

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 10

NOTE : *Answer ALL Questions.*

1. Read the following case study carefully and answer the questions given at the end :

Historically, the pharmaceutical industry has been a profitable one. Between 2002 and 2006, the average rate of return on invested capital (ROIC) for firms in the industry was 16.45%. Put differently, for every dollar of capital invested in the industry, the average pharmaceutical firm generated 16.45 cents of profit. This compares with an average return on invested capital of 12.76% for firms in the computer hardware industry, 8.54% for grocers, and 3.88% for firms in the electronics industry. However, the average level of profitability in the pharmaceutical industry has been declining of late. In 2002, the average ROIC in the industry was 21.6%; by 2006, it had fallen to 14.5%.

The profitability of the pharmaceutical industry can be best understood by looking at several aspects of its underlying economic structure. First, demand for pharmaceuticals has been strong and has grown for decades. Between 1990 and 2003, there was a 12.5% annual increase in spending on prescription drugs in the United States. This growth was driven by favourable demographics. As people grow older, they tend to need and consume more prescription medicines, and the population in most advanced nations has been growing older as the post-World War II baby boom generation ages. Looking forward, projections suggest that spending on prescription drugs will increase between 10 and 11% annually.

Second, successful new prescription drugs can be extraordinarily profitable. For example, Lipitor, the cholesterol lowering drug sold by Pfizer, was introduced in 1997, and by 2006 this drug had generated a staggering \$12.5 billion in annual sales for Pfizer. The costs of manufacturing, packing, and distributing Lipitor amounted to only about 10% of revenues. Pfizer spent close to \$500 million on promoting Lipitor and perhaps as much again on maintaining a sales force to sell the product. This still left Pfizer with a gross profit of approximately \$10 billion. Since the drug is protected from direct competition by a twenty-year patent, Pfizer had a temporary monopoly and could charge a high price. Once the patent expired, in 2010, other firms were able to produce “generic” versions of Lipitor and the price fell substantially within a year.

Competing firms can produce drugs that are similar (but not identical) to a patent-protected drug. Drug firms patent a specific molecule, and competing firms can patent similar, but not identical, molecules that have a similar pharmacological effect. Thus, Lipitor does have competitors in the market for cholesterol lowering drugs, such as Zocor, sold by Merck, and Crestor, sold by AstraZeneca. But these competing drugs are patent protected. Moreover, the high costs and risks associated with developing a new drug and bringing it to market limit new competition. Out of every 5,000 compounds tested in the laboratory by a drug company, only five entered clinical trials, and only one of these will ultimately make it to the market. On an average, estimates suggest that it costs some \$800 million and takes anywhere from ten to fifteen years to bring a new drug to market. Once in the market, only three out of ten drugs ever recoup their R&D and marketing costs and turn a profit. Thus the profitability of the pharmaceutical industry rests on a handful of blockbuster drugs. At Pfizer, the world’s largest pharmaceutical company, 55% of revenues were generated from just eight drugs.

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To produce a blockbuster, a drug company must spend large amounts of money on research, most of which fail to produce a product. Only very large companies can shoulder the costs and risks of doing this making it difficult for new companies to enter the industry. Pfizer, for example, spent some \$7.44 billion on R&D in 2005 alone, equivalent to 14.5% of its total revenues. It is a established fact that it is difficult to get into the pharma industry. Although a large number of companies were ranked among the top twenty in the industry in terms of sales in 2005, most failed to bring standard products to the market.

In addition to spending on R&D, the incumbent firms in the pharmaceutical industry spend large amounts of money on advertising and sales promotion. While the \$500 million a year that Pfizer spends promoting Lipitor is small relative to the drug's revenues, it is a large amount for a new competitor to match, making market entry difficult unless the competitor has a significantly better product.

There are also some big opportunities on the horizon for firms in the industry. New scientific breakthroughs in genomics are holding out the promise that within the next decade, pharmaceutical firms might be able to bring to market new drugs that treat some of the most intractable medical conditions, including Alzheimer's, Parkinson's disease, cancer, heart disease, stroke, depression, anxiety, stress and AIDS.

However, there are some threats to the long-term dominance and profitability of industry giants like Pfizer. First, as spending on health care rises, politicians look for ways to limit health care costs, and there is likelihood of some forms of price control on prescription drugs. Price controls are already in effect in most developed nations, and although they have not yet been introduced in the United States, they could be.

Second, twelve of the thirty-five top-selling drugs in the industry lost their patent protection between 2004 and 2009. By one estimate, some 28% of the global industry's sales of \$307

billion was exposed to generic challenge in the United States alone, due to drugs going off patent between 2006 and 2012. It is not clear to many industry observers whether the established drug companies have enough new drug prospects in their pipelines to replace revenues from drugs going off patent. Moreover generic drug companies have been aggressive in challenging the patents of proprietary drug companies and in pricing their generic offerings. As a result, their share of industry sales has been growing. In 2005, they accounted for more than half by volume of all drugs prescribed in the United States, up from one-third in 1990.

