



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 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: **[studentnumber.assessment8D]**. An example would be something along the following lines: 202021IFU-314.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 “studentnumber” 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 2021**. The assessment submission portal will close at **23:00 (11 pm) GMT on 31 July 2021**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **7 pages**.

ANSWER ALL THE QUESTIONS

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

Commented [CAM1]: 10 out of 10. Well done!

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

The Insolvency and Bankruptcy Code 2016 currently **does not** apply to:

- (a) Small companies.
- (b) Limited Liability Partnerships.
- (c) Individuals and Partnership Firms not being guarantors to corporate debtors.
- (d) All of the above.

Commented [CAM2]: Correct

Question 1.2

Which of the following jurisdictions are currently exercised by the Debt Recovery Tribunals?

- (a) Recovery proceedings by Indian banks.
- (b) Disputes under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
- (c) Insolvency and bankruptcy of personal guarantors to corporate debtors under the Insolvency and Bankruptcy Code 2016.
- (d) All of the above.

Commented [CAM3]: Correct.

Question 1.3

Which of these is **not** a function of the Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code 2016:

- (a) Registration of insolvency professionals.
- (b) Registration of insolvency professional agencies.
- (c) Carrying out inspections and investigations of insolvency professionals.
- (d) Appointing an insolvency professional as a resolution professional for a company.

Commented [CAM4]: Correct.

Question 1.4

Which of these **can** be liquidated under the Insolvency and Bankruptcy Code 2016:

- (a) A banking company.
- (b) An insurance company.
- (c) National Housing Bank.

(d) A non-banking financial company with asset size of INR 5 billion.

Commented [CAM5]: Correct.

Question 1.5

Which one of the following **is not** a ground for a court to refuse to grant a discharge order under the Presidency- Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920?

- (a) The debtor has failed to maintain proper books and records of its financial position.
- (b) The debtor has borrowed provable debt when he had a reasonable expectation that he will not be able to repay such a debt.
- (c) the debtor has travelled outside India without court's approval.
- (d) the debtor has brought about the insolvency due to rash and hazardous speculations.

Commented [CAM6]: Correct.

Question 1.6

Indicate which one of the following avoidance powers is **not** available under the Provincial Insolvency Act 1920:

- (a) Avoidance of undue preferences.
- (b) Avoidance of transfers in consideration of marriage.
- (c) Disclaimer of onerous contracts.
- (d) Avoidance of transfer other than to a *bond fide* purchaser for value.

Commented [CAM7]: Correct.

Question 1.7

Which of these has the highest priority in bankruptcy of an individual under the Insolvency and Bankruptcy Code 2016:

- (a) Workmen's dues for 24 months preceding the bankruptcy order.
- (b) Amounts due to the Government.
- (c) Debt owed to the Government banks.
- (d) Dues of the employees for a period of 12 months preceding the bankruptcy order.

Commented [CAM8]: Correct.

Question 1.8

Pursuant to Section 10A of the Insolvency and Bankruptcy Code 2016, which of the following **can** be a basis for an application to commence a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

- (a) A payment default on January 31, 2020.
- (b) A payment default on March 31, 2020.
- (c) A covenant default on March 25, 2020.
- (d) A covenant default on January 31, 2020.

Commented [CAM9]: Correct.

Question 1.9

Which of the following is **not** an action required to be undertaken by the resolution professional in respect of a corporate debtor during a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016?

- (a) Maintaining an updated list of creditors.
- (b) Preparation of the information memorandum.
- (c) Drafting and finalization of the resolution plan.
- (d) Filing applications for avoidance transactions.

Commented [CAM10]: Correct.

Question 1.10

Which of the following **is not** a requirement for withdrawing a corporate insolvency resolution process under the Insolvency and Bankruptcy Code 2016:

- (a) Approval of the National Company Law Tribunal.
- (b) Approval of creditors by 90% majority by value.
- (c) Application to be made by the person on whose application the corporate insolvency resolution process was commenced.

(d) Approval of a resolution plan.

