



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: **[studentID.assessment8D]**. An example would be something along the following lines: 202122-336.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 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. 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] (9 out of 10)

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 (Correct)

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.

Question 1.2 (Correct)

Which of the following remedies **is** available to a non-Indian creditor?

- (a) Recovery proceedings before the Debt Recovery Tribunal.
- (b) Enforcement of security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.
- (c) Initiation of insolvency proceeding against corporate debtors under the Insolvency and Bankruptcy Code 2016.**
- (d) Mandatory out-of-court restructuring under the inter-creditor agreement.

Question 1.3 (Correct)

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.**

Question 1.4 (Correct)

Who among the following **can be appointed** as a liquidator under the Companies Act 2013:

- (a) An Insolvency professional agency.
- (b) **An insolvency professional.**
- (c) A creditor.
- (d) A judge of the National Company Law Tribunal.

Question 1.5 (Correct)

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 travelled outside India without court's approval.**
- (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 failed to maintain proper books and records of its financial position.
- (d) the debtor has brought about the insolvency due to rash and hazardous speculations.

Question 1.6 (Correct)

Indicate which one of the following **is not** a disqualification for an insolvent under the Provincial Insolvency Act 1920:

- (a) Appointment as a magistrate.
- (b) Election to a local authority.
- (c) Voting as a member of a local authority.
- (d) **Entry into a partnership for a new business.**

Question 1.7 (Incorrect, correct answer is (a))

Which of the following **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.

Question 1.8 (Correct)

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

- (a) Corporate insolvency resolution process of an MSME.
- (b) Pre-pack insolvency process of an MSME.
- (c) Sale of assets of a company in liquidation.
- (d) Sale of assets under voluntary liquidation.

Question 1.9 (Correct)

Which of the following avoidance actions is only available during a liquidation process under the Insolvency and Bankruptcy Code 2016?

- (a) Avoidance of preferential transactions.
- (b) Avoidance of undervalued transactions.
- (c) Disclaimer of onerous property.
- (d) Avoidance of transactions defrauding creditors.

Question 1.10 (Correct)

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.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] (2 out of 2)

In the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016, briefly describe the difference between the moratorium upon filing of the petition and upon admission of the petition?

[In the insolvency resolution process for individuals under the Insolvency and Bankruptcy Code 2016, the difference between the moratorium upon filing of the petition and upon admission of the petition is that in the former, that is upon filing such an application or petition, the moratorium is declared in relation to all Creditor actions and continues

until the date of the admission of such application.¹ While in the latter, that is upon admission, the Moratorium is declared on all the Creditor actions and disposal of assets by the debtor and continues for a period of six months, beginning on the date of admission of the application².]

Question 2.2 [maximum 4 marks] (4 out of 4)

Briefly describe the priority of debts in bankruptcy under the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920.

[Priority of debts in bankruptcy under the Presidency-Towns Insolvency Act 1909 and the Provincial Insolvency Act 1920 is set out in Section 49 of the Presidency-Towns Act and Section 61 of the Provincial Act respectively. Under section 49 of the Presidency-Towns Act applicable in Kolkata, Chennai and Mumbai, the first priority is given to the expenses of administration of the debtor's estate. Followed by all debts due to the Government or to any local authority³ and all salaries or wages of any clerk, servant or labourer for the period of four months for rendering services to the debtor (not exceeding in the case of Presidency-Towns Act⁴, INR 300 for each such clerk and INR 100 for each such servant or labourer and in the case of the Provincial Act⁵, not exceeding INR 20 in total)⁶. The next on the priority, is "rent due to a landlord from the insolvent not exceeding one month's rent of the amount payable⁷. All the above-mentioned preferential debts rank equally among themselves and are to be paid in equal proportion among themselves⁸. Similarly, upon the payment of all preferential debts in full, all debts of the debtor entered in the scheduled are to be paid rateably from the proceeds of realization of assets without any preference⁹.]

Question 2.3 [maximum 3 marks] (3 out of 3)

Indicate the situations in which an adjudication as a bankrupt may be sought under the Insolvency and Bankruptcy Code 2016?

