

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.

### PART - A

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

1. (a) "In modern business world, business captains aim to capture market share and establish their rein in the product/service line and thereby increase their profitability. For this, their approach remains different at different times. Sometimes, they resort to 'friendly or hostile takeover route' and sometimes take 'amalgamation/merger route', the latter route being a long drawn process due to various approvals involved including the approval from shareholders and creditors of both the companies. But their destination remains the same."

In light of the above statement, answer the following :

- (i) If the acquiring company or transferee company, as the case may be, is profitable and healthy one and target company or amalgamating company is losing one, which route is most advantageous from tax planning point of view ?
- (ii) What are the qualifying conditions to avail tax benefits for claiming accumulated losses ?
- (iii) What are the path breaker(s)/hindrance(s) in the success of a hostile takeover ? Mention any three such reasons.
- (iv) If the business captain has no liquid funds in hand, which option is preferable ?
- (v) In the long-term, which option is more stable and why ?

(3 marks each)

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

- (i) Creditors' approval to the scheme of amalgamation is mandatory for court's sanction and this approval is obtained at the general meeting convened by the company.
- (ii) Where a scheme is not approved at a meeting by the requisite majority but is subsequently approved by individual affidavits, the court cannot sanction the scheme.

- (iii) The listed companies are required to file the scheme of merger or amalgamation with all the stock exchanges where the shares of the company are listed at least sixty days prior to filing it with the High Court. *F*
- (iv) In a scheme of merger/amalgamation, the court is empowered to order the transfer of undertaking, properties or liabilities only wholly and not in part.
- (v) A person holding less than 25% voting rights/shares in a target company cannot make an open offer unless he crosses the threshold limit of 25%. *F* (2 marks each)

2. (a) What are the approvals required in a scheme of merger ?

(8 marks)

(b) Explain the provisions of automatic route of external commercial borrowings (ECBs).

(7 marks)

3. (a) It is a general principle followed in case of arrangement and amalgamation that the transferor companies are dissolved without hassles of winding-up process. You are Company Secretary of a transferor company and have obtained the court order and filed it with the Registrar of Companies. Do you think that dissolution process is over automatically or some other formalities still remain to be completed for the dissolution to take effect ? Explain.

(5 marks)

(b) For a merger, it is the shareholders who decide whether the company will merge with another company or not. There is no hostile process/method to force merger by the other company. However, the Companies Act, 1956 empowers someone who can force amalgamation of more than one company in public interest. You are required to answer the following :

- (i) Which authority can force the merger ?
- (ii) What is the underlying situation for that ?
- (iii) What is the remedy in the hands of the affected persons ?
- (iv) How is it implemented ?
- (v) What are the pre-conditions in case of amalgamation of banks ?

(1 mark each)

(c) Enumerate the reasons inducing companies to go for international acquisitions.

(5 marks)

4. (a) Explain the provisions of buy-back under the Companies Act, 1956 with reference to Board resolution and shareholders' resolution. What is the maximum quantum of buy-back allowed under the Act ?

(9 marks)

- (b) Draft a notice convening a meeting of unsecured creditors in a scheme of merger.

(6 marks)

5. (a) Target Company Ltd. (TCL) has paid-up share capital of 10,00,000 equity shares fully paid-up and the shares are listed with recognised stock exchange of the State where the company is registered. Hemant is holding 1,00,000 equity shares of TCL. However, after taking into account the equity shares held by his associates and persons acting in concert (PAC), the holding of equity shares has reached the threshold limit of 25%, i.e. 2,50,000 equity shares, which is a trigger point for making open offer. Hemant is in no mood to make an open offer and has stopped acquiring further equity shares from the market.

However, for expansion plans, the company has offered rights shares in the ratio of 1:2, i.e., 1 share for every 2 shares held. After success of rights issue, the enhanced equity share capital of the company shall be 15,00,000 equity shares of ₹10 each aggregating to ₹1.5 crore and Hemant along with PAC, etc., will have 3,75,000 equity shares, if they apply for rights entitlement only and no additional shares. Hemant along with PAC, etc., applies for the rights entitlement only. Hemant is confused and seeks your opinion as a Practicing Company Secretary regarding the following :

Whether Hemant would need to make open offer for applying in rights issue as he alongwith PAC, etc., has already touched the trigger point of 25% paid-up equity share capital of TCL? Give your advice quoting the relevant provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

(6 marks)

- (b) What is the difference between 'demerger' and 'reconstruction' ?

(6 marks)

- (c) What are the factors relevant for 'post-merger evaluation' ?

(3 marks)

**PART – B**

(Answer ANY TWO questions from this part.)

6. (a) 'Winding-up' and 'dissolution' in respect of a company are the same thing. Comment. (5 marks)
- (b) Explain 'preferential payments' in the process of winding-up. (5 marks)
- (c) Briefly describe the role of professionals in the insolvency process. (5 marks)
7. (a) What are the procedural requirements for recognition of foreign proceedings under the UNCITRAL Model Law ? (6 marks)
- (b) What is the composition of Debt Recovery Tribunal (DRT) ? State the qualification and eligibility to get appointment on the same. (5 marks)
- (c) Explain non-performing assets (NPAs) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. (4 marks)
8. (a) "It is cardinal principle of law that a person can be insolvent but a company cannot be adjudged insolvent." Comment. (6 marks)
- (b) State the grounds on which RBI is entitled to exercise its powers under section 4 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to cancel the 'certificate of registration' issued to any asset reconstruction company ? State the procedure being followed by RBI before cancellation of certificate of registration. (5 marks)
- (c) Write short notes on the following :
- (i) Foreign court
  - (ii) Meaning of State.
- (2 marks each)