

Insolvency & Bankruptcy Code, 2016

PRACTICAL QUESTION

Q-1	<p>Wisdom Ltd. commits a default against the debts taken from the financial creditors. Mr. F, a financial creditor initiated the corporate insolvency resolution process against the Wisdom Ltd. Mr. X, another financial creditor, thereof files an application for initiating corporate insolvency resolution process with the Adjudicating Authority. Examine with reference to the validity as to the filing of an application by Mr. X for initiation of corporate insolvency resolution process?</p>
Sol	<p>According to the section 14 of the Code, on the insolvency commencement date, the Adjudicating Authority shall by order, declare moratorium prohibiting all of the following acts—</p> <ul style="list-style-type: none"> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment; (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor. <p>According to Section 12 Moratorium period shall be upto 180 days from the date of admission of the application to initiate such process, which may be further extended upto 90 Days</p> <p>In view of above, we may conclude that Application by Mr X Shall not be valid as the same has been filed after commencement of Moratorium Period.</p>
Q-2	<p>Standard International Ltd. who is a foreign trade creditor having its office in Hong Kong wanted to file a petition under insolvency and bankruptcy code 2016 on default of the debtor in India. It moved a petition under section 9 of the code seeking commencement of insolvency process. The foreign company was not having any office or bank account in India. Because of this, it couldn't submit a "certificate from financial institution "as required under the code. Examine whether the petition is permissible under the Insolvency & Bankruptcy Code, 2016?</p>
Sol	<p><u>As per Sec 8 of IBC, 2016</u></p> <p>On the occurrence of default, an operational creditor shall first send a demand notice and a copy of invoice to the corporate debtor.</p> <p>The corporate debtor shall, within a period of 10 days of the receipt of the demand notice bring to the notice of the operational creditor about—</p> <ul style="list-style-type: none"> (1) Existence of dispute and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice; (2) Repayment of unpaid operational debt

	<p>Application for initiation of corporate insolvency resolution process by operational creditor: [Sec 9]</p> <p>(i) After the expiry of the period of 10 days from the date of delivery of the notice, if the operational creditor does not receive payment from the corporate debtor, the operational creditor may file an application before the Adjudicating Authority for initiating corporate insolvency resolution process.</p> <p>(ii) The operational creditor shall, along with the application furnish the following documents—</p> <p>(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;</p> <p>(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;</p> <p>(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available</p> <p>Thus, we may conclude that copy of certificate is not a mandatory requirement now and Tribunal may submit the application even if said certificate is not attached along with application</p>
<p>Q-3</p>	<p>Whether an Employee is entitled to submit a petition of CIRP before NCLT for non payment of salary</p>
<p>Sol</p>	<p>“Operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;[Sec 5(20)]</p> <p>“Operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority [Sec 5(21)]</p>
<p>Q-4</p>	<p>Whether a Home Buyer can be classified as Financial Creditor or Operational Creditor</p>
<p>Sol</p>	<p>“Financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to; [Sec 5(7)]</p> <p>Section 5(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes “any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing”</p> <p>For this purpose: -</p> <p>(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and</p> <p>(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016</p> <p>Thus, we may conclude that Home Buyer shall be treated as Financial Creditors as they fall within the definition of financial creditors if read with financial debt.</p>
<p>Q-5</p>	<p>M/s TAS Constructions Private Limited, an operational creditor on 2nd April, 2018 being the default date issued a demand notice through speed post to M/s Dheeraj Constructions Private Limited, an unpaid operational/corporate debtor demanding payment of its invoice dated 19th March, 2018 for ₹5,60,000 (15 days payment terms) towards supply of certain works contract services as per the provisions of section 8(1) of the Insolvency and Bankruptcy Code, 2016 and rules framed there under</p>

	<p>Dheeraj Constructions Private Limited on receipt of the demand notice informed the operational creditor, that vide their e-mail dated 30th March, 2018, addressed to the company and all its directors, they have disputed the invoice on the quality of the services rendered and were withholding payment till the dispute is settled but without initiating any legal proceedings under any law for the time being in force. The operational creditor on expiry of the period of 10 days from the date of delivery of the demand notice and non-payment of its dues approached the Adjudicating Authority for the initiation of the corporate insolvency resolution process under section 9(1) of the Insolvency and Bankruptcy Code, 2016. Will the application of the operational creditor filed under section</p>
<p>Sol</p>	<p>According to Sec 9(1), after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating corporate insolvency resolution process.</p> <p>However, as per Section 8(2)(a) of the Code, the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor about</p> <p>Existence of dispute and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice <i>or invoice in relation to such dispute</i>.</p> <p>In given case, it is stated that Dheeraj Constructions Private Limited on receipt of the demand notice, informed M/s TAS Constructions Private Limited (Operational Creditor) that through email dated 30th March, 2018, addressed the company and all its directors, of the dispute on the invoice and withholding of the payment till the settlement of the dispute.</p> <p>The provision of Section 8(2)(a) require existence of dispute and record of the pendency of the suit or arbitration proceedings filed by the Corporate Debtor before receipt of such notice or invoice in relation to such disputes:</p> <p><u>Thus, existence of disputes and record of pendency of the suit or arbitration proceedings both are to be filed.</u></p> <p><i>The Supreme Court has settled the position in the case of Mobilox Innovations Private Limited v Kirusa Soft Ware Private Limited and Innoventive Industries v ICICI Bank by deciding that “and” used in Section 8(2)(a) has to be read as disjunctively and “and” to be read as “or” else, the purpose of the IBC will be defeated.</i></p> <p><i>(Students need to refer to only 1 of above case law only as per their choice as both Judgement are of Supreme Court)</i></p> <p>Thus, we may conclude that the requirement of Section 8, to bring to the notice of the operational creditor about an existence of dispute only and not along with the record of the pendency of the suit or arbitration proceedings as settled by the Supreme Court in the cases referred above</p> <p>So, the application of M/s TAS Constructions Private Limited (Operational Creditor) shall not be permitted under Section 9 of the Insolvency and Bankruptcy Code, 2016 as Dheeraj Construction Private Limited has complied the provisions of Section 8(2)(a) of the IBC, 2016.</p>
<p>Q-6</p>	<p>The Mumbai bench of the National Company Law Tribunal (NCLT) on 15 June initiated a corporate insolvency resolution process against the debtor. Later, the company and the creditor approached the National Company Law Appellate Tribunal (NCLAT) saying that the two had settled the dispute and that some of the dues had already been paid.</p> <p>NCLAT said on 13 July 2017 that under the IBC 2016, a case can be withdrawn before the admission of an insolvency case, and not after that. Decide</p>

