

Corporate Restructuring & Insolvency 374

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 7

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 believed that 'strategy' is a tactical and flexible way of resolving routine and non-routine issues in the corporate world. In this connection, Henry Mintzberg has enunciated 5Ps of strategy. Briefly explain these 5Ps within a maximum limit of 20 words each. (5 marks)
- (b) What is meant by 'strategic alliance' and what are its features ? (5 marks)
- (c) "A conglomerate merger is neither a type of horizontal merger nor a vertical merger." Discuss. (5 marks)
- (d) State whether the following statements are true or false citing relevant provisions of the law :
- Scheme of amalgamation which is not approved at a meeting by the requisite majority, but is subsequently approved by individual affidavits is deemed to be validly approved.
 - The resolution granting approval to the scheme of arrangement is passed by creditors with more than 3/4^{ths} in value, but not by creditors majority in number. The scheme would be deemed to be disapproved and court can disapprove the scheme on this ground.
 - Court is not bound to order convening meeting of shareholders/creditors for their approval on scheme of amalgamation which *prima facie* looks to be illegal, contrary to the public policy and unfair in its opinion.
 - Court cannot sanction a scheme of amalgamation where order of winding-up has been made and a liquidator has been appointed.

- (v) Any scheme of compromise or arrangement approved by the majority of creditors shall be binding on all the creditors even prior to the approval of the court and individual creditors shall not be entitled to file separate individual applications.

(2 marks each)

2. (a) What types of disclosures are required to be published in the first financial statements following the amalgamation of the transferee company (both for pooling of interests method and purchase method) ?

(7 marks)

- (b) Fitwell Ltd. is intending to make an initial public offer (IPO) of ₹50 crore through the book building process. Mention the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 relating to pricing in public issue.

(8 marks)

3. BM (India) Ltd. (BMIL) is a company registered in India. 99% of shareholding of BMIL is controlled by three companies namely, Van India Ltd. (VAN) (45%), Man India Ltd. (MAN) (45%) and Ran India Ltd. (RAN) (9%) which are the promoters of BMIL. The remaining 1% shareholding is in the control of 10 individual shareholders.

BMIL has filed a petition before the court for reduction of its share capital under sections 100 to 105 and stated that “only the shares of minority shareholding which at present is 1% of the total paid capital will be extinguished and reduced.” The articles of association of BMIL contain provisions for the reduction of capital. 99.99% shareholders have approved the special resolution except one shareholder Gaurav who has 0.01% of shares of the company. Gaurav has raised objection on the proposed scheme of reduction of capital on the following grounds :

- Proposed reduction of share capital by BMIL amounts to ‘forcible acquisition’ of shares of public shareholders as only their shares are being extinguished, whereas the shares of promoter group, *i.e.*, VAN, MAN and RAN remain unaffected. According to Gaurav, the actual intent and reason for reduction of share capital is only to eliminate the minority shareholders as members of the company and is thus wholly unfair, discriminatory and malafide. Gaurav submits that reduction, if any, should be spread equally over all the different classes of shareholders of BMIL.

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- Gaurav submits that the reduction of share capital proposed by BMIL is in fact a buy-back of the shares under section 77A and accordingly reduction of share capital has to be done on proportionate basis as mentioned in section 77A(5).

Keeping in view the provisions of section 77A, sections 100 to 105 and also the objections of Gaurav, you, being the Company Secretary and Legal Advisor of BMIL, are asked to give your opinion on the following :

- (i) Reduction of capital under section 100 gives liberty to the company to reduce its capital in 'any manner' other than what is illustrated in clause (a), (b) and (c) of section 100(1).
- (ii) Section 77A should not be applicable in case where petition for reduction of capital is moved to the court pursuant to sections 100 to 105.

Cite relevant case law in support of your answer.

(15 marks)

4. (a) A scheme of amalgamation was sanctioned by the High Court on 21st July, 2009 on the application made by Kshitija Garment Ltd. (KGL). KGL was directed to file a certified true copy of the order with the Registrar of Companies (ROC) within 30 days. However, due to inadvertence of the clerk of advocate on record, photostat signed copies of said order were obtained instead of certified copies. Thereafter, a fresh requisition was put in and on 25th November, 2009 (almost after a gap of three months), certified copy of the order was obtained. Since the period of 30 days from the date of the order had lapsed, ROC refused to accept the certified copies of the order.

KGL moved an application before the Company Court for extension of time to file the certified copies of the sanctioned scheme with ROC beyond the permitted time. The Company Court dismissed the application holding that as applicant had not filed the certified true copy within the prescribed time of one month (30 days), a presumption arose that KGL had abandoned the scheme.

On appeal, KGL contended that Rule 7 of the Companies (Court) Rules, 1959 expressly empowers the courts to extend the time fixed by an order of the court for doing any act and with this rule, there cannot be a presumption that after expiry of 30 days it was to be deemed that the KGL had abandoned their right to file the certified copy.

