335

Roll No..............................

Time allowed : 3 hours *Maximum marks : 100*

Total number of questions : 8 *Total number of printed pages : 6*

NOTE : *1. Answer SIX questions including Question No 1l which is compulsory.*

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

1. (a) Recently, Swift Auto Ltd. has called a meeting of its shareholders in pursuance of the order of the Hon'ble High Court of judicature at Mumbai for the purpose of considering and, if thought fit, approving with or without modification(s), the scheme of arrangement between Swift Auto Ltd., Swift Holdings & Investment Ltd. and Swift Finserv Ltd. and their respective shareholders and creditors. In the explanatory statement under section 393, following terms have been mentioned. Briefly explain them—

(i) The resultant company

(ii) Appointed date

(iii) Demerged company

(iv) Effective date

(v) Record date.

(1 mark each)

(b) State, with reasons in brief, whether the following statements are correct or incorrect:

(i) Section 395 gives mandate for a compulsory acquisition mode for the transferee company to acquire the shares of minority shareholders of transferor company holding less than 5% of the share capital even if such minority shareholders do not consent to the scheme.

(2 marks)

(ii) Buy-back of equity share capital in any financial year should not exceed 25% of its total paid-up equity capital in that financial year.

(2 marks)

(iii) Amalgamation of a foreign company with an Indian company is possible under the Companies Act, 1956.

(2 marks)

(c) (i) A company became sick and got registered with the Board for Industrial and Financial Reconstruction (BIFR). Operating agency is appointed and rehabilitation scheme is framed by the BIFR. Meanwhile, the company proposed a scheme of arrangement only with its lenders having first charge on its properties. Can the company hold the meeting of the first charge-holders ? Give reason.

(3 marks)

(ii) If there are wide variations in the valuation of the offer price, state whether the SEBI has powers to value shares by appointing independent valuers.

(3 marks)

(iii) "Demerger can be carried out partially or completely." Do you agree ? Give reason.

(3 marks)

2. Read the following case narratives carefully and answer the questions given at the end :

Amrit Tea Ltd. (ATL) acquired Freshlay Tea Ltd. (FTL) in 2000. FTL was the market leader in United Kingdom and Canada having 26% and 40% market shares respectively by value. At the time of acquisition, FTL has also launched 'Iced Tea' under the brand of 'Tea of Life' in United Kingdom, which was making good progress. Further, FTL also boasts of a wide range of fruits and herbals speciality tea.

At that time, FTL had a turnover which was equivalent to 3 times, the turnover of ATL. The acquisition took place through a special purpose vehicle (SPV), ATL (Great Britain) at a cost of GBP281 million.

The funding of the deal was made through a mix of debt and equity which is given below :

Equity	*GBP in Millions*
Amrit Tea	60
Amrit Tea Inc.	10
Amrit Sons	1
Total equity component of the deal	71
Debt	
7-Year senior debt	140
9-Year mezzanine debt	40
Other debts	30
Total debt component of the deal	210

This acquisition made ATL the world's second biggest ever cross-border acquisition by an Indian company at that time. The acquisition had the perfect blend, ATL, the leader in the packaged tea segment with a presence in the developing countries through exports and FTL, the second largest tea brand in the world with a presence in developed economies of USA, Canada, Europe and Australia. The integrated vistas offered access to new markets and products to both companies as well as synergies in tea buying and blending.

The FTL acquisition was perceived negatively by the market. For the next three years, the company carefully chose an approach to integrate the processes and explore synergies between the two companies. While maintaining operational independence, the emphasis throughout was on revenue and growth and not on cost reduction. A common mission-vision statement for both the companies was formulated after a debate in a joint-management group of the two companies and the integration process was smooth.

(i) What do you mean by 'leveraged buy-out' (LBO) ?

(3 marks)

(ii) What are the important characteristics of LBO ?

(3 marks)

(iii) How is LBO different from common restructuring strategies ?

(3 marks)

(iv) What are the perceived benefits of this acquisition from ATL's point of view ?

(3 marks)

(v) Why did ATL choose LBO as a restructuring strategy ?

(4 marks)

3. (a) What do you mean by takeover bids ? Distinguish between 'partial bid' and 'competitive bid' in accordance with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(6 marks)

(b) Aastha Ltd. amalgamated with Magic Ltd. which was 15 days old company. An objection was raised that since Aastha Ltd. is a new company having no assets and liabilities, the amalgamation should not be allowed. Whether the objection is tenable? Discuss in the light of case law.

(6 marks)

(c) You are the Company Secretary of Good Luck Ltd. Your company has planned to make an open offer for acquisition of 20% of the paid-up capital of Vinod Minerals Ltd. What legal documents you are required to keep ready under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ?

(4 marks)

4. (a) "The court is duty-bound to ascertain the *bonafide* of a scheme. The court will not act merely as a rubber stamp while sanctioning a scheme." When would the court not sanction a scheme ? Support your answer with relevant case law.

(8 marks)

(b) Green Ltd. is currently dealing in bulk drugs. White Ltd. is a leading pharmaceuticals company having presence all over the country. After continuous negotiations, it was decided that Green Ltd. would merge into White Ltd. As a Company Secretary of White Ltd., draft a Board resolution for approval of the scheme of amalgamation for which a meeting of Board of directors of White Ltd. is convened.