Commented [CAM11]: Correct.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks]

In the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016, who prepares the repayment plan and who submits a report on such plan?

Under section 105 of the Insolvency and Bankruptcy Code 2016, in the insolvency resolution process for individuals, the debtor (in consultation with the resolution professional) prepares the repayment plan. Section 106 provides that the resolution professional then should submit the repayment plan under section 105 together with the report on such plan to the court.

Commented [CAM12]: 2 out of 2.

Commented [CAM13]: Good answer.

Question 2.2 [maximum 4 marks]

Please describe how the Official Assignees under the Presidency- Towns Insolvency Act 1909 and the Official Receivers under the Provincial Insolvency Act 1920 are appointed.

According to section 77 of the Presidency-Towns Insolvency Act 1909,

- (a) The Chief Justice of the High Court at Madras may appoint the Official Assignee for the High Court of Madras;
- (b) The State Government of West Bengal shall, after consultation with, and with the concurrence of, the Chief Justice of the High Court at Calcutta, appoint the Official Assignee for the High Court at Calcutta;
- (c) The State Government of Bombay may appoint the Official Assignee for the High Court at Bombay.

According to section 57 of the Provincial Insolvency Act 1920, the State Government may appoint the Official Receiver to be receivers under the Act within such local limit as it may prescribe.

[Candidate's Note: It seems that footnote 66 of the Guidance Text refers to section 56 of the 1920 Act but it appears that the section should be section 57.]

Question 2.3 [maximum 3 marks]

Please describe the moratorium that becomes effective during the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016?

Upon the filing of an application by the debtor or the creditor for the commencement of the insolvency resolution process ("IRP") in respect of individuals, section 96 of the Insolvency and Bankruptcy Code 2016 ("IBC 2016") provides that an interim moratorium should commence to all debts. During the section 96 interim moratorium period, any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed and the creditors shall not initiate any legal actions or proceedings in respect of any debt. The section 96 interim moratorium shall last until the date of the admission of the application for commencement of IRP.

Section 101 of IBC 2016 provides that when the application for commencement of IRP is accepted under section 100, a moratorium shall commence in relation to all the debts of the debtor. During the section 101 moratorium, any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed and the creditors shall not initiate any legal actions or proceedings in respect of any debt. The debtor however shall not transfer, alienate, encumber or dispose of any of the assets or his legal right or beneficial interest therein. The moratorium shall end (a) at the end of a period of 180 days, beginning on the date of admission of the application; or (b) the passing of an order by the Adjudicating Authority in respect of a repayment plan under section 114, whichever is earlier.

Question 2.4 [maximum 1 mark]

Please indicate the guidelines applicable to out of court restructuring by banks in India and the regulator who has issued these guidelines?

Commented [CAM14]: Great answer.

4 out of 4

Commented [CAM15]: 3 out of 3.

Commented [CAM16]: 1 out of 1.

The latest guidelines are known as the Prudential Framework for Resolution of Stressed Assets on 7 June 2019 and are issued by the Reserve Bank of India.

QUESTION 3 (essay-type questions) [15 marks in total]

Write a short essay on the constitution and role of the committee of creditors in the corporate insolvency resolution process of a company under the Insolvency and Bankruptcy Code 2016.

Your answer should make reference to at least the following:

- Who constitutes the committee and what is the basis of constitution;
- Who is eligible to be a member of the committee and who is not; and
- various actions that require the committee's approval and the applicable percentages for the same.

The committee of creditors ("CoC") is the most important decision-making body in relation to the corporate insolvency resolution process ("CIRP") under the Insolvency and Bankruptcy Code 2016 ("IBC 2016").

Constitution of CoC

The CoC is the supervisory body for the resolution professional and the primary decision-making body during CIRP. After the CIRP application is admitted by the National Company Law Tribunal, the tribunal is required under section 16 of IBC 2016 to appoint an interim resolution professional. The interim resolution professional is required to carry out a number of duties, making a public announcement on his appointment and verifying the proof of claim submitted by all creditors. Section 21 of IBC 2016 requires the interim resolution professional to constitute the CoC after collation of all claims received against the corporate debtor and the determination of the financial position of the debtor.