Sol	<i>Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 has inserted Sec 12A</i> , though which it has been provided that Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be prescribed.
Q-7	A Limited i.e. a company having winding up petition pending with High Court of Mumbai, meanwhile creditors of company also decide to proceed against the company u/s 7. Decide about validity of initiating proceeding under IBC, where case is already lying with High Court for Winding up
Sol	In the case of [<i>Jotun Private Limited v PSL Ltd</i>] It was held by the High Court that “A winding Up petition pending in a court can not act as a deterrent to initiate Corporate Insolvency Resolution Process under IBC, 2016
Q-8	M/s ANG Industries Limited failed to pay the amount of debt as payable to its Financial Creditors, so they have lodged a complaint under NCLT, but even before the date such appeal can be accepted by NCLT, Uttarakhand Power Corporation Limited proceed to remove the connection of electricity and upon acceptance of application, they submitted their claim to Interim Resolution Professional, but inspite of several request from IRP, Uttarakhand Power Corporation Limited still refused to restore the electricity supply to company. Now against this decision IRP want to initiate suit against Uttarakhand Power Corporation Limited, which was again objected by Uttarakhand Power Corporation Limited by contending that since company is under Moratorium, thus case so filed was invalid. Decide the course of action available to IRP against such decision by Uttarakhand Power Corporation Limited
Sol	As per Section 14(2) of the Insolvency and Bankruptcy Code, 2016 provides that during the moratorium period the supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted so that Corporate Debtor keeps running as Going Concern. However, the I&B Code 2016 is silent with respect to the situation wherein the supply of essential goods or services has been terminated before the insolvency date or order for initiating the Corporate Insolvency Resolution Process (CIRP) has been passed by the Adjudicating Authority (AA). Furthermore, the I&B Code 2016 is also silent with respect to cost to be paid for such supply of essential goods or services during the Mortarium period. National Company Law Appellate Authority (NCLAT) have come across this issues in the case of <u><i>Uttarakhand Power Corporation Limited v M/s ANG Industries Limited</i></u> As per the view of NCLAT, Appellant cannot recover the dues unpaid for period prior to the insolvency order however they can submit the claim before the Resolution professional like other operational creditors. Further, for dues in relation to period under CIRP , appellants are entitled to be paid for such charges and the Insolvency Resolution Professional is required to pay the amount on behalf of the Corporate Debtor on month to month basis. Furthermore, in case the Insolvency Resolution Professional fails to pay the same the Appellant the charges due, the Appellant can give a notice and disconnect the electricity supply. Thus, we may conclude that, even though the I&B Code 2016 provides for supply of essential goods or services to the Corporate Debtor during the moratorium period, the above referred judgment of NCLAT clarified that the Insolvency Resolution Professional needs to pay for such supply of essential services received during the Moratorium period and if not then the supply can be terminated or suspended or interrupted.

Q-9	<p>You are appointed as Interim Resolution Professional in XYZ Company Ltd. under the Insolvency and Bankruptcy Code, 2016. State the time limit to make Public Announcement? Also state the protocol for issuance of public notice. Who shall bear the expenses of public announcement?</p>
Sol	<p><u>Time Limit for making Public Announcement</u></p> <p>Interim Resolution Professional shall make the Public Announcement immediately after his appointment. “Immediately” here means not more than three days from the date of appointment of the Interim Resolution Professional. Hence, the time limit to make Public Announcement is within 3 days from the date of appointment of the Interim Resolution Professional.</p> <p><u>Protocol for issuance of Public Notice</u></p> <p><i>As per Section 15 of the Insolvency and Bankruptcy Code, 2016, public announcement shall include the following:—</i></p> <ol style="list-style-type: none"> (a) Name & Address of Corporate Debtor under the Corporate Insolvency Resolution Process. (b) Name of the authority with which the corporate debtor is incorporated or registered. (c) Details of interim resolution Professional who shall be vested with the management of the Corporate Debtor and be responsible for receiving claims. (d) Penalties for false or misleading Claims. (e) The last date for the submission of the claims. (f) The date on which the Corporate Insolvency Resolution Process ends. <p><u>Expenses of Public Announcement</u></p> <p>The expenses of public announcement shall be borne by the applicant which may be reimbursed by the Committee of Creditors, to the extent it ratifies them.</p>
Q-10	<p>Rose Garden Ltd. was incurring continuous losses and its financial position went bad to worse. Black Stone (Private) Ltd., a trade creditor, issued notice under Section 271 of the Companies Act, 2013 for winding up of Rose Garden Ltd. on the ground that Rose Garden Ltd. was unable to pay its debts. After some time, Black Stone (Private) Ltd. being an operational creditor filed a petition before the Adjudicating Authority to initiate insolvency process under the Insolvency and Bankruptcy Code, 2016. Demand Notice and copy of invoice were not served to Rose Garden Ltd. since a notice was earlier issued for winding up. All other formalities were complied with. The Adjudicating Authority initiated Insolvency Resolution Process by admitting the application and appointed Resolution Professional. After complying required formalities, the Adjudicating Authority issued orders for moratorium and other relief within the stipulated time. Being aggrieved by the order of Adjudicating Authority, Rose Garden Ltd. (Corporate debtor) filed an appeal before NCLAT under the Insolvency and Bankruptcy Code, 2016. Determine will the Company succeed in its appeal?</p>
Sol	<p><i>As per Section 8 of the Insolvency and Bankruptcy Code, 2016</i>, once a default has occurred, the operational creditor has to deliver a demand notice or a copy of invoice demanding payment of debt in default to the corporate debtor.</p> <p>As in the given case, demand notice and copy of invoice was not served to the Rose Garden Ltd., thus the requirement for initiation of the corporate insolvency resolution process by operational creditor as per section 9 of the Code, was not in compliance.</p> <p>Thus, the admission of application by the NCLT was against the law.</p> <p>As Rose Garden Ltd. (Corporate debtor) was aggrieved by the Order of the Adjudicating Authority on the non-compliance of requirement of Section 8, Rose Garden Ltd. will succeed in its appeal filed before the National Company Law Appellate Tribunal.</p>

