

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : 1. Answer **ALL** Questions.

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

PART-I

1. (a) ABC Ltd. is planning for merger with RST Ltd. As a Company Secretary you have advised your management that all shareholders of transferor and transferee can give consent for the merger and thereby the shareholders meeting can be dispensed to save the time. However, CFO of your Company has raised a doubt on your view. Hence, the matter was put before a practicing Company Secretary, who will advise on the matter to the Company. As a practicing Company Secretary referring relevant provision and a case law give your opinion on the matter. (5 marks)
- (b) Due Diligence is an important exercise for any potential investment proposal. Discuss the importance of due diligence for a proposed Merger. Also enumerate the types of due diligence which may be taken for such a proposal. (5 marks)
- (c) One of the most important facets of the Indian merger control regime is the element of 'control'. Control over an enterprise has the ability to change the competitive dynamics of any market, and the Competition Commission of India (CCI), like all other competition regulators, gives due importance to changes in control. On this backdrop, elaborate on 'Control' and 'Group' under the Competition Act, 2002 and also through light on exemptions, if any under these definitions. (5 marks)

: 2 :

- (d) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 impose an obligation on the acquirer together with person acting in concert to make public announcement of an open offer in the event of their becoming entitled to exercise 25% or more of the voting rights in the target company. What are the conditions under which the acquirer is exempt from making such open offer under Regulation 10(1) (a) of the regulations ?

(5 marks)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) Based on the following information find out the total amount of purchase consideration and the post-Merger Capital Structure of the Company. Capital structure of Transferor and Transferee Companies are as follows :

A Ltd. (Transferor Company)		B Ltd. (Transferee Company)	
1,00,00,000 Equity Shares of ₹ 10 each	10,00,00,000	15,00,000 Equity Shares of ₹ 100 each	15,00,00,000
5,00,000 10% Preference Shares of ₹ 100 each	5,00,00,000	10,00,000 12% Preference Shares of ₹ 100 each	10,00,00,000
1,00,000 11% Redeemable Debentures of ₹ 1,000 each	10,00,00,000		

The swap ratio is fixed as follows :

- (a) For every 40 Equity Shares in A Ltd. 5 Shares of B Ltd.
 (b) For every 5 Preference Shares in A Ltd. 4 Shares of B Ltd.
 (c) Debentureholders will be allotted with 12% Redeemable Debentures of ₹ 1,000 each for every one Debenture held in A Ltd. (with no change in tenure)

(2+2+1=5 marks)

: 3 :

- (b) “For funding of restructuring, various foreign currency denominated instruments are available”. In this context explain in brief the concept of Depository receipts and eligibility conditions for issuance of the same.

(5 marks)

- (c) Your Company is considering for demerger of one of its division and requested you to prepare a note on amortization of expenditure, carry forward and set off of business losses and unabsorbed depreciation as per the provisions of the Income Tax Act, 1961.

(5 marks)

OR (Alternate question to Q. No. 2)

- 2A. (i) Explain the provisions relating to the power of Competition Commission of India to impose penalty for the non-submission of information on combination.

(5 marks)

- (ii) As a practicing Company Secretary, a client has approached you and sought your guidance on following procedural aspects of Fast Track Mergers.

- (a) Declaration of Solvency
- (b) Filing of Scheme
- (c) Approval of the Scheme

Prepare a brief note on the aforesaid points to be presented to your client.

(5 marks)

: 4 :

- (iii) A Company's performance will have an impact on its Valuation. Based on following information prepare a sensitive table on how changes in sales affects the Company's Enterprise Valuation :

	Amount (INR Crore)	Percentage
Sales	1000	
Cost of Sales	700	70% on Sales
Gross Profit	300	
Fixed Cost	150	(Constant upto INR 2000 Crore of Sales)
Variable Cost	100	10% on Sales
Earnings before Tax (EBT)	50	
Tax	12.50	25% of EBT
Earning after Tax	37.50	
EPS (in ₹)	25	
P/E ratio of the industry	20	
Market Price per Share	?	
Enterprise Value	?	

The Company has 1.5 Crore Equity Shares of ₹ 10 each :

- Find out the Market Value per Share and Enterprise Value. Also give your opinion on the results.
- When the Sales of the Company increases by 10%.
- When the Sales of the Company decreases by 10%.

(1+2+2=5 marks)

: 5 :

3. (a) You are one of the Company Secretary in the big multi-national conglomerate, which is contemplating a merger. As the Management is keen on completion of merger without any regulatory hiccups, your department head have advised you to sought an informal consultation with Competition Commission. Suggest the management if such informal consultation is allowed. Brief the process of informal consultation with Competition Commission prior to business combinations and the conditions applicable, if any.
- (b) Briefly discuss on 'Earnouts' and 'Carveouts' in Cross Border Mergers.
- (c) Discuss the provisions for Escrow Account for open market Buy Back through Stock Exchange.
- (d) QR Private Limited, a Start-up company proposes for merger with MN Private Limited a small Company. Explaining the meaning of 'Start-up', brief whether the merger proposal can be carried out without the approval of the National Company Law Tribunal. If yes, name the authority with whom they have to approach for such merger.
- (e) Spinoff is one type of Demerger wherein the Shares of new entity is being distributed to the shareholders of parent company on a pro-rata basis. Explain in brief the reasons for Spinoff.

