

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 3

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) Explain, with reference to judicial precedents, whether in the scheme of arrangement by way of amalgamation, High Court, while sanctioning the scheme, can change/modify – (i) the appointed date; and (ii) the share exchange ratio fixed by the Board of directors and approved by the stakeholders.

(6 marks)

- (b) State, briefly citing relevant provisions of the law, whether the following statements are correct or incorrect :

- (i) In case of transfer/sale of undertaking, compliance of section 293(1) (a) is a must.
- (ii) Separate petition for amalgamation needs to be filed by the transferee company even when the transferor company (100% subsidiary of transferee company) has already filed the petition.
- (iii) SEBI Takeover Code is not applicable to any arrangement or reconstruction including amalgamation or merger or demerger under any Indian/foreign law or regulation.
- (iv) The court has power to order winding-up of a company while considering its scheme of arrangement.
- (v) Buy-back of shares can be a part of scheme of arrangement.
- (vi) Unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as of other unsecured creditors.
- (vii) Debentureholders enjoy different position as compared to secured creditors in a scheme of amalgamation.

(2 marks each)

- 2 (a) Speed Call Ltd. and Clear Call Ltd. are two listed companies engaged in the business of telecommunication. The companies are not making profit and hence market prices of their shares have gone down. A substantial portion of their share capital is held by the Central Government as well as some public financial

2/2009/CRLP (OS)

P. T. O.

335

: 2 :

corporations. The Central Government wants to amalgamate the aforesaid two companies into a single company. Examine the powers of the Central Government to amalgamate the two companies in public interest as per the provisions of the Companies Act, 1956.

(8 marks)

- (b) Arrow Ltd. was merged with Horizon Ltd. under a scheme of amalgamation. Some workers of Arrow Ltd. refused to join as workers of Horizon Ltd. and claimed compensation on the ground of premature termination of their services. Horizon Ltd. resists the claim of the workers on the ground that their services have been transferred to Horizon Ltd. in view of the order of amalgamation and merger and hence the workers must join the services of Horizon Ltd. and cannot claim any compensation. Decide on the basis of legal provisions and decided case(s), if any, whether the contention of the workers is justified.

(8 marks)

3. (a) Distinguish between 'statement' under section 393(1) and 'explanatory statement' under section 173.

(4 marks)

- (b) At the court convened meeting of the secured creditors for approval of the proposed scheme of arrangement, out of 3 secured creditors, 2 secured creditors voted in favour of the proposed scheme of arrangement and objections were raised by one of the secured creditors that the company (petitioner) has failed to disclose the material facts in the 'statement' under section 393(1) and in the petition under sections 391-393. The petitioner company sought sanction of the scheme of arrangement with secured creditors of the company contending that since the company was incurring loss, it was not to repay the debts due to the secured creditors. Examine the objection and its maintainability.

(4 marks)

- (c) Draft the explanatory statement required to be annexed with the resolution for preferential allotment of shares to the promoters, their relatives and associates by a listed company.

(8 marks)

4. Attempt the following citing relevant provisions of law and judicial pronouncements :
- (i) Whether a transfer of immovable property under a scheme of arrangement attracts stamp duty ?
 - (ii) Can one of the member of the creditors seek re-classification and postponement of class meeting ?

- (iii) Whether the court can do the valuation of shares on its own in the scheme of amalgamation ?
- (iv) What are the consequences if the order made by High Court under section 394 is not duly stamped ?
- (4 marks each)
5. (a) "Mergers and amalgamations are not only means of corporate growth, but are an alternative to organic growth." Comment.
- (8 marks)
- (b) What do you mean by the term 'takeover' ? What are the objectives which takeover seeks to achieve ? Briefly state how the takeover of a listed company is regulated in India.
- (8 marks)
6. (a) What is the procedure to be followed for variation of rights of shareholders ?
- (8 marks)
- (b) What are the contents and disclosures required to be made in a public announcement to be given in the newspaper by the acquirer under the SEBI Takeover Code ?
- (8 marks)
7. Explain **any four** of the following :
- (i) Eligibility to participate in Employees' Stock Option Scheme (ESOS).
 - (ii) Pricing under ESOS.
 - (iii) Different type of strategic alliances.
 - (iv) Factors to be kept in mind while managing an alliance.
 - (v) Various modes of demerger.
- (4 marks each)
8. Write notes on **any four** of the following:
- (i) Valuation of shares
 - (ii) Financial restructuring in the context of over-capitalised and under-capitalised companies
 - (iii) Compromise and arrangements
 - (iv) Strategic planning
 - (v) Internal reconstruction.
- (4 marks each)

-- o --