<p>Q-11</p>	<p>M/s Systemtek India Private Limited (Appellant-Corporate Debtor) has challenged the order dated 3rd July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Mumbai Bench, Mumbai, in the National Company Law Appellate Tribunal (NCLAT).</p> <p>NCLT had admitted the application preferred by appellant under Section 10 of the Insolvency and Bankruptcy Code, 2016 and an order of Moratorium was passed and Insolvency Resolution Professional was ordered to be appointed by the Ld. Adjudicating Authority (NCLT).</p> <p>The only grievance of the appellant in its challenge is that the movable and immovable property of Guarantor (promoter) has been attached pursuant to a SARFAESI Act, which is violative of section 14(1)(c) of the Insolvency and Bankruptcy Code, 2016 though the Code prescribes a Moratorium for certain types of transactions. Decide</p>
<p>Sol</p>	<p><i>As per Section 14(1) of the Insolvency and Bankruptcy Code, 2016</i>, on the Insolvency commencement date, the NCLT shall by order declare moratorium prohibiting certain acts by/ against the Corporate Debtor.</p> <p>According to Sec 14(3), the provisions of sub-section (1) shall not apply to—</p> <p>(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;</p> <p>(b) a surety in a contract of guarantee to a corporate debtor.</p> <p>Thus, the assets of corporate guarantors or personal guarantors of the corporate debtor will not get the protection of stay provisions under section 14.</p> <p>We may conclude that, action against the properties of personal guarantor or corporate guarantor can be initiated even during moratorium period under SARFAESI Act.</p>
<p>Q-12</p>	<p>Mr. Ramlal, an Insolvency professional was appointed as a resolution professional for a corporate insolvency process initiated against the corporate debtor, Monotech Ltd. Mr. Ramlal is a partner of consulting firm M/s supervision and company which is entity recognized under the IBBI. It was discovered that M/s supervision and company had a transaction with the Monotech Ltd. Amounting to 11% of its gross turnover in the last financial year 2017-2018.</p> <p>Analyse the given situation as per the Insolvency and Bankruptcy Code, 2016, and advise on the validity of appointment of Mr. Ramlal as resolution professional against Monotech Ltd.</p> <p>What if, the creditor of the Monotech Ltd. opines that the resolution professional appointed is required to be replaced.</p>
<p>Sol</p>	<p><i>As per Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulation, 2016</i></p> <p>An insolvency professional shall be eligible for appointment as are solution professional for a corporate insolvency process if he and all partners and directors of the insolvency professional entity of which he is partner or director are independent of the corporate debtor.</p> <p>However, such an Insolvency professional who is appointed as an resolution professional shall not be an employee or proprietor or a partner of a legal or consulting firm that has or had any transaction with the corporate debtor amounting to ten per cent or more of the gross turnover of such firm in the last three financial years</p> <p>In given case, Mr. Ramlal, was appointed as Resolution professional for a corporate insolvency process initiated against the Monotech Ltd. Where Mr. Ramlal is a partner of a consultant firm M/s supervision and company, which has made transaction of 11% of the gross turnover of the firm in the financial year 2017-2018 with Monotech Ltd.</p> <p>Conclusion: —Thus, we may conclude that his appointment as resolution professional against Monotech Ltd for initiation of CIRP, is not valid.</p>

