



# FINAL CA – May 2018

## LAW

Test Code – F98

Branch: MULTIPLE Date: 11.03.2018

(50 Marks)

*Note: All questions are compulsory.*

### Question 1 (6 marks)

Reconstruction may be carried out:		
1. by sale of the company under the powers contained in its Memorandum of Association;		1
2. by a scheme of arrangement under section 391		1
3. by acquiring all or a majority of the shares in another company under section 395;		1
4. by a compulsory amalgamation of companies in the public interest by an order of the Central Government under section 396;		1
5. by a sale under section 494 (members voluntarily winding up); or under section 507 (creditor's voluntarily winding up); in the former case a special resolution and in the latter case the sanction either of the Court or of the Committee of Inspection is necessary.		1
6. by a scheme of arrangement with creditors only; under section 517 (voluntary winding up both by members and creditors, a special resolution and consent of three-fourths in value of creditors are necessary.		1

### Question 2 (6 marks)

1. The proposed scheme involves a compromise or arrangement with members and creditors and attracts section 391 of the said Act. An application be <u>submitted before the High Court under section 391 of the said Act</u> . On such application the court may order that a meeting of creditors and/or members be called and held as per the directions of the court.		1
2, The company must send <u>notice of meeting to every creditor/member</u> containing a statement setting forth the terms of compromise explaining its effects.		1
3. At the meetings convened as per directions of the court <u>majority in number representing atleast <math>\frac{3}{4}</math> in value of creditors/members present and voting</u> must agree in compromise or arrangements. Thereafter the company must present a petition to the court for confirmation of the compromise or arrangement.		1
4. The notice of application made by the company will be served on the Central Government and the court will take into consideration representation, if any, made by the Central Government (Section 394A).		1
5. The court will sanction the scheme, if satisfied, after consideration of all relevant matters. <u>Copy of order issued by the court must be filed with the Registrar of Companies and then only the order will come into effect.</u>		1

6. Copy of the said order must be annexed to memorandum of Association issued thereafter. The scheme sanctioned by the court shall be binding on all members and creditors even on those who were dissenting.		1
---	--	---

Question 3 (5 marks)

Apart from the power of sanctioning a compromise or arrangement the Court has inter alia the following powers:		
1. to stay, while application under section 391 is pending the commencement or continuation or any suit or proceeding against the company [section 391(6)];		1.5
2. to supervise the carrying out of the compromise or arrangement [section 392(1)(a)]. Only the High Court has this power when it makes an order under section 391; a District Court has no such power.		1.5
3. to modify the compromise or arrangement for the proper working thereof [Section 392(1)]; and		1
4. to order winding up of the company, if it is satisfied that the compromise or arrangement is unworkable [Section 392(2)].		1

Question 4 (5 marks)

1. Section 396(1) provides that where in the "Public" interest it appears to the Central Government that amalgamation of two companies is essential, it may, through notification in the Official Gazette, provide for the amalgamation of the two companies into a single company with such constitution, property, powers, rights, interests, authorities and privileges and with such liabilities, duties and obligations as may be specified in the notification.		1
2. Under section 396(2), the order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and may also contain such incidental, consequential and supplemental provisions necessary to give effect to the amalgamation.		1
3. Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interests in or rights against the amalgamated company as he has in the company of which he was originally a member or creditor.		1.5
4. If his interests in or rights against the amalgamated company are less than his original interests etc., in the original company, he shall be entitled to receive compensation from the amalgamated company to the extent these have been reduced. [section 396(3)]		1.5

Question 5 (5 marks)

1. It is another form of reconstruction pursuant to an arrangement with the creditors when the company is being voluntarily wound up.		1.5
---	--	-----

<p>2. Under this Section, any arrangement entered into between a company about to be wound up or in the course of winding-up and its creditors is binding on the company and its creditors provided it has been:</p> <p>a. approved by a special resolution of the company; and</p> <p>b. agreed to by three fourths in number and value of the creditors.</p>		2
<p>3. Any creditor or contributory may, however, within three weeks from the completion of arrangement, appeal to the Court and the court may amend, vary, confirm or set aside the arrangement.</p>		1.5

Question 6 (5 marks)

18. Initiation of corporate insolvency resolution process by financial creditor.

Section 7 of the Insolvency and Bankruptcy Code, 2016 state the manner of initiation of corporate insolvency resolution process by financial creditor. According to the provision, a financial creditor either by itself or jointly with other financial creditors may file an application against a corporate debtor before the Adjudicating Authority (Tribunal) when a default has occurred.

