 2016** is not violative. However M/s Systemtek India Private Limited can challenge the Order of the NCLT on the ground that until the liability of the Company is decisively crystallize, the guarantor cannot be held liable.

Question 19

What is a Resolution plan?

Answer

A resolution plan is a proposal agreed to by the Debtors and Creditors of an entity in a collective mechanism to propose a time bound solution to resolve the situation of insolvency.

As per **Section 30, the Insolvency Resolution Professional** (IRP) within the prescribed time i.e. 180 days or in case of extension 270 days, where Fast Track Resolution within 90 days or in case of extension 135 days, is required to submit the Resolution Plan to Adjudicating Authority (NCLT) prepared by the Resolution applicant on the basis of information memorandum.

The Resolution Plan should provide for:

- (i) payment of insolvency resolution costs;
- (ii) repayment of the debts to operational creditors;
- (iii) management of affairs of the Company after approval of the resolution plan;
- (iv) implementation and supervision of the resolution plan;
- (v) does not contravene provisions of the law for the time being in force; and conforms to such other requirement as may be specified by the Board.

Question 20

Mr. Madhyam, was appointed as an Interim resolution professional during the Corporate Insolvency Resolution Process. What are the duties to be performed by Mr. Madhyam in the given capacity?

Answer

According to Section 18 of the Insolvency and Bankruptcy Code, 2016, Mr. Madhyam as an Interim Resolution Professional shall perform the following duties:

- (a) collect all information relating to the assets, finances and operations of Corporate debtor including information relating to:
 - ▶ Its business operations for the previous two years;
 - ▶ Its financial and operational payments for the previous two years ;
 - ▶ A list of assets and liabilities of Corporate Debtor as on the initiation date; and
 - ▶ Other specified matters;
- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made by him under sections 13 and 15;
- (c) constitute a committee of creditors;
- (d) monitor the assets of Corporate Debtor and manage its operations until a Resolution Professional (RP) is appointed by the committee of creditors;
- (e) file information collected with the information utility, if necessary and
- (f) take control and custody of the assets over which Corporate Debtor has ownership rights like plot, factory building, debtors, etc.
perform such other duties as may be specified by IBBI.

Question 21

Mr. Naman was a resolution professional for the Corporate Insolvency Resolution process initiated against the corporate debtor, PQR Pvt. Ltd. However, attempt to resolve the

insolvency of PQR Pvt. Ltd. failed. An order for liquidation of PQR Pvt. Ltd., was passed by the NCLT. Mr. Naman acted as liquidator. The resolution plan submitted by Mr. Naman was rejected for failure to meet the requirements. Board recommended for the replacement of Mr. Naman.

What steps may be taken for the appointment of another liquidator under the Insolvency and Bankruptcy Code. What are the other aspects related to the charge of fees for the conduct of liquidation proceeding.

Answer

According to **section 34 of the Insolvency and Bankruptcy Code, 2016**, where the Adjudicating Authority passes an order for liquidation of the corporate debtor, the resolution professional appointed for the corporate insolvency resolution process, shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority.

The Adjudicating Authority shall by order replace the resolution professional, if—

- a) The resolution plan submitted by the resolution professional **was rejected for failure to meet the requirements**; or
- b) The **Board recommends the replacement of a resolution professional** to the Adjudicating Authority for reasons to be recorded in writing.

On rejection of resolution plan due to failure to meet the requirements, the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority.

The Adjudicating Authority shall, on receipt of the proposal of the Board for the appointment of an insolvency professional as liquidator, by an order appoint such insolvency professional as the liquidator.

Charge of fees for conduct of liquidation proceedings: An insolvency professional proposed to be appointed as a liquidator shall charge such fee for the conduct of the liquidation proceedings and in such proportion to the value of the liquidation estate assets, as may be specified by the Board.

Payment of fees: The fees for the conduct of the liquidation proceedings shall be paid to the liquidator from the proceeds of the liquidation estate.

Question 22

What is the priority order in case of liquidation in insolvency code?

Answer

Distribution of proceeds from the sale of the liquidation assets: The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority —

- (a) the insolvency resolution process costs and the liquidation costs paid in full;
- (b) the following debts which shall rank equally between and among the following :—
 - (I) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
 - (II) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;
- (c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;
- (d) financial debts owed to unsecured creditors
- (e) the following dues shall rank equally between and among the following:—
 - (I) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - (II) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;
- (f) any remaining debts and dues;
- (g) preference shareholders, if any; and equity shareholders or partners, as the case may be.

