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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 8D**

**INDIA**

This is the **summative (formal) assessment for Module 8D** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 8D**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial or Avenir Next font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment8D]**. An example would be something along the following lines: 202223-336.assessment8D. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.The final submission date for this assessment is **31 July 2024**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

Which of the following legislation provides for the rescue of a company:

1. The Insolvency and Bankruptcy Code 2016.
2. The Companies Act 2013.
3. The Presidency-towns Insolvency Act 1909.
4. The Provincial Insolvency Act 1920.

**Question 1.2**

Which one of the following remedies is available to a non-Indian creditor:

1. Recovery proceedings before the Civil Court.
2. Enforcement of security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
3. Recovery proceedings before the Debts Recovery Tribunal.
4. Mandatory participation in an out-of-court restructuring under the inter-creditor agreement.

**Question 1.3**

Which of the following is not a function of the Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code 2016?

1. Registration of insolvency professionals.
2. Registration of insolvency professional agencies.
3. Carrying out inspections and investigations of insolvency professionals.
4. Appointing an insolvency professional as a resolution professional for a company.

**Question 1.4**

Which of the following forms of security cannot be enforced under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002?

1. A mortgage in English form.
2. A pledge.
3. A charge.
4. A hypothecation.

**Question 1.5**

Which one of the following will make a creditor’s petition for adjudication as a bankrupt under the Presidency-towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 non-compliant with the requirements:

1. The debt owing exceeds INR 5,000.
2. The debt is a liquidated sum payable immediately or in some certain future time.
3. The relevant act of insolvency occurred five months prior to the presentation of the petition.
4. The debtor did not defraud its creditors.

**Question 1.6**

Indicate which one of the following enjoys **the highest priority** in distribution of proceeds from a bankrupt’s assets under the Insolvency and Bankruptcy Code 2016:

1. Fees of the bankruptcy trustee.
2. Dues owed to the State and Central Government.
3. Workmen’s dues for 24 months.
4. Employees’ dues for 12 months.

**Question 1.7**

Which of the following is **not a requirement** for initiating voluntary liquidation under the Insolvency and Bankruptcy Code 2016?

1. Special resolution of the shareholders of the corporate debtor.
2. Declaration of the directors of the company on the ability of the company to repay its debts from available assets.
3. Approval of two-thirds of the creditors.
4. Approval of the National Company Law Tribunal.

**Question 1.8**

In which one of the following processes is the entire section 29A of the Insolvency and Bankruptcy Code 2016 **not applicable**?

1. Corporate insolvency resolution process of an MSME.
2. Pre-pack insolvency process of an MSME.
3. Sale of assets of a company in liquidation.
4. Sale of assets under voluntary liquidation.

**Question 1.9**

In which of the following situations can an **application for initiation** of corporate insolvency resolution process **not be** filed under the Insolvency and Bankruptcy Code 2016?

1. The corporate debtor is a bank.
2. The corporate debtor is an MSME.
3. The creditor is an operational creditor who has issued a demand notice for the debt.
4. The corporate debtor is in financial difficulties but has defaulted to only one creditor to the extent of INR 20 million.

**Question 1.10**

**Approval of the committee of creditors** is not a requirement for the following transactions undertaken by the resolution professional under the Insolvency and Bankruptcy Code 2016:

1. Raising interim finance.
2. Undertaking any related party transactions.
3. Payment of the approved insolvency resolution process costs.
4. Amending the constitutional documents of the corporate debtor.

**QUESTION 2 (direct questions) [10 marks in total]**

**Question 2.1 [maximum 2 marks]**

Briefly describe the remedies against an order of the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016.

A party that is unsatisfied with an order made by the National Company Law Tribunal can file an appeal before the National Company Law Appellate Tribunal. Any such appeal has to be filed within 30 days of the issuance of the order by the National Company Law Tribunal .

Similarly, an order of the National Company Law Appellate Tribunal can be appealed before the Supreme Court, provided the appeal is on question of the law. Any such appeal has to be filed within 45 days of the issuance of the order by the National Company Law Appellate Tribunal.

**Question 2.2 [maximum 4 marks]**

Briefly describe the exceptions to the moratorium during the corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016.

