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CS Professional 2024 Question Paper · Insolvency and Bankruptcy - Law and Practice

EXAM
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YEAR
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TYPE
Question Paper

SUBJECT
Insolvency and Bankruptcy - Law and Practice

DATE
June 2024

NEW SYLLABUS

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Roll No. .....

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 4

Total number of printed pages : 19

NOTE : *Answer **ALL** Questions.*

1. Alok is a dealer in Eyewear, Spectacles and other eye accessories in India for the last 10 years based in Gurgaon. His vision was to transform the way people see and experience the world. He is a frequent traveller and visited many countries to expand his business. Gulshan is one of the cousins of Alok and a resident of South Africa. Alok has a very good relations with his cousin and during his visit to South Africa in 2015 he started a showroom in partnership with his cousin in South Africa.

Alok has a very big showroom in India also. He used to import spectacles and other accessories from South Africa. With the increasing demand of more and more spectacles, goggles etc., business is reaching greater heights and he made a huge profit. His business was a growing business going very well. Since there was huge demand, the business went well and profits got multiplied in 3 to 4 years. In the year 2019 some differences developed between both the cousins and Alok decided to quit from the partnership.

He was also a director of Padmavat Solutions Private Limited and its associate company. Shekhawat Solutions Private Limited where he used to get the sitting fee for attending the Board Meetings.

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In India also due to entry of online selling platform and other sales promotion strategies of the competitors, there were lots of changes in the market situation in India and his business started running into losses. He raised loans worth ₹ 10 Crore in the year 2019 to finance the working capital requirement of the business. He managed for another one year (year 2020) to run the business out of the retained earnings of the business. However due to the impact of COVlD 19 and other reasons the demand declined rapidly and later on he started making defaults. He defaulted in making payment to his creditors and Insolvency proceedings commenced and a repayment plan was approved. Alok failed to follow the repayment plan and filed for bankruptcy on 1st April, 2022 which was admitted on 10th April, 2022. A Bankruptcy order was passed and Gopal Gupta, an Insolvency Professional was appointed as a Bankruptcy Trustee.

Gopal Gupta started investigation of the affairs of the Bankrupt. He observed that on 7th April, 2022, Alok Gupta sold his shop to Kapil Kalra for ₹ 50 Lakh and gifted this amount to his major son. As per Bankruptcy Trustee, he has some doubt that this transaction is not allowed as per Insolvency and Bankruptcy Code, 2016.

The Bankruptcy Trustee further asked Alok to prepare the list of the assets and hand over to the bankruptcy trustee. As per the list of the assets, Alok informed as below :

- Alok stated that he has been entrusted by his friend Arun to look after his property in Delhi currently valued at ₹ 1 Crore as Arun is staying in UK.

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- Alok has ₹ 50 Lakh in provident fund, pension fund and the gratuity fund of the employees.
- Alok has a residential flat worth ₹ 2 Crore in his name.
- He has an antique paintings and silver household utensils and other valuable items worth ₹ 50 Lakh which have not been encumbered.
- He has also unencumbered insurance policy worth of ₹ 50 Lakh.
- He has also the father's inherited property now in his name worth ₹ 5 Crore.

While bankruptcy proceedings were going on, Alok further decided to start a new business of kids garments by forming a new company in the name of ''Kids Paradise Pvt. Ltd.'' and engage himself in the formation and management of Kids Paradise Pvt Ltd. (Under Incorporation).

Based on the above facts, answer the following questions :

(*a*) Whether the doubt of the Bankruptcy Trustee about the sale of his shop to Kapil Kalra for ₹ 50 Lakh and gift to his son has any relevance as per the Insolvency and Bankruptcy Code, 2016. Describe with reference to the provisions of Insolvency and Bankruptcy Code, 2016 ?

(*5 marks*)

(*b*) Is act of Alok for continuing as a director in the Padmavat Solutions Pvt. Ltd. and Shekhawat Solutions Private Limited and participating in the formation and management of a new company is valid ? Explain with the help of the provisions of Insolvency and Bankruptcy Code, 2016.