Eligibility to be a Member of CoC

Under section 21(2) of IBC 2016, only financial creditors are allowed to be members of CoC and no classes are required to be formed. A financial creditor is defined under section 5(7) of IBC 2016 as "any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to". Financial debt is further defined as debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes a number of specified items. However, a financial creditor who is a related party of the debtor cannot participate or vote in a meeting of the CoC (unless the financial creditor is regulated by a financial sector regulator and the financial creditor is a related party solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed, prior to the insolvency commencement date).

Section 21 further provides that when the corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

Under regulation 16 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016, when the corporate debtor has no financial creditor or all financial creditors are related party (and hence cannot be members of CoC),

Commented [CAM17]: Very good answer.

13 out of 15.

Commented [CAM18]: Should have also included that 10% OC and the Board who are non-voting participants.

CoC should comprise of (a) the 18 largest operational creditors by value (or if the operational creditors are less than 18, all the operational creditors); (b) one elected representative for all workmen of the corporate debtor; and (c) one elected representative for employees of the corporate debtor. Under section 5(20) of IBC 2016, an operational creditor means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. Operational debt is defined under section 5(21) as claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

Role of CoC

CoC has the following roles:

- (a) in accordance with section 28 of IBC 2016,
- (I) approving the resolution professional to raise interim finance for the corporate debtor;
 - (II) approving the resolution professional to create any security interest over the assets of the corporate debtor;
 - (III) approving the resolution professional to change the capital structure (including issuing new securities) of the corporate debtor;
 - (IV) approving the resolution professional to make and record changes in the ownership interest of the corporate debtor;
 - (V) approving the resolution professional to give instructions to banks which maintain the accounts for the corporate debtor when the transactions exceed the limit set by CoC;
 - (VI) approving the resolution professional to carry out related-party transactions;
 - (VII) approving the resolution professional to amend the constitutional documents of the corporate debtor;
 - (VIII) approving the resolution professional to delegate his authority to a third party;
 - (IX) approving the resolution professional to dispose or permit the disposal of the shares of the corporate debtor's shareholders to third parties;
 - (X) approving the resolution professional to change the management of the corporate debtors and its subsidiaries;
 - (XI) approving the resolution professional to transfer rights, financial debts or operational debts under material contracts otherwise than in the ordinary course of business; &
 - (XII) approving the resolution professional to make changes in the appointment or the terms of appointment of the statutory auditor, internal auditor or any specified persons as designated by CoC;

each of the item under section 28 of IBC requires the approval by a vote of 66% of the voting shares;

- (b) approving the extension of the CIRP if the CIRP cannot be completed with the statutory timeline of 180 days under section 12 of IBC 2016 (and the resolution professional, with the CoC approval to seek extension from National Company Law Tribunal);

the section 12 extension requires the approval by a vote of 66% of the voting shares;

- (c) at the first meeting of CoC (within 7 days of the constitution of CoC), appointing the interim resolution professional as the resolution professional or another insolvency professional as the resolution professional in accordance with section 22 of IBC 2016;

the section 22 appointment requires the approval by a majority of vote of not less than 66% of the voting shares;

(d) during CIRP, appointing another insolvency professional as the resolution professional pursuant to section 27 of IBC 2016;

the appointment under section 27 requires a vote of 66% of voting shares;

(e) approving the applicant who initiates the CIRP process to withdraw the CIRP application (the applicant then needs to apply to the National Company Law Tribunal to withdraw) under section 12A of IBC 2016;

the approval for withdrawal under section 12A requires a vote of 90% of voting shares;

