

NATIONAL LAW UNIVERSITY, DELHI

LL.M. (Professional), Semester-II (Batch of 2020)

End Semester Examinations, July-2021

Paper: Bankruptcy and Insolvency Law

Total Marks:

100

Instructions:

1. Attempt any FIVE Questions. All Questions have equal marks (5x20=100), (1500-2000 word limit)
 2. No clarification shall be sought on the question paper.
 3. Open Book Exam, Participants may refer to Study Material, Bare Act, Recent Amendments & Ordinance. Cite Decided cases from NCLT/NCLAT/SC in support wherever applicable.
-

Q1. Application Hypothetical.

XYZ Ltd is a supplier of Active Pharmaceutical Ingredients ('API') being used in pharma products and is based out of Hong-Kong. ABC Ltd is a pharma company in India based out of New Delhi and has been purchasing ingredients from XYZ Ltd for last five years.

In the Financial Year 2016-17, XYZ Ltd raised 12 invoices on ABC Ltd in respect of supplies made amounting to INR 5,60,00,000/-. On 12th January, 2018, the Supplier being an operational creditor served a notice u/s 8 of the Insolvency and Bankruptcy Code on the Corporate Debtor demanding a payment outstanding for aforementioned 12 invoices.

On 15th March, 2018, ABC Ltd sent a reply to XYZ Ltd that time and again, it had raised the quality issues in connection with the material supplied and also shared material rejection report, however, in view of the domination of XYZ Ltd in the pharma market, it never quantified the losses incurred by it due to material rejection and quality issues.

XYZ Ltd without paying heed to the request of ABC Ltd filed an insolvency petition u/s 9 of the Insolvency & Bankruptcy Code before NCLT, Delhi on 25th August, 2020. The NCLT on 30th August, 2020 issued a notice to ABC Ltd for filing response to the petition filed by XYZ Ltd.

- I. Students are required to identify and substantiate the legal issues u/s 9 of the Insolvency and Bankruptcy Code on behalf of XYZ Ltd mentioning the series of events and also addressing the limitation issue since the invoices were issued in the FY 2016-17 i.e., April 1, 2016 to March 31, 2017.
- II. Students are also required to identify and substantiate the legal issues in response to section 9 petition on behalf of ABC Ltd. Arguments should be taken on the validity of section 8 notice, pre-existing disputes if any, limitation issue in the Insolvency Code.

Q2.: On 10th May 2019 Corporate Debtor (CD) was admitted into insolvency u/s 7 Application. Despite the best efforts of Resolution Professional (RP) no Resolution Plan could be approved by the Committee of Creditor (COC). Consequently, RP applied for Liquidation

which was approved by the Adjudicatory Authority (AA) on 15th March 2020. “PR” the Promoters of Corporate Debtor submitted a scheme of arrangement and wanted to buy the company on a going basis. The CD was declared NPA in January 2019. The Committee of Creditor approved the scheme of arrangement of PR which was also approved by AA, the same is now being challenged in the NCLAT by the operational creditor.

Identify the legal issues substantiating by relevant legal provisions and recent case law to be argued in the NCLAT.

Q3.: Explain exemption for Essential services from Moratorium and Ipso-Facto clauses. Refer to the case of Gujarat Urja Vikas Nigam v Amit Gupta, Supreme Court, CA 9241 of 2019 decided on 8-March 2021.

Q4.: Whether after approval of resolution plan by the Adjudicating Authority a creditor including the Central Government, State Government or any local authority is entitled to initiate proceedings for recovery of any of the dues from the Corporate Debtor, which are not a part of the Resolution Plan approved by the adjudicating authority? Case of Ghanshyam Mishra v Edelweiss ARC SC 13-April 2021 CIVIL APPEAL NO.8129 OF 2019.

Q5: Referring to the case of Lalit Kumar Jain Vs. Union of India, Transferred Case (Civil) No. 245/2020, decided on 21st May 2021 by the Supreme Court of India, explain the following legal issues: -

- (i) Whether approval of a resolution plan discharge a Personal Guarantor of a Corporate Debtor of her or his liabilities to the lender/financial creditor?
- (ii) Which would be the appropriate forum for Personal Guarantors to Corporate Debtor to be proceeded against?
- (iii) Whether selective operationalisation of the IBC is detrimental to the interests of petitioners?

Q6: Write short notes upon any two of the following: - **(2x10= 20 Marks)**

- i. Define & explain “Default” u/IBC.
- ii. Waterfall Mechanism u/IBC 2016
- iii. Cross-border insolvency