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Legal Reasoning Questions for CLAT Exam

Legal Reasoning Set 17

Directions: Study the following information carefully and answer the questions given beside.

Hours after India went into lockdown, the Finance Minister announced a slew of measures to alleviate the economic crisis. This included proposed changes to the Insolvency and Bankruptcy Code (IBC), 2016, a law enacted to bring about smooth and quick resolutions for companies facing insolvency and bankruptcy with a view to primarily avoiding liquidation. The government, the Minister said, was considering suspension of certain provisions of the IBC which enabled creditors to file insolvency petitions against Indian companies for a years' time beyond April 30. April 30 came and went without any announcement in this regard.

In mid-May, the Finance Minister announced that the government was planning to bring in an ordinance to suspend provisions enabling filing of fresh insolvency cases for a period of one year. This was followed by absolute silence on the modalities or mechanism of suspension of the provisions. Banks, financial institutions (FIs), and insolvency law practitioners had no idea where they stood with these announcements. Finally, on June 5, the government promulgated an ordinance which inserted Section 10A in the IBC. The government said the ordinance was promulgated because the lockdown has caused business disruptions which may lead to default on debts pushing such companies into insolvency. Therefore, it felt that suspending Sections 7, 9 and 10 of the IBC would be the right course of action.

Towards that end, Section 10 A provides that "no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from this period, as may be notified in this behalf". This means that these provisions shall remain suspended from March 25 till September 25, unless extended for another six months, which would extend the suspension up till March 25, 2021.

However, the provision to the section states that no application for insolvency resolution shall ever be filed against a corporate debtor for any default occurring during the suspension period. While the main Section 10A suspends such applications for a limited period, the proviso enlarges the scope to provide complete amnesty under the IBC for any default occurring during such period. The role of a proviso in a statute is to restrict the application of the main provision under exceptional circumstances. However, the proviso expands the substantive provision in the main section. Further, if the main provision is unclear, a proviso may be given to explain its true meaning. In this case the main provision appears clear, only to be obfuscated by the proviso. The proviso therefore does not appear to be legally tenable. As creditors can still approach courts, and as banks/Fis can still approach Debt Recovery Tribunals, the protection given by this proviso seems illusory.

[Extracted from editorial by V. V. Sivakumar and Chitranshu Sinha "The faults in our drafts"]

1. Which of the following statements clearly explain the ordinance inserting article 10A in the IBC?

- A. The corporate debtor is protected against any default occurring during the suspension period.
- B. The corporate debtor can be sued by the creditors relating to default during the suspension period.
- C. The insolvency fresh cases can be managed by the insolvency tribunals during the suspension period.
- D. The bankruptcy cannot be filed by the companies during the suspension period.

2. Why the author believes that the proviso mentioned in the ordinance is obfuscated?

- A. The creditors can still approach the court against the companies.
- B. The banks and financial institutions can still approach debt recovery tribunal.
- C. The proviso must be explained by substantial meanings and elaborations.
- D. All of the above

3. The insolvency and bankruptcy code applies to Indian companies which default in their operations. Mr. Anil floated a company which defaulted and went bankrupt due to corona virus disruption in May, 2020. What legal protection he is entitled to?

- A. The company is protected against the insolvency resolution process due to new ordinance by the government in June 2020.
- B. The company is not protected against the insolvency resolution process as the ordinance is passed after the company went bankrupt.
- C. The company can itself file for bankruptcy in the tribunal prescribed by the IBC.
- D. None of the above

4. What kind of ideology the government is following for the Indian companies according to the passage?

- A. The protectionist strategy citing the lockdown, the corona pandemic and loss of business.
- B. Averting the economic meltdown of the financial institutions and the creditors of the companies.
- C. Saving employment of the workforce working in such companies.
- D. All of the above

5. Which sections of the IBC are relevant to insolvency of the companies according to the passage?

- A. Section 10A of the IBC
- B. Section 7,8 and 10 of the IBC
- C. Section 7, 8 and 9 of the IBC
- D. Section 7, 8 and 10A of the IBC

Correct Answers:

1	2	3	4	5
A	D	A	D	B



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Explanations :

1. The lines 6-7 of the passage mention that the government in order to protect the companies from going bankrupt due to disruption of the business due to Corona induced lockdown was planning to bring an ordinance to change certain provisions of the IBC. The ordinance inserted section 10A into the IBC protecting the companies from default by suspension of filing of fresh cases during the suspension period from 25th March 2020 to 25th September with six month more of extension if approved further by the government.

So option A is the clear answer..

2. The lines 32-35 clearly explain that the proviso lacks specific meaning and moreover there is no clear safeguard as the creditors can still sue the companies in the court and banks and financial institutions have still an option of approaching debt recovery tribunals in case of big defaults.

So option D is cumulative answer.

3. The passage provides that company is entitled to the benefit of the bankruptcy retrospectively from March 25, 2020.

So option A is the clear answer. Other options can be rejected.

4. The motive behind the ordinance is protection of the companies from default citing the loss of business and thereby saving employment of the workforce. The creditors and financial institutions are also being saved indirectly from the meltdown as the companies will be generating revenues and payback the banks and institutions averting NPAs.

So all the options are correct and option D is the cumulative answer.

5. Refer to the lines 15-16 of the passage which mention that section 7, 8 and 10 will remain suspended of the IBC which are relevant to filing insolvency and bankruptcy for the India companies. And moreover 10A is inserted to give effect to new rules regarding suspension so it can't be added into the count.

So option B is the right answer. Other options can be rejected.

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