

**Answer to Q.1**

Foreign trade creditor is operational creditor and eligible to file petition to initiate insolvency process as per section 9 of IBC, 2016. As per section 9, operational creditor shall furnish 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 along with application. Financial Institution includes scheduled bank, public financial institutions or such other institution as notified by the Central Government. In the matter of **Smart Timing Steel Limited V/s. National Steel and Agro Industries**, NCLAT has cleared that the provisions of filing certificate from financial institution is mandatory in case of filing of application of operational creditor. In this case, foreign operational creditor filed petition without furnishing certificate from financial institution as it was not maintaining bank account in India and it was rejected. Accordingly, it can be said that the petition of Standard International Limited is not permissible under IBC 2016.

**Answer to Q.2**

Facts in question are similar to the case of **Parker Hannifin India Private Limited V/s. Prowess International Private Limited**. In this case, an application was made to initiate corporate insolvency and resolution process under section 8 and 9 of the IBC, 2016. NCLT has admitted petition and appointed an interim insolvency resolution professional, declared moratorium, directed for public announcement. After that, both the parties agree for the amicable settlement. Corporate Debtor then filed an application with the NCLT for withdrawal of the petition based on settlement arrived at between them.

NCLT has held that:

- As per section 9 of the IBC, 2016, if repayment of the debt amount is made by the corporate debtor then the NCLT has power to reject the petition, before the admission of the petition.
- After the admission of the petition, it acquires the character of representative suit and through publication in the newspapers, other creditors get a right to participate in the insolvency resolution process and claim before IRP.
- Petition cannot be dismissed based upon compromise between the operational creditor and corporate debtor.
- Operational Creditor and Operational Debtor along have no right to withdraw the Petition after admission.

Based on the above judgement, it can be said that once a petition is admitted by the NCLT under the IBC, 2016, Nature India Limited has no right to withdraw the petition. As it can say IBC is not a Recovery Law it is Revival Law.

Thus, NCLT may reject the application of Operation Creditor if:

- It is incomplete
- The unpaid operational debt is paid, before admission of petition
- Demand notice was not delivered
- Notice of dispute is received from operational debtor
- Disciplinary proceeding is pending against the proposed resolution professional.

Therefore, other than above there are no grounds for rejection of petition.

**Answer to Q.3**

Statement is false. Illegal association is not valid in eye of law. The Tribunal can deal with winding up of companies registered in India and unregistered companies. However, Tribunal is not competent to order winding up of illegal association.

**Answer to Q.4**

The liability of members of unlimited company is unlimited. However, creditor of unlimited company cannot directly recover due money from its members. The liability of members is only towards the company in event of its being wound up and Liquidator can ask member to contribute amount, which will be used to pay off debts of company.

**Answer to Q.5 (i)**

In case of East Bengal Sugar Mills Limited, some applicants consented to become members of company on the condition that their suggestions should be included in the Memorandum and Articles of Association. Their suggestions were not included but they signed application for shares. Shares were allotted to them and they become member of company. It was held that it was not open to them to object subsequently that they were not shareholders of company on the ground that their condition had not been included. Accordingly, they are treated as present members of company and contributories as well.

**Answer to Q.5 (ii)**

Workmen's due + Secured Creditors = Total Debt due (As per Section 326 they shall rank pari passu)

Therefore Rs.1,00,000 + 3,00,000 = 4,00,000

Thus workmen's proportion is  $\frac{1}{4}$  and Secured Creditors proportion is  $\frac{3}{4}$

Therefore, workmen's portion in liquidators expenses of Rs.10,000 is = Rs.2,500

And that of Secured Creditors portion in liquidators expenses of Rs.10,000 is = Rs.7,500.

**Answer to Q.6**

Once foreign proceeding is recognised which is foreign main proceeding, the following are the effects:

- (a) Commencement or continuation of individuals actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
- (b) Execution against the debtors assets is stayed; and
- (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

The effects provided by Article 20 are not discretionary in nature. These flow automatically from recognition of the foreign main proceeding. The automatic effects under Article 21 apply only to main proceedings.

**Answer to Q.7**

The various objectives of UNCITRAL Model Law are as follows:

- The purpose of the Model Law is to provide effective mechanisms for dealing with cases of cross border insolvency.
- Promoter cooperation between the courts and competent authorities of a State and Foreign States involved in cases of cross border insolvency.
- Increase greater legal certainty for trade and investment.

- Ensure fair and efficient administration of cross border insolvencies that protects the interests of all creditors and other interested persons, including the debtor
- Protection and maximization of the value of the debtor's assets; and
- Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

#### **Answer to Q.8**

Various types of corporate restructuring strategies include:

- Merger
- Demerger
- Reverse Merger
- Disinvestment
- Takeovers
- Joint Ventures
- Strategic Alliance
- Slump Sale
- Franchising
- Strategic alliance etc.

#### **Answer to Q.9**

- a) Role of professionals in corporate restructuring is increasing day by day.
- b) Corporate restructuring involves decision on various technical and legal aspects such as valuation of organisations involved in restructuring process, swap ratio of shares if any, legal and procedural aspects with regulators such as Registrar of Companies, Tribunal etc., optimum tax benefits after merger, human and cultural integration, stamp duty cost involved etc.
- c) All these requires team of professionals including business experts, Company Secretaries, Chartered Accountants, HR professionals etc., who have a role to play in various stages of restructuring process.

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