335

Roll No.....

Time allowed : 3 hours *Maximum marks : 100*

Total number of questions : 8 *Total number of printed pages : 6*

NOTE : *1. Answer SIX questions including Question No.1 which is compulsory.*

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

1. (a) Describe 'financial restructuring'. What steps may be taken in case of under-capitalisation and over-capitalisation ?

(6 marks)

(b) State whether the following statements are true or false citing briefly relevant provisions of the law :

(i) Debentureholders enjoy different position other than that of secured creditors in a scheme of amalgamation.

(ii) Separate petition for amalgamation needs to be filed by the transferee company if the transferor company (100% subsidiary of transferee company) has already filed the petition.

(iii) SEBI Takeover Code is not applicable to any arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, Indian or foreign.

(iv) Company can buy-back shares purely for equity restructuring and not for making profits by buying and selling its own shares.

(v) There is no transfer when the assets of the transferor company pass to the transferee company.

(vi) Implications of the term 'unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors'.

(vii) Court cannot withhold the sanction of scheme of compromise or arrangement.

(2 marks each)

2. Gemini Copper Ltd. is a public limited company in which Government of India holds 99.4% equity and remaining equity is held by public including financial institutions, banks and public at large. The company is into the business of copper mining and manufacturing various copper products with huge potential due to increased global

demand of copper at good price. Company was running into losses for the last couple of years and its net worth got eroded substantially uptill the close of financial year ended on 31st March, 2007. Following is the balance sheet of the company as on 31st March, 2007 :

Liabilities	*Rs. in Crores*	*Assets*	*Rs. in Crores*
Equity share capital	800	Fixed assets	350
Preference shares (subscribed by Central Govt.)	180	Current assets : Loans and advances	100
Loan (given by Central Govt.)	50	Profit and loss account	630
Current liabilities and provisions	50		
	1,080		1,080

In the current year, the company is doing exceedingly well and hopes to continue profitable performance in years to come due to all round increased demand and price of copper. This company is the only company in the country to have copper mines.

To accelerate improved financial performance and to increase shareholders' value, the company is planning to expand its mining operations substantially and for that to invite technical-cum-financial partners from overseas market to meet funds requirement and technical support.

The shares of the company are listed in Indian stock market and ruling price per share is about Rs.100 of Rs.10 face value share. Due to huge mining potential and huge copper reserves in the mines, the company is not willing to offer the shares to financial partner at current market price but wants to charge a very high premium. Due to huge losses in the balance sheet, it is not possible for the company to approach the foreign investors for a premium issue, which may be overcome by financial restructuring as per the advice of the merchant banker. The Board of directors of the company is willing to appoint you as financial adviser to give road map to the Board of directors. In this regard, answer the following questions —

(i) How will the financial restructuring be possible ?

(ii) Would the Government be able to maintain its market capitalisation ?

(iii) Do you think that market price of shares shall fall after restructuring ?

(iv) If the company has to mobilise Rs.3,000 crore more after restructuring, what possible ways, you would suggest for the same and at what premium ?

(4 marks each)

3. Comment on *any four* of the following giving reasons and case law, if any :

(i) Unsecured creditors of the transferee company raised objections that the scheme for reconstruction stood vitiated by non-disclosure of an FIR registered against the transferee company alleging charges of misfeasance on its part.

(ii) Any arrangement or agreement under which two or more firms cooperate in order to achieve commercial objects is a strategic alliance.

(iii) A non-banking finance company (NBFC) had submitted an application for approval of a scheme of arrangement under section 391 before the court. A depositor filed an application thereafter with the Company Law Board (CLB) for ordering repayment of deposits. The CLB passed an order to repay the deposits under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934. The NBFC challenged the order of CLB in the court. Whether the CLB has jurisdiction to pass such an order in the circumstances of the case ?

(iv) In post-merger scenario, the subsidiaries of the transferor company would become subsidiaries of the transferee company and since they already hold shares in the transferee company, their shareholding in post-merger scenario is not permitted by virtue of section 42.

(v) Demerger can be carried out partially or completely.

(4 marks each)

4. (a) Distinguish between *any two* of the following :

(i) 'Merger' and 'acquisition'.

(ii) 'Effective date' and 'transfer date' in a scheme of merger.

(iii) 'Split-off' and 'split-up'.

(4 marks each)

(b) Write short notes on *any two* of the following :

(i) American depository receipts (ADR)

(ii) Infrequently traded shares under the SEBI Takeover Code

(iii) Demerger by agreement.