	<p>Replacement of Resolution Professional:</p> <ol style="list-style-type: none"> 1. Committee of creditors is of the opinion that a resolution professional as appointed, is required to be replaced, it may replace him with another resolution professional. 2. The committee of creditors may, at a meeting, by a vote of 66% of voting shares, resolve to replace the resolution professional, subject to a written consent from the proposed resolution professional in the specified form. 3. The committee of creditors shall forward the name of the insolvency professional proposed by them to the Adjudicating Authority. 4. The Adjudicating Authority shall forward the name of the proposed resolution professional to the Board for its confirmation and a resolution professional shall be appointed in the same manner as laid down in section 16. 5. Where any disciplinary proceedings are pending against the proposed resolution professional, the resolution professional appointed shall continue till the appointment of another resolution professional under this section. 																														
<p>Q-13</p>	<p>The following particulars relate to Big Rammy (Private) Ltd. which has gone into Corporate Insolvency Resolution Plan (CIRP)</p> <table border="1" data-bbox="326 768 1440 1493"> <thead> <tr> <th>Sr.No.</th> <th>Particulars</th> <th>Amount in ₹</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Amount realized from the sale of liquidation of assets</td> <td>14,00,000</td> </tr> <tr> <td>2</td> <td>Secured creditor who has relinquished the security</td> <td>5,00,000</td> </tr> <tr> <td>3</td> <td>Unsecured financial creditors</td> <td>4,00,000</td> </tr> <tr> <td>4</td> <td>Income-tax payable within a period of 2 years preceding the liquidation commencement date</td> <td>50,000</td> </tr> <tr> <td>5</td> <td>Cess payable to state government within a period of one year preceding the liquidation commencement date</td> <td>20,000</td> </tr> <tr> <td>6</td> <td>Fees payable to resolution professional</td> <td>75,000</td> </tr> <tr> <td>7</td> <td>Expenses incurred by the resolution professional in running the business of the Big Rammy (Private) Ltd. on going concern</td> <td>25,000</td> </tr> <tr> <td>8</td> <td>Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month</td> <td>3,00,000</td> </tr> <tr> <td>9</td> <td>Equity shareholders</td> <td>10,00,000</td> </tr> </tbody> </table> <p>State the priority order in which the liquidator shall distribute the proceeds under the Insolvency and Bankruptcy Code 2016.</p>	Sr.No.	Particulars	Amount in ₹	1	Amount realized from the sale of liquidation of assets	14,00,000	2	Secured creditor who has relinquished the security	5,00,000	3	Unsecured financial creditors	4,00,000	4	Income-tax payable within a period of 2 years preceding the liquidation commencement date	50,000	5	Cess payable to state government within a period of one year preceding the liquidation commencement date	20,000	6	Fees payable to resolution professional	75,000	7	Expenses incurred by the resolution professional in running the business of the Big Rammy (Private) Ltd. on going concern	25,000	8	Workmen salary payable for a period of thirty months preceding the liquidation commencement date. The workmen salary is equal per month	3,00,000	9	Equity shareholders	10,00,000
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<p>Sol</p>	<p>As per section 53 of the Insolvency and Bankruptcy Code, 2016, the proceeds from the sale of liquidation assets shall be distributed in the following order of priority:</p> <table border="1" data-bbox="326 1673 1440 1927"> <thead> <tr> <th>Sr. No.</th> <th>Particulars</th> <th>Amount in ₹</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Fees payable to resolution professional</td> <td>75,000</td> </tr> <tr> <td>2</td> <td>Expenses incurred by the resolution professional in running the business of the Big Rammy (Private) Ltd. on going concern</td> <td>25,000</td> </tr> <tr> <td>3</td> <td>Workmen salary payable for a period of 24 months</td> <td>2,40,000</td> </tr> </tbody> </table>	Sr. No.	Particulars	Amount in ₹	1	Fees payable to resolution professional	75,000	2	Expenses incurred by the resolution professional in running the business of the Big Rammy (Private) Ltd. on going concern	25,000	3	Workmen salary payable for a period of 24 months	2,40,000																		
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	6	Income-tax payable within a period of 2 years preceding the liquidation commencement date	50,000
	7	Cess payable to state government within a period of one year preceding the liquidation commencement date	20,000
	8	<u>Amount realized from the sale of liquidation of assets</u>	<u>14,00,000</u>
	9	Balance payable to workmen	60,000
	10	<u>Total Liability payable</u>	<u>13,70,000</u>
	11	<u>Assets Realised</u>	<u>14,00,000</u>
	12	Available for Shareholders	30,000
Q-14	A Limited recently refused to pay a payment due to Zenith Finance Limited i.e. one of its financial creditor stating that Payment was overdue for more than 3 years now and thus Limitation Period has been attracted, whereby A Limited is not liable to pay the amount now. Decide.		
Sol	<p>Given case is based on decision of Supreme Court in the case of <i>B.K. Educational Services Pvt Ltd v Parag Gupta & Associates</i>, wherein it was held that</p> <p>Limitation Act is applicable to application filed u/s 7 and 9 of Code from inception of Code as Article 137 of Limitation Act gets attracted.</p> <p>The right to sue therefore arises when a default occurs. If default has occurred over 3 years prior to date of filing of application, Application would be barred under Article 137 of Limitation Act.</p> <p>Thus in the given case A Limited is not liable to pay the amount due to Zenith Finance Limited</p>		
Q-15	Mr. Madhyam, was appointed as an Interim resolution professional during the Corporate Insolvency Resolution Process. What are the duties to be performed by Mr. Madhyam in the given capacity?		
Sol	<p>According to Section 18, Mr. Madhyam as an Interim Resolution Professional shall perform the following duties:</p> <ol style="list-style-type: none"> 1. Collect all information relating to the assets, finances and operations including information relating to: <ul style="list-style-type: none"> • Its business operations for the previous two years; • Its financial and operational payments for the previous two years ; • A list of assets and liabilities of MMPL as on the initiation date; and • Other specified matters; 2. Receive and collate all the claims submitted by Creditors, pursuant to the public announcement made by him under sections 13 and 15; 3. Constitute a committee of creditors; 		

	<ol style="list-style-type: none"> 4. Monitor the assets and manage operations until a Resolution Professional (RP) is appointed by the committee of creditors; 5. File information collected with the information utility, if necessary; and 6. Take control and custody of the assets over which Corporate Debtor has ownership rights 7. Perform such other duties as may be specified by IBBI.
<p>Q-16</p>	<p>X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company. They gave the opinion that the company will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation.</p> <p>Analysing the given situation, comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration?</p> <p>Also, state the consequences, where if the articles fixed the period of duration for which company may be carried and that period expires.</p>
<p>Sol</p>	<p>As per the provisions of Section 59 of the Insolvency & Bankruptcy Code, 2016</p> <p>A corporate person may liquidate itself voluntarily if it meet the following conditions to initiate a voluntary liquidation process:—</p> <ol style="list-style-type: none"> 1. A declaration from majority of the directors of the company verified by an affidavit stating <ol style="list-style-type: none"> (i) <i>That they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and</i> (ii) <i>That the company is not being liquidated to defraud any person.</i> 2. The declaration shall be accompanied with the following documents, namely: <ol style="list-style-type: none"> (i) <i>Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;</i> (ii) <i>A report of the valuation of the assets of the company, if any, prepared by a registered valuer.</i> 3. After making the declaration the corporate debtor shall within four weeks— <ol style="list-style-type: none"> (i) <i>Pass a special resolution at a general meeting stating that the company should be liquidated voluntarily and insolvency professional to act as the liquidator may be appointed.</i> (ii) <i>Pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.</i> <p>In the given case, a declaration was made on affidavit of the some of the directors of the X Ltd. verifying full inquiry of the affairs of the company, is not in compliance as the majority was the requirement for initiation of the voluntary liquidation proceedings. And the further declaration that the company is not being liquidated to defraud any person is not given in the affidavit.</p> <p><u>Situation where articles fixed the period of duration of continuation and that period expires</u></p> <p>In such a scenario, X Ltd. after making declaration, shall within 4 weeks pass a resolution at a general meeting stating that the company be liquidated voluntarily as a result of expiry of the period of its duration as fixed by its articles and appointing an insolvency professional to act as the liquidator.</p>

