

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 4

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

PART—A

*(Answer Question No.1 which is compulsory
and any three of the rest from this part.)*

1. (a) It is widely believed that there are several reasons for business growth and expansion for a merged company. Explain at least three such reasons for business growth and expansion which may be achieved by a merged company.

(9 marks)
- (b) A company is over-capitalised due to rights issue, bonus issue and allotment of shares to the shareholders of transferor companies. Its share prices have plunged due to floating shares and do not represent its fair value in the market. The management is now thinking to take some corrective measures. The company has sufficient liquid cash at its disposal. State briefly the corrective measures.

(6 marks)
- (c) In a scheme of reconstruction, a company may, if its memorandum of association permits, carry out reconstruction following the procedure laid down under section 494, by incorporating a new company specifically for that purpose.
In the given case, the new company bears features which are substantially the same as of the earlier company.
But the shareholders of a transferor company objected to the scheme of reconstruction that the directors were actuated by sinister motive by doing so.
Is the objection sustainable if the objecting shareholders fulfil the formalities of minimum percentage for doing so ? State your answer with case law.

(5 marks)
- (d) What is 'strategic planning' ? State its salient features.

(5 marks)
2. (a) Can a lending bank file an appeal/revision application for modification of sanctioned scheme of amalgamation on the basis of the fact that there is a provision in the loan agreement executed between the company and the bank requiring prior approval of the bank before undertaking any steps for amalgamation or reconstruction ? Explain.

(4 marks)

- (b) Acquirer, target company and merchant banker are duty bound to comply with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 both in letter and spirit. Explain, with relevant provisions of law, consequences in case of violation of provisions of the SEBI regulations.

(4 marks)

- (c) State, with reasons in brief, whether the following statements are true or false :
- (i) Provisions of the Specific Relief Act, 1963 override the provisions of sections 391 and 392.
 - (ii) A scheme, apparently made to merge the profit making company with a loss making company and to take tax advantage, is a valid scheme.
 - (iii) Amalgamation between two banking companies is governed solely by the Companies Act, 1956.
 - (iv) The transferee company after effecting merger is able to charge to profit and loss account the expenditure incurred wholly and exclusively for the purposes of amalgamation.
 - (v) Persons acting in concert (PAC) are individuals/company(ies)/any other legal entities who are acting together for an uncommon objective.
 - (vi) Under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, it is a voluntary requirement to appoint a merchant banker for acquisition of shares.
 - (vii) The shares of a target company are deemed as 'frequently traded' for pricing purpose if the annualised trading turnover in those shares is more than 5% (by number of shares).

(1 mark each)

3. (a) By analysing a balance sheet of Aadarsh Ltd., it was found that there are plethora of reserves in the balance sheet for the year ended 31st March, 2009, and the reserves are summarised below :

- (i) Investment fluctuation reserve
- (ii) Statutory reserve
- (iii) Securities premium account
- (iv) General reserve
- (v) Foreign currency fluctuation reserve
- (vi) Dividend equalisation reserve
- (vii) Dividend redemption reserve (preference shares)
- (viii) Capital redemption reserve.

Now, the Chairman of Aadarsh Ltd. asks you as a Company Secretary to know which of the above reserves can be utilised for the proposed buy-back of shares of the company. Advise.

(4 marks)

- (b) A company wants to demerge its unrelated business to a newly formed company with a purpose of selling the demerged company. However, the company presented a scheme of arrangement/demerger before the court and fixed an 'appointed date' before incorporation of the new company to which unrelated business will go. The Central Government raised objection that the 'appointed date' (*i.e.*, on which date all assets and liabilities will transfer to the demerged company) cannot be transferred before the incorporation of the resulting company. Is the objection of the Central Government sustainable ? State your answer with case law.
- (4 marks)
- (c) Regulation 22 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 puts certain obligations upon the acquirer. At the same time, the duty of SEBI is to issue directions only. An aggrieved person applied to the court for *writ of mandamus* to SEBI to conduct enquiry for irregularities committed by the acquirer. Will the petitioner succeed ? State with relevant case law.
- (4 marks)
- (d) State government has power to impose stamp duty on transfer of properties under the order of amalgamation. Briefly comment with case law.
- (3 marks)
4. (a) What are the safeguards incorporated in the takeover process so as to ensure that shareholders get their payments under the offer/receive back their share certificates ?
- (4 marks)
- (b) Can the Central Government amalgamate two companies in the public interest ? Explain with the relevant provisions of law and process.
- (4 marks)
- (c) What should be the minimum price for creeping acquisition ? Explain with relevant provisions of law.
- (4 marks)
- (d) Can an acquirer withdraw the offer once made ? Give reasons.
- (3 marks)
5. (a) Describe **any three** of the following :
- (i) Cross border takeover
 - (ii) Demerger by agreement
 - (iii) Non-performing assets
 - (iv) Accounting Standard-14.

(3 marks each)

- (b) Distinguish between **any two** of the following :
- (i) 'Reduction of capital' and 'diminution of capital'.
 - (ii) 'Split-off' and 'split-up'.
 - (iii) 'Mandatory bid' and 'competitive bid'.

(3 marks each)

PART—B

(Answer ANY TWO questions from this part.)

6. (a) "A company is also a person in the eye of law and can be adjudged as insolvent." Comment. *(5 marks)*
- (b) Is the Registrar of Companies capable of making a petition for winding-up of a company ? If so, on what grounds ? *(5 marks)*
- (c) Explain the immunities provided to a sick industrial company under the Sick Industrial Companies (Special Provisions) Act, 1985. *(5 marks)*
7. (a) Briefly explain the mechanism for the enforcement of security interest by a secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. *(7 marks)*
- (b) Briefly describe the role of professionals in the insolvency process. *(4 marks)*
- (c) Briefly describe the insolvency or bankruptcy laws as applicable in United States of America. *(4 marks)*
8. (a) Though UNCITRAL Model Law is not a substantive law, yet it recommends protection to creditors and other interested persons. Briefly describe the protections provided under the UNCITRAL Model Law. *(4 marks)*
- (b) Main object of 'asset reconstruction company' (ARC) is to act as an agent for banks and financial institutions. Briefly explain with relevant provisions of law. *(4 marks)*
- (c) Can a company make winding-up petition ? If so, what is the procedure of making petition for winding-up ? *(4 marks)*
- (d) Define 'securitisation' and explain its motives. *(3 marks)*