

NATIONAL LAW UNIVERSITY DELHI

LL.M. (Professional), Semester-II (Regular Students-Batch of 2021)

End Semester Assessment (Online), September-2022

Paper: Bankruptcy and Insolvency

Time: 6:00 hrs

Total Marks: 70

Instructions:

1. **ATTEMPT ANY FOUR QUESTIONS.**
 2. No clarification shall be sought or provided on the question paper.
 3. **Open Book Examination. A student may refer to Study Material, Bare Act, Recent Amendments and Ordinances.**
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- Q1. Write a case note on the Essar Steel Insolvency Resolution, including the analysis of application of section 29-A. **(17.5 Marks, approximately 1000-1200 words)**
- Q2. Write short note upon **any TWO** of the following:
(2 x 8.75 = 17.5 marks, approximately 750 words each)
- (a) Critical services during CIRP
 - (b) Priority among creditors in resolution plan
 - (c) Role and function of Insolvency Professional
- Q3. Please deal with the three issues listed at the end of this question, with the help of decided cases from NCLT/NCLAT/SC, wherever available.
(17.5 Marks, approximately 250 words per issue)

Aqua Minerale Pvt. Ltd. (Aqua) is a prominent mineral water bottling company in India. Its registered office is in Gurgaon, Haryana, but its manufacturing unit is in Dehradun, Uttarakhand. It owes dues to 10 creditors out of which (i) 4 are banks which are secured creditors holding 75% of debt in value, (ii) 4 unsecured creditors including Plasticon Limited (Plasticon), which is a supplier of bottles to Aqua; and (iii) 2 bondholders. Total amount due to all of them is Rs. 25 crore, which includes cash credit availed of during January 2013 to December 2016, and unpaid bills in respect of materials received during January 2016 to February 2017.

The head office of Plasticon is located in Delhi, while its manufacturing facility is based at Haridwar. On 1st April 2017, Plasticon served a demand note seeking a payment of Rs. 2 crore towards balance amount due on bottles supplied. On 5th April, 2017, Aqua filed a notice of arbitration, as provided in their agreement for dispute resolution, citing deficiency in quality of material of bottles supplied and its intent to return around 25% of the bottles supplied by Plasticon.

In April 2018, Plasticon delivered a demand notice under section 8 of the IBC demanding payment of unpaid amount of Rs. 2 crore involved in the default to Aqua. Aqua disputed it on the ground of deficiency in quality of material of bottles supplied. Nevertheless, Plasticon filed an application for commencement of insolvency proceedings in respect of Aqua under the IBC at the NCLT Bench, Allahabad. It proposed Mr. Karan Dev for appointment as Interim Resolution Professional (IRP). Karan is a well-known accountant and has audited the accounts of many companies in the past, including one of the creditors of Aqua.

On appointment as the IRP, Karan invited claims from creditors. He rejected the claim of one unsecured creditor, rejected the claim of one bondholder and reduced the claim of one secured creditor. He then constituted a committee of creditors (committee). In the first meeting of the committee, Karan is appointed as the Resolution Professional.

Five days later, one financial creditor requested Karan to convene a meeting of committee to consider two proposals, namely, replacement of Karan by Mr. Diwan Chand, and approval of interim finance from Distressed Asset Fund (DAF) against existing charged assets of Aqua. DAF is also a funder of Pep-Waters, a bottled water plant of PepCola, a leading aerated drinks company. The committee approved both the proposals.

Diwan prepared the Information Memorandum. He invited resolution plans from interested parties. Two resolution applicants, namely, Sprite-Cola and DAF, submitted resolution plans with Diwan for consideration of the committee. Sprite-Cola is a company involved in processing and selling packaged fruit juice. Mr. Malik, a promoter of Aqua, is also a Promoter of Sprite-Cola.

In the meeting of the committee, promoters of Aqua, and representatives of Plasticon, Sprite-Cola, and DAF were present. Aqua opposed the Plan of DAF. The plan of Sprite-Cola was approved by the secured creditors having 70% voting share of the committee. Diwan placed the resolution plan before the Adjudicating Authority for approval. DAF opposed the plan of Sprite-Cola before the Adjudicating Authority.

(i) 1st Issue (5 Marks)

Please identify relevant issues to be determined by the Adjudicatory Authority for admitting the application filed by Plasticon. Please prepare a brief submission to be made before the Adjudicating authority on behalf of Aqua.

(ii) 2nd Issue (5 Marks)

Please prepare a brief note to brief a Counsel to file a miscellaneous application on behalf of Karan opposing his replacement.

(iii) 3rd issue (5 Marks)

Please prepare a brief note carrying submissions to be made before the Adjudicating Authority on behalf of DAF in respect of resolution plan of Sprite-Cola.

Q4. Write short note upon **any TWO** of the following:

(2x8.75 = 17.5 marks, approximately 750 words each)

- (a) Cross-Border Insolvency
- (b) Moratorium
- (c) Role and function of Information Utilities

Q5. Whether insolvency proceedings can be initiated against a personal guarantor and a corporate guarantor of a corporate debtor before initiating corporate insolvency resolution process of the corporate debtor? Where applications for such insolvency proceedings may be filed? Illustrate with the help of recent case laws.

(17.5 Marks, approximately 1000 words)