KGL further stated that procedural law should not be allowed to overpower substantive rights and substantial cause for justice.

Keeping in view the above facts, give your opinion whether KGL would be successful in getting the extension of time for filing of certified copy of the order with the ROC.

(7 marks)

- (b) Discuss funding of a merger or takeover through financial institutions and banks.

(8 marks)

5. (a) What is meant by Indian depository receipts (IDRs) ? Why are such receipts issued ?

(5 marks)

- (b) Where no mistake is found in valuation of exchange ratio worked out by a recognised firm of chartered accountants and the same has been accepted by the shareholders/creditors with overwhelming majority, court still has a right to substitute its own exchange ratio. Do you agree ? Discuss.

(5 marks)

- (c) What is the meaning and importance of 'appointed date' particularly in case of demerger or spin-off ?

(5 marks)

PART — B

(Answer ANY TWO questions from this part.)

6. (a) ARC India Ltd. (ARCIL) filed winding-up petition of MF Ltd. (MFL) before the Company Court. ARCIL was having security interest in MFL and wanted to dispose of the assets for which it has requested the Company Court to give permission. Prior to the order of winding-up, an order was passed by the Company Judge declining permission to ARCIL (appellant) to sell the assets of MFL under section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Aggrieved by the order of Company Judge, ARCIL has filed an appeal before the division bench. The division bench has permitted ARCIL to sell the secured assets of MFL

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which is in liquidation in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

On the basis of the valuation report of the registered valuer, the fair market value of the properties was fixed by the Sale Committee at ₹30 crore and distress market value was fixed at ₹15 crore. In auction, two bidders emerged at top, offering ₹40 crore and ₹41 crore. The Company Judge has refused to confirm the sale conducted by the Sale Committee on the ground that there was a huge gap between bid amount and fair market value. The Company Judge has not assigned any other reasons for not confirming the sale in favour of the highest bidder. Official Liquidator has made a statement that he was a party to the sale proceedings and he never objected to the proposal of the Sale Committee and today also he is not in a position to contend that the price quoted by the highest bidder is on the lower side or that the properties in question can be sold at a higher price.

In spite of the request of ARCIL and statement given by the Official Liquidator, the Company Judge set aside the proceedings of the sale and also directed refund of the security amount to all the bidders. The Company Judge further ordered to the Official Liquidator to get a fresh valuation report.

Keeping in view the above facts and circumstances, you are required to give your opinion as to —

- (i) Whether the Company Judge has committed an error in not approving the report submitted by the Sale Committee, without giving any reason ?
- (ii) Whether ARCIL would be successful in getting favourable order from division bench ?

(9 marks)

- (b) What do you understand by 'operating agency' and what are its functions ?

(6 marks)

7. (a) GCL Ltd. is a company engaged in the business of accepting deposits from the general public and lending the same to the needy at a higher rate of interest and thereby earning profits. Over a period of time, GCL Ltd. started incurring losses and did not pay back

to their depositors. Ranjan, one of the deposit holders of GCL Ltd. issued statutory notice to GCL Ltd. asking for repayment of amount due to him. In spite of the lapse of 21 days, the GCL Ltd. neither paid the amount to Ranjan nor replied to the statutory notice served to it.

Ranjan, aggrieved by the conduct of the GCL Ltd., filed petition for winding-up of GCL Ltd. before the High Court under section 433(e) and (f). In response to the said petition, GCL Ltd. stated that if the loans and advances made by it were recovered, GCL Ltd. would have been able to repay the amount due to the deposit holders. However, due to the financial crises and the globalisation of markets, GCL Ltd. was unable to repay the amount. GCL Ltd. has submitted profit and loss account and balance sheet according to which the liability of the company was more than its assets.

Considering the above facts, give your comments as to whether Ranjan would be successful in getting the winding-up order against GCL Ltd.

(7 marks)

- (b) On what grounds is RBI entitled to exercise its power under section 4 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to cancel the 'certificate of registration' issued by it to any asset reconstruction company? What formalities have to be undertaken by RBI before cancellation of certificate of registration?

(4 marks)

- (c) Explain the term 'cross border insolvency'.

(4 marks)

8. (a) "Under some circumstances including the completion of basic objective of incorporation of a company, the company may be wound-up by knocking the door of a court of law." You are required to explain —

- (i) Circumstances under which a company may be wound-up.

(4 marks)

- (ii) The procedure to be followed for winding-up of a company.

(4 marks)

- (iii) Why, in your view, the provisions of voluntary winding-up are contained in the Companies Act, 1956?

(2 marks)

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(b) In the context of UNCITRAL Model Law, what do you mean by the following :

- (i) State
- (ii) Establishment
- (iii) Foreign main proceeding
- (iv) Foreign Court
- (v) Foreign representative.

(1 mark each)

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