The financial creditor shall, along with the application furnish the following informations—(3 mark)

- (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;
- (b) the name of the resolution professional proposed to act as an interim resolution professional; and
- (c) any other information as may be specified by the Board.

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. Adjudicating Authority if, satisfied that a default has occurred and complying with other requirements of the section, it may, by order, admit such application; or if, default has not occurred, it may, by order, reject such application. (1 mark)

Commencement of corporate insolvency resolution process: The corporate insolvency resolution process shall commence from the date of admission of the application. The Adjudicating Authority shall communicate— the order to the financial creditor within seven days of admission or rejection of such application and to the corporate debtor. (1 mark)

Question 7 (6 marks)

19. Persons not entitled to make application.

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process -(4 mark)

- (a) a corporate debtor undergoing a corporate insolvency resolution process; or
- (b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

- (c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
- (d) a corporate debtor in respect of whom a liquidation order has been made.

In this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.  
[Section 11]

As per the facts corporate applicant Mr. X seems to be a separate individual and not a corporate applicant in respect of such corporate debtor who is undergoing a corporate insolvency resolution process. So he shall be entitled to make an application to initiate corporate insolvency resolution process. (2 mark)

#### Question 8 (6 marks)

18. In the given problem, on commission of default by the Wisdom Ltd., Mr. F filed an application for initiating corporate insolvency resolution process before adjudicating authority. Further, Mr. X another financial creditor moved an application for initiation of insolvency resolution process against the Wisdom Ltd. (1 mark)

According to the section 6 of the Code, where any corporate debtor commits a default, a financial creditor, Operational creditor or the Corporate debtor itself may initiate insolvency resolution process against such corporate debtor. (1.5 mark)

But as per Section 13 of the Code, once an application is admitted by the Adjudicating authority, it shall by an order declare a moratorium for the purposes referred to in section 14. Then causes a public announcement of the initiation of CIRP by IRP and call for the submission of claims under section 15 and appoint an IRP in the manner as laid down in section 16 of the Code. Public announcement lays down all the relevant information related to the CIRP. So that the all creditors entitled under the law can raise their claim in this case. (2 mark)

So, no further application for initiation of CIRP against the same debtor ( i.e, Wisdom Ltd.) can be initiated. So, Mr. X, cannot file an application on initiation of CIRP, however, is entitled under the law to raise his claim in this case against the Wisdom Ltd. (1.5 mark)

#### Question 9 (6 marks)

19. Section 1 of the Insolvency and Bankruptcy Code, 2016 specifies of the extent, commencement and applicability of the Code. According to this, it extends to the whole of India and shall apply for insolvency, liquidation, voluntary liquidation or bankruptcy of any company incorporated under the Companies Act, 2013 or under any previous law. (1 mark)

In view of this, the IBC Code, 2016 applies to the corporate debtor incorporated under the Companies Act, 2013 or under any previous laws. (1 mark)

As per the definition of the Creditor given in section 3(10) of the Insolvency and Bankruptcy Code, 2016, it means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor, and a decree holder. So, Standard International Ltd. is a creditor under the purview of the Code. (1 mark)

As per the facts given in question, Standard International Ltd., is a foreign trade creditor. He wanted to file a petition under the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for commencement of Insolvency process against the defaulter in India. Standard International Ltd. was not having any office or bank account in India. (1 mark)

As per the requirement of section 9 of the Code, along with application certain documents were needed to be furnished by the creditor to the Adjudicating authority. (1 mark)

Being a foreign trade creditor, Standard International Ltd was also required to provide a copy of certificate from the financial institutions maintaining accounts of the creditor confirming that there is no payment of an unpaid operational debt by the corpo rate debtor. Since, Standard International Ltd. was not having any office or bank account in India, it cannot furnish certificate from financial institution as defined under the section 3(14) of the code. So, Petition under section 9 of the Code is not permissible. (1 mark)

\*\*\*\*\*