

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 7

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

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

**PART – A**

1. (a) While combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited under section 6 of the Competition Act, 2002, certain transactions are exempted and are, therefore, not prohibited.

List out the transactions or dealings which are not hit by section 6 of the Competition Act, 2002.

(5 marks)

- (b) The draftsmen of the Competition Act, 2002 had demonstrated utmost concern and care in identifying questionable combinations and prohibiting such combinations. In order to achieve this object, extra territorial jurisdiction is conferred on the Competition Commission of India (CCI) to inquire and pass orders even if both the parties to an agreement are outside India.

List out the circumstances where the CCI can pass orders consequent to extra territorial jurisdiction conferred on it.

(5 marks)

- (c) Brown Ltd. committed certain defaults in repayment of deposits. Subsequently, the said defaults were remedied and a period of 30 months has lapsed after such defaults ceased to subsist.

Brown Ltd. desires to purchase its own shares. Do you think Brown Ltd. is entitled to proceed with the proposed buy-back of shares ?

Give reasons for your answer quoting the relevant provisions applicable to the issue under consideration.

(5 marks)

- (d) The paid-up capital of Cool Ltd. as on 31<sup>st</sup> March, 2014 is ₹10 crore and its free reserves as on the same date was ₹10 crore. Cool Ltd. proposes to buy-back its shares for a value upto 15% of its paid-up capital.

State whether the Board of Cool Ltd. can approve buy-back of company's shares upto 15% of the paid-up capital under the provisions of the Companies Act, 2013.

(5 marks)

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

2. (a) Aspire Ltd. is the target company in respect of which an acquirer made an open offer for acquisition of shares and the open offer has commenced. Dreams Ltd. is the subsidiary of Aspire Ltd.

Dreams Ltd. signed the loan agreements with financial institutions for major capital expenditure for its expansion project and started withdrawing the loan amount during the open offer period. The said borrowings are clearly within the ordinary course of its business.

No approval was taken by Aspire Ltd. from its shareholders nor did Dreams Ltd. obtain the approval from its shareholders. The internal auditors have opined that the target company has violated the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as no approval was obtained by the shareholders of the target company for the borrowings effected. The statutory auditors have agreed with the views of the internal auditors and pointed out that the target company Aspire Ltd. has failed in its obligations that are required to be complied with during the offer period in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as approval of its members by way of special resolution through the mechanism of postal ballot was not obtained. Moreover, they maintained that Dreams Ltd. borrowed money for its expansion programme when the open offer of target company was on and therefore Dreams Ltd. violated the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

State in clear terms whether there is a violation of the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 by Aspire Ltd. or Dreams Ltd.

(6 marks)

: 3 :

- (b) As per the scheme of arrangement, textiles undertaking of Cotton Ltd. is proposed to be demerged to Jutewel Ltd. under sections 391 and 394 of the Companies Act, 1956. One of the conditions of the aforesaid scheme is that any excess in the value of net assets of textiles undertaking proposed to be transferred to the resulting company shall be credited to general reserve.

If you as an advisor to the parties to the arrangement are asked to advise, what will be your response considering the applicable accounting standards and legal provisions applicable to the aforesaid case.

(5 marks)

- (c) In an open offer, the schedule of activities and the timelines of all competing offers shall be identical. Explain.

(4 marks)

**OR (Alternate question to Q.No. 2)**

**2A.** Comment on the following statements :

- (i) In terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, 'offer period' and 'tendering period' are one and the same.

(3 marks)

- (ii) The acquirer can opt out of the open offer process at any point of time by informing stock exchange wherein the shares of the target company are listed and furnishing a copy of the communication to the target company.

(3 marks)

- (iii) Revision of offer price can be made by the acquirer upward but that can be exercised only in the event of there being a competing offer.

(3 marks)

- (iv) Acquisition pursuant to a scheme made under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 or any statutory modification thereto shall be automatically exempt from the obligation to make an open offer under Regulations 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 but not the acquisition made pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(3 marks)

- (v) The acquisition of shares resulting from invocation of pledge by a public financial institution is exempt from open offer obligation.

(3 marks)

3. (a) Flying Ltd. got demerged and the resulting company Soars Ltd. was formed. It was a demerger within the meaning of section 2(19AA) of the Income-tax Act, 1961. Your advice is sought by Flying Ltd. regarding the tax concession available to a demerged company.

(5 marks)

- (b) Alps (Pvt.) Ltd. is taking over an unlisted company Mountain Ltd., through the route stipulated under section 395 of the Companies Act, 1956. Alps (Pvt.) Ltd. wants to compulsorily acquire the shares of minority shareholders of Mountain Ltd. A group of minority shareholders objected to the compulsory acquisition of their shares by Alps (Pvt.) Ltd.