[The situations in which an adjudication as a bankrupt may be sought under the Insolvency and Bankruptcy Code 2016 are as follows;

- (1) Where the court rejects an Insolvency Resolution process application on the basis of the report of the resolution professional that avers the application was made with the intention to defraud creditors; or
- (2) Where the court has passed an Order that the approved repayment plan could not be implemented completely; or
- (3) Where the court rejects the repayment plan submitted by the debtor¹⁰.]

¹ See, Insolvency and Bankruptcy Code 2016, s 96(1). See also, Module 8D Guidance Text p 29.

² See *idem*, s 101. See also *Idem*.

³ See, Presidency-Towns Act, s 48(1)(a). This is the same under Provincial Act, s 61(1)(a).

⁴ *Idem*, s 49(1)(b).

⁵ *Ibid*, s 61(1)(b)

⁶ See *ibid*, Guidance Text, p 23.

⁷ See *ibid*, s 49(1)(c).

⁸ *Idem*, s 49(2). See also Provincial Act, s 61(2): Guidance Text, p 24.

⁹ See Guidance Text, *idem*.

¹⁰ See IBC, s 121(1). See also *idem*, p 30.

Question 2.4 [maximum 1 mark] (1 out of 1)

What kind of foreign judgements are eligible for enforcement in India?

[The kind of foreign judgements that are eligible for enforcements in India are foreign judgments from courts of reciprocating territories outside India which are not affected or refused on the grounds set out under section 13 of the Civil Procedure Code and are in relation to the payment of a sum of money not being taxes or other charges similar in nature to taxes. The grounds however set out by the Code¹¹ for the refusal of such foreign judgments are;

- (a) If the judgment has been pronounced by a court without jurisdiction;
- (b) If the judgment has not been given on the merits of the case;
- (c) If it appears on the face of the proceedings to have been founded on an incorrect view of international law or of Indian law, as applicable;
- (d) If the proceedings in which the judgment was obtained were opposed to natural justice;
- (e) If the judgment was obtained by fraud;
- (f) If the judgment is founded on a breach of Indian law¹².]

QUESTION 3 (essay-type questions) [15 marks in total] (12 out of 15)

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

Your answer should make reference to at least the following:

- the various means of sale of assets available to the liquidator including the eligibility requirements to purchase assets in liquidation;
- the priority of debts in liquidation; and
- a timeline for completion of the liquidation process.

[Liquidation process of a company under the Insolvency and Bankruptcy Code 2016 is one the two liquidation regimes in India for companies¹³. The emergence of the Code¹⁴, removed the inability to pay debts as a ground upon which to wind up a company under the Companies Act 2013 and provided a payment default as the basis of an insolvency resolution application. Furthermore, the ability of a creditor to file a winding up petition under the Companies Act was also removed, resulting to the Code becoming the prominent legislation with which to resolve and liquidate companies in India.

The application of the Code relates to insolvency and liquidation of companies registered under the Companies Act or other legislation, as well as limited liability partnerships and the insolvency resolution and bankruptcy of individuals and partnership firms. However, those parts are not yet in operation except in relation to personal guarantors to corporate debtors.¹⁵

Under the Code, liquidation process of a company can be entered in two ways;

- (a) Liquidation which follows a Corporate Insolvency Resolution Process (CIRP); and
- (b) Voluntary liquidation where the corporate debtor can enter liquidation directly.¹⁶

¹¹ Civil Procedure Code, s 13.

¹² Ibid, p 73.

¹³ The other liquidation regime for companies is the liquidation process under the companies Act 2013.

¹⁴ IBC 2016.

¹⁵ See ibid, p 33.

¹⁶ Idem.

Commented [CAM1]: Answer is broadly a footnoted copy of the guidance text.

The liquidation which follows a Corporate Insolvency Resolution Process (CIRP) can be initiated by a financial creditor or an operational creditor of the corporate debtor upon the occurrence of a default (for a minimum of INR 10,000,000) by filing an application before the National Company Law Tribunal. Upon the occurrence of a default, the corporate debtor itself or a shareholder or partner of the corporate debtor and any other person who has the control and supervision over financial affairs of the corporate debtor, may also apply to the National Company Law Tribunal for initiation of the CIRP, provided such application has been approved by 75% of the shareholders or partners of the corporate debtor.¹⁷ The National Company Law Tribunal will, within 14 days of receipt of the CIRP application¹⁸, admit the application after ascertaining the existence of a default. The Supreme Court has held further, in the context of an application by financial creditors, that if the existence of the debt and a default is prima facie proven, the application will be admitted by the National Company Law Tribunal¹⁹.