Q-17	What is the Insolvency Resolution Process for financial creditors?
Sol	<p>Initiation of corporate insolvency resolution process by financial creditor [Sec 7]</p> <p>(i) Filing of application before adjudicating authority: A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.</p> <p><i>Explanation—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.</i></p> <p>(ii) Furnishing of information: The financial creditor shall, along with the application furnish—</p> <ol style="list-style-type: none"> (a) record of the default with the information utility or such other record or evidence of default as may be specified; (b) the name of the resolution professional; and (c) any other information as may be specified by the Board. <p>(iii) Time period for determination of default: The Adjudicating Authority shall, within 14 days of the receipt of the application, ascertain the existence of a default on the basis of other evidence furnished by the financial creditor.</p>
Q-18	Mr. IP was proposed to be appointed as a resolution professional for the insolvency resolution process initiated against BMR Ltd. Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. IP is partner. In the light of the given facts, examine the nature of the proposal of the appointment of Mr. IP for the conduct of the CIRP as per the Insolvency and Bankruptcy Code, 2016.
Sol	<p>As per Regulation 3 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016,</p> <p>An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.</p> <p>Explanation— A person shall be considered independent of the corporate debtor, if he:</p> <ol style="list-style-type: none"> (a) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company; (b) is not a related party of the corporate debtor; or (c) is not an employee or proprietor or a partner: <ol style="list-style-type: none"> (i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in the last three financial years. <p>In given case, Mr. IP was proposed to be appointed as a resolution professional for the insolvency resolution process initiated against BMR Ltd. Whereas, Mr. R, a relative of director of BMR Ltd. is a partner in the insolvency professional entity in which Mr. IP is partner.</p> <p>Since Mr. R is a partner in IP Entity in which Mr. IP is also a partner, so Mr. IP is not eligible for appointment as Resolution Professional as he is not independent of the corporate debtor.</p>

Q-19	Mr. Ram, an operational creditor filed an application for corporate insolvency resolution process. He does not propose for appointment of an interim resolution professional in the application. State the provisions given by the Code in the given situation. State the period of IRP holding the said office.
Sol	<p><u>As per Section 16 of the IBC, 2016</u></p> <p>Where the application for corporate insolvency resolution process is made by an operational creditor and no proposal for an interim resolution professional is made in the said application, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional.</p> <p>The Board shall recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending, within ten days of the receipt of a reference from the Adjudicating Authority.</p> <p>The term of the interim resolution professional shall continue till the date of appointment of the resolution professional under section 22 of the Insolvency and Bankruptcy Code.</p>
Q-20	<p>The financial creditor, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' payable on maturity, was issued by the M/s Asset Ltd. (corporate debtor). The zero interest OCD bonds amounted to 2 crore matured in 2016. The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor, which was not made. Mr. Raman filed the Corporate Insolvency resolution process before the NCLT. Advise in the light of the given facts, the following situations:</p> <p>(i) State whether Mr. Raman is eligible for filing of application for initiation of CIRP?</p> <p>(ii) Do the redemption of debenture payable on the maturity date amounts to debt?</p>
Sol	<p><u>As per Section 5(7) of the Insolvency and Bankruptcy Code, 2016,</u></p> <p>Financial creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.</p> <p><u>Whereas the term Financial debt defined under Section 5(8) means</u> a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised pursuant to the issue of bonds, notes, debentures, loan stock or any similar instrument.</p> <p>In the given case, Mr. Raman, was an investor and a debenture holder of 'Optionally Convertible Debenture Bond (OPDB)' issued by the Asset Ltd. With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money.</p> <p><u>Conclusion:</u> -As per the definition of Financial debt given above, debentures on maturity will come under that purview of Section 5(8).</p> <p>Since Mr. Raman is a person to whom a financial debt is owed, he will come within the definition of Financial creditor. Being a debenture-holder and shareholder of the company he, being a creditor is entitled to claim debt amount. Therefore, as per section 7, Mr. Raman is entitled to file an application to initiate CIRP against the M/s Asset Ltd.</p>
Q-21	<p>As on March 31, 2018, the audited balance sheet of M/s. Sharp Industries Limited, revealed total assets of ₹1 crore. M/s. Sharp Industries Limited, in the capacity of a Corporate Debtor, filed an application on July 1, 2018 with the Adjudicating Authority for initiating a fast track corporate insolvency resolution process. Explain under the provisions of Insolvency and Bankruptcy Code, 2016 the following:</p> <p>(i) Whether the application made by M/s. Sharp Industries Ltd. for initiating a fast track corporate insolvency resolution process is admissible?</p> <p>(ii) The time period including the extension of time period, if any, within which the fast track corporate insolvency resolution process shall be completed?</p>

Sol	<p>As per Sec 55 of IBC, 2016 An application for fast track insolvency resolution can be made by any corporate debtor falling under any of the below mentioned category:—</p> <p>(a) An unlisted company with total assets as reported in the financial statement of immediately preceding financial year not exceeding one crore; or</p> <p>(b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or</p> <p>(c) such other category of corporate persons as may be notified by the Central Government.</p> <p><u>Time period for completion of fast track corporate insolvency resolution process [Sec 56]</u></p> <p>The fast track corporate insolvency resolution process shall be completed within a period of 90 days from the insolvency commencement date.</p> <p>The aggrieved may make an application to the Adjudicating Authority if it is satisfied that the fast track corporate insolvency resolution process cannot be completed within a period of 90 days, it may, by order; extend the duration of such process to a further period which shall not be exceeding 45 days.</p> <p><u>In the light of the provisions above and the fact of the question:</u></p> <p>(i) The application made by M/s Sharp Industries for initiating fast track corporate insolvency resolution process is admissible if it falls within the purview of the mentioned categories of corporate debtor.</p> <p>(ii) The fast track corporate insolvency resolution process shall be completed within 135 days (90+45) from the insolvency commencement date.</p>
Q-22	<p>XY Ltd. filed a petition under Insolvency and Bankruptcy Code, 2016 with NCLT against DF Ltd. (Corporate Debtor) and the petition was admitted. There were only three financial creditors including XY Ltd. During the Corporate Insolvency Resolution process, the Corporate Debtor settled the claims of all the 3 financial creditors. Whether such settlement agreement could be termed as a valid resolution plan? Also discuss whether a financial creditor in respect of whom there is no default can file an application before Adjudicating Authority (NCLT) for initiating corporate insolvency resolution process. Discuss.</p>
Sol	<p><u>As per section 7 of the Insolvency and Bankruptcy Code, 2016,</u></p> <p>A financial creditor either by itself or jointly with other financial creditors, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.</p> <p><i>As per the facts given, the</i> Adjudicating Authority admitted the petition. During the Corporate Insolvency Resolution Process (CIRP), the DF (Corporate debtor) settled the claims of all the 3 financial creditors.</p> <p>However, as per the Code, during the insolvency resolution process, the IRP/RP shall be appointed to collate the claims and prepare the resolution plan as agreed to by the debtors and creditors and submit the same to Committee of Creditors for its approval.</p> <p>Since in the give case, debtor itself settled the claims without following the said procedure. Therefore, such a settlement agreement cannot be termed as valid resolution plan.</p> <p>As per sec 3(12) of the Code, the process of insolvency is triggered by occurrence of default. Default means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.</p> <p>So a financial creditor in respect of whom there is no default, cannot file an application for initiating insolvency resolution process.</p>

