

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 12

NOTE : Answer ALL Questions.

PART-I

1. ETA Motors Ltd. is an Indian automotive company, headquartered and registered in Delhi, incorporated on 12th May, 2002. The company manufactures vans and buses. The technical experts of the company have an opinion that four critical technological disruptions—mobility, autonomous driving, electric vehicles, and connected technologies—are poised to revolutionize the automotive landscape. The Company besides its plan to increase its market share by 20% to 35% by 2025-26, wants to enter the global market through joint ventures or technology transfers. The company decided to chalk out an expansion strategy for the same.

K&G Associates, the official and legal advisors to the Company were asked to deliberate on the expansion strategies. In their presentation to the Board of directors of ETA Motors Ltd., they explained that Mergers and Acquisitions (M&A) and Takeovers are common occurrences in the business world as entities aim for inorganic growth and diversification. By merging, the companies hope to reap the benefits by becoming bigger and dominating and also through tax benefits, economies of scale, acquiring new technology and improved market reach and industry visibility. After gaining an insight into the M&A opportunities, ETA Motors Ltd. created a separate (M&A) team to look out for acquisition targets as the Board of Directors felt that strategic assessments of companies, industry expertise, due diligence, merger integration, and operational improvements represent areas where knowledge and skills are required for the success of a merger or acquisition.

(M&A) team was assigned the task to do the investigating effort and to gather all relevant facts and information about the targets that can influence a decision to enter into a transaction or not. M&A team after their detailed due diligence recommended an unlisted company, Daisy Commercial Vehicle Company Ltd. (DCVL) in South India as a potential target to give ETA Motors Ltd. a major breakthrough on the expansion front. The acquisition offer seemed to open up possibilities for strong synergies like expansion of the product line, good R&D capabilities and new markets.

As Merger & Acquisition process is normally proceeded by formulation of strategy, carrying out due diligence, conducting valuation, ensuring all legal compliances and considering the aspects of stamp duty and other applications, K&G Associates was consulted regarding legal procedures and compliances under various acts and also regarding the valuation aspects of shares.

Both the companies deliberated and discussed together at the Board level and came out with a scheme. The scheme received approval of 96% of the shareholders of DCVL but rest 4% dissented from the scheme.

K&G Associates advised that Section 235 and 236 of the Companies Act, 2013 lays down legal requirements for purpose of takeover of an unlisted company through transfer of undertaking to another company. Where the scheme has been approved by the holders of not less than nine tenth (90%) in value of the shares of the DCVL whose transfer is involved, ETA Motors Ltd., may give notice to the dissenting shareholders that transferee company desires to acquire their shares. The scheme shall be binding on all the shareholders of the DCVL (including dissenting shareholders), unless the Tribunal orders otherwise (i.e., that the scheme shall not be binding on all shareholders). Accordingly, the ETA Motors Ltd. shall be entitled and bound to acquire these shares on the terms on which it acquires under the scheme (the binding provision).

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Accordingly, the circular along with all information as provided in the Act was sent to the dissenting shareholders in Form No : CAA 14 to the last known address of the dissenting shareholders. Some of the shareholders held their shares in DEMAT form.

Based on the above facts, answer the following questions :

- (a) Due diligence is a meaningful analysis of the collected information to arrive at some decision about the potential transaction. Explain the various types of Due diligence which could be conducted by M&A team while finalising a potential company for takeover.
- (b) Whether the company has done sufficient compliance for giving Notice to dissenting shareholders in accordance with Rule 26 A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 which deals with purchase of minority shareholding held in DEMAT form ?
- (c) As the legal advisor of the company, guide the company regarding determination of the price to be paid by acquirer for purchase of equity shares of the minority shareholders of DCVL under the provisions of Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (d) Will the takeover achieved in the above process fall within the meaning of amalgamation under the Income Tax Act, 1961 and will benefits of amalgamation provided under the said Act be available to the acquisition under consideration ?

(5 marks each)

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

2.

(a)

ABC Ltd. is having a share capital of ₹ 35 Crore and XYZ Ltd. is having a share capital of ₹ 45 Crore. DNF Ltd. was formed to take over the business of ABC Ltd. and XYZ Ltd. at a purchase consideration of ₹ 45 Crore and ₹ 38 Crore respectively, payable in shares of DNF Ltd.

The assets and liabilities were taken over at their carrying amounts.

Compute the Goodwill or Capital Reserve.

(5 marks)

(b)

Company ABC purchased 51% equity interest in Company XYZ. The consideration is paid in cash. The relevant dates are as under :

Date of agreement with shareholders –1st June, 2022

Appointed date as per agreement –1st April, 2022

Date of obtaining TRAI Permission –1st July, 2022

Date of payment of consideration –15th July, 2022

What will be the acquisition date ?

Whether the 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control. Discuss.