Commencement of the Corporate Insolvency Resolution Process (CIRP) (i.e., following admission of the CIRP Application by the National Company Law Tribunal) triggers a moratorium until the end of the Corporate Insolvency Resolution Process. Exceptions to this moratorium are:

1. While the moratorium prevents termination of supply of essential goods and services needed by the debtor company, the moratorium does not prevent termination of supply of such goods and services where the termination is as a result of default of payment for supplies made during the moratorium period;
2. The moratorium does not apply to transactions, agreements and arrangements specified by the Central Government in consultation with any financial sector regulator or any other authority (<https://www.taxmann.com/post/blog/moratorium-meaning-and-objective-in-insolvency-bankruptcy-law>, under Section 1 – Legislative History, Paragraph Marked (iii)) – The Central Government has since notified several contracts as being exempted from this moratorium, being:
	1. Contracts/transactions relating to production, revenue sharing, exploration and mining leases under the Oilfields Act, 1948 (<https://www.linkedin.com/pulse/new-mca-notification-every-insolvency-professional-should-shaikh> ) and ; and
	2. Contracts/transactions under the under the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (<https://corporate.cyrilamarchandblogs.com/2023/10/sky-is-the-actual-limit-for-ibc-exemption-from-moratorium-over-aircraft-objects-during-insolvency/> )
3. The moratorium does not apply to proceedings or actions against a surety in respect of a guarantee contract relating to the debtor undergoing CIRP – i.e., the moratorium only extends to the assets of the debtor undergoing CIRP and enforcement action can still be pursued against their guarantor even while the moratorium in respect of the corporate debtor is in place;
4. While the moratorium prevents termination of government licenses, approvals, permits and concessions, the moratorium does not prevent such termination where the termination is as a result of default of payment to the relevant government authority during the moratorium period; and
5. The moratorium will also not prevent the termination of contracts where the termination is on other grounds unrelated to the insolvency of the corporate debtor as determined by the Supreme Court of India in *“Tata Consultancy Services Ltd. v. Vishal Ghisulal Jain, Resolution Professional S.K.Wheels Pvt. Ltd.” (*[*https://main.sci.gov.in/supremecourt/2020/16761/16761\_2020\_4\_1502\_31612\_Judgement\_23-Nov-2021.pdf*](https://main.sci.gov.in/supremecourt/2020/16761/16761_2020_4_1502_31612_Judgement_23-Nov-2021.pdf) *)*.

**Question 2.3 [maximum 3 marks]**

Indicate the acts of insolvency under the Presidency-towns Insolvency Act 1909.

Acts of insolvency under Section 9 of the Presidency-towns Insolvency Act 1909 (<https://www.indiacode.nic.in/bitstream/123456789/19722/1/a1909-03.pdf> ) are where:

1. The debtor transfers all or substantially all their assets to a third person for the benefit of their creditors in general;
2. The debtor transfers all or part of their property with the intention of defeating or delaying recovery by their creditors;
3. The debtor transfers all or part of their property to a creditor under a transaction that would qualify as a fraudulent preference if the debtor was insolvent;
4. The debtor travels outside the country, leaves their usual place of business or residence or goes into hiding to delay or defeat recovery by their creditors;
5. The debtor petitions the Court to be declared insolvent;
6. The debtor notifies their creditors that they have suspended or intend to suspend payments;
7. The debtor is imprisoned further to orders of the court for the payment of money;
8. The debtor has their property sold or attached for at least 21 days further to orders of the court for the payment of money; and
9. The debtor does not comply with a notice for payment issued by a creditor who has secured orders for payment against the debtor from the court (where such orders have become final and execution has not been stayed).

**Question 2.4 [maximum 1 mark]**

Explain the cross-border insolvency arrangements in the Indian regime.

India does not have a very robust/developed framework to deal with cross-border insolvency. For example, the Country is yet to adopt the UNCITRAL Model Law on Cross-Border Insolvency.

The primary mode of dealing with cross-border insolvency is through applications to Indian courts for recognition and enforcement of (insolvency) judgements under the Code of Civil Procedures, 1908.

Section 44A of the Code of Civil Procedures (<https://devgan.in/cpc/chapter_02.php#s44A>) provides for the execution, by Indian Courts, of judgements/decrees for payment of money passed by foreign courts from designated (reciprocating) territories with which India has bilateral treaties. The Reciprocating Countries are UK, Singapore, UAE, Aden, Bangladesh, the Cook Islands, Fiji, New Zealand, Papua New Guinea, Trinidad and Tobago, The Trust Territories of Western Samoa, Hong Kong and the Federation of Malaya (<https://iclg.com/practice-areas/enforcement-of-foreign-judgments-laws-and-regulations/india>, under Section 1 “Country Finder” under the subheading “Reciprocating Bilateral Agreements”). The Code of Civil Procedures requires that certified copies of such decrees from superior courts in the reciprocating jurisdiction be filed in the Indian Court which gives the same effect as decrees of the Indian Court. The execution of foreign decrees from reciprocating countries can be refused on various grounds including, but not limited to, issuance by a court that does not have jurisdiction, being obtained fraudulently, being in breach of Indian Law etc.).

