

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) "Section 394 contains reference to reconstruction of any company or companies or amalgamation of any two or more companies." Comment on the relevant provisions for facilitating reconstruction and amalgamation of companies.

(8 marks)

- (b) State whether the following statements are true or false citing relevant provisions of the law :

- (i) The scheme of amalgamation is approved by shareholders holding more than 75% of the shares who vote at the meeting of the members of the company convened under the orders of the court.
- (ii) Application for approval of scheme of compromise or arrangement can be made by a creditor of the company.
- (iii) Proxies cannot be counted for the purpose of quorum at the general meeting convened in accordance with the directions of the court.
- (iv) Copies of the order of the High Court sanctioning the scheme of arrangement are required to be affixed to all copies of memorandum of association and articles of association of the transferee company.

(2 marks each)

: 2 :

- (c) As per the provisions of the Companies Act, 1956 and the Income-tax Act, 1961 there is no difference between de-merger and slump sale; though it results in separation of a division or unit of an existing company to a potential buyer. But in common parlance, it means rightward and leftward, *i.e.*, totally different approach from one to another. The first requires no payment but second requires down payment. But the ultimate objective is to hive off some business which is not compatible with the core business competency of the main company.

Discuss the eventuality in conjunction with the provisions of the Income-tax Act, 1961.
(5 marks)

- (d) Explain the meaning of 'strategic planning' and the steps involved in strategic planning.
(4 marks)

2. (a) Wide Ltd. prepared a scheme of amalgamation and arrangement with Narrow Ltd. and Small Ltd. and the same was duly approved by the Hon'ble High Court concerned. In the approved scheme, the swap ratio was as under :

Narrow Ltd. : Wide Ltd. will issue 1 equity share of ₹ 1 each in exchange of 3 equity shares of Narrow Ltd.

Small Ltd. : Wide Ltd. will issue 1 equity share of ₹ 1 each in exchange of 2 equity shares of Small Ltd.

The pre-amalgamation share capital were as follows :

| <i>Particulars</i> | <i>Wide Ltd.</i> | <i>Narrow Ltd.</i> | <i>Small Ltd.</i> |
|------------------------------------|------------------|--------------------|-------------------|
| Face value of equity share (₹) | 1 | 1 | 1 |
| No. of fully paid-up equity shares | 10,00,000 | 5,00,000 | 4,00,000 |
| Paid-up value (₹) | 10,00,000 | 5,00,000 | 4,00,000 |
| Reserves and surplus (₹) | 5,00,000 | 5,00,000 | 5,00,000 |
| Total (₹) | <u>15,00,000</u> | <u>10,00,000</u> | <u>9,00,000</u> |

: 3 :

The pre-merger investments were as follows —

| | <i>No. of Shares</i> |
|------------------------------|----------------------|
| In Wide Ltd. : | |
| Equity shares of Narrow Ltd. | 1,00,000 |
| Equity shares of Small Ltd. | 1,00,000 |
| In Narrow Ltd. : | |
| Equity shares of Wide Ltd. | 1,00,000 |
| Equity shares of Small Ltd. | 1,00,000 |
| In Small Ltd. : | |
| Equity shares of Wide Ltd. | 1,00,000 |
| Equity shares of Narrow Ltd. | 1,00,000 |

As the Company Secretary of Wide Ltd., you are required to advise the Chief Executive Officer :

- (i) The quantum of new shares of Wide Ltd. to be issued to the shareholders of transferor company (a) Narrow Ltd.; (b) Small Ltd.; and
- (ii) What will be the post-issue share capital of Wide Ltd. after cancellation of cross holding of equity shares of all companies ?

(10 marks)

- (b) State the different kinds of approvals required to be obtained in the scheme of amalgamation.

(5 marks)

3. (a) (i) In case of pricing of equity shares through 'red-herring prospectus', *i.e.*, through book building process, what is the maximum gap between the floor price and the ceiling in the price band ? Give example.

(2 marks)

- (ii) If the floor price/price band is not mentioned in the red-herring prospectus —
- (a) What is the time limit to inform the same by the issuer for the initial public offer (IPO) ?
 - (b) What is the time limit to inform the same by the issuer for the further public offer (FPO) ?
- (2 marks)
- (b) In the modern economic era, it is a well known fact that neither the government nor the consumers allow the companies to insulate themselves through cartels for an infinite period in order to restrict competition. So what options are left to the companies with surplus capacities to mitigate the competition from its rival firm(s), as the excess capacity increases competition, erodes profits and reduces further growth. Write your answer with brief example.
- (5 marks)
- (c) What is meant by partial demerger ? State the factors/features which differentiate it from complete demerger.
- (6 marks)
4. (a) "Accounting Standard-14 is equally applicable whether it is a case of amalgamation or demerger." Discuss the statement citing case law.
- (5 marks)
- (b) It is well settled principle of the various High Courts that if the shareholders approve a scheme of arrangement (whether it is amalgamation, demerger/hive off, *etc.*) with required majority and is not against public policy or illegal, such scheme of arrangement shall not be disallowed.
- However, in rare cases High Courts reject a scheme on the ground of *res judicata*. What are the circumstances where the High Courts are applying this principle ?
- (5 marks)
- (c) Draft a Board resolution for appointment of merchant banker by an acquirer company under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- (5 marks)

: 5 :

5. (a) Draft a notice convening a meeting of creditors in the case of scheme of amalgamation.
(5 marks)
- (b) What is the relevance of price-earnings ratio in a company ?
(5 marks)
- (c) What are the statutory forms required to be filed under the Companies (Court) Rules, 1959 in respect of scheme of demerger ? Mention the purpose of these forms.
(5 marks)

PART — B

(Answer ANY TWO questions from this part.)

6. (a) Section 35 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 provides that the provisions of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Further, in accordance with section 37, the provisions of the Act or the rules made thereunder shall be in addition to and not in derogation of any other law for the time being in force. Write a note on the combined effect of these two provisions.
(5 marks)
- (b) Write a comprehensive note on the constitutional validity of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 referring to decided case law.
(5 marks)
- (c) What is meant by an 'unregistered company' ? What are the circumstances under which an unregistered company is deemed to be unable to pay its debts ?
(5 marks)

7. (a) "Non-performing assets constitute a real economic cost to the nation because they reflect the application of scarce capital and credit funds to unproductive uses." Comment and discuss how securitisation has gained importance in India.

(5 marks)

- (b) Define the following in brief in relation to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 :

- (i) Originator
- (ii) Security receipt
- (iii) Qualified institutional buyer.

(2 marks each)

- (c) You are the Company Secretary of an asset reconstruction company and allowed to operate securitisation activities throughout India. To expand the business horizon of the company, the present management wants to induct cash rich and experienced businessman in the management by transfer of shares from the promoters which entail a substantial change in the management of your company. The new person also wants to shift the registered office from Delhi to Mumbai. The present managing director has sought your views for formalities to be completed in this regard.

(4 marks)

8. (a) Can the court order winding-up of the company when a just and equitable ground does not exist at the time of hearing though it might have existed at the time of presenting the petition ? Explain.

(7 marks)

- (b) Write note on **any one** of the following :

- (i) Corporate insolvency
- (ii) Cross examination at the Debt Recovery Tribunal (DRT).

(4 marks)

: 7 :

- (c) Though UNCITRAL Model Law is not a substantive law, it recommends protection to creditors and other interested persons. Briefly describe the protections provided under the UNCITRAL Model Law.

(4 marks)

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