(5 marks)

(c)

A Ltd. is incurring losses for past 8 years as several of its business units are running under losses. The balance sheet does not reflect the true position of the business, as higher net worth is depicted, than that of the real one. The assets are overvalued and it has many intangible and fictitious assets, which does not depict a true picture of the financial statements. The management of the company approaches Mr. X, a practising Company Secretary to suggest the way out in such a situation. Prepare suggestive measures for Mr. X for resolution of the current status with respect to corporate restructuring.

(5 marks)

Contd.

: 5 :

(d) Flora Ltd. and Fauna Ltd. submitted joint application to National Company Law Tribunal (NCLT) Kolkata which has approved merger into Happy Ltd. and passed an order. Happy Ltd. management is of opinion that West Bengal govt has no authority to levy stamp duty. Here, value of shares allotted by Happy Ltd. is ₹ 500 crore and cash ₹ 57 crore. Citing relevant decided cases, as Company Secretary of Happy Ltd. give advice about legal status for levy of West Bengal state stamp duty and value over which stamp duty will be levied.

(5 marks)

OR (Alternate question to Q. No. 2)

~~Q.A.~~ (i) Outline a list of conditions which companies proposing to enter into fast-track mergers are required to follow under Section 233 of the Companies Act, 2013 along with Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

(5 marks)

(ii) Two insurance companies Goyenka General Insurance and Binani Alliance General Insurance decide to amalgamate.

Since the amalgamation or merger involved companies being regulated by a sectoral regulator like Insurance Regulatory and Development Authority (IRDA), the approval of the Regulators was also taken in addition to compliance with the Companies Act, 2013.

In addition, where an amalgamation takes place between any two or more insurers, the insurer carrying on the amalgamated business has to submit some statements to the IRDA.

Make a list of documents to be submitted under the provisions of Section 37 of the Insurance Act, 1938 in this context.

(5 marks)

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(iii) The Competition Commission of India will have jurisdiction even if both the parties to an agreement are outside India but only if the agreement, dominant position or combination entered into by them has an appreciable adverse effect on competition in the relevant market of India. Comment and explain the extra territorial jurisdiction of Competition Commission of India.

(5 marks)

(iv) Dneers Infotech Ltd., an Indian company, is contemplating to take over Divine Infotech Pvt. Ltd. of Indonesia in accordance with procedures under the provisions of the Companies Act, 2013. Advice top management on key regulations which need to be followed during an inbound merger with respect to the following transactions :

- (i) Transfer of Securities
- (ii) Branch/Office outside India
- (iii) Borrowings
- (iv) Transfer of Assets
- (v) Opening of overseas bank accounts for resultant company

(5 marks)

PART-II

3. (a) Company X, the parent company, is demerging its subsidiary, Company Y, into a separate entity called Y New.

The following information is available for company X and company Y :

1. Company X :

Number of outstanding shares : 10 crores

Market price per share : ₹ 60

2. Company Y :

Number of outstanding shares : 6 crores

Market price per share : ₹ 30

You are required to determine :

— The swap ratio and

— Based on the swap ratio, calculate the number of shares a shareholder would receive in the company Y New if he owns 20,000 shares in Company X.

(5 marks)

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(b) In the process of valuing a business, a detailed, comprehensive analysis and the ability to develop accurate projections and assumptions are necessities. Moreover, application of finance theory and professional judgment in the appropriate places is also required. Hence, every valuer faces a lot of hindrances in the process. Discuss some of the most common hindrances faced by valuers during business valuation process.

(5 marks)

4. (a) PQR Ltd. has decided to issue Sweat equity shares, to compensate its employees for their contributions to the company by way of time, effort, expertise, increasing revenue, improving operational efficiency, or developing innovative products or services etc.

In the light of the provisions under the sub rules of rule 8 of Companies (Share Capital and Debentures) Rules, 2014 w.r.t. issue of sweat equity shares, advise the Board of directors of PQR Ltd. regarding :

- (i) Valuation of sweat equity shares
- (ii) Treatment of the transaction in the books of PQR Ltd.

(b) G-tech solutions is a fast-growing company and is exploring the options for fund raising.

The Management of Company has approached you to determine the valuation of their business using Discounted Cash Flow Market Approach.

Explain the steps involved in this method of valuation of business.

(5 marks each)

PART-III

5. (a) ^{OC.} An application under section 9 of the Insolvency and Bankruptcy Code (IBC), 2016 was filed by N, operational creditor of Delta Pvt. Ltd. and was admitted by the NCLT on 30th July, 2024. Later on, the parties amicably settled the dispute and executed a Memorandum of Understanding on 06th August, 2024. In light of the settlement, Form-FA was received by the IRP on 08th August, 2024 for withdrawal of the Application in terms of Section 12A of the IBC read with Regulation 30A. Accordingly, an Application for withdrawal was filed by the IRP on 09th August, 2024 before NCLT.