Recognition and execution of decrees from foreign court from countries with whom India does not have reciprocating treaties requires that fresh suits be brought before Indian courts for determination, with the foreign judgements only carrying evidentiary value.

While the Insolvency and Bankruptcy Code, under Sections 234 and 235 of the Code, does attempt to enhance the position on cross-border insolvency by providing for bilateral treaties between India and foreign governments in order to extend the provisions of the Code to those foreign countries, this attempt is rendered ineffective by the fact that the Government of India has not entered any bilateral treaties for purposes of operationalization of these sections.

One positive aspect from the perspective of the cross-border insolvency is the fact that under Indian Law, foreign creditors are able to participate fully in local insolvency proceedings (i.e., equal rights with local creditors). This is subject to limitation of forums that foreign creditors can use to pursue repayment of their debts (e.g., foreign creditors do not have access to Debt Recovery Tribunals as an avenue for pursuing repayment).

**QUESTION 3 (essay-type question) [15 marks]**

Write a short essay on the process of sale of assets of a company, and distribution of proceeds under liquidation in terms of the Insolvency and Bankruptcy Code 2016.

Your answer should make reference to at least the following:

* available methods to sell the assets;
* requirement for valuation and consultation with the creditors; and
* priority of different types of claims in distribution.

*Note: This essay is prepared with reference to the Act and various applicable sets of Regulations. The sections of the Act/Regulations referred to are quoted in-text. The sources referred to include the Insolvency and Bankruptcy Code, the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations*

**Essay**

One of the powers of the liquidator provided for under Section 35 (1) (f) of the Act is the power to sell, by way of private treaty or public auction, the movable and immovable assets, and actionable claims, of the corporate debtor and to distribute the proceeds of realization in line with the provisions of the Insolvency and Bankruptcy Code (as set out under Section 53 of the Act).

However:

1. The Liquidator’s power to sell the assets of the corporate debtor is subject to the rights of secured creditors, should they choose, to realize their securities outside the liquidation proceedings, as set out under Section 52 of the Act;
2. The Liquidator is not allowed to sell the assets of the debtor to any person that is ineligible to submit a resolution plan in respect of the debtor; and
3. Except with the prior permission of the Adjudicating Authority, the Liquidator is not allowed to sell the assets of the corporate debtor to a related party of the corporate debtor, the Liquidator’s related parties or any professional appointed by the Liquidator.

As set out in Regulation 31A, in selling the assets of the corporate debtor, the Liquidator is expected to consult (i.e., obtain concurrence of) the consultation committee on various aspects of the asset realization process including the mode/manner of sale, pre-bid qualifications for the potential buyers, reserve price for the various categories of assets, marketing strategy and auction process that is likely to maximize value etc.

In line with Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, the Liquidator can sell:

1. an asset on a standalone basis;
2. the assets in a slump sale;
3. a set of assets collectively;
4. the assets in parcels;
5. the corporate debtor as a going concern; or
6. the business of the corporate debtor as a going concern.

The Liquidator is obliged to first try to sell the corporate debtor or the business of the corporate debtor as a going concern where the committee of creditors, in approving the resolution plan in respect of the corporate debtor or deciding to liquidate the corporate debtor, recommends such sale approach or where the Liquidator is of the opinion such sale approach is likely to maximize the realizable value of the corporate debtor (Regulation 32A of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations). The Liquidator is allowed to explore sale of the corporate debtor as a going concern only at the first auction, although the Liquidators is also not allowed to limit potential bidders to only this option during such first auction.

The choice of assets and liabilities to be sold as a going concern is either identified by the committee of creditors, based on the committee’s commercial considerations, in line with the provisions of sub-regulation 2 of regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, or by the Liquidator in consultation with the committee of creditors.

Except under limited circumstances, the Liquidator is expected to sell the assets of the corporate debtor by way of public auction. Sale by way of private treaty is allowed, subject to consultation with the committer of creditors, in instances where the assets in question are either perishable or likely to deteriorate in value if not sold immediately, or where the Liquidator has obtained the permission of the Adjudicating Authority to conduct such sale.

As part of the process of selling the assets of the corporate debtor, the Liquidator is required to prepare an asset memorandum providing relevant details in relation to the assets which are proposed to be realized. Relevant details to be included in the asset memorandum include, *inter alia,* value of the assets (as established through valuation undertaken in line with the provisions of Regulation 35 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations), intended mode of sale and the justification for the same and the expected amount of realization. The asset memorandum is supposed to be filed with the Adjudication Authority and shared with the Insolvency and Bankruptcy Board of India (the Board) and members of the committee of creditors who have voting rights.

