ICSI
Previous Year Questions Papers

CORPORATE RESTRUCTURING LAW AND PRACTICE

CORPORATE RESTRUCTURING – LAW AND PRACTICE

Time allowed: 3 hours *Maximum marks: 100*

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

Question 1

(a) You are the Company Secretary of Strong Base Ltd., which has just now taken over Weak Links Ltd. pursuant to a scheme confirmed by the court. The court order has been received. Briefly mention the various steps required to be taken to give effect to the merger. Also mention the various authorities with whom you will file the order of merger to ensure that the records are updated properly in their offices. (12 marks)

(b) Amar Ltd. proposed a scheme of arrangement with its shareholders for the purpose of buying-back the small lot of shares held in physical form. The scheme was approved by majority of shareholders. However, the Registrar of Companies, representing the Central Government, raised an objection that the purpose of the scheme is to buy-back the shares and as such the company ought to have followed the provisions of Section 77A. Discuss in the light of judicial pronouncements. (8 marks)

Question 2

(a) Allen Ltd., a listed company, is in the process of acquiring the entire paid-up share capital of Ben Ltd. The Board meeting of Allen Ltd. is to be convened for approving the issue of offer document. You are required to list out the documents to be placed before the Board meeting for its consideration.

(b) Draft a petition to the court for sanctioning the scheme of amalgamation covering in brief all the relevant points mentioned under Section 394(1).

(8 marks each)

Question 3

(a) In the context of corporate restructuring, briefly mention the provisions of Section 395 relating to powers and duties to acquire shares of shareholders dissenting from scheme or contract approved by majority shareholders.

(5 marks)

(b) Explain the concept of 'management buy-out'. (5 marks)

(c) Explain the concepts of 'financial restructuring' in the cases of under-capitalised and over-capitalised companies. (6 marks)

Question 4

(a) Prudent Ltd. has agreed to acquire 51% of the holding of Volatile Co. Ltd. for Rs. 100 crore in cash and by issuing 10% non-convertible debentures of Rs. 100 each for Rs. 150 crore. As one of the promoters of Volatile Co. Ltd. demanded payment in cash instead of debentures, Prudent Ltd. decided to make cash payment in place of non-convertible debentures at a discount of 10%. The company does not have necessary cash to meet the obligation. How can the company raise necessary cash to make the payment? Suggest the ways the company can moblise funds for meeting the cash requirement with their respective implications. (8 marks)

(b) State whether the following statements are true or false and mention briefly the relevant provisions of law:

(i) Appeal can be made to a superior court against orders under Sections 391/394.

(ii) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 is applicable even if the acquirer is a person resident outside India.

(iii) A company can buy-back more than 25% of its paid-up capital in a single year.

(iv) Section 396 contemplates a situation where a merger can take place without the court's intervention. *(2 marks each)*

Question 5

(a) Desi Textiles Ltd. was incorporated in 1920. Ramchandra Rao, promoter of the company, was follower of the 'Swadesi Movement' and started this company with the objectives of — (i) generating employment for Indians; (ii) giving good price to the cotton growers; and (iii) giving quality cloth to the end users at affordable prices. Motto of the company was 'for Indians, by Indians and of Indians'.

The company was being run like a trust with nominal profits. The company did well till 1980s and was well managed by the second and third generation of promoters.

Due to changing business environment and problems like adverse government policies, advancement in technologies, fierce competition from foreign companies, opening-up of economy, the company's health deteriorated. At present, the factory is working at 60% of its capacity. There are statutory defaults and it is a capital starved company, hence, cannot replace old machinery. Fourth generation promoters do not have the capacity to raise capital themselves. However, looking at the intangibles of Desi Textiles Ltd., like brand equity, loyal staff, and tangibles like — land and building, one of the foreign investors contacted by Desi Textile Ltd. through some intermediary is willing to infuse required funds in preferred capital on the condition that 50% of the Board members (6 out of 12 directors) would be nominated by them and the managing director would also be of their own choice.

The intermediary also brought in for discussion another foreign company, engaged as International Trading House. This foreign company, after proper scrutiny, expressed willingness to invest required funds on the condition that it will have 33% share in the equity of Desi Textiles Ltd. against which it will supply machinery matching the requirements of modern day fashion world to replace old and unusable machinery and it should be the sole marketing agent of the products of Desi Textiles Ltd. in Europe. It also demanded 6 positions of directors including the position of the managing director.

Prakash, the great-grandson of Ramchandra Rao, is in a dilemma because such infusion of foreign capital and changing composition of the Board with foreign nominees would hit at the very objective/purpose of its incorporation as a part of Swadesi Movement.