(3 marks each)

PART-II

4. (a) PQ Private Limited is under Corporate Insolvency Resolution Process (CIRP). The CIRP was initiated based on an application filed by Operational Creditor of PQ Private Limited. The Resolution professional appointed by National Company Law Tribunal is carrying out CIRP process has published advertisements for Expression of Interest (EoI). In the meantime both PQ Private Limited and the Operational Creditor who has initiated the CIRP have arrived at settlement and would like to file withdrawal application. One of the other Operational Creditor has contended that once CIRP has commenced and advertisement for EoI is given, the CIRP cannot be withdrawn. Referring relevant case law and suitable provisions of the Regulations answer whether the contention of the other Operational Creditor is tenable.

(5 marks)

: 6 :

- (b) What are the orders that can be issued by The Debt Recovery Tribunal (DRT) once the dues have been finalised to be paid. If the DRT has issued a certificate of recovery against a Company and such company is under liquidation. What orders can be issued by the DRT to recover the dues ?

(5 marks)

- (c) Whether National Company Law Tribunal or National Company Law Appellate Tribunal has a right to interfere with the decision of Committee of Creditors (CoC). Discuss in view of some decided case law.

(5 marks)

- (d) EF LLP was under Corporate Insolvency Resolution Process (CIRP) and NCLT has approved the Resolution Plan submitted by XY Private Limited, who is totally unrelated to the EF LLP or its Partners. Prior to initiating of CIRP the EF LLP has entered into commercial agreement with Q Ltd to supply them the goods manufactured by EF LLP for a particular period. But EF LLP did not supply as per the terms and Q Ltd suffered huge loss due to breach of contract by EF LLP. Now after Resolution and successful commencement of business again by EF LLP, Q Ltd would like to claim damages for breach of contract. Referring relevant provisions answer whether Q Ltd can claim damages for breach of Contract.

(5 marks)

5. (a) “The Resolution plan is not a sale or auction or recovery or liquidation but a resolution of the Corporate Debtor as a going concern.” Referring relevant case law highlight on the importance of the statement.

(3 marks)

- (b) Your company has received recovery notice from a Creditor with whom receivables of the Company are discounted with Chief Financial Officer (CFO) of your Company is of the view that this is not covered as ‘Financial Debt’ under Insolvency and Bankruptcy Code, 2016 as the receivables are sold on non-recourse basis. Referring the relevant provisions comment whether the contention of CFO is correct.

(3 marks)

: 7 :

- (c) A Bank has initiated insolvency proceedings against the personal guarantors of a Corporate Debtor, in the list of assets of a personal guarantor, one of the asset is 'pension plan' taken in the name of spouse of the personal guarantor. The Insolvency Professional has sorted your opinion as to whether the above pension plan can be included as assets of the personal guarantor. Clarify referring relevant provisions of the Insolvency and Bankruptcy Code, 2016.

(3 marks)

- (d) What are the general duties of a debtor under the Fresh Start Process under the Insolvency and Bankruptcy Code 2016.

(3 marks)

- (e) Whether the Former Directors of the Company on which insolvency proceedings have been initiated are entitled to receive the copy of the Resolution Plan from the Resolution Professional. Comment.

(3 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (a) Ritu Housing Finance Company Limited initiated Corporate Insolvency Resolution Process against its corporate debtor Raj Infrastructure Limited under section 7 of The Insolvency and Bankruptcy Code, 2016. The National Company Law Tribunal dismissed the application as not maintainable. The reason given was that winding up proceedings have already been initiated by the High Court. Quoting any decided case law confirm whether the application under section 7 of the Code is maintainable when winding up proceeding against the corporate debtor have already been initiated ?

(5 marks)

- (b) "The term 'default' under SARFAESI Act and the Insolvency and Bankruptcy Code, 2016 are different and based on purpose of the Acts." Examine the statement by analyzing the definition under the both Acts.

(5 marks)

- (c) The Committee of Creditors of a Corporate Debtor by passing a resolution with fifty five per cent of voting shares, wants to remove Mr. B as a Resolution Professional after taking his consent in writing in advance. Please examine keeping in view of the provisions of the IBC Code that whether the COC can remove the RP by passing a resolution with fifty five per cent voting shares.

(5 marks)

OR (Alternate question to Q. No. 6)

- 6A. (i) Discuss on the provisions of Management of affairs of corporate debtor during the pre-packaged insolvency resolution, also brief the powers of Committee of Creditors in vesting the Management of Corporate Debtor in pre-packaged insolvency resolution process.
- (ii) “The Objective of SARFAESI Act and the Insolvency and Bankruptcy Code, 2016 are altogether different and cannot be interchangeable.” Examine the statement highlighting the prime objects of both Acts.
- (iii) Insolvency Professional Agencies (IPAs) play a crucial role in regulating and educating Insolvency Professionals’. Elucidate the functions of the IPAs as enshrined in the Code.

(5 marks each)

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