

## NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination Oct.-Nov. – 2023  
Semester: UG VII Semester (Business Law Hons.)  
Subject: Law of Corporate Insolvency and Bankruptcy

Time: Three hours

Marks: 100

**Instructions:**

1. Attempt any five out of six questions.
2. All questions carry equal marks.
3. Use of bare acts or any reference material is not permitted.

Q.1). Insolvency and Bankruptcy Code, 2016 tries to ensure efficient remedy to the creditors within the code, but sometimes the efficient remedy lies outside the code and therefore withdrawal of application mechanism has been provided within the code. Analysing the statement, state whether the adjudicating authority can allow for withdrawal of the application. If yes, what are the pre-requisites for the withdrawal process. Also, explain the condition existing prior to the amendment made to the Code related to withdrawal process.

(Marks: 20)

Q.2). 'The true nature and intent of section 29A is to prevent the backdoor entry of all those persons who are in control and the meaning of term control need to be interpreted in a holistic manner.' In the light of abovementioned statement, explain the meaning of Positive and Negative control. Also, explain the relevance and importance of Section 29A under the Code.

(Marks: 20)

Q.3). 'Commercial wisdom is a very unique concept and it needs to be applied in a judicious manner. Although the general rule is that the adjudicating authority does not intervene with the decision based on commercial wisdom but it does not mean that a complete leeway is provided in the name of commercial wisdom.' With the help of case laws, explain the concept of Commercial wisdom, and also explain in what all situations the Adjudicating authority can intervene in the matters/decision based on commercial wisdom.

(Marks: 20)

Q.4). 'There has been an entire shift in the dynamics of the market. Prior to the advent of Insolvency and Bankruptcy laws market was entirely based on Debtor in control but due to introduction of Insolvency and Bankruptcy Code, 2016 the new regime has been created i.e., Creditor in Control, and this has improved and protected the status of the creditors. From the very inception of the code there are some provisions whose validity is constitutionally challenged.'

On the basis of above-mentioned statement, critically determine the constitutional validity of the code. Also, explain how the IBC 2016 has in true manner protected and preserved the status of the creditors.

(Marks: 20)

Q.5). *“It's almost a decade that the code has been enforced with a view not only to deal with domestic insolvency but also to deal with cross-border insolvency matters but still the provisions under the code related to cross-border insolvency are insufficient and therefore it demands an immediate attention to revamp the existing structure related to cross border insolvency so as to make the existing mechanism more robust and smoother”.*

On the basis of abovementioned statement, critically examine the gaps in the current structure which has created the problem while dealing with Cross-Border Insolvency matters. Also, explain the bypass scheme which we are using in India to handle these situations using statutory provisions and case laws.

(Marks: 20)

Q.6). Write short notes on the following:

- a. Powers and Functions of IBBI
- b. Powers and Duties of IRP

(Marks: 10+10=20)