Question 23

Particulars relate to BigRammy (Private) Ltd. which has gone into Corporate Insolvency Resolution Plan (CIRP):

Sr. No.	Particulars	Amount in Rs.
1	Amount realized from the sale of liquidation of assets	14,00,000
2	Secured creditor who has relinquished the security	5,00,000
3	Unsecured financial creditors	4,00,000
4	Income-tax payable within a period of 2 years preceding the liquidation commencement date	50,000
5	Cess payable to state government within a period of one year preceding the liquidation commencement date	20,000
6	Fees payable to resolution professional	75,000
7	Expenses incurred by the resolution professional in running the business of the BigRammy (Private) Ltd. on going concern	25,000

8	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month	3,00,000
9	Equity shareholders	10,00,000

State the priority order in which the liquidator shall distribute the proceeds under the IBC.

Answer

As per section 53 of Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:

Insolvency Resolution Process Cost and Liquidation cost to be paid in full

(i)	Fees payable to Resolution Professional in full	75,000
(ii)	Expenses incurred by the Resolution professional in running the business on going concern	25,000
(iii)	Workmen salary outstanding for a period of 24 months (proportionate to 24 months only). The balance ` 60,000 is considered as remaining debts and dues and will be settled before preference shareholder/equity shareholder.	2,40,000
(iv)	Secured creditor who has relinquished the security	5,00,000
(v)	Unsecured Financial Creditors	4,00,000
(vi)	Income- tax payable with in the period 2 years	50,000
(vii)	Cess to State Government payable with in a period of one year	20,000
(vii)	Balance amount in workmen salary	60,000
	Total distribution in the above priority	13,70,000
	Amount realized from the sale of liquidation of assets	14,00,000
	Balance available to Equity share holder on pro rata basis	30,000

Question 24

BDLK Limited decided to go for voluntary winding up and accordingly the Board of Directors at a meeting of the Board are about to take the necessary steps to initiate the winding up proceedings. The Board of Directors of the company approached you for guidance in this regard. Please list out the steps required under the Insolvency & Bankruptcy Code 2016 before approval of such liquidation proposal with specific reference to meetings and actions of relevant stakeholders.

Answer

Voluntary Winding Up: As per **Section 59 of the Insolvency and Bankruptcy Code, 2016**, the voluntary liquidation of a corporate person shall meet such conditions and procedural requirements as may be specified by the Board (IBBI).

Conditions of initiation of voluntary liquidation proceedings: Voluntary liquidation proceedings of a corporate person registered as a company shall meet the following

conditions, namely:—

- (a) a declaration from majority of the directors of the company verified by an affidavit stating that they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and the company is not being liquidated to defraud any person;
- (b) the declaration given above shall be accompanied with the following documents namely:
 - (i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;
 - (ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;
- (c) within four weeks of a declaration under sub-clause (a) above, there shall be—
 - (i) a **special resolution of the members of the company in a general meeting** requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or
 - (ii) a **resolution of the members of the company in a general meeting** requiring the company to be liquidated voluntarily **as a result of expiry of the period of its duration**, if any, fixed by its articles, or

on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, **creditors representing two thirds in value of the debt of the company shall approve the resolution passed** under sub-clause (c) within seven days of such resolution.

Notification to Registrar of company and the Board: The Company shall notify the Registrar of Companies and the Board about the resolution to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

Question 25

Samridhi Pvt. Ltd. is declared as defaulter against Shubham cooperative Bank Ltd. For financial debt of ₹ 10 cr. against the business transactions. State in the given situation whether the Shubham cooperative Bank can initiate the insolvency resolution process against Samridhi Pvt. Ltd. under the provisions of the Insolvency & Bankruptcy Code.

Answer

Section 35 AA- New insertion	Power of Central Government to authorise Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process. The Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.
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Accordingly IBC Code can be initiated under Section 7 only when RBI issues direction to the bank.

Question 26

Mr. X, a Resolution professional in a liquidation process, on an examination of sale of property of corporate debtor finds that a transaction was made by the corporate debtor to his relative within 6 months preceding the Insolvency Commencement date, was undervalued.