(f) approving the resolution plan submitted by the resolution applicant under section 30 of IBC 2016 and voting for the plan to be used, if more than 1 resolution plan is prepared, in accordance with regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIPR Regulations")

the approval of the resolution plan under section 30 requires a vote of 66% of voting shares. In the case where regulation 39 of CIPR Regulations applies (2 or more resolution plans submitted), the resolution plan with the highest votes and not less than 75% of voting shares would be passed. In a tie case, CoC should approve in accordance with a tie breaker formula announced before voting. If none of the plan receives 75% of voting shares (the requisite vote), CoC should vote on the resolution plan which receives the highest votes, subject to the timelines under IBC 2016;

(g) approving the resolution professional to sell unencumbered assets of the corporate debtor, not exceeding 10% of the total claims admitted, outside the ordinary course of business, for realizing a better value for the corporate debtor, as permitted under regulation 29 of CIPR Regulations;

the regulation 29 approval requires a vote of 66% of the voting shares;

(h) deciding that the corporate debtor should be liquidated at any time during CIRP but before the confirmation of a resolution plan under section 33 of IBC 2016 (the resolution professional should inform the National Company Law Tribunal for CoC decision and the Tribunal must make a liquidation order);

the section 33 approval requires a vote of 66% of the voting shares; and

(i) approval of the remuneration for the liquidator before the liquidation order is passed under regulation 39D of CIPR Regulations

the regulation 39D can be approved by a majority of the voting shares.

Other Roles of CoC

The CoC also has the following roles:

(a) according to section 27 of IBC 2016, filing of an application to the National Company Law Tribunal for the replacement of the interim resolution professional once a section 22 decision is made;

(b) according to regulation 19(2) of CIPR Regulations, reducing the notice period of CoC meeting from 5 days to such period not less than 24 hours;

(c) according to regulation 33(2) of CIPR Regulations, amending the required quorum for CoC meeting (the default rule is 33% under regulation 33(1)); and

Commented [CAM19]: Repeated typos

(d) according to regulation 34 of CIRP Regulations, fixing the expenses (including professional fees) to be made to the resolution professional.

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

Milky Limited (Milky) is a dairy and milk products company in India. Milky underwent a corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code 2016; however due to the COVID-19 pandemic, no resolution plans were approved and Milky was sent into liquidation by the National Company Law Tribunal. The resolution professional appointed during the CIRP has not provided her consent to act as the liquidator. Milky currently has a large stock of perishable dairy products.

Basis a request from the National Company Law Tribunal, the Insolvency and Bankruptcy Board of India nominated Mr. Salman Khan, an insolvency professional, to act as the liquidator for Milky and the National Company Law Tribunal has confirmed his appointment as the liquidator

Mr. Khan has contacted you to advise him on the liquidation process under the Insolvency and Bankruptcy Code 2016. In this context, answer the questions below.

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 7 marks]

Commented [CAM20]: 7 out of 7.

Prepare a note for Mr Khan on reporting requirements as a liquidator of Milky and the timelines for the same. Please also advise him on how to deal with a situation where the timeline for completion of liquidation has not been met.

Dear Mr Khan,

1. This note serves to provide you on the reporting requirements as a liquidator of Milky Limited, which is now under the liquidation process of the Insolvency and Bankruptcy Code 2016 ("IBC 2016").

Preliminary Report

2. The first report is the Preliminary Report under Regulation 13 of the IBBI (Liquidation Process) Regulations 2016 ("Liquidation Regulations"). The Preliminary Report must be submitted to the National Company Law Tribunal within 75 days from the liquidation commencement date. The Preliminary Report shall contain the following information: (a) the corporate structure of the corporate debtor; (b) the estimates of the assets and liabilities as on the liquidation commencement date based on the books and records of the corporate debtor (and if the books are not reliable, based on other available records and data available to the liquidator); (c) whether the liquidator intends to make further enquiry into any matter relating to the promotion, formation or failure of the corporate debtor or the conduct of the business; and (d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

Asset Memorandum

3. The liquidator is required to prepare the Asset Memorandum within 75 days from the liquidation commencement date under regulation 34 of the Liquidation Regulations. It should be submitted to the National Company Law Tribunal at the same time with the Preliminary Report. The Asset Memorandum should contain information (a) in respect of

assets which are intended to be realized by way of sale, including the value, the intended manner of sale and the reasons, expected amount of realization and any other relevant information; and (b) in respect of any other assets which are not intended to be realized by way of sale, including the value, the intended manner of sale and the reasons, expected amount of realization and any other relevant information.