Q-23	<p>Rose Garden Ltd. was incurring continuous losses and its financial position went bad to worse. Black Stone (Private) Ltd., a trade creditor, issued notice under Section 271 of the Companies Act, 2013 for winding up of Rose Garden Ltd. on the ground that it was unable to pay its debts. After some time, Black Stone (Private) Ltd. being an operational creditor filed a petition before the Adjudicating Authority to initiate insolvency process under the Insolvency and Bankruptcy Code, 2016. Demand Notice and copy of invoice were not served to Rose Garden Ltd. since a notice was earlier issued for winding up. All other formalities were complied with. The Adjudicating Authority Initiated Insolvency Resolution Process by admitting the application and appointed Resolution Professional. After complying required formalities, the Adjudicating Authority issued orders for moratorium and other relief within the stipulated time. Being aggrieved by the order of Adjudicating Authority, Rose Garden Ltd. (Corporate debtor) filed an appeal before NCLAT under the Insolvency and Bankruptcy Code, 2016. Determine will the Company succeed in its appeal?</p>
Sol	<p><u>As per Section 8 of the Insolvency and Bankruptcy Code, 2016,</u></p> <ul style="list-style-type: none"> • once a default has occurred, the operational creditor has to deliver a demand notice or a copy of invoice demanding payment of debt in default to the corporate debtor. • In the given case, demand notice and copy of invoice was not served to the Rose Garden Ltd., so the requirement for the initiation of the corporate insolvency resolution process by operational creditor under section 9 of the Code, was not in compliance. • So, the admission of application and issue of order of moratorium and other relief, given by the NCLT was against the law. • As Rose Garden Ltd. (Corporate debtor) was aggrieved by the Order of the Adjudicating Authority on the non-compliance of requirement of Section 8, Rose Garden Ltd. will succeed in its appeal filed before the National Company Law Appellate Tribunal. • Further, as IBC is a special law, having an overriding effect on the Companies Act, 2013, therefore serving of notice for winding up as per the Companies Act, will not be considered as a sufficient compliance of the requirement for prevailing of section 8 of the Insolvency and Bankruptcy Code.
Q-24	<p>Discuss the process of appointment of resolution professional by the Committee of creditors under the IBC, 2016.</p>
Sol	<p><u>As per Sec 22 of IBC, 2016</u></p> <ul style="list-style-type: none"> • The Committee of Creditors may, in the first meeting, by a majority vote of not less than 66% of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional. • If they decide to continue interim resolution professional, subject to a written consent from the interim resolution professional in the specified form they will inform its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority. • However, if they decide to replace the interim resolution professional, the COC shall file application before the Adjudicating Authority for the appointment of Resolution Professional, along with a written consent from the proposed resolution professional in the specified form • The Adjudicating Authority (NCLT) shall inform name of proposed new Resolution Professional to IBBI. The resolution professional can be appointed only with approval of Board (IBBI). Till then, the interim resolution professional will continue.

Q-25	<p>Mr. X in lieu of jewellery of his wife, as a security, taken a loan of amount ₹ 5 lakhs from Mr. Y, who runs a business of providing loan. Mr. X, after a year, made the payment of amount and said to return his jewellery (worth ₹ 10 Lakh). During the period, Mr. Y became Insolvent due to loss in business and was declared liquidated. The liquidator was appointed and formed the liquidation estate for recovery of debts to the creditors. Mr. X came to know of the Situation of Mr. Y. Advise, the rights available with Mr. X against Mr. Y on his declaration as liquidated.</p>
Sol	<p><u>According to section 36 of the Insolvency and Bankruptcy Code,</u></p> <p>Liquidator shall form an estate of the assets, which will be called the liquidation estate in relation to the corporate debtor.</p> <p>The liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors. There are certain exceptions to the assets from inclusion in the liquidation estate assets.</p> <p>Thus, where an assets owned by a third party which are in possession of the corporate debtor, including the bailment contracts, it shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.</p> <p>In the given case lending of jewelry as a security in lieu of loan, is considered as an bailment contracts.</p> <p>Thus, the jewellery of wife of Mr. X which is in possession of Mr. Y shall not be included in the liquidation estate assets and shall not be used for recovery in the liquidation.</p> <p>Besides, bailment contracts has come to an end with the payment of amount. Further, Mr. X's interest shall be protected and his position shall be restored by the Adjudicating authority under section 49 of the Code.</p>
Q-26	<p>Best Bank, a financial creditor sent a demand notice for a claim of ₹ 10.2 crores on XYZ Limited, a corporate debtor on 6th February, 2018. When the petition was filed before NCLT under Insolvency and Bankruptcy Code, 2016, Best Bank claimed that the XYZ Limited has defaulted ₹ 29.8 crores instead of original amount of ₹ 10.2 crores. NCLT appointed an interim insolvency resolution professional. XYZ Limited made an appeal with NCLAT demanding that the Best Bank's claim is not maintainable as there is a difference in the amount mentioned in the demand notice and the application filed under the Code. Decide whether the contention of XYZ Limited is correct. Also, state who can file Corporate Insolvency Resolution process under the Code.</p>
Sol	<p><u>As per section 7 of the Insolvency and Bankruptcy Code, 2016,</u></p> <p>A financial creditor either by itself or jointly with other financial creditors, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.</p> <p><i>Financial creditor shall, along with the application furnish-</i></p> <ol style="list-style-type: none"> record of the default recorded with the information utility or such other record or evidence of default as may be specified; the name of the resolution professional proposed to act as an interim resolution professional; and any other information as may be specified by the Board. <p>The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.</p> <p>In the given case, Best Bank (Financial creditor) filed a petition against the XYZ Ltd. (Corporate debtor) for the default of ₹ 29.8 crore instead the earlier demanded amount of ₹ 10.2 Crore.</p>