Due to the Covid 19 pandemic, the Code has however been amended to insert section 10A to the effect that an application to commence CIRP cannot be filed by any one at any point in time on the basis of a default which has occurred on 25 March, 2020 or thereafter during a specified period subject to a maximum of 12 months. Currently, this specified period is up to 25 December, 2020.

Under section 59 of the Code, a company may place itself in voluntary liquidation, provided it has not defaulted in its payment obligations towards creditors. A special resolution (75%) of the shareholders of the company will be required, resolving that it be placed in voluntary liquidation and appointing an Insolvency professional to act as the liquidator (who can be replaced by the shareholders with a resolution passed by 75% majority). An ordinary resolution will suffice where the articles of association of the company provide that the company is to be liquidated after a specific period. Liquidation commences from the date of the passing of such resolution. Upon the passing of the resolution, the company is required to notify the Registrar of companies and the Insolvency and Bankruptcy Board of India²⁰

In relation to the various means of sale of assets available to the Liquidator including the eligibility requirements to purchase assets in liquidation, the Liquidation Regulations 2016 requires the Liquidator to make efforts to propose a scheme of arrangement / compromise under the Companies Act within the first 90 days from the date of commencement of liquidation. The time taken for such compromise or arrangement not exceeding 90 days is not included in the liquidation period²¹. If, however, during the CIRP the committee of creditors have recommended the sale of the corporate debtor as a going concern, the Liquidator is first required to endeavour to attempt selling the corporate debtor as a going concern²². To this extent, the committee of creditors may identify assets and liabilities which may be sold as a going concern, absent which the Liquidator can decide which assets and liabilities should be sold together as a going concern. If such sale as a going concern has not occurred within 90 days from the liquidation commencement date, the Liquidator must then sell the assets on a

¹⁷See *ibid*, IBC s 10.

¹⁸ The Supreme Court has held that this 14-day period is not mandatory. It is only directory and starts from the date the application is first listed for admission. See, *Surendra Trading Company v Juggilal Kamlapat Jute Mills Company Limited*, Judgment dated Sept. 19, 2017 in CA NO 8400 of 2017 and CA Nos 15091-15091 of 2017. However, due to an amendment to the Code in August, 2019, the National Company Law Tribunal is now required to record reasons for delay in admission of petitions beyond the 14 days period. See also *Ibid*, p 51.

¹⁹ See, *Innovative Industries Ltd v ICICI Bank and Another* (2018) 1 SCC 407.

²⁰ See *ibid*, p 42; the governing regulations are the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (Voluntary Liquidation Regulations).

²¹ See *ibid*, p 38.

²² *Idem*.

standalone basis, in parcels or collectively²³. Furthermore, the Liquidator is ordinarily required by the Regulation to sell the assets by way of public auction. However, if:

- (a) The assets are perishable;
- (b) The assets are likely to deteriorate in value significantly if not, sold immediately;
- (c) The assets are sold at a price higher than the reserve price of a failed auction; or
- (d) Prior permission of the National Company Law Tribunal has been obtained for such sale,

the assets can be sold by way of a private sale²⁴.

With regards to the eligibility requirement to purchase assets in Liquidation, the Liquidator cannot sell any assets to his own (or the corporate debtor's) related parties, or any professional appointed by him, without approval of the Adjudicating Authority²⁵. The Liquidator also cannot sell the assets to any person who was ineligible to submit a resolution plan for the corporate debtor under Section 29A of the Code²⁶.

