

ELECTIVE PAPER 6D: ECONOMIC LAWS

SOLUTION

Case Study 6

I. ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (d) [Hints: As per section 3(12), 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]
2. (c) [Hints: 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;{section 5(7)}]
3. (b) [Hint: Refer Regulation 15 of the FEM (Export of Goods and Services), Regulations, 2000]
4. (c) [Hint: Refer Section 5 (7) of the Code]
5. (c) [Hint: Refer Section 5 (25) read with section 28 of the Code]
6. (c) [Hint: Refer Section 16 of the Code]
7. (d) [Hint: Refer Section 15 of the Code]
8. (c) [Hint: Refer Section 22 (1)]
9. (d) [Hint: Refer Regulation 3 of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]
10. (d) [Hint: section 61(3) of the IBC]

II ANSWERS TO OBJECTIVE TYPE QUESTIONS

1. (i) According to section 33 of the Insolvency and Bankruptcy Code, 2016, where the Adjudicating Authority before the expiry of the insolvency resolution process period does not receive a resolution plan as approved by the committee of creditors, it shall—
 - (a) **pass an order** requiring the corporate debtor to be liquidated as per the relevant provisions
 - (b) **issue a public announcement** stating that the corporate debtor is in liquidation; and
 - (c) **require such order** to be sent to the authority with which the corporate debtor is registered.

According to section 12 of the Insolvency and Bankruptcy Code, 2016, the corporate insolvency resolution process (CIRP) shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

As per the facts, Ronit, presented the approved resolution plan, before NCLT after the prescribed period for the completion of CIRP i.e, after 180 days of insolvency commencement date.

According to the above stated provisions, NCLT, shall pass an order requiring the corporate debtor (MMPL) to be liquidated. It shall issue a public announcement of its liquidation and send such order to the Registrar of companies.

- (ii) As per Section 33(3) of the Insolvency and Bankruptcy Code, 2016, where the resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor, any person other than the corporate debtor, whose interests are prejudicially affected by such contravention, may make an application to the Adjudicating Authority for a liquidation order

as referred above. Accordingly, the employees and the stakeholders of MMPL, whose interests are affected by contravention in compliances of the resolution plan, may make an application to NCLT for initiation of liquidation. On receipt of an application, if the Adjudicating Authority determines that the MMPL has contravened the provisions of the resolution plan, it shall pass a liquidation order.

- (iii) As per section 33(7) of the Insolvency and Bankruptcy Code, 2016, the order for liquidation shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor.

However, where the business of the corporate debtor when continued during the liquidation process by the liquidator, it shall not be deemed to be notice of discharge to the officers, employees and workmen of the corporate debtor.

So the Conduct of business of MMPL during liquidation process by the liquidator is tenable and shall not be deemed to be notice of discharge to the officers, employees and workmen of the MMPL.

2. (i) **Validity of the conduct of undervalued transaction :** As per the provisions given in section 45 of the Insolvency and Bankruptcy Code, 2016, Ronit, on an examination of the transactions of the MMPL, determines that certain transactions were made by MMPL with a related party (Rama devi) within the period of two years preceding the insolvency commencement date (in 6 months preceding the Insolvency Commencement date), which were undervalued. Ronit, shall make an application to the NCLT to declare such transactions as void and reverse the effect of such undervalued transaction and requiring the person who benefits from such transaction to pay back any gains he may have made as a result of such transaction.
- (ii) **Failure to report to NCLT of undervalued transactions:** As per the stated facts given in the light of the provisions laid in Section 47 of the Insolvency and Bankruptcy Code, an undervalued transaction has taken place and Ronit (Resolution Professional) has not reported it to the NCLT, in such case, a creditor , member or a partner of a MMPL, as the case may be, may make an application to the NCLT to declare such transactions void and reverse their effect in accordance with the relevant provisions of this Code.
- (iii) **Order of NCLT:** Where the NCLT, after examination of the application made above, is satisfied that undervalued transactions had occurred; and Ronit (RP) after having sufficient information or opportunity to avail information of such transactions did not report such transaction, there it shall pass an order of —
- (a) restoring the position as it existed before such transactions and reversing the effects thereof in the manner as laid down in section 45 and section 48 of the Code. The order of the Adjudicating Authority may provide for the following:—
- (1) require any property transferred as part of the transaction, to be vested in the corporate debtor(MMPL);
 - (2) release or discharge (in whole or in part) any security interest granted by the corporate debtor (MMPL);
 - (3) require any person to pay such sums, in respect of benefits received by such person, to the Ronit (RP), as the Adjudicating Authority may direct; or
 - (4) require the payment of such consideration for the transaction as may be determined by an independent expert.
- (b) requiring the Board(IBBI) to initiate disciplinary proceedings against Ronit.
3. (a) (i) As per the provisions given in section 68 of the Code, Mr. Shyam, Director (an officer in default) has within the twelve months immediately preceding the insolvency commencement date, fraudulently transferred his holding of shares in favour of his sister

of Rs.1 lakh (which is more than value of ten thousand rupees). So, Mr. shyam, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both: However, he shall not be liable to any punishment under this section if he proves that he had no intent to defraud or to conceal the state of affairs of the corporate debtor.

- (ii) According to section 71 of the Code, on and after the insolvency commencement date, Mr. Shyam, makes a false entry in the books of account of MMPL with an intent to defraud or deceive any person, he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.
 - (iii) As per Section 77 of the Code, as Shyam permitted Shivam to provide informations in the application under section 10, which is false in material particular and omits material fact related to a books of accounts of a specified period, so he shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to five years or with fine which shall not be less than one lakh rupees, but which may extend to one crore rupees, or with both.
- (b) As per section 69 of the Code, on or after the insolvency commencement date, where the directors of the MMPL—
- (a) has made transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;
 - (b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such directors of MMPL, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

However, directors of MMPL, shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.