Third, the industry has come under renewed scrutiny following studies showing that some FDA approved prescription drugs, known as COX-2 inhibitors, were associated with a greater risk of heart attacks. Two of these drugs, Vioxx and Bextra, were pulled from the market in 2004.

Questions :

- (a) Drawing on the Five Forces Model of Michael E. Porter, explain why the pharmaceutical industry has historically been a very profitable industry.
- (b) There are apprehensions in the pharma industry that its profitability, measured by rate of return on invested capital (ROIC) may decline in the near future. Why do you think it may occur ?
- (c) What are the prospects and opportunities for the pharma industry going forward ?
What are the threats that are discernible ?
- (d) What must pharma industry do to exploit the opportunities ? What strategies should the industry adopt to counter the threats ?

(10 marks each)

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2. (a) Discuss :

- (i) Whether the Companies Act, 2013 bars filing of a joint application for compounding of offence by a defaulting company along with its officers in default ?
- (ii) Whether the Companies Act, 2013 bars filing of a joint application for compounding of the same offence committed in different years ?
- (iii) Whether an offence punishable under the relevant provisions of the Companies Act, 2013 with 'imprisonment or fine', if repeated within a period of three years results into a mandatory imprisonment for the defaulters and whether the same can be compounded or not ?

(6 marks)

(b) The legal principle is that coercive recovery proceedings cannot be initiated against a sick company.

Manmohan and Raj Kumar were guarantors to the loan obtained by a sick company. Recovery proceedings against them were initiated before the Debt Recovery Tribunal (DRT). They contended that recovery proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 are to be treated as a suit and if the principal borrower is declared as a sick company, proceedings cannot lie or be continued against the guarantors. Will they succeed in getting protection under section 22A of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) ? Give reasons in support of your answer.

(6 marks)

3. (a) The elder son of Prem Kumar Biswas was a truck driver with one Bidhan Chander Roy. He met with an accident while on his way to deliver consignment of the owner in the truck from Kolkata (West Bengal) to Lucknow (Uttar Pradesh). He sustained severe injuries on the head and died on the spot.

Prem Kumar Biswas filed for compensation under the Employees State Insurance Act, 1923 and the Commissioner allowed a compensation of Rs. 15,20,268.

Aggrieved by the order, the Insurance company preferred an appeal before the High Court in Kolkata. One of the contentions of the insurance company was that the deceased lost his life as a result of his own negligence and that Prem Kumar Biswas was not entitled to any compensation.

There was no document on record to prove the exact amount of wages being earned by the deceased at the time of the accident. But it was proved that the deceased was a highly skilled workman and was often required to undertake long journeys outside the State in the line of duty. The vehicle he used to ply had a registered National Route Permit.

The High Court set aside the order of the Commissioner for workmen's compensation and reduced the amount of compensation to Rs. 11,00,000.

Prem Kumar Biswas intends to prefer an appeal before the Supreme Court challenging the correctness of the impugned judgement of the High Court.

Will he succeed ? Give reasons in support of your answer.

(6 marks)

- (b) Ramesh Kumar and Jainendra Singh (respondants) had asked following information from RBI under the Right to Information Act, 2005 :

- (i) Details of the reports pertaining to investigation and audit carried out by RBI and details of past 20 years investigation with respect to cooperative banks.

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- (ii) Details of the report sent by RBI to the Finance Ministry with respect to FEMA violations committed by several commercial banks.
- (iii) Details of the inspection reports of apex cooperative banks.
- (iv) Details of the loans taken by the industrialists that have not been repaid and about the names of the top defaulters who have not repaid their loans to public sector banks.
- (v) Details of the show cause notices and fines imposed by the RBI on various banks.

RBI refused to provide the requisite information on the grounds of economic interest, commercial confidence, fiduciary relationships with other banks and the public interest.

Is the refusal by the RBI tenable ? Give reasons in support of your answer.

(6 marks)

4. (a) A multiproduct company catering to applications in diverse sectors had borrowed from various financial institutions including Kundan Bank Ltd. A corporate debt restructure plan (CDR) was framed between 19 lenders and the company in 2014 and a master restructuring agreement (MRA) was made by which funds were to be infused by the creditors and certain obligations were to be met by the debtors. The aforesaid restructuring plan was implementable over a period of 2 years.
- On 07-12-2016 Kundan Bank Ltd. made an application in which it was stated that the company being a defaulter within the meaning of the Insolvency and Bankruptcy Code, 2016, the insolvency resolution process ought to be set in motion. To this application, a reply was filed by means of an interim application on behalf of the company by the erstwhile Directors. It was claimed that there was no debt legally due in as much as vide two notifications issued under the Maharashtra Relief Undertakings (Special Provision Act), 1958 (hereinafter referred to as the Maharashtra Act), all

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liabilities of the appellant and remedies for enforcement thereof were temporarily suspended for a period up to 18-07-2017.

