

# Corporate Restructuring & Insolvency 374

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) “As per provisions of the Companies Act, 1956, there is no difference between a merger and a reverse merger. But in common parlance, it means rightward and leftward, *i.e.*, totally opposite to one another, but ultimate objective remains the same, *i.e.*, revival of business of unhealthy company and enjoying tax benefits.” Discuss it in practical scenario. What are the social objectives to provide tax incentives with reference to section 72A of the Income-tax Act, 1961 ?
- (10 marks)
- (b) State whether the following statements are true or false citing relevant provisions of the law :
- (i) Reorganisation of capital through a scheme of compromise or arrangement under section 391 can cover reorganisation of reserves and surplus.
  - (ii) Amalgamation cannot be sanctioned by the court when the transferee company’s objects do not cover business of the transferor company which the former proposes to carry on after the amalgamation.
  - (iii) Any dissenting shareholder may apply to the court to seek an order to the effect that the scheme shall not be binding on him despite that it has been accepted by 90% of the shareholders.
  - (iv) Where a large number of creditors have not been given the notice, the scheme cannot be considered by the court for its sanction even if it has been passed by a three-fourths majority of the creditors who attended the meeting.
  - (v) The books and papers of a company which has been amalgamated with or whose shares have been acquired by another company shall not be disposed of without the prior permission of the Central Government.

- (vi) A public offer once made shall be withdrawn when the statutory approvals required have been refused.
- (vii) A promoter of the company may within three working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company.

*(1 mark each)*

- (c) What are the broad principles that can be considered by the court while sanctioning the scheme of compromise or arrangement ?

*(4 marks)*

- (d) “Strategies exist at several levels in any organisation.” Comment.

*(4 marks)*

2. (a) New Ltd., the transferee company having paid-up share capital of 1,00,000 equity shares of ₹10 each, fully paid-up, at ₹10,00,000 and Old Ltd., the transferor company having paid-up capital of 50,000 equity shares of ₹10 each, fully paid-up, at ₹5,00,000, out of which, 10,000 equity shares were held by New Ltd. (the transferee company). The Hon’ble High Court passed the scheme of amalgamation with a swap ratio of 1:1. How many new shares of New Ltd. are to be issued to the public shareholders of Old Ltd. ? Show calculations.

*(7 marks)*

- (b) Is it possible at the instance of Hon’ble High Court to approve a scheme of amalgamation/arrangement without convening a meeting of shareholders and creditors ? If possible, state the circumstances and alternatives.

*(5 marks)*

- (c) On which grounds/compliances, amalgamation between holding and subsidiary companies be exempted from payment of stamp duty under the Indian Stamp Act, 1899 in case of order made by court under sections 391-394 ?

*(3 marks)*

3. (a) Where an acquirer/company intends to takeover another company through acquisition of 90% or more in terms of its paid-up equity share capital, in such circumstances, what type of handicap/plight is suffered by the miserable minority shareholders ? What are the possible ways of exit from such miserable situation and get a win-win position for the acquirer/company and the minority shareholders ? What are the safeguards/uniqueeness of using the procedure ? (Detail procedure of section 395 not required.)

*(8 marks)*

: 3 :

- (b) Buy-back of securities by a cash-rich company is so far used as a potential weapon for capital restructuring and increasing shareholders value. But companies are restricted to use this procedure under some circumstances. State the situation and circumstances. (7 marks)
4. (a) Explain discounted cash flow method of valuation of shares. (6 marks)
- (b) Draft a notice convening meeting of unsecured creditors in the case of scheme of compromise or arrangement, not being amalgamation. (5 marks)
- (c) Draft a suitable Board resolution for opening of escrow account. (4 marks)
5. (a) Define 'amalgamation' and 'merger' to qualify as an amalgamation for the purpose of income-tax. What are the conditions to be satisfied ? (5 marks)
- (b) "In valuation of shares and fixation of exchange ratio, the court cannot abdicate its duty to scrutinise the scheme with vigilance." Do you agree ? Support your answer with relevant case law. (5 marks)
- (c) What should be the minimum price for creeping acquisition ? (5 marks)

**PART — B**

*(Answer ANY TWO questions from this part.)*

6. (a) "In the commercial and legal world, the terms 'winding-up' and 'dissolution' refer to same legal procedure and there are no fundamental differences between the two." Do you agree with this statement ? Justify. (7 marks)

(b) Write notes on the following :

- (i) Non-performing assets
- (ii) Compromise through Lok Adalats.

*(4 marks each)*

7. (a) Explain the procedure involved in the process of takeover of business of a borrower by the secured creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

*(7 marks)*

(b) Explain preferential payments in the process of winding-up.

*(4 marks)*

(c) Explain 'reference to the Board' under the Sick Industrial Companies (Special Provisions) Act, 1985.

*(4 marks)*

8. (a) Briefly describe the protection provided to the creditors and other interested persons under the UNCITRAL Model Law.

*(5 marks)*

(b) "Asset reconstruction companies are public financial institutions." Comment.

*(5 marks)*

(c) Define 'financial asset' under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

*(5 marks)*