Progress Report

4. Subsequently, the liquidator is required to file Progress Report in accordance with Regulation 15 of the Liquidation Regulations. The first Progress Report must be made within 15 days after the end of the quarter which the liquidator is appointed in as well as subsequent Progress Reports within 15 days after the end of every quarter during which he acts as a liquidator.
5. When the person ceases to act as the liquidator during the liquidation process, the person shall file a Progress Report for the quarter up to the date of his so ceasing to act, within 15 days of such cessation.
6. The Progress Report must contain the following information: (a) appointment, tenure of appointment and cessation of appointment of professionals; (b) a statement indicating the progress of liquidation (which includes a list of stakeholders, details of property remain to be sold and realized, distribution made to stakeholders and distribution of unsold property made to stakeholders); (c) details of fee and remuneration (which include the fee due and received by the liquidator with a description of activities carried out by the liquidator, the remuneration or fee paid to professionals appointed by the liquidator together with a description of activities carried out by them and other paid or unpaid expenses incurred by the liquidator); (d) developments of any material litigation (whether by or against the corporate debtor); (e) filing of and developments in applications for avoidance of transactions; and (f) changes in estimated liquidation costs (if any).
7. In addition, the Progress Report is required to enclose an account maintained by the liquidator which shows (a) the receipts and payments made by the liquidator during the quarter which the Progress Report is related to; and (b) the cumulative receipts and payments made by the liquidator since the liquidation commencement date. The Progress Report for the 4th quarter of a financial year should also include audited accounts of the receipts and payments of the liquidator for the whole financial year.
8. Finally, the Progress Report should include a statement which indicates any material change in expected realization of any property proposed to be sold, along with the basis for such change. The statement however is not accessible to any person during the process of liquidation unless with the permission of the National Company Law Tribunal.

Asset Sale Report

9. The liquidator must prepare the Asset Sale Report under regulation 36 of the Liquidation Regulations and the Asset Sale Report should be enclosed with the Progress Report. The Asset Sale Report should be prepared on sale of an asset and include (a) the realized value; (b) cost of realization, if any; (c) the manner and mode of sale; (d) if the value realized is less than the value in the asset memorandum, the reasons for the same; (e) the person to whom the sale is made; and (f) any other details of the sale.

Final Report

10. The liquidator must prepare the Final Report pursuant to regulation 45 of the Liquidation Regulations after completion of the liquidation process to the National Company Law

Tribunal for closure of the case (if the company is sold as a going concern) or for dissolution. In the Final Report, the liquidator shall make an account of the liquidation, showing how it has been conducted and how the corporate debtor's assets have been liquidated. The liquidator is required to provide the reasons when the liquidation cost exceeds the estimated liquidation cost provided in the Preliminary Report.

Completion of Liquidation and Application for Extension

11. Under regulation 44(1) of the Liquidation Regulations, the liquidator must complete the liquidation within 1 year from the liquidation commencement date.
12. When the liquidator cannot complete the liquidation in accordance with regulation 44(1), the liquidator is required to make an application to the National Company Law Tribunal to extend the time limit. The liquidator must provide a report as to the reasons why the liquidation has not been completed and specify any additional time needed for the completion of the liquidation.

Please feel free to contact us if you have any questions.

Yours sincerely

[signed]

Question 4.2 [maximum 8 marks]

Please prepare a note for Mr Khan on the process of realization of assets of Milky during liquidation and the eligible buyers.

Dear Mr. Khan,

1. This note serves to provide you on the process of realization of assets during liquidation for Milky Limited, which is now under the liquidation process of the Insolvency and Bankruptcy Code 2016 ("IBC 2016").