(*5 marks*)

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(*c*) Explain the relevant provisions for the distribution of the estate of the Alok in accordance with the Insolvency and Bankruptcy Code.

(*5 marks*)

(*d*) Based on the above facts, ascertain the assets, which will form part of the estate of the Alok.

(*5 marks*)

(*e*) What is fresh start process and conditions to be fulfilled for applying for fresh start process ?

(*5 marks*)

2. (*a*) Vinayaka Car Company Ltd (VCC) is a manufacturer of passenger cars and commercial vehicles in India. It sells the cars through single brand dealerships across different cities. The dealerships are separate for passenger cars and commercial vehicles. VCC is lagging behind the competitors in the passenger car segment due to its cost structure and is losing market share for the last 3 years. With no revival in sight, the company has decided to exit the passenger car segment and notified its dealers about shutdown of passenger car manufacturing and sales in India. Further added that the service centres for passenger cars will continue its operations for the next 3 years.

Karthik Cars Pvt Ltd. (KCL) is a passenger car dealer for VCC in Bangalore with an office cum showroom and no service centre. KCL has bank loans from Bank B1 and Bank B2 for ₹ 10 crore and ₹ 7 crore respectively. Both the banks have pari-passu charge on the office premise cum showroom.

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KCL has expressed its inability to repay its financial obligations to the bankers. One of the bankers, Bank B1 has filed an application for Insolvency Resolution Process (IRP) which is admitted by the adjudicating authority, while the other bank is still contemplating to proceed against the borrower under SARFAESI.

- VCC has an interest free dealership security deposit of ₹ 1.50 crore since 2010 from KCL with a right to set-off against any receivables pending from KCL towards VCC.
- The nephew of the promoter of KCL had given a loan of ₹ 0.50 crore to KCL in the last 3 months to pay the utility bills, pressing commitments and office expenses.
- VCC in its claims has demanded ₹ 3.50 crore from KCL against pending receivables.
- KCL has not paid wages to the tune of ₹ 0.50 crore to its workmen and statutory employer contributions to the tune of ₹ 0.20 crore.
- As per valuer, Rama Mani's report, approximate realizable value of office cum showroom is ₹ 12 crores. Items which are not readily relishable having not touch value has not been reckoned and hence has been ignored by the Valuer. Value of furniture and equipment is to the tune of ₹ 0.05 crore.
- The current receivables on books are ₹ 1.50 crore, out of which 50% is doubtful.
- KCL has a general-purpose current account with B1 having current balance of ₹ 0.15 crore.

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On the basis of the below mentioned fact answer the questions :

(*i*) How much is VCC's net claim against KCL ?

(*ii*) What will be the status of VCC as a claimant for its claims against KCL ?

(*iii*) Who all will be in the committee of creditors ?

(*iv*) Who among the creditors/groups of creditors, cannot reject a proposed resolution plan ?

(*v*) Assume that IRP has failed in the resolution of the case. After deducting the insolvency costs, sum available from proceeds of liquidation of assets is ₹ 10.99 crore. Based on priority of claims, how much will Bank Bl receive ?

(*vi*) How much will Bank B2 receive, in case the proceeds on liquidation of assets are ₹ 8.34 crores.

(*6 marks*)

(*b*) Ankur Constructions Limited, is a Public Limited Company incorporated under the provisions of Companies Act, 2013 on 30th June, 2017. The Company had a 100% subsidiary in the name of ABC International Private Limited. It was engaged in the business of Projects relating to the cleaning of the Ganga River and the surrounding areas under the ''Namami Gange Programme'', a flagship programme approved by the Union Government of India to achieve the objective of effective abatement of pollution, conservation and rejuvenation of National River Ganga. The ABC International Private Limited could procure some orders under the "Namami Gange Programme" and commenced its commercial operations and continued working for four years and completed all its projects. After 4 years of its existence, the Board of Directors waited

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for 2 more years and could not expand its operations and thought of merging the company with the other operational company(s). The proposal of merger could not hold good and later on the management decided to wind up the company under the voluntary winding up provisions of the Insolvency and Bankruptcy Code, 2016. The Ministry of Urban Housing and Urban affairs also accorded its approval to close the company. The Board of Directors on their next Board Meeting filed a declaration of solvency stating that the company is solvent and no litigation is pending under any court and need to be closed under the voluntary winding up process of the company. The company is not having any employee on the rolls of the company.