One more option was explored when Prakash approached an Indian *industrialist who agreed to infuse the required capital on the condition of getting 74% stake in the equity share capital and 7 nominees on the Board out of 12 directors and also the position of the managing director. This proposal was not acceptable to Prakash because he was losing the control on the affairs of the company without corresponding consideration to him.*

If he refuses to accept any of the above proposals, the company has no chance of survival. Advise Prakash. *(12 marks)*

(b) *A listed company is controlled by three separate groups, out of which two groups are having family relations as per the definition of 'relative' and one group is absolutely outsider. In the light of regulation 11 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, whether all the three groups shall be treated as 'person acting in concert' to each other?* *(4 marks)*

Question 6

(a) *"Valuation of shares is more an art than science." Do you agree? Also explain various aspects of valuation of shares.* *(5 marks)*

(b) *Explain the strategic reasons behind reverse mergers.* *(5 marks)*

(c) *Calculate the 'minimum offer price' under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 in the following case:*

— *Negotiated price in three tranches Rs. 100, Rs. 125 and Rs. 75;*

— *Average weekly high-low of 26 weeks prior to public announcements Rs. 110-56;*

— *Average high-low of two weeks prior to public announcement Rs. 110-75; and*

— *Latest traded price Rs. 200.* *(6 marks)*

Question 7

Advise on the following with supporting judicial decisions, if any:

(i) *In a scheme of reconstruction by a multinational company listed in India, the company wanted the minority shareholders to get out of the company by selling their shares back to the promoters at a price determined by the promoters. The minority shareholders were not given a choice whether they wanted to tender their shares or not. In the meeting, there were six non-promoter shareholders who voted against the scheme, but the chairman declared that the motion was carried with an overwhelming majority of more than 90% of shareholding. However, the minority shareholders contended that they had a right to reject the offer. Will they succeed?*

(ii) *Vivek Ltd. proposed to merge with Bidur Ltd. The motions in the respective court convened meetings were carried out with 99% of shareholders agreeing for the same. The scheme of merger provided for retention of all the employees, with terms of employment not adverse to the present terms. However, there was no assurance about retrenchment in future. The employees' union of Vivek Ltd. opposed it on the ground that it was against the interests of the employees and the merger should not be sanctioned, as it could lead to retrenchment of workers. Advise the employees' union.*

(iii) *You are the Company Secretary of Grow Fast Ltd. which has just merged*

Agile Co. Ltd. with itself. 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 the company.

(iv) Is it correct to say that the term 'arrangement' has wider scope than 'compromise' under Section 390(b)? Give your considered views.

(4 marks each)

Question 8

Write notes on the following:

(i) Cross cultural alliances

(ii) Franchising

(iii) Operational synergy

(iv) Bail-out takeovers. *(4 marks each)*

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

Time allowed : 3 hours *Maximum marks : 100*

Total number of questions : 8 *Total number of printed pages : 4*

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

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

1. (a) "The main purpose of merger or acquisition is to deliver the expected financial results, *viz.*, earnings and cash flows." Discuss this statement with some examples from past Indian mergers.

(10 marks)

(b) An agreement was entered into between a company and its workers. Later on, the said company was to amalgamate with another company. The workers of the said company would like to object to the scheme as creditors. Advise.

(5 marks)

(c) Define 'alliance'. What are the characteristics of a strategic alliance ? What are its advantages ?

(5 marks)

2. (a) What are the general obligations of an acquirer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ?

(6 marks)

(b) Is sanction of the court necessary for a scheme of amalgamation wherein the petitioner company had no secured creditors and all unsecured creditors had accorded their approval to the proposed scheme along with the shareholders of both the companies ? The official liquidator also did not have any objection to the scheme. Substantiate your answer.

(5 marks)

(c) The shareholders of Green Ltd. and Yellow Ltd. are the same set of people. Green Ltd. and Yellow Ltd. have merged and formed Green Yellow Ltd. It is the contention of the shareholders that since both the transferor and transferee are the same set of people, there is no transfer and hence no liability to stamp duty. Discuss with reference to case law.

(5 marks)

3. (a) A scheme of arrangement confirmed by the court provided for the change in the name of the company. After the scheme is confirmed, the company applied to the Registrar of Companies (ROC) to change the name of the company and issue a fresh certificate of incorporation. ROC refused to effect change of name. Will the stand of the ROC withstand the legal scrutiny ?

(6 marks)

(b) The majority shareholders of Priya Ltd., after approving the scheme of amalgamation with Ash Ltd., approached the Board of directors of Priya Ltd. with a request to withdraw the petition filed by the company seeking court's confirmation. Advise the Board of directors on the course of action to be followed.

(5 marks)

(c) Discuss whether the filing of draft letter of offer with SEBI amounts to approval of its contents.