(4 marks each)

5. (a) HOEL, target company, is a company whose shares are listed in the NSE and BSE. BEIL, acquirer company, entered into a share purchase agreement (SPA) with UIC on 14th February, 2005 to acquire 100% equity of UBL, a person acting in concert (PAC), a wholly owned subsidiary of UIC. In turn, UBL held 1,52,81,633 shares of HOEL, constituting 26.01% of HOEL's equity. As the aforesaid constituted indirect acquisition of shares and control of HOEL, the acquirer company and UBL made a public announcement on 15th February, 2005 in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 to acquire 1,17,48,990 shares of the target company, *i.e.*, HOEL constituting 20% of its equity.

Meanwhile, UBL replaced two of its nominees on the Board of directors of HOEL with two directors who were appointed on UBL's Board on 14th February, 2005 (which is the date of SPA and also the first day of the offer period) by the BEIL. In turn, they were appointed as directors of HOEL also, on the same day. In this context, answer the following questions —

(i) Define the 'offer period' in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(ii) What is the period of offer in the instant case ?

(iii) Who is required to make public announcement and when it is required to be made ?

(iv) Is the appointment of directors valid under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ?

(3 marks each)

(b) Draft a suitable resolution for offer to be made by the company to other company for acquisition.

(4 marks)

6. (a) In October, 2006, OCL, a listed company, made a rights issue of 18 lakh zero coupon convertible debentures (ZCCD) to the shareholders of the company. As per the terms of offer, each ZCCD was automatically and compulsorily converted into one equity share of Rs.10 on 1st January, 2007. Further, each ZCCD had one detachable warrant attached thereto which entitles the holder thereof to apply for and seek allotment of one equity share of the company. The company now proposed

that an offer be made to the warrantholders for buy-back of the entire 18,00,000 warrants. In light of above case, answer the following questions confined to section 77A and the SEBI (Buy-back of Securities) Regulations, 1998 :

(i) Whether the provisions of section 77A will be applicable to buy-back of warrants ?

(4 marks)

(ii) Whether the provisions of the SEBI (Buy-back of Securities) Regulations, 1998 will be applicable to the proposed buy-back of warrants ?

(3 marks)

(iii) Are partly paid-up securities eligible for buy-back ?

(3 marks)

(b) "Honda has core competence in small engine design and manufacturing; Sony has core competence in miniaturisation; Federal Express has core competence in logistics and customer services." In the light of above statement, answer the following :

(i) What is 'core competence' ?

(ii) How is core competence achieved ?

(iii) List at least three factors of identifying core competence in an organisation.

(2 marks each)

7. (a) Kangan Ltd. is considering merger with Payal Ltd. Kangan Ltd.'s shares are currently traded at Rs.25 per share. It has 2,00,000 shares outstanding and its earnings after taxes (EAT) amount to Rs.4,00,000. Payal Ltd. has 1,00,000 shares outstanding; its current market price is Rs.12.50 per share and its EAT is Rs.1,00,000. The merger will be effected by means of a stock-swap (exchange). Payal Ltd. has agreed to a plan under which Kangan Ltd. will offer the current market value of Payal Ltd.'s shares.

(i) What are the pre-merger earnings per share (EPS) and P/E ratios of both the companies ?

(2 marks)

(ii) What must the exchange ratio be for Kangan Ltd.'s pre-merger and post-merger EPS to be the same ?

(2 marks)

(iii) If Payal Ltd.'s P/E ratio is 8, what will be its current market price ? What will be the exchange ratio ? What will Kangan Ltd.'s post-merger EPS be ?

(4 marks)

(b) The scheme of amalgamation is to be prepared by the companies which have arrived at consent to merge. List out the key clauses to be covered in a scheme of amalgamation.

(8 marks)

8. (a) Most integration initiatives focus on maximising resource synergies across the organisation, research and practice consistently show that the key to success and failure factors in mergers lies in how the human resources issues are addressed. It's very challenging to address culture as part of mergers and acquisitions (M&A). But organisations that engage in M&A without considering culture do so at their own peril and run the risk of alienating people and having them leave within a short time-frame. In the light of above, answer the following questions :

(i) Culture is at the core of merger success or failure. What is meant by the 'culture' ?

(ii) How does culture impact merger success ?

(iii) How can an organisation address these cultural issues and prevent them from derailing the merger ?

(iv) Given the challenges of significant transitions required by a merger and the need to get employees' personal goals aligned with the organisational goals, how do you balance the needs of the individuals with the organisational needs ?

(v) How are the challenges for retaining employees best addressed ?

(2 marks each)

(b) In respect of takeover by offeror company, draft a comprehensive resolution for constitution of committee to deal with matters related to the offer.

(6 marks)

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