The Board of Directors received a proposal of appointment of Geeta as a proposed Liquidator of the Company who is an insolvency Professional and cleared the necessary examination and training. After obtaining her consent and valid Authorisation for Assignment, the management recommended her name to the shareholders of the Company. The Management also appointed Registered Valuers to value the assets of the company ven though there were not any major assets in the company.

The management decided to take the agenda of initiation of Voluntary Liquidation and appointment of Voluntary Liquidator in the Extraordinary General Meeting of the company. In the Extraordinary General Meeting held on 20th June, 2023, the liquidator was appointed and she intimated to various authorities concerned including the Comptroller & Auditor General of India about the initiation of voluntary winding up of the company and filing of necessary claims.

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The Liquidator received the claims from various creditors and after verification found that the both the operational creditors and financial creditors have filed their claims by post only. The Liquidator took necessary steps to realise the assets of the company as per the laid down procedures, payoff all the liabilities and distributed the proceeds among the various stakeholders of the Company after deducting the cost of Liquidation.

In view of the above facts, answer the following with reasons :

(*i*) Whether the mode of submission of proof of claims to the liquidator by the financial creditors are in line with the provisions of the Insolvency and Bankruptcy Code, 2016. Also, what are the various type of forms prescribed for submission of proof of claim to the liquidator by all the stakeholders ?

(*5 marks*)

(*ii*) What is the role of the liquidator if she finds that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation ?

(*4 marks*)

(*c*) Panapathi G. Seeds Pvt. Ltd. a closely held private company was engaged in the business of processing oilseeds for edible oils. It was established in 1988 under the leadership of Panapathi G. Prasad. Within a decade, Panapathi G. Seeds Pvt. Ltd positioned itself as a leader in production of groundnut oil in the Western region of India with two premium brands.

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In 2016 Panapathi G. Prasad had a severe heart attack and died without any succession plan in place. Ram and Sham, the two sons of Panapathi G. Prasad were also directors in the company with equal shareholding. After the death of Panapathi G. Prasad, both brothers had strained relations over the management control which adversely affected the business of the company. With declining profit and turnover both the brothers were worried and decided to reach a family settlement whereby the control of the company was handed over to the elder brother Ram. Sham resigned as the director of the company and in lieu of the same he was entrusted with the management and control of another family firm Saraswathi Edibles, wherein both brothers were partners. Praveen, son of Ram was inducted as director in the Company.

In 2018 Sham wanted to withdraw unsecured loan given by him to the company because the company stopped paying him interest on the loan. Despite follow up Sham was not paid either the principal or interest, which forced him to file an application under section 7 of the Insolvency and Bankruptcy Code 2016.

The Adjudicating Authority (*i*) admitted the application, (*ii*) declared moratorium and (*iii*) appointed Nagarajan, as an Interim Resolution Professional (IRP). Ram refused to hand over the management control to the IRP on the plea that it was a family dispute, and they will settle soon on their own. He also asked the IRP not to make the public announcement. IRP tried to persuade Ram citing the provisions of the Code and warned him that if he does not hand over control of the Corporate Debtor IRP will be forced to approach the Adjudicating Authority for appropriate orders. Thereafter Ram allowed the IRP to take inventory of the assets and stocks after 15 days from the insolvency commencement date.

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With reference to the above facts and other details provided, answer the following questions with particular reference to the provisions contained in the Code, Regulations and rules of IBC and others :

(*i*) Sophie Bank, the only Bank with whom the Company is banking, filed an appeal before the National Company Law Appellate Tribunal (NCLAT) to set aside the order of Adjudicating Authority regarding admission of CIRP on the ground that its cash credit account with the company is regular and there is no default. Will the application of Sophie Bank survive ?

