

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.

**P A R T – A**

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

1. (a) State whether the following statements are correct or incorrect citing briefly relevant provisions of the law :
- (i) Court cannot refuse to sanction a scheme of arrangement which has been approved by majority of shareholders/creditors of the companies concerned.
  - (ii) Court would not insist on prior approval of stock exchange(s) while sanctioning a scheme of arrangement.
  - (iii) The word 'amalgamation' or 'merger' is not defined anywhere in the Companies Act, 1956.
  - (iv) The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 also apply to acquisition of global depository receipts (GDRs) or American depository receipts (ADRs).
  - (v) Filing of draft letter of offer with SEBI should be deemed or construed as conclusive evidence that the same has been vetted or approved by SEBI.
  - (vi) An offer made by the acquirer can be withdrawn unconditionally at any time without any demur or resistance of any party since the acquirer is at liberty to withdraw his offer.
  - (vii) The order of court sanctioning the scheme of arrangement is final and effective. Companies need not do any thing thereafter in respect of courts sanction.
- (2 marks each)
- (b) Distinguish between 'management buy-out' and 'management buy-in'.
- (3 marks)
- (c) A company whose shares were listed on a stock exchange for 3 months as on the relevant date made preferential allotment at Rs.100 per share. On completing the period of 6 months of being listed on the stock exchange, the company recomputed the share price based on the guidelines issued by SEBI in this respect and price of share so recomputed came to Rs.150 per share. The company demanded additional amount of Rs.50 per share from the allottees of shares. Is the action of the company justified ? Give reasons.
- (4 marks)

- (d) Grow Well Ltd. wants to adopt strategic planning to ensure its growth in the present day highly competitive scenario. As part of the management team, you are assigned with the role of highlighting the essential features such a planning should have. Suggest the features which you consider are vital for any strategic planning.
- (4 marks)*
2. (a) "Section 391 is a boon to the corporate restructuring." Critically examine the statement and discuss the relevant provisions relating to corporate restructuring.
- (8 marks)*
- (b) Will the court sanction a scheme of amalgamation where companies to the scheme tend to reshuffle their objects clause in the memorandum of association ? Support your answer with case law.
- (4 marks)*
- (c) Relax Movies Ltd. is going for takeover of another company. Your advice is sought whether the company has to go for mandatory bidding. Advise with reference to the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.
- (3 marks)*
3. (a) Whether in a scheme of arrangement the meeting of shareholders and creditors can be dispensed with ? Supplement your answer with the help of case law.
- (4 marks)*
- (b) Whether non-compliance with the disclosure and related requirement is a violation of the SEBI Takeover Code ? Give your answer by referring to case law.
- (4 marks)*
- (c) Explain whether the transferee company is required to increase its authorised share capital by following the procedure laid down in the Companies Act, 1956 even though after amalgamation its authorised share capital is sufficient to issue shares to the shareholders of transferor company.
- (4 marks)*
- (d) Briefly state whether permission of the Reserve Bank of India is necessary for the compromise and arrangement of non-banking finance company (NBFC) with a bank.
- (3 marks)*
4. (a) Discuss 'funding through rehabilitation finance' as a source of funds for mergers/ takeovers.
- (6 marks)*

- (b) Draft a suitable Board resolution with respect to takeover for the following :
- (i) Appointment of a merchant banker.
  - (ii) Opening of an Escrow account.
- (3 marks each)*
- (c) Can shareholders seek an amendment to the swap ratio in the scheme of merger? Supplement your answer by referring to case law.
- (3 marks)*
5. (a) What are the safeguards incorporated in takeover process so as to ensure that shareholders get their payments under the offer or receive back their share certificates?
- (4 marks)*
- (b) Gopal has acquired shares in Aadil Ltd., but he is yet to be registered as a member. He has made an application to the court for modification in the scheme proposed under section 391. Is he entitled under the Companies Act, 1956 to move such an application?
- (4 marks)*
- (c) The capital structure of Johar Ltd. is as follows :
- 5 lakh equity shares of Rs.10 each fully paid-up.
  - 10 lakh equity shares of Rs.10 each on which Rs.5 is paid-up.
  - Free reserves of Rs.3 crore.
- The Board of directors of the company has passed a resolution authorising the buy-back of shares worth Rs.40 lakh for the financial year 2009-10. Is the Board of directors empowered to do so? Give reasons.
- (4 marks)*
- (d) Abhay Ltd. has filed a petition before the High Court of Bombay for sanction of a scheme of amalgamation with Gel Well Ltd., and the petition is posted for hearing to Monday, the 8<sup>th</sup> March, 2010. The court has ordered to serve notice of the hearing of the petition on the creditors. As the Company Secretary of Abhay Ltd., draft the notice.
- (3 marks)*

**P A R T – B**

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

6. (a) Laxmi Bank Ltd. has approached you for your professional advice about the rights available to it for enforcing the security interest under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002. Highlight the rights and the advantages to the bank by resorting to that mode of recovery citing the relevant provisions of the said Act.
- (5 marks)*

- (b) Kuber Bank Ltd. has obtained a decree from a civil court to recover an amount of Rs.20 lakh with 12% interest and the court has allowed it to proceed against the commercial building given as security for the loan. Can the decree be treated as a debt under the SARFAESI Act, 2002 ? Cite the relevant provisions of law in support of your answer.  
(5 marks)
- (c) Amir Bank has issued a bank guarantee for and on behalf of Madhuri Ltd., an industrial company in connection with loans granted to the company. The company became sick. While the proceedings before Board for Financial and Industrial Reconstruction (BIFR) is going on, the beneficiary of the bank guarantee invoked it and demanded payment from Amir Bank. The bank has sought your expert opinion in the matter. Give your opinion based on legal provisions and judicial decisions.  
(5 marks)
7. (a) Explain the role of BIFR and the concerned High Court in winding-up of a sick industrial company mentioning the relevant provisions of the law and judicial decision(s).  
(5 marks)
- (b) There was an agreement between a company having its registered office at Delhi with its creditors having their office at Mumbai. It contained a clause that in case of dispute between them, only the courts in Mumbai will have the jurisdiction. On the basis of the clause, the creditors filed a winding-up petition before High Court of Bombay. The company has asked your professional opinion in the matter. How will you advise the company ?  
(5 marks)
- (c) Recovery Officer under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has issued an order and the defendant wants to challenge the order. What will be your advice to the defendant based on the relevant provisions in the Act ?  
(5 marks)
8. (a) The trade union of workers of a company has filed a winding-up petition of their company. State the legal position citing relevant case law.  
(5 marks)
- (b) Debt Recovery Tribunal (DRT) has passed an interim order attaching the property of the defendant. The defendant wants to challenge this order on the ground that DRT has no power to pass interim orders. Explain the legal provisions in this regard.  
(5 marks)
- (c) As the Company Secretary of a company, mention your duties in respect of compulsory winding-up.  
(5 marks)