	<p>Adjudicating Authority shall, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor. When It is satisfied, it may admit the submitted application for initiation of corporate insolvency process.</p> <p>Therefore, contention of XYZ Ltd. as to filing of appeal before NCLAT demanding that the best bank's claim is not maintainable due to difference in the claim amount, is incorrect.</p> <p>Who can file insolvency resolution process: As per section 6 of the Code, where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor.</p>
<p>Q-27 May-19</p>	<p>Continental Rubber Limited is a supplier of raw materials to Smooth Latex Limited. It filed a petition before the NCLT for the recovery of ` 10,00,000 from Smooth Latex Limited. Smooth Latex Limited, the Corporate Debtor, has other financial creditors to the extent of ` 1,50,00,000 and they also joined together and filed petitions to NCLT. The Corporate Debtor has a total of 40 financial creditors and 2 operational creditors.</p> <p>Further, all the financial creditors are having equal voting rights/shares.</p> <p>Notice was issued on 1st August, 2018 for the conduct of the first meeting to be held on 5th August, 2018 at a common venue. The meeting was attended by all 40 financial creditors and 2 operational creditors. A resolution was passed to appoint Mr. TK as a Resolution Professional. 25 of the financial creditors voted in favour of the resolution and 10 voted against the resolution and 5 financial creditors and 2 operational creditors abstained from voting. Decide whether the resolution passed is valid? In the light of the provisions of Insolvency and Bankruptcy Code, 2016 read with rules framed thereunder, explain the requirements of issue of notice and quorum for the conduct of the meeting.</p>
<p>Sol</p>	<p><i>Let us do it together in a class now</i></p>

<p>Q-28 Nov-19</p>	<p><i>In view of the deep recession prevailing in the market for the past three years, M/s Infra Limited (Corporate Debtor), which was facing the brunt of financial crisis, could not pay salaries and wages to its workmen and employees for the past 6 months. The workmen and the employees, who are the members of a recognized Trade Union “Infra Labor Federation”, made a complaint in this regard. Thereafter, the Trade Union approached and urged the Management of the company in person and through representations in writing to settle the amount. Under the circumstances, Infra Labour Federation filed an application before the Adjudicating Authority i.e. with the National Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.</i></p> <p><i>In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, examine the following:</i></p> <p><i>(i) Validity of the Application.</i></p> <p><i>(ii) What will be the “Initiation date” for initiating the Corporate Insolvency Resolution Process?</i></p>
<p>Sol</p>	<p><i>Let us do it together in a class now</i></p>
<p>Q-29 Nov-19</p>	<p>The Committee of creditors of M/s XYZ Limited proposes to appoint Mr. Ajit an Insolvency Professional, as Insolvency Resolution Professional in the matter of corporate insolvency process of M/s XYZ Limited. Mr. Ajit was a promoter of M/s ABC Limited which is a holding company of M/s XYZ Limited. Examine and decide whether</p>

	Mr. Ajit is eligible for appointment as an Insolvency Resolution Professional under the Provisions of Insolvency and Bankruptcy Code, 2016.
Sol	<i>Let us do it together in a class now</i>
Q-29	<p><i>JJ Infrastructure launched a Real Estate project for construction of 1000 Flats in Noida. However due to mismanagement, company could not complete the structure and some home Buyers filed a petition for return of their money in court. However, any court refused to entertain the matter stating that this is out of their purview since case will fall under IBC, 2016. Home buyers joins together and submitted a petition to Tribunal in capacity as financial creditor and Proposed Mr Ravi i.e. one of the Home Buyer as IRP. Tribunal admitted such application and formed the COC with Financial creditors. Now Banks and other members of COC objected to the appointment of Mr Ravi as IRP and requested the tribunal to intervene</i></p> <p><i>Decide in light of IBC, 2016, whether</i></p> <ol style="list-style-type: none"> <i>1. Appointment of Mr Ravi is valid</i> <i>2. Since there are around 800 Home buyers where all of them are forming part of COC, decide how they shall take part in meeting of committee of creditors</i>

<p>Sol</p>	<p>1. Law has prescribed certain restrictions through Regulation</p> <p>An insolvency professional shall be eligible to be appointed as a resolution professional for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.</p> <p>Explanation– A person shall be considered independent of the corporate debtor, if he:</p> <p>is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013, where the corporate debtor is a company;</p> <p>Now as per Sec 149(1)(a), person proposed as Independent Director shall have the integrity, where we may conclude that he shall not have any conflict of interest. Applying the same restriction, we may conclude that Mr Ravi shall not be appointed as IRP</p> <p>2. Sec 21 (6A) Where a financial debt-</p> <p>(a) is in the form of securities or deposits and the terms of financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;</p> <p>(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;</p> <p>Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016</p> <p>This regulation provide that wherever the corporate debtor has classes of creditors having at least ten creditors in the class, the interim resolution professional shall offer a choice of three insolvency professionals in the public announcement to act as the authorised representative of creditors in each class. A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional, to act as its authorised representative. The insolvency professional, who is the choice of the highest number of creditors in the class, shall be appointed as the authorised representative of the creditors of the respective class.</p> <p>Thus, Home Buyers shall attend the meeting through Authorised Representative appointed on their behalf by following the procedure as prescribed above</p>
<p>Q-30</p>	<p>ABC Limited i.e. a company engaged in the business of dealing in diamonds. Recently ED initiated an action against the company for embezzlement and indulging into several cash transactions, ED even proceeded to attach their property under PMLA. Meanwhile company committed a default in payment to its lender R Ltd, consequently R Ltd submitted a petition as financial Creditor under IBC, 2016. Tribunal admitted such a petition and ordered for Moratorium. During moratorium, period for provisional attachment of property under Sec 5 of PMLA expired and Special court confirm such order of attachment and consequent to which ABC Limited was directed to vacate the property, Aggrieved by such order IRP of company under CIRP submitted a petition to tribunal for declaring the order so passed by Special court as null and void since company is under Moratorium and thus any order passed during Moratorium shall not have any effect, meanwhile ED and its officers continue to pressurized the company to vacate else they informed that they will take action under IPC for recovery. Decide what should be the course of action in the given case.</p>