(5 marks)

4. (a) Anand has made an offer to acquire a stake in a public limited company. There is no competitive bid to the said offer. However, Anand unilaterally desires to revise the offer price upwards. Advise Anand. Can Anand now reduce the offer price in view of the fact that there is no competitive bid ?

(6 marks)

(b) Richie Rich Ltd. desires to purchase its own shares through its wholly-owned subsidiary Wealthy Ltd. Discuss.

(5 marks)

(c) After the shareholders and creditors approved the scheme of amalgamation, the court while sanctioning the scheme decides to alter the appointed date. Advise the company.

(5 marks)

5. (a) What are the disclosures to be made in the letter of offer for buy-back ?

(6 marks)

(b) Suresh has made an offer for acquisition of 20% of the paid-up capital of Amar Ltd. on 1st March, 2006. The offer closed on 31st March, 2006. On 20th April, 2006, he decides to acquire further shares of Amar Ltd. Advise him.

(5 marks)

(c) What are the conditions to be satisfied for issuance of shares with differential rights as to voting, dividends or otherwise ?

(5 marks)

6. (a) Discuss the three methods of valuation of equity shares of a listed company. If there is a 'willing buyer' and 'willing seller' in a transaction, is it necessary to follow the methods of valuation stipulated above ? If not, what are the exceptional situations where one need not follow it ?

(8 marks)

(b) Arjun currently holds shares in a company which entitle him to 14% voting rights in the company. He desires to acquire 9% of further voting rights in the said company during the calendar year

January – December, 2006 in such a way that he acquires 4% between January – March, 2006 and the balance between April – December, 2006. Advise.

(4 marks)

(c) List out the various legal and official documents a company is required to prepare, maintain and file which is involved in merger/demerger.

(4 marks)

7. (a) Adarsh, a promoter of Diligent Ltd., desires to make a competitive bid for Diligent Ltd. which has turned sick and is currently under the control of an operating agency appointed by BIFR. Advise him.

(6 marks)

(b) Who can appoint a special director under section 424B ? What are his powers ?

(6 marks)

(c) What is the difference in income-tax benefits of 'demerger' and 'reverse merger' ?

(4 marks)

8. (a) Draft a special resolution for approving buy-back of company's own securities.

(6 marks)

(b) Prashant Ltd. intends to enter into a strategic alliance with Excel Ltd. List out the steps which are to be initiated for creation of good alliance.

(5 marks)

(c) What do you understand by 'demerger' ?

(5 marks)

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

Time allowed : 3 hours | *Maximum marks : 100*

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

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

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

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

Mittal Steel, owned by L N Mittal & family, has its headquarters in London and Rotterdam. It has plants in 14 countries spread across Europe, Asia, North America and Africa. Its first acquisition took place in 1989.

Arcelor was founded in 2002 by merger of Abred of Luxembourg, Arcelia of Spain and Usinor of France. Its turnover is valued at ¤ 33 billion. Its plants, joint ventures and subsidiaries are spread across 60 countries.

In the year 2006, Mittal Steel made an offer to acquire Arcelor. Its original offer to Arcelor was for ¤17.5 billion. In May it increased the offer to ¤ 24 billion and the final offer was ¤ 26.9 billion. Mittal's final offer was accepted. Mittal paid ¤ 40.37 a share for Arcelor nearly double the price, it was trading before the first bid was made.

When Mittal made first bid, Arcelor rejected it with vengeance. It recommended to shareholders not to sell shares to Mittal as the two companies did not share the same strategic vision, business model and values.

A couple of European governments did not like the idea of an Indian taking over an European company. The French foreign minister felt it would affect 28,000 jobs and that the bid was ill-prepared and hostile. However, Mittal Steel said jobs would be safeguarded. Arcelor took the matter to regulators to thwart the takeover. But the regulators did not find any anti-trust provisions being violated and asked Arcelor not to issue shares to anyone without investors' explicit consent.

To begin with Arcelor refused to meet Mittal until a string of demands were met and simultaneously orchestrated a ¤13 billion deal with Severstal of Russia to keep Mittal away.

As shareholders wrath grew over the Severstal agreement and pressures from other quarters increased, Arcelor accepted Mittal's final bid. Arcelor had to pay ¤130 million as a fine to Servestal for breaching the contract.

Ultimately, L N Mittal succeeded in acquiring Arcelor. The combined capacity of Arcelor Mittal is 109.7 million tonnes.

Questions :

(i) Was this takeover 'hostile' or 'friendly' ? Distinguish between hostile takeover and friendly takeover.

(3 marks)

(ii) Why did the executives of Arcelor defend Mittal's bid to takeover ?

(3 marks)

(iii) What normally happens once a hostile takeover is completed ?