In relation to the priority of debts in liquidation, Section 53(1) provided for the following;

- (a) The insolvency resolution process costs²⁷ and the liquidation cost²⁸, paid in full;
- (b) The following debts, which rank equally between and among the following:
 - (i) Workmen's dues for the period of 24 months preceding the liquidation commencement date, that is, the date on which the proceedings for liquidation commenced; and
 - (ii) Debts owed to a secured creditor, in the event such secured creditor has relinquished its security to the liquidation estate;
- (c) Wages and any unpaid dues owed to employees (other than workmen) for the period of 12 months preceding the liquidation commencement date;
- (d) Financial debts owed to unsecured creditors;
- (e) The following dues rank equally between and among the following:
 - (i) Any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - (ii) Debts owed to a secured creditor for any amount unpaid following the enforcement of its security interest.
- (f) Any remaining debts and dues;
- (g) Preference shareholders, if any; and
- (h) Equity shareholders or partners, as the case maybe.

²³ Idem. See also *ibid*, Reg. 34A.

²⁴ Idem. See also *idem*, Reg 33.

²⁵ Idem.

²⁶ Idem. Section 29A stipulates the criteria for a resolution applicant to be eligible to present a resolution plan for a corporate debtor under the Code. See *idem*, p 58.

²⁷ By s 5(13) of the IBC, "Insolvency resolution Process cost" means (a) the amount of any interim finance and the costs incurred in raising such finance; (b) the fees payable to any person acting as a resolution professional; (c) any cost incurred by the resolution professional in running the business of the corporate debtor as a going concern; (d) any costs incurred at the expenses of the Government to facilitate the insolvency resolution process; and (e) any other costs as may be specified by the Insolvency and Bankruptcy Board of India. See *ibid*, p 40, n 119.

²⁸ By s 5(16) of the IBC, "Liquidation cost" means any cost incurred by the Liquidator during the period of liquidation, subject to such regulations as may be specified by the Insolvency and Bankruptcy Board of India. See, *idem*.

Any contractual arrangement between stakeholders with the same ranking, if disrupting the liquidation waterfall, will be disregarded by the Liquidator²⁹.

In relation to the timeline for completion of the Liquidation process, the Liquidator is required to complete the liquidation within one year (an additional 90 days is allowed if a sale as a going concern is being attempted) and if he does not do so, he is required to make an application to the National Company Law Tribunal explaining why the liquidation could not be completed within the one year period and specify the additional time needed³⁰. If at any time after preparation of the preliminary report it appears to the Liquidator that the realisable property of the Corporate debtor will be insufficient to cover the cost of the liquidation process, and the affairs of the corporate debtor do not require any further investigation, the Liquidator may apply to the National Company Law Tribunal for the early dissolution of the corporate debtor³¹.]

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

Fours and Sixes Limited (the Company) owns a cricket stadium in India. Due to the COVID-19 pandemic, there were no games played in the stadium and the revenue was negligible. In the latest meeting of the Board of Directors of the Company, it was noticed that the financial performance of the Company has not improved materially and that the Company is likely to default on an upcoming payment instalment to its creditors in June 2022. The lenders of the Company are primarily Indian banks.

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

Using the facts above, answer the questions that follow.

Question 4.1 [maximum 7 marks] (7 out of 7)

Prepare a note for the Board on the legal regime for an out-of-court debt restructuring for the Company.

[In India, the Sick Industrial Companies Act (SICA) used to occupy the field with respect to rehabilitation of companies including an out- of-court debt restructuring for the company. However, Banks in India have followed the guidelines recently³² issued by the Reserve Bank of India (RBI) with regard to out-of-court workouts. Majority of these guidelines were based on international principles such as the Statement of Principles for a Global Approach to Multi-Creditor workouts, issued by INSOL International³³. The revised guidelines of RBI of 7 June, 2019 with respect to out-of-court debt restructuring did away with all previous guidelines relating to out-of-court restructuring in India³⁴. The guidelines require India banks and financial Institutions to review the financial situation of the debtor for the first 30 days after default and decide whether they would like to restructure the debt of the debtor. If the creditors so decide, they are required to enter into an inter-creditor agreement which provides for a stand-still and the mechanics for arriving at an out-of-court resolution plan. If no such plan has been agreed and implemented by the creditors within 180 days of default, the creditors are required to make

²⁹ Ibid, p 40.

³⁰ Idem, p 41. See also ibid, Reg 44.

³¹ Idem. See also Idem, Reg 14.

³² Reserve Bank of India (RBI) dated 7 June, 2019.