The company made a second application on 16-1-2017. It pleaded that owing to non-release of funds under the MRA, it was unable to pay back its debts.

Will the company succeed in its contentions ? Give reasons in support of your answer.

(6 marks)

- (b) CTVN and Channel 10 telecasted Mahabharat TV serial in dubbed form in Bangla language in the State of West Bengal. The co-ordination committee comprising film and TV entities in the State banned the telecast of the dubbed version of the serial contending that it was affecting the TV and film industry of the State.

CTVN and Channel 10 intend to contest the ban before the Competition Commission of India.

Discuss whether :

- (i) Activities in which the co-ordination committee indulged can be treated as 'agreement' for the purposes of section 3 of the Competition Act, 2002 and the Co-ordination Committee would be covered by the definition of 'person' under 2(l) of the Act ?
- (ii) The act of banning of the TV serial amounts to violation of the provisions of section 3(3)(b) of the Competition Act, 2002 ?

(4+2=6 marks)

5. (a) Ramakrishnan was employed by the Mukateshwara Silk Company Ltd. at its registered office in Mumbai in the dyeing section in the year 1988. He was later on promoted in 1992 and again in 2000 and continued to be located at the company's registered office in Mumbai. The company in its orders of transfer located Ramakrishnan

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at the company's establishment in Panjim (Goa) in 2005 and again transferred him at company's another establishment in Jamnagar (Gujarat) in 2006. However, Ramakrishnan's services, were terminated in 2007 due to the closure of the establishment in Jamnagar.

Aggrieved by the order of termination Ramakrishnan intends to institute a suit in the Labour Court in Mumbai under the Industrial Disputes Act, 1947. Will he succeed ? Give reasons in support your answer.

(6 marks)

- (b) Robert Steel Tube Co. Ltd. had applied for allotment of 2500 acres of land on 30-6-1994 and in principle approval of allotment of 2500 acres of land was given on the terms and conditions laid down in the policy decision of the State Government as revised on 25-1-1995 for the establishment of the steel plant.

Robert Steel Tube Co. Ltd. deposited Rs. 1.25 crores with the Haryana Industrial Development Corporation Ltd. (Corp.) on 3-4-1995 and took possession of 1756.29 acres of land in the first phase in 1996. However, the company did not execute the lease deed with the Corporation. Ultimately, on 25-7-2003 on failure to get the lease deed executed, the land was resumed and possession letter of 1756.29 acres of land was cancelled by the Corporation. The amount of Rs. 1.25 crores deposited by the company was forfeited and adjusted towards compensation for use and occupation of the land and damages.

Out of the resumed land, the Corporation allotted 934.31 acres of land to other units. Robert Steel Tube Co. Ltd. made unsuccessful representations to the Corporation for allotment. Thereafter, the company filed a writ petition before the High Court for allotment of the balance land of 821.98 acres to it.

Will the company succeed in its petition against the Corporation ? Give reasons in support of your answer.

(6 marks)

6. Luke Graves (Luke) is the long-serving Chief Executive Officer (CEO) of Hornbill plc, a UK listed company. He had a meeting with the newly-appointed Chairman of the company, Ross Plank (Ross), who is married to Luke's sister. A number of different items were on the agenda for discussion. Luke said that he had recently had a meeting with two institutional shareholders in the company, who together held 5% of the equity shares. He had also discussed the company's performance over the past few months with them and they had been pleased by the profit forecasts that he had given them. The company's results would be announced to the stock market within the next two weeks. Luke added that he had also discussed the company's main business strategies with these shareholders and had informed them that he intended to establish a strategy committee within the company, consisting of the executive directors and other senior executives. Luke and Ross later on discussed the retirement and re-election of Board of Directors at the next annual general meeting of the company. Luke said there was an issue with John, one of the directors, who would be retiring by rotation. John had been an independent non-executive director for almost nine years. He was very experienced and had contributed enormously while attending meetings of the Board. He was considered to be too valuable to lose from the Board, but there was now a problem with his independent status. Luke felt that he was still as independent now as he was when he first joined the Board. Luke also informed Ross that he had arranged for additional training for two Board directors : one of the non-executive directors and also the marketing director.
- (a) On the basis of above-mentioned facts, what weaknesses are discernible in the corporate governance practices of the company ?
- (b) What would be your recommendations and suggestions regarding the appropriate practices to be followed on the weaknesses identified by you ?

(6 marks each)