

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Corporate Law  
Semester-I (Batch: 2018-19)

LL.M. End Semester Examination: Oct-Nov. 2018

Date: 3<sup>rd</sup> November, 2018

Duration: 3 hours

Max. Marks: 70

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act not allowed.
- Answers should be legible.

**Answer any seven questions**

**Marks**

- Q.1 'Do not go gentle into that good night, wrote Welsh poet Dylan Thomas some 70 years ago. That's a message that many Indian promoters of companies seem to have taken to heart. Despite being smothered by distressed assets, promoters are not throwing in the towel just yet. Through fair means or foul, by which we mean litigation or random allegations, they seem determined to hold on to their crumbling empires. The ones bearing the brunt of this inability to let go are, predictably, employees and lenders. Banks have reported a steady rise in the number of non-performing assets on their loan books. These are loans to companies that seem unable to pay back. In just the past two years, there has been a surfeit of such 'assets': Binani Cement with debts of ₹ 3,976 crore; Essar Steel, now bankrupt with debts of ₹ 37,284 crore; and Bhushan Steel with borrowings of over ₹ 44,000 crore. A succession of such insolvent companies meant that banks found their bad loans, or non-performing assets (NPA), steadily mounting. As on June 2017, NPAs stood at ₹ 7,33,137 crore, according to finance ministry data.' [Ashish Gupta & Debabrata Das 'IBC: A code in need of an urgent upgrade' Fortune India, May 2018]

Explain the legislative approach adopted in Insolvency and Bankruptcy Code through its various provisions. How effectively, in your opinion, will IBC protect the interests of the creditors in the light of the experience till date?

- Q.2 'Legal fiction or *fictio juris* is a device by which law deliberately departs from the truth of things whether there is any sufficient reason for the same or not. That is, at times law may have to identify certain facts as something which may go against the actual manifestation. In such situations, law holds fast to *fictio juris* or legal fictions whereby it departs from the truth and believe something else. A corporation is an artificial being, existing only in the contemplation of law.'

In the light of the above-mentioned statement, analyse the judicial approach regarding lifting of corporate veil in India through relevant judgments.



- Q.3 'According to a VCCircle analysis conducted in Financial Year 2017, Om Prakash Bhatt, former chairman of State Bank of India, emerged as the top-paid independent director in listed companies with a board position in Tata Consultancy Services, Tata Steel and fast-moving consumer goods major Hindustan Unilever. He received a total remuneration of ₹ 3.39 crore. While his sitting fee declined marginally at Hindustan Unilever, he more than made up for it with a 16% remuneration hike at Tata Steel and a 20% rise in total payment at TCS. In the process, he surpassed the money pocketed by Aman Mehta, former chief executive officer of HSBC Asia Pacific. Mehta, who held the top spot the previous year, dropped a position after his remuneration fell 16% to ₹ 3.19 crore. Mehta is currently on the board of six companies including Vedanta, Tata Steel and Tata Consultancy Services. However, his total remuneration only captures payment received from four of them as he joined Vedanta and Tata Steel board either at the end of last fiscal year or after that. Naresh Chandra, a former bureaucrat who passed away in July, occupied the third slot thanks to a sharp rise in total remuneration. Interestingly, Nanoo Pamnani is the only member in the list who held independent directorships only in the companies of a single group. The former Citibank executive is on the boards of Bajaj Finserv, Bajaj Finance, Bajaj Auto and Bajaj Holdings & Investment. He earned more than half of his compensation from Bajaj Finance. Punita Kumar Sinha and Ireena Vittal are the only two women independent directors on the list. Sinha is founder and managing partner of Asia-focussed investment advisory firm Pacific Paradigm Advisors and has previously worked at private equity giant Blackstone. She is also married to Jayant Sinha, minister of state for civil aviation, a former venture capital executive himself. Vittal is a former partner with McKinsey & Company. Independent directors' compensation is largely in two parts - sitting fee for attending board meetings and commission. The real moolah comes from this commission, which is a cut from the profit that the companies make. Tata group flagship firms, the top IT services companies and Bharti Airtel, among others, are known to give big commission to their independent directors. Mehta, Sinha and Vittal sit on the board of at least six companies. (In 2017-18, Aman Mehta was inducted into Vedanta and Tata Steel).'

Critically evaluate the performance of Independent directors in the light of the foregoing statement as also recent controversies. How far, in your opinion, have the provisions of the Companies Act 2013 succeeded in enhancing their accountability?

- Q.4 Protection of minority shareholders has a long history. Such protection is crucial to strengthening corporate governance in India. Judiciary has played pivotal role in ensuring a fair deal to them. (10)

Analyse the judicial approach in the light of the above-mentioned observation.

- Q.5 Superbuild Ltd, a company venturing into construction related services, has its registered office at Delhi. Four promoters of the proposed aforementioned company, enter into an agreement for the purchase of 10 acres of a land at a price of ₹ 1,20,00,000/- per acre in Ghaziabad from Mr. Pillai. A presale advance of ₹/2 crore is paid by promoters jointly and an agreement of sale is entered into. Thereafter, the company is incorporated and this agreement of sale is not reflected in the Articles of the company. Shareholders refuse to ratify the agreement on the ground of non-disclosure of price. Mr. Pillai approaches the court for the remainder of the sale price since the company has actually taken possession over the property. (10)

Decide as to the possession of property, payment of dues, liability of the company and promoters with reference to pre-incorporation contracts under the Companies Act, 2013.

- Q.6 The Companies Act 2013 has adopted a new approach towards amalgamation. It is indeed more facilitative to the corporate world. However, judicial approach has contributed greatly in enabling a conducive environment. (10)

How far do you agree with the above-mentioned observation? Justify your opinion with relevant judgments.

- Q.7 They are not bloodhounds but nevertheless watchdogs. They are major pillars of corporate governance across the world. India is no exception. Their accountability has been a major concern since Satyam scam. (10)

Do you think India has done sufficient enough to avoid the repeat of Satyam scam in the light of the above-mentioned observation? Discuss in the light of various provisions of the Companies Act 2013.

- Q. 8 Write short notes on the following: (2x5=10)
- (a) Ever rising Managerial Remuneration in India
  - (b) Buy Back of shares

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