Sol	<p>PMLA prevails over Bankruptcy Act and insolvency code, rules HC</p> <p>The Delhi High Court has held that the Prevention of Money Laundering Act (PMLA) prevails over the Bankruptcy Act and insolvency code when it comes to attachment of properties obtained as “proceeds of crime”.</p>
Q-31	<p>Alloysmin Industries (herein after referred to as 'the Appellant') recently submitted an appeal to NCLAT against the order passed by the National Company Law Tribunal, New Delhi. Raman Casting Pvt. Ltd. (RCPL) is a private limited company and had showed interest in the goods sold by the Appellant. Initially, the RCPL had placed several small orders with the Appellant and cleared the dues immediately. However, thereafter the RCPL started delaying the payments and as per the ledger accounts maintained by the Appellant, a total sum of Rs. 7,67,675/- was outstanding from the RCPL. After repeated and failed requests to the RCPL by the Appellant to clear its dues, the Appellant sent a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') and filed an Application under Section 9 of the Code against the RCPL for initiation of Corporate Insolvency Resolution Process (CIRP).</p> <p>The demand notice under Section 8 of the Code was sent to the registered office of the RCPL through courier but was returned to the Appellant with the remark "S/A RTO". Further, the demand notice was also sent to the Corporate Office of the RCPL where it was duly served upon the RCPL.</p> <p>The NCLT by its impugned order rejected the Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 on the ground that the demand notice issued under Section 8 of the Code was not issued to the Respondent at its Registered office and was returned with the remark "S/A RTO". Hence, the Appellant through this Appeal has challenged the rejection of the Application under Section 9 while stating that even though the notice sent at the registered office of the Respondent was returned, the notice sent at the Corporate Office of the Respondent was duly served. Decide in the light of IBC, 2016</p>
Sol	<p>Mention about Sec 7</p> <p>Decision by NATIONAL COMPANY LAW APPELLATE TRIBUNAL in the case of Alloysmin Industries. vs. Raman Casting Pvt. Ltd.</p> <p>NCLAT has held that the following are the three essential ingredients to initiate proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016:</p> <ol style="list-style-type: none"> 1. There must be an outstanding debt in favor of the Applicant, from the Respondent. 2. The demand notice under Section 8 of the Code must be duly served upon the Corporate Debtor, either on its Registered office OR its Corporate Office., 3. The debt is undisputed. <p>Now, in given case <i>The Hon'ble NCLAT also observed that the Respondent had not disputed the claim of the Appellant that an amount of Rs. 7,67,675/- was outstanding from the Respondent and no plea of an existing dispute has been taken by the Respondent either.</i></p>

Q-32	<p><i>A Ltd was availing loan from several Banks and Corporates. They commit a default in payment of loan to Rama Ltd, consequent to which Rama Ltd filed a petition u/s 7 in capacity as Financial Creditor, Tribunal admitted such application within 14 days and ordered Moratorium. Aggrieved by such order of Tribunal, A ltd decided to approach NCLAT stating that NCLT have not provided any opportunity of being heard to them before accepting any such petition, thus acceptance of petition by NCLT is not valid. Discuss</i></p>
Sol	<p>Given case is based on <u>Case of <i>Sree Metaliks Limited and Anr (Corporate Debtor) v Union of India & Anr</i></u></p> <p>The Corporate Debtor contended that NCLT had proceeded to admit the company petition without affording any opportunity of hearing to it and therefore NCLT had acted in breach of the principles of natural justice in doing so</p> <p><u>Now Decision of Kolkata High Court</u></p> <p>The NCLT is, obliged to afford a reasonable opportunity to the financial debtor to contest such claim of default by filing a written objection or any other written document as the NCLT may direct and provide a reasonable opportunity of hearing to the corporate debtor prior to admitting the petition filed under Section 7 of the Code of 2016.</p> <p>Section 7(4) of the Code of 2016 requires the NCLT to ascertain the default of the corporate debtor. Such ascertainment of default must necessarily involve the consideration of the documentary claim of the financial creditor.</p> <p>This statutory requirement of ascertainment of default brings within its wake the extension of a reasonable opportunity to the corporate debtor to substantiate by document or otherwise, that there does not exist a default as claimed against it.</p>

Question-Discuss about the eligibility of following resolution applicant in terms of Sec 29A			
Case No	Situation	Whether Eligible	Clause Attracted
1	Mr Ajay want to acquire NPA of SBI, where Mr Zaheer would also accompany him. Even though Mr Zaheer is availing personal loan from Bank of Baroda, where his account is currently NPA	No	29A
2	Suppose Ajay was Insolvent till last year, even though as of now, he is out of insolvency	Yes	Sec 29A(a)
3	Z Ltd being a finance entity which has recently acquired account of Essar Steel 2 years back, now want to acquire another account of Y Ltd which is also as NPA	Yes	Sec 29A(c)
4	LN Steel Ltd want to acquire NPA of SBI i.e. M Ltd, Promoter of LN Steel i.e. Mr Laxmi is having another Company M/s Uttam Steel, which is NPA with Yes Bank for past 4 years	No	Sec 29A(c)
5	Suppose in above case, account of M/s Uttam Steel was NPA for past 6 months only	Yes	Sec 29A(c)

6	Mr Ajay want to acquire NPA of SBI, where Mr Zaheer would also accompany him. Mr Zaheer who want to start a fresh life after coming out of imprisonment and spending almost 7 yrs in jail and released last month only	No	Sec 29A(d)(ii)
7	Mr Namit, who has just came to India after spending almost 10 yrs in USA, want to acquire NPA of SBI. Account of Namit was NPA is USA.	No	Sec 29A(h)
8	New Metal want to acquire account of Essar Steel. After this take over they are proposing Mr Ravi as Director. Ravi is having his account as NPA with Bank of India	No	Sec 29A(j)
9	Z ltd i.e. a company who want to acquire NPA of SBI i.e. New Bharat Ltd. One of the associate company of Z Ltd is under NPA	No	Sec 29A(j)
10	Ajay want to acquire NPA of SBI i.e. Apeejay Ltd. Spouse of Ajay i.e. Neeta was in Jail for murder for past 2 years and have been released just last week	Yes	Proviso to Sec 29A(d)