- (i) Will their objections stand good as per the provisions under section 395 of the Companies Act, 1956 ?
- (ii) Will Alps (Pvt.) Ltd. be entitled to carry forward unabsorbed depreciation and accumulated losses of Mountain Ltd ?

(5 marks)

- (c) Hardnut Ltd. wants to buy-back its equity shares. The company has equity share capital of ₹100 crore (face value of ₹10 fully paid-up) and free reserves of ₹200 crore. Partly paid equity shares are ₹60 crore. Preference share capital of face value ₹100 fully paid is ₹40 crore. The company seeks your opinion about the quantum of shares that can be bought back.

(5 marks)

#### PART – B

4. (a) Zen Ltd. has earned a profit of ₹40,00,000 before tax for the year ended 31<sup>st</sup> March, 2014. Tax amounts to ₹11,40,000. The share capital of the company is ₹60,00,000 (4,00,000 equity share of ₹10 each and 2,00,000, 7% preference shares of ₹10 each). Compute earnings per share (EPS) of Zen Ltd.

(5 marks)

: 5 :

- (b) Valuation of shares of an enterprise demands a detailed and comprehensive analysis embracing a host of factors at macro and micro level.

List out five important factors that influence the determination of price of the shares.

(5 marks)

- (c) How is the open offer price for acquisition of shares of a listed target company whose shares are frequently traded determined ?

(5 marks)

5. (a) Various judicial pronouncements on valuation principles demonstrate salient dicta of courts in relation to the subject. You are required to list out the principles set-out by the courts in this regard.

(6 marks)

- (b) Blue Ltd. and Moon Ltd. have agreed to amalgamate to form a new company Blue Moon Ltd. After negotiation, the two companies have decided on the balance sheets as given below :

	<i>Blue Ltd.</i>	<i>Moon Ltd.</i>
	<i>(₹ in '000)</i>	
	<i>Blue Ltd.</i>	<i>Moon Ltd.</i>
<i>EQUITY AND LIABILITIES</i>		
(1) Shareholders' funds		
(a) Share capital		
Equity shares of ₹10 each	5,00,000	10,00,000
(b) Reserves and surplus		
Reserve fund	20,000	—
Surplus	40,000	40,000
(2) Current liabilities		
Trade payables	40,000	60,000
	<b>TOTAL</b>	
	<u>6,00,000</u>	<u>11,00,000</u>

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	<i>Blue Ltd.</i>	<i>Moon Ltd.</i>
		<i>(₹ in '000)</i>
<b>ASSETS</b>		
(1) Non-current assets		
(i) Tangible assets		
(a) Land and building	2,00,000	4,25,000
(b) Plant and machinery	1,70,000	2,75,000
(ii) Intangible assets (Goodwill)	50,000	1,00,000
(2) Current assets		
(a) Inventories	80,000	1,20,000
(b) Trade receivables	30,000	1,00,000
(c) Cash and cash equivalents	70,000	80,000
	<b>TOTAL</b>	
	<u>6,00,000</u>	<u>11,00,000</u>

The assets and liabilities are taken over by Blue Moon Ltd. Compute the total number of shares of the Blue Moon Ltd. having a value of ₹10 each to be issued to the shareholders of Blue Ltd. and Moon Ltd. using net asset value method.

(5 marks)

- (c) In which circumstances, is the market based approach to valuation not relevant and useful ?

(4 marks)

**PART – C***(Attempt all parts of either Q.No. 6 or Q.No. 6A)*

6. Write notes on the following :

- (a) Four grounds on which a company may be wound-up
- (b) 'State' with reference to the UNCITRAL model law
- (c) Types of foreign proceedings covered
- (d) Protection of creditors and other interested persons under the UNCITRAL model law
- (e) Mode of recovery of debt determined by Debt Recovery Tribunal (DRT).

(4 marks each)

*OR (Alternate question to Q.No. 6)*

- 6A.** (i) "The effects provided by Article 20 of the UNCITRAL model law in respect of recognition of a foreign main proceeding are discretionary in nature." Comment whether the statement is correct or not and state the effects of recognition of a foreign main proceeding as per Article 20.

*(5 marks)*

- (ii) "The official liquidator cannot have recourse to the doctrine of election. He can challenge the order passed by the recovery officer and appeal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 but cannot approach the company court to set aside the auction or confirmation of sale when the same has been confirmed by the recovery officer under the Act."

Comment on the above statement giving the options, if any, available to the official liquidator in this regard.

*(5 marks)*

- (iii) The provisions of the Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 do not apply to certain cases. List out six such cases where the provisions of the Act do not apply.

*(5 marks)*

- (iv) Explain the salient features of Chapter 11 dealing with the US Bankruptcy Code.

*(5 marks)*