(3 marks)

(iv) Do you think that the executives of Arcelor created defences against the Mittal keeping the best interest of stockholders in mind ?

(3 marks)

(v) Anti-takeover strategies can be of two types, *viz.* preventive and reactive. Explain them.

(4 marks)

(vi) Evaluate defense strategies adopted by target firms to hostile takeover.

(4 marks)

2. Attempt *any four* of the following citing relevant legal provisions and case law, if any :

(i) If the transferor company and the transferee company have their registered offices in the same State, can the two companies ordinarily file a joint-application for the approval of scheme of amalgamation before the Bench of High Court ?

(4 marks)

(ii) Whether the sanction to scheme of amalgamation can be withheld on the plea that the transferor company, before resorting to sections 391-394, has not amended the objects clause of its memorandum of association under section 17 to incorporate the power to amalgamate with another company ?

(4 marks)

(iii) Can the Board for Industrial and Financial Reconstruction (BIFR) direct the State government to pay the dues of a company, the shares of which were owned by the government directly or indirectly ?

(4 marks)

(iv) In terms of regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, no acquirer shall acquire 15% or more shares in a company unless it makes a public announcement to acquire shares of a target company. What does the word ‘unless’ mandate ?

(4 marks)

(v) On account of merger of the authorised share capital of the transferor company, the authorised share capital of the transferee company is increased. Is the transferee company required to pay the fee for increase in authorised capital ?

(4 marks)

3. During the year 2006, Corporation Bank, Oriental Bank of Commerce and Indian Bank have decided to form a strategic business alliance. The Boards of the three nationalised banks informed the Bombay Stock Exchange on 14^{th} September, 2006, that the proposed 'strategic business alliance' of these three PSU banks is only a 'technical alliance' and will not involve inter-bank transfer of staff. The bank employees unions have also been kept informed of the proposed alliance to share information.

In the light of above, answer the following questions :

(a) What do you understand by the term 'strategic business alliance' ?

(2 marks)

(b) Why alliances are becoming popular ?

(3 marks)

(c) What are the important criteria in the selection of alliance partners ?

(3 marks)

(d) How does an alliance lead to synergy ?

(4 marks)

(e) Why did the three PSU banks, in your opinion, formed a strategic business alliance instead of amalgamation/ merger ?

(4 marks)

4. (a) Glowmore Ltd., a listed company of which you are the Company Secretary, is planning a demerger. You are required to prepare a check-list to be followed by company in process of demerger.

(10 marks)

(b) Distinguish between *any two* of the following :

(i) 'Corporate level strategy' and 'business unit strategy'.

(ii) 'Management buy-out' and 'management buy-in'.

(iii) 'Mandatory bid' and 'Competitive bid'.

(3 marks each)

5. (a) "Valuation of company's shares is a highly technical and complex matter." Discuss this statement in the light of various methods of share valuation.

(8 marks)

(b) What is meant by 'operating agency' ? Briefly explain its functions.

(8 marks)

6. (a) X Ltd. is considering the proposal to acquire Y Ltd. and the financial information is given below :

	X Ltd.	*Y Ltd.*
No. of equity shares	10,00,000	6,00,000
Market price per share *(Rs.)*	30	18
Market capitalisation *(Rs.)*	3,00,00,000	1,08,00,000

X Ltd. intends to pay Rs.1,40,00,000 in cash for Y Ltd. If Y Ltd's market price reflects only its value as a separate entity, calculate the cost of merger when merger is financed by cash.

(6 marks)

(b) Adroit Ltd. is run and managed by an effective team that insists on reinvesting 60% of its earnings in projects that provide a return on equity (ROE) of 10% despite the fact that the firm's capitalisation rate (k) is 15%. The firm's current year's earnings is Rs.10 per share.

(i) At what price will the share of Adroit Ltd. sell?

(3 marks)

(ii) What is the present value of growth opportunities?

(3 marks)

(iii) Why would such a firm be a takeover target ?

(4 marks)

7. The IDBI Bank Ltd. (IDBI) has finally walked away with United Western Bank (UWB), the Satara-based private sector bank. There were 17 commercial banks including public sector banks, private sector banks and foreign banks, who had bid for UWB. There was also one restructuring proposal from UWB, which envisaged the help of the Maharashtra Government in association with SICOM, HDFC and its subsidiaries and associates and IDFC. These investors together had offered to pump in around Rs.350 crore into the bank.

IDBI has offered Rs.28 per share to all UWB shareholders. The major institutional shareholders in UWB is SICOM, which holds around 10%. IDBI's offer of Rs.28 per share was marginally lower than SICOM's acquisition price. The IDBI's offer price works out to 1.8 times of the book

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