Give the following answers in reference to the above situation-

- (a) State the validity of the conduct of such transaction by corporate debtor to his relative.
- (b) What will be the consequences when resolution professional determines such transactions undervalue and fails to report that same to NCLT?
- (c) What order NCLT shall pass when Corporate Debtor entered into an undervalued transaction?

Answer

- a) Validity of the conduct of undervalued transaction:** As per the provisions given in section 45 of the Insolvency and Bankruptcy Code, 2016, Mr. X, a resolution professional, on an examination of the transactions of the Corporate Debtor, determines that certain transactions were made by Corporate Debtor with a related party, within the period of two years preceding the insolvency commencement date (in 6 months preceding the Insolvency Commencement date), which were undervalued. Mr. X, shall make an application to the NCLT to declare such transactions as void and reverse the effect of such undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transaction.
- b) Failure to report to NCLT of undervalued transactions:** As per the stated facts given in the light of the provisions laid in Section 47 of the Insolvency and Bankruptcy Code, an undervalued transaction has taken place and Mr. X (Resolution Professional) has not reported it to the NCLT, in such case, a creditor, member or a partner of a Corporate Debtor, as the case may be, may make an application to the NCLT to declare such transactions void and reverse their effect in accordance with the relevant provisions of this Code.
- c) Order of NCLT:** Where the NCLT, after examination of the application made above, is satisfied that undervalued transactions had occurred; and Mr. X (RP) after having sufficient information or opportunity to avail information of such transactions did not report such transaction, there it shall pass an order of —
 - (a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48 of the Code. The order of the Adjudicating Authority may provide for the following:—
 1. require any property transferred as part of the transaction, to be vested in the corporate debtor;

2. release or discharge (in whole or in part) any security interest granted by the corporate debtor
 3. require any person to pay such sums, in respect of benefits received by such person, to the Mr. X (RP), as the Adjudicating Authority may direct; or
 4. Require the payment of such consideration for the transaction as may be determined by an independent expert.
- (b) Requiring the Board (IBBI) to initiate disciplinary proceedings against Mr. X.

Question 27

Mr. Ramlal, an Insolvency professional was appointed as a resolution professional for a corporate insolvency process initiated against the corporate debtor, Monotech Ltd. Mr. Ramlal is a partner of consulting firm M/s supervision and company which is an entity recognized under the IBBI. It was discovered that M/s supervision and company had a transaction with the corporate debtor, Monotech Ltd. amounting to 11% of its gross turnover in the last financial year 2017-2018.

Analyse the given situation as per the Insolvency and Bankruptcy Code, 2016, and advise on the validity of appointment of Mr. Ramlal as resolution professional against Monotech Ltd.

Answer

As per Regulation 3 of *Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016*, an insolvency professional shall be eligible for appointment as a resolution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor. However such an Insolvency professional who is appointed as an resolution professional shall not be an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years, subject to compliance of other requirements.

In the given instance, Mr. Ramlal, was appointed as Resolution professional for a corporate insolvency process initiated against the Monotech Ltd. During the process, it was discovered that Mr. Ramlal is a partner of a firm M/s supervision and company, which has made transaction of 11% of the gross turnover of the firm in the financial year 2017-2018 with Monotech Ltd.

Accordingly, Mr. Ramlal being a partner of the Firm had made a transaction of more than 10% of the gross turnover of the firm in the previous financial year 2017-2018. So his appointment as resolution professional against Monotech Ltd for initiation of CIRP, is not valid.

Question 28

Discuss the Principles on the basis of which the Insolvency Professional Agency (IPA) is enrolled and regulate insolvency professionals as its members in accordance with the I & B Code, 2016.

Answer

The Code provides for establishment of insolvency professionals agencies (IPA) to enroll and regulate insolvency professionals as its members in accordance with the Insolvency and Bankruptcy Code 2016 and read with regulations.

Principles governing registration of Insolvency Professional Agency

- to promote the professional development of and regulation of insolvency professionals
- to promote the services of competent insolvency professionals to cater to the needs of debtors, creditors and such other persons as may be specified
- to promote good professional and ethical conduct amongst insolvency professionals
- to protect the interests of debtors, creditors and such other persons as may be specified
- to promote the growth of insolvency professional agencies for the effective resolution of insolvency and bankruptcy processes under this Code.