³³ See ibid, p 49.

³⁴ Idem, n 135.

additional provisioning (20% from the 181st day and another 15% from 366th day) over and above the usual provisioning for non-performing loans which may be reversed in half when creditors file to initiate Insolvency proceedings for the debtor under the Code and the rest when such petition is accepted³⁵.

In relation to the available facts, the company may adopt the option provided in the reversed guidelines for out-of-court debt restructuring process issued on 7 June 2019 by the Reserve Bank of India in the event the company defaulted in the upcoming payment instalment to its creditors in June 2022. 30 days after the default, the India banks may approach the Board of the company for the review of the financial situation of the company and decide whether, they would like to restructure the debt of the company. Where the banks so decide, they are required to enter into an inter-bank agreement which will provide for a stand-still and the mechanics for arriving at an out-of-court resolution plan. If no such plan has been agreed and implemented by the banks within 180 days of default, the banks are required to make additional provisioning (20% from the 181st day and another 15% from 366th day) over and above the usual provisioning for non-performing loans, which may be reversed in half when the banks file to initiate Insolvency proceedings for the company under the Code and the rest when such petition is accepted.]

Commented [CAM2]: Good answer

Question 4.2 [maximum 8 marks] (1 out of 8)

Prepare a note for the Board describing their powers and duties during a corporate insolvency resolution process of the Company.

[The powers and duties of the Board during a Corporate Insolvency Resolution Process of the company are usually vested in the interim resolution professional (IRP) who will manage affairs of the corporate debtor on a going concern basis until the resolution professional (RP) is appointed. The powers of the board of directors, or other governing body Corporate debtor, is suspended³⁶ and the management of the affairs of the company shall vest in the interim resolution professional³⁷. Furthermore, the officers and managers of the company shall report to the interim resolution professional and provide access to such documents and records of the company as may be required by the interim resolution professional³⁸ and every other assistance required by the interim professional from the board must be availed to him. The Interim resolution professional now vested with the powers of management of board shall perform the following key powers;

Commented [CAM3]: Powers are vested in the IRP not duties

- (a) To act and execute in the name and on behalf of the company all deeds, receipts, and other documents, if any;
- (b) The authority to access the books of accounts, records and other relevant documents of the company available with government authorities, statutory auditors, accountants and such other persons as may be specified; and
- (c) Comply with the requirements under any law for the time being in force on behalf of the corporate debtor³⁹.

Key duties now required to be performed by the Insolvency resolution professional include the following:

- (a) Collect all information relating to the assets, finances and operations of the company for determining its financial position (including business operations and financial and

³⁵ Idem.

³⁶ See IBC s 17(1)(b).

³⁷ See Idem, s 17(1)(a).

³⁸ Idem, s 17(1)(c).

³⁹ Idem, s 17(d). See also ibid, p 55.

operational payments for the previous two years) and draft a list of assets and liabilities as of the insolvency commencement date;

- (b) Constitute a committee of creditors;
- (c) Monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;
- (d) Take custody and control of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the company, including assets in a foreign country, assets that may not be in the possession of the corporate debtor, securities (including any shares in a subsidiary) and all tangible and intangible assets;
- (e) Make every endeavour to protect and preserve the assets of the company and manage the operations of the company as a going concern, for which purpose the IRP may appoint advisors, enter into contracts on behalf of the company and issue instructions to the personnel of the company⁴⁰.
- (f) For the purposes of preserving and protecting the assets of the company and managing its operations on a going concern basis, the IRP is permitted to raise finance (referred to as interim finance) and provide security over any asset of the company for such interim finance without obtaining the prior consent of any lender to whom such asset is already charged, provided the value of such asset is more than twice the debt of such creditor⁴¹.

Nevertheless, the directors have powers to attend the meeting of the creditors' committee without the right to vote. [They can also provide comments and suggestions on proposed resolution plan without more.]

Commented [CAM4]: These are duties of the IRP and not of the Board

Commented [CAM5]: Sentence not clear.

(39 out of 50)

*** End of Assessment ***

⁴⁰ Idem, s 18 to s 20. See ibid, p 56.

⁴¹ See idem, p 56.