During pendency of said Application, a Committee of Creditors (CoC) was constituted consisting of two financial creditors and the 1st meeting of CoC was also held. One financial creditor having 20% of voting shares dissented to allow withdrawal. NCLT refused to entertain the withdrawal application on the ground that it is not supported by 90% vote of CoC. As a Company Secretary of the corporate debtor, advise whether the withdrawal application is tenable citing relevant case laws ?

(5 marks)

- (b) Upon commencement of the Corporate Insolvency Resolution Process (CIRP) in ABC Ltd. under IBC, a complaint was found to be pending under section 138 of the Negotiable Instruments Act, 1881 against Mr. X, Chairman and Managing Director of ABC Ltd. In the matter, NCLT also approves the resolution plan with a change

monitors

in management and control in the company. Thereupon, Mr. X sought to quash the prosecution under section 138 of the Negotiable Instruments Act, 1938 in terms of the protection available to him under Section 14 of the IBC. Discuss the possibility of getting the abovesaid prosecution quashed, citing relevant case laws under IBC. (5 marks)

(e) TERO Ltd. entered into supply contract with Telecom Regulatory Authority of India (TRAI) for supply of fibre optic cables. TRAI has defaulted in paying invoice value as per demand notice issued to them. TERO Ltd. filed CIRP application in NCLT filed against TRAI. The said CIRP application was rejected. Discuss the legal status of NCLT order and advise TERO Ltd. (5 marks)

(d) Mr. X, who is a Practising Company Secretary is approached by an Association of Small Enterprises. The members of Association want to understand Pre-Packaged Insolvency Resolution Process. As an Assistant to Mr. X, you are required to prepare a brief on Pre-Packaged Insolvency Resolution Process, indicating features of Pre-pack insolvency resolution process under IBC and its benefits to make the members of Association understand the features. (5 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (a) Resolution Professional (RP) of TMT Ltd. filed an application seeking approval of the resolution plan submitted by a resolution applicant, who is a Financial Creditor with 82.7% voting share in the CoC. The plan provided that the resolution applicant will sell the corporate debtor in two years. It provides for generation of income from

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ongoing operations and no upfront money is being brought in by the resolution applicant. Comment in light of relevant case laws, will the resolution plan be approved by NCLT ?

(5 marks)

(b) A key duty of the RP under section 25(2)(h) of the IBC is to invite Prospective Resolution Applicants (PRAs), who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans. The details pertaining to the steps for inviting, submitting, evaluating, and approving the resolution plan (and timelines in relation to them) are detailed in the CIRP Regulations.

Give the timelines for the following as provided in the CIRP regulations.

- (i) Publish brief particulars of the invitation for expression of interest in Form G of the Schedule-I.
- (ii) Last date for submission of expression of interest.
- (iii) Objection for inclusion or exclusion of a PRA in the provisional list.
- (iv) Issue of information memorandum, evaluation matrix and a request for resolution plans.
- (v) Submission of resolution plans to the RP.

(5 marks)

(c) While the Insolvency professionals assist in the insolvency resolution proceedings envisaged in the IBC, the Information Utility, on the other hand, collect, collate, authenticate and disseminate financial information. Explain the purpose of formation of Information utilities highlighting its obligations under Section 214 of the Insolvency and Bankruptcy Code, 2016.

(5 marks)

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(d) The Committee of Creditors recommended the liquidation of the Gopi Ltd. i.e., corporate Debtor and the National Company Law Tribunal (NCLT) i.e., adjudicating authority did not concur with the decision of the Committee of Creditors. Adjudicating Authority discarded the recommendation of the CoC with 87.30% of vote share and gave its own directives overriding the commercial wisdom of the CoC. Citing relevant case laws, discuss as to what will be the merit of appeal filed by Gopi Ltd against National Company Law Tribunal (NCLT) decision in National Company Law Appellate Tribunal (NCLAT) ?

(5 marks)

OR (Alternate question to Q. No. 6)

6A. (i) Creditor means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree holder. Define creditor and citing relevant case laws express your opinion regarding legal tenability of filing of CIRP by decree holder.

(5 marks)

(ii) X was appointed as an official liquidator of ABC Company Ltd. at the time of passing of the order of winding up by NCLT. After few months, X suffered a cardiac arrest and due to his sudden demise, his position has become vacant. Elucidate the powers of Tribunal w.r.t removal and replacement of liquidator in place of X under Section 276 of the Companies Act, 2013.

(5 marks)

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- (iii) Sarwam Technologies Pvt. Ltd. is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455 of the Companies Act, 2013. The Board of directors of Sarwam Technologies Pvt. Ltd. intend to file an application for removal of name of company from the Register of Companies (ROC). The Board of directors called a meeting of shareholders and 66% of the shareholders in terms of paid-up capital gave their consent to the proposal and thereafter the application was filed with ROC.

Discuss the tenability of the application filed with ROC for removal of name.

(5 marks)

- (iv) Critically dwell upon/describe relevant enabling provisions for cross border transactions under Insolvency and Bankruptcy Code, 2016 ?

(5 marks)