

**NATIONAL LAW UNIVERSITY, DELHI**

**LL.M. Degree Programme, I-Semester (Batch of 2018)**

**End-Semester Examinations, December- 2018**

**Paper: Corporate Insolvency: Law & Practice**

Time: 3:00 Hours

Total Marks: 50

**Instructions:**

1. Read the questions carefully and answer. Attempt Any Two Questions From Part A, and Part B is compulsory.
  2. This is an Open Book Exam, Participants may refer to Study Material, Bare Act, Recent Amendments & Ordinance.
  3. No clarification shall be sought on the question paper.
  4. Do not write anything on the question paper except your roll no.
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**PART-A**

**Attempt ANY TWO Questions (2x15=30 Marks)**

**Q1. Application/ Case Study**

**(15 Marks)**

“Kingflyers” is an Air charter company registered in India as a Private Limited Company under Companies Act 2013. The registered office is situated at Lucknow, the corporate office is located at New Delhi. Mr. Amit is the Promoter and Managing Director of Kingflyers. Mr. Kunal is another Promoter and serves as an Independent Director of Kingflyers. SAFE Bank has provided a loan of Rs. 10 crore to Kingflyers, in October 2014, against collateral of office space & aircraft. In September 2016, Kingflyers requested SAFE Bank for a further advance of Rs. 5 crore to purchase a helicopter. SAFE Bank asked Mr. Amit to act as a Guarantor for the said advance.

In August 2017, Kingflyers was unable to service its loan obligations to SAFE Bank due to slump in business and reduced income. In November 2017, SAFE Bank, wants to proceed with available legal remedies against Kingflyers, Mr. Amit and Mr. Kunal.

**Suggest : -**

- (a) The Forum/ Adjudicatory Authority before whom the proceedings may be initiated?
- (b) The Rule/Provision/Legislation which governs the legal rights of parties.
- (c) Assuming Insolvency Application is admitted by the Adjudicatory Authority, can SAFE Bank invoke Guarantee provided by Mr. Amit?



**Q2. Write a note upon ANY TWO of the following: -**

**(2x7.5= 15 Marks)**

- (i) Moratorium
- (ii) Liquidation of Corporate Debtor
- (iii) Whether Limitation Act is applicable to the proceedings under the Code? Refer to leading cases and the recent amendment to IBC, 2016.

**Q3. Describe the main features of 'The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, w.e.f. 6<sup>th</sup> June 2018, making a special reference to the issue of eligibility of Resolution Applicants. Kindly discuss the relevant cases.**

**(15 Marks)**

**PART-B**  
**(Compulsory)**

**Q5. Application/ Case Study (1000-2000 word limit)**

**(20 Marks)**

**Cite Decided cases from NCLT/NCLAT/SC in support wherever applicable**

Aqua Minerale Pvt. Ltd. Co., hereinafter "Aqua" is a prominent mineral water bottling company in India. It owes dues to: (i) 10 creditors out of which 4 are banks which are secured creditors holding 75% of debt in value, (ii) 4 unsecured creditors including Plasticon Limited "Plasticon" which is supplier of bottles to Aqua; (iii) 2 bondholders. Total dues are 25 crore, advances availed of during January 2013 to December 2016, and materials supplied during January 2016 to February 2017. The registered office of Aqua is in Gurgaon, Haryana, but its manufacturing unit is in Dehradun, Uttarakhand.

In April 2018, Plasticon makes a demand on Aqua of Rs. 2 crore. Aqua disputes it on the ground of deficiency in quality of material of bottles supplied. Nevertheless, Plasticon goes ahead and filed an application for commencement of proceedings in respect of Aqua under IBC at the NCLT Bench at Allahabad. Manufacturing facility of Plasticon is based at Haridwar, and its head office is located at Delhi. Mr. Karan Dev is proposed for appointment as Interim Resolution Professional. Karan is a well-known accountant and has audited the accounts of many companies including one of the creditors of Aqua.

**(a) 1<sup>st</sup> Issue**

**(6 Marks)**

On 1<sup>st</sup> April 2017, Plasticon serves a demand note upon Aqua for balance amount due on bottles supplied for Rs. 2 crore. On 5<sup>th</sup> April, 2017, Aqua files 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.

Argue upon the CIRP Application on behalf of either Plasticon or Aqua in the NCLT, identify the relevant issues at this stage; which is the relevant Adjudicatory Authority?



(b) 2<sup>nd</sup> Issue

(6 Marks)

On appointment, Karan invites claims from creditors. He rejects the claim of one unsecured creditor, rejects the claim of one bondholder and reduces the claim of one secured creditor. A creditors' committee is constituted comprising of financial creditors. In the first meeting, Karan is appointed as Resolution Professional. 5 days later one financial creditor of Aqua requests to convene a meeting of creditors' committee to consider two agenda - replacement of Karan Dev and approve request of "Distressed Asset Financing "DAF" to provide interim finance 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. DAF is approved for providing interim finance

**Argue On behalf of either Aqua or Karan Dev: Replacement of Resolution Professional by Creditors Committee; Interim Finance by hostile investor**

(c) (3rd issue)

(8 Marks)

Karan Dev is replaced with Diwan Chand. Diwan Chand prepares Information Memorandum. Notice is published inviting Resolution Plan from interested parties. Sprite-Cola is a company involved in processing selling packaged fruit juice. Mr. Malik, a promoter of Aqua, is also a Promoter of Sprite-Cola. Sprite-Cola and DAF file Resolution Plans with Diwan Chand for consideration and placements before the committee of creditors.

Creditors committee meets to consider the Resolution Plan. Promoters of Aqua, representative of Plasticon, representative of Sprite-Cola, DAF are also invited to the meeting. Aqua opposes the Plan of DAF. The plan of Sprite-Cola is approved by the secured creditors. Diwan Chand places it before the NCLT for sanction. DAF opposes the Plan of Sprite-Cola and asks for removal of Diwan Chand as RP.

**Argue in Proceeding before the NCLT:**

- (i) on behalf of DAF
- (ii) on behalf of Diwan Chand