

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Insolvency and Bankruptcy Law**
Semester- **VIII (Batch: 2019-24)**

End Semester Examination: May 2023

Date: 13th May, 2023

Duration: 3 hours

Max. Marks: 50

Instructions:

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

Attempt any five questions.

Marks

Q.1 DreamFlight Ltd. is a Company engaged in the business of air careers. Due to prevailing scenario in the aviation industry, it faltered in the payment of its debt. Accordingly, its creditor GetAll Ltd. initiated the Corporate Insolvency Resolution Process (CIRP) process u/s 7 of the Insolvency and Bankruptcy Code (IBC). Ms. Serenity was appointed as an Interim Resolution Professional by the Adjudicating Authority. A Committee of Creditors (CoC) was constituted. 1st Meeting of the CoC was convened by e-voting and resolved to continue Ms. Serenity as Resolution Professional (RP).

(10)

Promoters of DreamFlight Ltd. made a Settlement Proposal which outlined the plan for the revival of its operations and full payment to the lenders including principal, interest and all costs, charges and expenses from the assets mortgaged to each of them.

On nine distinct occasions, RP proposed publication of Form-G (invitation for expression of interest). However, in every such meeting, CoC resolved to postpone the matter with requisite majority. CoC reasoned that in view of the impending settlement, it will not be wise enough to publish Form-G as settlement talks were underway. Therefore, RP was not able to proceed with the publication of Form-G leading to extension of timeline for completing CIRP. However, RP took all the steps to inform the CoC that the above decision needs to be reconsidered.

Eventually, lenders consented to the Settlement Proposal. Settlement talks led to fructification in the form of Settlement Deed entered into by the parties. With a view to ensure the smooth implementation and supervision of this Settlement, lenders constituted a 'Monitoring Committee' which will continue to have powers and immunity as available to CoC under IBC and any action in relation to DreamFlight Ltd. (as required u/s 28 of IBC) shall require prior written consent of Monitoring Committee.

RP approached the Adjudicating Authority for approval. Adjudicating Authority held that the settlement proposal contains a lot of uncertainty since no backup plan is provided in case of failure to meet the shortfall within the timeline agreed by the parties. Adjudicating Authority also expressed adverse opinion about the conduct of CoC.

Appellate Authority overruled the above decision of Adjudicating Authority.

Decide the appeal against the decision of the Appellate Authority.

- Q.2 Resolution Professional (RP) is the pivot around which the whole CIRP revolves. In fact, its success depends on his competence, skilfulness and vigilance. He is the one who engages with all the stakeholders involved. He constitutes even the Committee of Creditors. In a fast evolving law like IBC, his experience has played instrumental role in shaping it with time. (10)

Analyse the challenges faced by RP under IBC in the light of the above-mentioned observation.

- Q.3 In the era of globalisation, it is usual for the companies to engage in cross border business deals. This may lead to such companies having assets as well as creditors in different countries. In such a situation, if business becomes insolvent, it will have direct adverse consequences on the creditors. However, creditors, on their part, will aim to protect their rights but, in this process, will have to grapple with conflicting national laws governing insolvency. Such laws will be based on the priorities of the concerned country. (10)

In the light of the above-mentioned statement, analyse the regulatory regime envisaged under the Insolvency and Bankruptcy Code 2016 through suitable examples and the need for further reforms therein.

- Q.4 It is not an exaggeration to state that the IBC, though a relatively new law, has constantly evolved at a very fast rate. The legislature as well as executive has been prompt in learning from their experience in this regard. Accordingly, IBC has been frequently amended in order to rectify the causes of problems in its implementation. The judicial interpretations too have played their role in the process of updating IBC. (10)

In the light of the above-mentioned observation, point out specifically the amendments required in IBC along with justifications thereof.

- Q.5 Commercial wisdom of the Committee of Creditors (CoC) is regarded as sacrosanct under the legislative scheme of IBC. Further, the judiciary, on its part, has repeatedly upheld the principle of non-interference with the decision of CoC through upholding the principle of commercial wisdom thereof. Such legislative and judicial approach makes it imperative for the CoC to discharge its responsibility as envisaged in IBC in an ethical manner. However, there have been instances brought before the dispute redressal agencies under IBC where the conduct of the CoC has left much to be desired. (10)

Elucidate, in detail, such instances pointing towards the need for developing such code of conduct for CoC and the salient features thereof.

- Q.6 Liquidation of Corporate Debtor under the IBC is a detailed process which is initiated after CIRP ends. However, despite similarities, there are significant differences too. Discuss the salient steps of the liquidation process as well as the judicial approach in this regard while distinguishing the same from CIRP. (10)