The First 90 Days from the Liquidation Commencement Date

2. Under section 230 of the Companies Act 2013 and regulation 2B of the IBBI (Liquidation Process) Regulations 2016 ("Liquidation Regulations"), the liquidator is required to make effort to propose a scheme of arrangement or compromise within the first 90 days from the liquidation commencement date. The arrangement or compromise would require sanctions from the National Company Law Tribunal.

Realizing the Property under Liquidation Regulations

3. When there is no scheme proposed, regulation 32 of the Liquidation Regulations applies to the sale of assets and provides that the liquidator may sell (a) an asset on a standalone basis; (b) the assets in a slump sale; (c) a set of assets collectively; (d) the assets in parcels; (e) the corporate debtor as a going concern; or (f) the business(s) of the corporate debtor as a going concern. When an asset is subject to security interest, it shall not be sold under (a) to (f) as mentioned above unless the security interest therein has been given up to the liquidation estate.
4. Regulation 32A provides that if the committee of creditors ("CoC") has recommended sale under regulation 32(e) or (f) (selling the debtor or the businesses of the debtor on a going

Commented [CAM21]: 8 out of 8

concern basis) or where the liquidator is of the opinion that sale under regulation 32(e) or (f) (selling the debtor or the businesses of the debtor on a going concern basis) would maximize the value of the corporate debtor, he must endeavor to first sell in accordance with regulation 32(e) or (f) (selling the debtor or the businesses of the debtor on a going concern basis). CoC may identify the group of assets or liabilities which should be sold as a going concern and if CoC has not identified, the liquidator shall identify in consultation with CoC.

5. If the liquidator cannot sell the corporate debtor or businesses of the corporate debtor pursuant to regulation 32(e) or (f) within 90 days of the liquidation commencement date, the liquidator shall proceed to sell the assets under regulation 32(a) to (d).
6. Under regulation 33 of the Liquidation Regulations, the sale should be made by public auction in accordance with the procedures provided in Schedule I, including adopting suitable marketing strategies (such as releasing advertisements, preparing information sheets, preparing a notice of sale and liaising with agents). The liquidator shall prepare the terms and conditions of the public auction and shall make a public announcement of the auction (can be dispensed with the application to the National Company Law Tribunal). The auction should be transparent and should sell to the buyer with the highest bid. Further, the auction should be conducted by electronic means. A physical auction is only allowed if it is likely to maximize the realization from the sale of assets and is in the best interests of the creditors and approval from the National Company Law Tribunal is obtained.
7. A reserve price (which should be the value of the asset) should be set and the reserve price can only be reduced up to 25% of the value in a subsequent auction. A further reduction not more than 10% at subsequent auction may be made if the auction fails even at reduced price.
8. The auction should be transparent and the highest bid at any given point shall be visible to the other bidders (unless the liquidator is of the opinion that an auction where bid amounts are not visible is likely to maximize realizations from the sale of assets and is in the best interests of the creditors and the liquidator has obtained approval from the National Company Law Tribunal). The liquidator is required to provide all necessary assistance for due diligence by interested buyers.

The Perishable Dairy Products

9. As Milky Ltd has a large stock of perishable dairy products, the auction sale for these dairy products may not be feasible. Under regulation 33(2), for perishable property, the sale may be made by private sale. However, if a private sale is used, the liquidator shall not sell the assets to (a) a related party of the corporate debtor; (b) his related party; or (c) any professional appointed by him, unless with the prior approval of the National Company Law Tribunal. The liquidator is also not allowed to sell assets to a person who is ineligible to submit a resolution plan under section 29A of IBC 2016.
10. The private sale should also follow the procedures provided under Schedule I. The liquidator shall prepare a strategy to approach interested buyers for assets to be sold by private sale, which may be conducted through directly liaising with potential buyers or their agents, through retail shops, or through any other means that is likely to maximize the realizations from the sale of assets. The sale shall complete in accordance with the terms of sale.

Please feel free to contact us if you have any questions.

Yours sincerely

[signed]

*** End of Assessment ***

Total : 48 out of 50