The fair and liquidation values of the assets/business of a corporate debtor are determined during the Corporate Insolvency Resolution Process (which ordinarily precedes liquidation proceedings). Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations requires the resolution professional to appoint two registered valuers to determine the fair value and liquidation value of the corporate debtor in line with the provisions of Regulation 35 of the Insolvency and Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations. The resolution professional may also appoint a third valuer if the estimates of value for any asset class as returned by the two valuers are significantly (25+%) different or upon receipt of a proposal to appoint a third value from the committee of creditors. The Liquidator takes the average of the estimates of fair value and liquidation value of arrived under the valuation undertaken during the Corporate Insolvency Resolution Process as the value of the assets for purposes of the sale process during the liquidation. However, where the Liquidator, in consultation with the committee of creditors, is of the opinion that a fresh valuation is required, the Liquidator is required to appoint two registered valuers to determine the realizable value of the assets/business of the corporate debtor, with the average of the two estimated returned by these valuers then being taken as value of the assets/business.

In line with Regulation 36 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, upon sale of an asset, the Liquidator is required to prepare a sale report in respect of such asset and to enclose the sale report as par of their Progress Reports. The sale report should contain, *inter alia*, the realized value, costs of realization incurred, the manner and mode of sale and details of the person to whom the asset was sold.

Under the provisions of Section 52 of the Act, assets subject to security interests may be realized by the respective charge-holders, subject to appropriate notice to the Liquidator regarding the intention to realize the assets outside the liquidation proceedings, the price at which they propose to sell the assets and there being no alternative bidder identified by the Liquidator that is willing to acquire the same assets at a higher price.

Subject to consultations with the committee of creditors, the Liquidator also has the power to assign or transfer any assets of the corporate debtor that are not readily available for a consideration to an eligible person. Additionally, subject to the permission of the Adjudicating Authority, the Liquidators also has the power to distribute any assets that cannot be realized, assigned, or transferred amongst stakeholders. The Liquidator also has the power to realize amounts due from the contributories of the corporate debtor.

In line with the provisions of Section 53 of the Act, once the Liquidator has realized the assets of the corporate debtor, the Liquidator is required to distribute the proceeds from the sale of the assets in the following hierarchical order:

1. First, in full satisfaction of the costs of the insolvency resolution process and the liquidation process for the corporate debtor;
2. Second, on *pari passu* basis, towards settling workmen’s due arising during the last two years preceding the commencement of the liquidation and debts owed to any secured creditor who relinquishes their to the liquidator for realization in line with the provisions of Section 52 of the Act;
3. Third, in paying wages and dues owed to employees (other than workmen) arising in the last 1 year preceding the commencement of the liquation;
4. Fourth, in settling financial debts owed to unsecured creditors;
5. Fifth, on *pari passu* basis, amounts owed to the Central and State Governments and debts owed to secured creditors that remain outstanding after the realization of their security;
6. Sixth, in settling any other debt;
7. Seven, towards any preference shareholders;
8. Eight, towards any ordinary equity shareholders.

Fees due to the Liquidator are deducted proportionately from the proceeds payable to each class under the statutory waterfall set out above, with each respective class receiving as distributions (on pro para basis to the individual members of the class) the net proceeds after the deduction of the Liquidator’s fees.

Additionally, where a secured creditor realizes their security outside the liquidation proceedings as provided for under Section 52 of the Act, the secured creditors is expected to:

1. Deduct and transfer to the Liquidator any amount payable out of the proceeds of realization of their security in respect of the costs of the insolvency resolution process;
2. Deduct and transfer to the Liquidator the portion of the realization proceeds due to the *pari passu* ranking workmen’s dues; and
3. Account and surrender to the Liquidator any surplus proceeds realized after settlement of their claim.

**QUESTION 4 (fact-based application-type question) [15 marks]**

Big Air Limited, an Indian company, (the Company) is a commercial airline company in India. It has leased aircrafts from various lessors. The Company has failed to pay the lease rentals in the last few months which now aggregate to INR 2 billion. The lessors seek to terminate the leases and take away the aircraft from the Company’s control. However, the Company has not defaulted to its other creditors.

The Board of the Directors of the Company has contacted you to advise them on the options available and key considerations. In this context, answer the questions below.

**Question 4.1 [maximum 7 marks]**

Prepare a note for the Board on the ability to initiate insolvency proceedings and the steps to be taken in this regard.

Ability to initiate insolvency proceedings

The Board of Big Air can initiate a Corporate Insolvency Resolution Process (CIRP) as provided for under Chapter II of the Insolvency and Bankruptcy Code, 2016.