(8 marks)

5. Attempt ***any four*** of the following citing relevant legal provisions and judicial pronouncements, if any :

(i) A meeting of members of Shivi Ltd. was convened under the orders of the court to consider a scheme of compromise and arrangement. The meeting was attended by 200 members holding 5,00,000 shares in aggregate. 75 members holding 4,00,000 shares voted for the scheme, others voted against the scheme. Is the scheme approved in the eyes of law ?

(ii) A few non-banking finance companies could not fulfil the RBI guidelines regarding minimum net worth. Thus, they individually decided to amalgamate to jointly achieve the minimum net worth and the scheme was duly approved in the respective company meetings. Is the amalgamation valid ? Give reason.

(iii) A scheme of amalgamation of Rani Ltd. with Minakshi Machine Tools Ltd. was presented to the High Court for sanction after the scheme was approved by an overwhelming majority of shareholders and secured as well as unsecured creditors of both the companies at their respective meetings held under section 391. While the scheme was pending before the High Court, some of the members requisitioned an extra-ordinary general meeting for the purpose of requesting Rani Ltd. to negotiate with Minakshi Machine Tools Ltd., as according to the requisionists, the exchange ratio was not fair and reasonable. Can the directors refuse to call the extra-ordinary general meeting ? Discuss.

(iv) "Amalgamation order can be passed before opinion is expressed by BIFR in favour of winding-up." Comment.

(v) You are the Company Secretary of Madhuri Ltd. which has just merged with Aaish Ltd. The State Government has sent a notice for payment of stamp duty on the court order. However, the financial controller of your company is of the opinion that as this is a court order, there is no liability to pay stamp duty. Advise.

(4 marks each)

6. (a) Why would you recommend 'discounted cash flow' (DCF) technique as a method for valuation of securities ?

(6 marks)

(b) Big Ltd., a manufacturer of cycles, is contemplating acquisition of Small Ltd., a tyre manufacturing company for Rs.6,00,000. Big Ltd. has a high rate of financial leverage, which reflects in its 13% cost of capital. In the post acquisition scenario, Big Ltd. expects an overall cost of capital of 10% due to low financial leverage of Small Ltd. The post acquisition annual cash flows estimation attributable to the target company which is expected to spread over a period of 20 years is Rs.75,000.

Decide about acceptability of the acquisition, if —

(i) you consider post acquisition cost of capital as 10%; and

(ii) you do not consider the effect of changed capital structure on cost of capital and hence used 13% discount rate.

(Note : The present value of an annuity of one rupee discounted at 10%, 12% and 13% for 20 years is 8.514, 7.469 and 7,025 respectively.)

(5 marks)

(c) Briefly describe the factors which are required to measure the success/failure of a merger or acquisition. *(5 marks)*

7. (a) Explain the powers of Central Government to direct amalgamation of two or more companies in public interest.

(6 marks)

(b) What are the common mistakes made by the corporates which lead to pitfalls in merger and acquisitions ?

(6 marks)

(c) Briefly state the need and importance of following 'forms' in the process of mergers and acquisitions. Attempt *any* ***two*** *:*

(i) Form No. 33

(ii) Form No. 21

(iii) Form No. 37

(iv) Form No. 39.

(2 marks-each)

8. While most of the Indian companies are going all out for strategic alliance for marketing and co-branding with the world's top MNCs, East India Hotels (EIH) (owners of Oberoi Group of Hotels) has decided to terminate its strategic alliance for marketing and co-branding with the US-based hospitality chain, Hilton International with effect from April, 2008. The Oberoi-Hilton alliance came into effect in 2004. The alliance was a 15-Year franchisee agreement for eight Trident-Hilton properties. Currently, there are seven Trident-Hilton properties across India.

EIH Chairman P.R.S. Oberoi said, "We wish to independently pursue the development of the Trident brand in India but could not do so and maintained Hilton alliance at the same time." The new properties set to open at Bandra Kurla in Mumbai, at new international airport in Bangalore, and at Hitech City in Hyderabad and other potential properties to come at Kolkata, Chandigarh and Delhi are destinations for the Trident brand. According to S.S. Mukherji, Vice-Chairman, EIH, Hilton's multi-brand strategy in India could dilute the positioning of the Trident brand. "Using the Hilton name along with mid-market brand such as Garden **Inn** can send confusing signals to the customers", he added. Industry analysts feel - EIH has taken a robust step. They have a strong brand through their own distribution system. It also shows the confidence they have in developing and growing the Trident brand in the country.

You are required to answer the following questions —

(i) "Alliances work if you have good reasons to stay together." Explain the statement. *(3 marks)*

(ii) Why did EIH decide to terminate the strategic alliance with Hilton International ? *(3 marks)*

(iii) 'Is parting ways with foreign partners a new phenomenon ? *(3 marks)*

(iv) What is 'brand positioning' ? *(3 marks)*

(v) How EIH has dared to take the robust step to terminate Hilton alliance ? *(4 marks)*