(*ii*) Sham filed a claim for unsecured loan of ₹ 1,75,00,000 along with interest @ 18 per cent per annum. IRP reviewed the accounts and found that there is neither an agreement to that effect on interest rate, northern is any resolution of the Board of Director in this regard. IRP admitted the claim only for the principal amount. Is the IRP right in his decision ?

(*iii*) Sophie Bank charged interest @ 9 per cent on the cash credit limit availed by the company, as per the terms of sanction, even after the insolvency commencement date and justified it on the ground that if the interest is not charged the account has to be classified as NPA. Is the bank's claim legally justified ?

(*iv*) On review of the bank accounts, IRP observed that sixteen months before the insolvency commencement date, a payment of ₹ 1 Crore has been made to a creditor viz., Saraswathi Edibles in which Ram is a partner. What is the status of this transaction under the code ?

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(*v*) IRP sent the notice of the CoC meeting to Ram but not to Sham. Sham protested this and represented that Ram is also a related party and an unsecured financial creditor like him therefore, he is also entitled to receive notice of the CoC meeting. What is your opinion on the representation by Sham ?

(*5 marks*)

(*d*) Whether the legislative scheme that is contained in section 7 and section 9 of IBC, differentiating between financial creditors and operational creditors respectively as regards the Code's objectives and notice on default, are discriminatory and arbitrary ? Substantiate your answer with the relevant case law.

(*5 marks*)

3. (*a*) Suhani and Dhwani are childhood friends and were very fond of designing Indian traditional dresses. After completing their schooling, Suhani joined a fashion designing course to pursue her interest and Dhwani decided to be a fashion Model. She participated in various fashion show programs conducted by Non-Government Organisation(s) engaged in the creating awareness for cervical cancer which is spreading rapidly among Ladies in India.

After some years, in one of the fashion programmes, they met again and planned to form a private Limited Company in the name of Suhani Fashions Private Limited having a paid-up share capital of 5 Crore and became Entrepreneurs.

Suhani Fashions Pvt. Ltd. is engaged in the business of Manufacturing and Selling Ladies Suits and Sarees in Kolkata, West Bengal which is a very big market for Indian traditional dresses. They also offered their products on online e-commerce

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platforms. They employed more than 100 Ladies and other staff in their workshop who were engaged in designing, cutting, tailoring and other allied works. Suhani also used to design products being sold by the company.

Both Suhani and Dhwani were Promoter Directors of the company as per the Article of Association of the company and also the subscribers to the Memorandum of Association of the company by subscribing 50% shares each in the company. Dhwani, being a fashion model, did modelling for her products in order to improve the sales of the company. The company started growing very fast and sales touched a figure of ₹ 20 crores in the very first year and in order to meet the working capital and other requirements, the company approached the bankers Beta bank and Gama Bank for a facility of ₹ 3 crores and ₹ 5 crores respectively. The Company already had taken the credit facilities with Alpha Bank and outstanding amount is ₹ 6 crores.

After the change in demand of the products and growing need of Formal dresses from the Indian traditional dresses, sales started declining and the company started facing cash crunch and made a default in paying the instalments for ₹ 2 crores which were outstanding in the name of the Alpha bank.

The Alpha bank decided to file an Insolvency Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 as a financial Creditor on 3rd January, 2024. The Corporate Insolvency Resolution Process application was admitted by the Adjudicating Authority on 25th January, 2024. Moratorium was declared and Ishann was appointed as an Interim Resolution Professional. Ishaan, Interim Resolution Professional made a public announcement and prepared a list of creditors based on the claims received. The CoC is yet to be formed.

Contd. .....

Consider the above facts and answer the following questions :

(*i*) What is the date of initiation of Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 ?

(*3 marks*)

(*ii*) Describe in detail the meaning of Interim finance. How the interim finance and cost incurred in raising such finance is treated in case the corporate debtor goes into liquidation ?