Under Section 6 of the Code, various parties can initiate CIRP in respect of a corporate debtor upon occurrence of an act of default for a minimum of INR 10,000,000. These parties include:

1. Financial Creditors
2. Operational Creditors
3. The Corporate Debtor itself or a shareholder/partner of the corporate debtor or any person that controls or supervises the financial affairs of the Corporate Debtor.

Big Air is in default for INR 2 Billion (above the minimum threshold of default). The Board of Big Air qualifies as “a person that controls or supervises the financial affairs of the Corporate Debtor” and, therefore, can initiate CIRP in respect of the Company.

Steps to be taken to initiate insolvency proceedings

In line with the procedure set out under Section 10 of the Code, the Board of Big Air may initiate CIRP in respect of the Company by filing an application with the Adjudicating Authority/The National Company Law Tribunal.

The application to the Adjudicating Authority should be accompanied by:

1. Information on the financial position of Biga Air (e.g., latest audited accounts, list of creditors etc.);
2. Details of the Resolution Professional proposed to be appointed as the Interim Resolution Professional in the CIRP of Biga Air – this professional is expected to be independent of Big Air; and
3. A special resolution (i.e., minimum support by 75%) of the shareholders of Big Air.

The Adjudicating Authority will admit or reject the application by Big Air within 14 days of the application being made. In the event the application by Big Air has any deficiencies, the Adjudicating Authority will give Big Air 7 days to remedy such deficiency before rejecting the application altogether.

The CIRP in respect of Big Air will commence from the date of admission of the application by the Adjudicating Authority.

**Question 4.2 [maximum 8 marks]**

Prepare a note for the Board explaining the effect of insolvency proceedings on the rights of the lessors and whether the aircraft can be retained by the Company.

Effect of the commencement of the CIRP

After admitting the application for commencement of CIRP in respect of Big Air, the Adjudicating Authority will, by order:

1. Declare a moratorium in favour of Big Air for the duration of the CIRP;
2. Cause the commencement of the CIRP to be advertised publicly and for creditors of Big Air to be invited to submit their claims; and
3. Appoint an interim insolvency resolution professional over Big Air.

A moratorium during CIRP prohibits various adverse actions against the Corporate Debtor, which actions are deemed as likely to undermine the objectives of the CIRP. One of the actions that a moratorium prohibits is recovery of property that is in the custody of the corporate debtor under rental or leasing arrangements (I.e., arrangement under which title to the property is with a third party owner or lessor).

However, there are limitations or exclusions to this moratorium. The Code, under Section 14, Subsection 3, excludes, from such moratorium, any transactions/agreements/arrangements that the Central Government, in consultation with any financial sector regulator or other authority, notifies as being excluded.

 Specifically, relevant for the circumstance of Big Air, in October 2023, the Central Government notified (<https://ibbi.gov.in/uploads/legalframwork/8273e42bb4de11d39f37ab81f96f93ec.pdf> ) that Contracts/transactions under the under the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment were excluded from the moratorium (<https://corporate.cyrilamarchandblogs.com/2023/10/sky-is-the-actual-limit-for-ibc-exemption-from-moratorium-over-aircraft-objects-during-insolvency/> ).

Effectively, due to this exclusion, since Big Air’s insolvency is commencing in 2024 (i.e., after the date of the notification of October 2023), the notification would apply to Big Air’s CIRP and Big Air’s aircraft lessors would retain their right to repossess Big Air’s leased aircrafts due to failure by Big Air to honour the terms of the leases for the aircrafts. However, the lessors’ right to repossess the aircrafts would be subject to a two-month waiting period from the date of the commencement of the CIRP in line with India’s declaration under Article XI of Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (<https://www.azbpartners.com/bank/will-lessors-lenders-continue-to-face-difficulty-in-repossessing-aircrafts-in-india-in-the-post-gofirst-environment/> ).

During these two months, Big Air would have the opportunity to elect to retain the aircraft if it can cure all past default relating to these lease contracts, as well as confirm the ability to continue honouring the Company’s obligations under the lease contracts going forward. If Big Air cannot cure past default or confirm ability to meet future obligations, the lessors would have the right to repossess their aircrafts.

Repossession of the aircrafts would almost certainly result in the eventual liquidation of Big Air.

Potential solution

The Company, therefore, as part of its CIRP should consider/target resolution options that potentially cure the INR 2 billion default. These options may include, but are not limited to, resolution applicants that are willing and able to restructure or refinance of the INR 2 billion debt into a repayment profile that the Company can manage.

**\* End of Assessment \***