(*5 marks*)

(*iii*) State, whether any other creditor can initiate proceeding under the Insolvency and Bankruptcy Code, 2016, after the withdrawal of an application for Corporate Insolvency Resolution Process by an applicant ? Discuss with the help of the case laws.

(*5 marks*)

(*iv*) State the provisions of Insolvency and Bankruptcy Code for withdrawal of application admitted under section 7, 9 and 10 by the applicant. Can it be withdrawn after its admission but before the constitution of CoC. Explain with the help of the case laws.

(*7 marks*)

(*b*) XYZ Limited had undertaken financial debts of ₹ 500 crores. It was unable to service the debts to Financial Creditors. The Financial Creditors restructured the debt under a Restructuring Agreement with XYZ Limited. However, it continued to remain in

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default with the Financial Creditors. Application was filed against XYZ Limited under section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Proceedings. To this effect XYZ Limited took shelter under a Special Provision Act of State of Tamil Nadu (State Act). XYZ Limited was declared as a relief undertaking by the Government of Tamil Nadu under a State law through which XYZ Limited's liabilities were suspended by way of Moratorium. National Company Law Tribunal admitted the application filed by the Financial Creditor initiating Corporate Insolvency Resolution Process against XYZ Limited. Directors of XYZ Limited immediately filed an appeal before National Company Law Appellate Tribunal against the National Company Law Tribunal's order for admission of the company to Corporate Insolvency Resolution Process as the company is already subject to moratorium under the Tamil Nadu State Act.

Whether the non-obstante Clause contained under Insolvency and Bankruptcy Code, 2016 will prevail over the non-obstante Clause under a State Act ?

(*5 marks*)

4. (*a*) Vikky Construction Company Pvt. Ltd. (Corporate Debtor & Respondent) entered into a sub-Contract Agreement with one Nusheerabad Constructions Pvt. Ltd. (NCPL) on 01.02.2008, to undertake work of Construction and widening of roads for and on behalf of NCPL.

Apart from this Agreement, a separate agreement of the same date was entered into between the said NCPL and one KDM Projects Private Limited, Kolkata, as a result of which, a tripartite Memorandum of Understanding was entered into on 09.05.2008 between NCPL, KDM Projects Pvt. Ltd. and the Respondent.

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During the course of the project, disputes and differences arose between the parties and the same were referred to an Arbitral Tribunal, which delivered its Award on 21.01.2017. One of the claims that was allowed by the said Award was in favour of the respondent for a sum of ₹ 1,71,98,302/- which arose out of certain interim payment certificates. Another claim that was allowed related to higher rates of payment in which a sum of ₹ 13,56,98,624 was awarded. Three cross claims that were made by the Respondent were rejected.

A notice dated 06.02.2017 was sent by the Respondent to NCPL to pay an amount of ₹ 1,79,00,166. This notice was stated to be a notice under Section 8 of the Code. Within 10 days, by a letter dated 16.02.2017, NCPL disputed the invoice that was referred to in the said notice, stating that the said amount was, in fact, the subject-matter of an arbitration proceeding, and as per NCPL's accounts, the Respondent was liable to pay larger amounts to them.

After the notice and reply, on 20.04.2017, a Section 34 petition was filed by NCPL under the Arbitration and Conciliation Act, 1996 challenging the aforesaid Award. This petition was filed within the period of limitation set down in Section 34(3) of the Act. It is only thereafter that a petition was filed under Section 9 of the Code, on 14.07.2017.

The Adjudicating Authority (AA), by its order dated 29.08.2017, referred to the afore stated facts and also referred to the fact that the Award which was challenged under Section 34 specifically stated that learned counsel for the first Respondent (i.e., the corporate debtor) was fair enough to admit that the claimant is entitled to the said sum of ₹ 1,71,98,302/- According to the AA, the fact that a Section 34 petition

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was pending was irrelevant for the reason that the claim stood admitted, and there was no stay of the Award. For these reasons, therefore, the Section 9 petition was admitted.

An appeal filed to the Appellate Tribunal met with the same fate, as according to the Appellate Tribunal, the non-obstante clause contained in Section 238 of the Code would override the Arbitration Act. Also, according to the Appellate Tribunal, since Form(s) required to be filed in terms of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 requires particulars of an order of an arbitral panel adjudicating on the default, this would have to be treated as ‘‘a record of an operational debt", as a result of which the petition would have to be admitted, as was correctly done by the Adjudicating Authority. The appeal was, accordingly, dismissed.

Being aggrieved by the decision of the Appellate Tribunal, the Appellant has appealed to the apex court. In the light of decided cases, examine whether the code can be invoked in respect of an operational debt where an Arbitral Award has been passed against the operational debtor, which has not yet been finally adjudicated upon ? Would the Appellants’ plea against the judgment of the Authorities be accepted ?

(*6 marks*)

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(*b*) Match the following dictum/issue involved with the Case Law(s) based on ratios/decisions pronounced under IBC :

Sr. No.	Dictum/issue involved	Case Law(s)
(*i*)	There is no scope for elaborate pleadings. An application to the Adjudicating Authority under Section 7 of the Code in the prescribed form, cannot therefore, be compared with the plaint in a suit	Sanjay Kumar Ruia *Vs.* Catholic Syrian Bank Ltd. & Anr,
(*ii*)	Once the amount is shown as 'fees' and 'resolution cost' the same to be paid in terms of Section 53 of the Code.	State Bank of India *Vs.* Jet Airways (India) Ltd., (NCLT. Mumbai)
(*iii*)	Can an Insolvency Resolution professional who had been in employment of a financial creditor be appointed as Resolution professional ?	Dena Bank (now Bank of Baroda Vs. C. Shivakumar Reddy and Anr

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(*iv*)	Can the Appellate Tribuanl set aside the order of liquidation of a corporate debtor using the powers under Rule 11 of NCLAT Rules, 2016 ?	Liberty House Group Pte. Ltd. Vs. State Bank of India & Others (NCLAT, New Delhi)
(*v*)	Without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC qua corporate guarantor.	State Bank of India Vs. Metenere Limited (Supreme Court)
(*vi*)	Admitting of corporate insolvency resolution process of the corporate debtor in India in the light of order passed by a foreign Court ?	Rai Bahadur Shree Ram and Company Pvt. Ltd. Vs. Rural Electrification Corporation Ltd. and Ors.

(*9 marks*)

(*c*) Sanjay Garg is a practising Company Secretary and an Insolvency Professional. He is acting as an Interim Resolution Professional in Saturn Toys Limited. (STL) vide the order of Hon'ble National Company Law Tribunal, Principal Bench, Delhi dated 8th October, 2018. Sanjay Garg was subsequently confirmed as the Resolution Professional of the Corporate Debtor, Saturn Toys Limited (STL) by the Committee of Creditors (CoC) in its first CoC meeting held on 1st November, 2018.

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Prior to the commencement of CIRP, MIRDI Bank (one of the financial creditors) conducted a bidding process for selecting an Interim Resolution Professional for the corporate insolvency resolution process of STL. Along with the selection of Sanjay Garg as proposed, H & M was selected to provide Infrastructure, Personnel and Back-office support services to assist Sanjay Garg for the purpose of corporate insolvency resolution process of STL.

The payment agreed to be paid to H & M is 19 times of the fee payable to Resolution professional. Sanjay Garg, Resolution Professional appointed professionals during the corporate insolvency resolution process and could not disclose the payment made to himself, H & M and the other professionals separately. He raised the invoices for an amount which is more than the amount approved by the appropriate authorities.

The Complaint was made against the Resolution Professional and the matter travelled to the Disciplinary Committee of the Insolvency and Bankruptcy Board of India.

The Disciplinary Committee is of the view that it is inconceivable that the cost of providing infrastructure, personnel and back-office support services is 19 times of the fee payable to Resolution Professional which is not a reasonable reflection of the work done and the insolvency professional was not straight forward and forthright in his conduct.

In the light of the provisions of the Code and decided case laws, discuss whether Sanjay Garg as a resolution professional is liable on the basis of above facts ?

(*10 marks*)

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