

Corporate Restructuring and Insolvency

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Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 6

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) The position of capital and reserves as on 31st March, 2009 of Matrix Ltd. are given below :

	Rs.
Equity shares (Fully paid-up of face value Rs.10 each)	1,00,00,000
Equity shares (Rs.5 is paid-up on face value of Rs.10 each)	1,00,00,000
Equity shares with differential voting rights (Fully paid-up of face value of Rs.10 each)	1,00,00,000
Preference shares (Fully paid-up of Rs.100 each)	1,00,00,000
Free reserves	7,50,00,000

The managing director of Matrix Ltd. wanted to place proposal before the Board for buy-back of its 100% preference share capital. You, as a Company Secretary, advise your managing director on the following issues :

- (i) Maximum limit upto which Board can approve buy-back of shares.
- (ii) Maximum limit upto which shareholders can approve buy-back of shares.
- (iii) Maximum limit upto which company can buy-back its own shares.
- (iv) The situation in which further offer of buy-back can be given by the company within a period of 365 days.

(2 marks each)

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

- (i) The scheme of arrangement is to be passed at a meeting with the support of majority in number and three-fourths in value of those present and voting. The creditors or members who are present at the meeting but remain neutral or abstain from voting will be counted in ascertaining the majority in number or value.
- (ii) A person who is a transferee of certain shares (yet to be registered) can seek to modify a scheme of arrangement of the company concerned approved by the court.

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- (iii) A private limited company can amalgamate with a public limited company within few days after its incorporation.
- (iv) Court has power to disapprove the scheme of arrangement on the grounds of mismanagement of affairs of the company and withholding of material information from the shareholders and creditors.
- (v) Court can modify the scheme of arrangement filed before it on its own.
- (vi) Section 394 does not cast an obligation on the court to satisfy the presence of 'public interest' if the scheme is duly approved by the shareholders and creditors of the companies concerned.

(2 marks each)

- (c) Though the terms 'diminution of share capital' and 'reduction of capital' look synonymous, but sometimes diminution of share capital does not amount to reduction of capital. Briefly explain the circumstances when such exercises do not fall within the purview of 'reduction of capital' and procedure of reduction of capital under section 100 is not to be followed.

(5 marks)

2. (a) Good Luck Ltd. (GCL), a listed company, holds 100% equity of C&S India Ltd. C&S India Ltd. holds 15% stake in C&S USA Ltd. as on 31st March, 2009. Due to poor performance of C&S USA Ltd., Board of directors of GCL and C&S USA Ltd. in their meeting held on 20th May, 2009 had approved merger of C&S USA Ltd. with GCL with effect from 1st April, 2009. The scheme of merger was filed with the Hon'ble High Court of Delhi pursuant to sections 391-394. The Registrar of Companies has raised objections that sanction of the scheme of merger would result in the buying back by the GCL of shares of its subsidiary C&S USA Ltd. and would thereby violate the provisions of sections 42 and 77. Give your comments whether the objection raised by the Registrar of Companies is sustainable in the court of law.

(5 marks)

- (b) Define 'corporate restructuring'. What are the various kinds of restructuring?

(5 marks)

- (c) ABC Ltd. proposes to amalgamate with BCD Ltd. In this context, explain how to go about for convening the meeting of the creditors or class of creditors in terms of court's order.

(5 marks)

3. (a) In Broad Vision Ltd., two acquirers made open offer for acquisition of 20% of its equity capital – one made by Damania and another by British-American Tobacco Plc. UK (BAT Group). In this case, the petitioners sought a writ of mandamus directing SEBI to conduct investigation into violations and particularly under regulation 22 dealing with obligations of acquirer, and thereby to deny permission to the abovementioned two acquirers to proceed with their public offer.

Will the petitioner get the remedy as applied before the High Court of the State where the registered office of the target company is situated ? Support your answer with justification and case law(s).

(7 marks)

- (b) A takeover bid may either be 'friendly' or 'hostile', it may also be mandatory, partial or competitive. Explain the three types of takeover bids with circumstances and purpose of such bids.

(8 marks)

4. (a) According to the Companies Act, 1956, it is clearly understood that there is no difference between the terms 'merger' and 'reverse merger', both are the cases of amalgamation. But in common business parlance, both are quite different. Why is the amalgamation of a particular nature called 'reverse merger' and what are underlying circumstances and benefits for effecting a 'reverse merger' ? Discuss.

(7 marks)

- (b) Registrar of Companies (ROC) while going through the technical scrutiny of the annual report of Gemini Ltd. for the financial year ended on March, 2008 had observed certain irregularities or non-compliance of Schedule VI of the Companies Act, 1956 related to disclosure of 'interest accrued and due on secured loans' and asked information from the company under section 234.

The Schedule 3 of the secured loan as given in the annual report of Gemini Ltd. as on 31st March, 2008 is as follows :

<i>Schedule 3 : Secured Loans</i>	<i>Rupees in Crores</i>	
	<i>As at 31-3-2008</i>	<i>As at 31-3-2007</i>
Debentures :		
10% Non-convertible debentures	—	9.00
From banks and financial institutions :		
Working capital loans	241.00	243.00
Foreign currency loans	5.00	15.00
Rupee term loans	581.00	517.00
	<u>827.00</u>	<u>784.00</u>

ROC in its letter to Gemini Ltd. stated that "as per the provisions of section 211 read with Schedule VI, Part 1 to the Companies Act, 1956, interest accrued and due on secured loans should be included under the appropriate sub-heads under the head secured loans. But it was observed that the company has not separately disclosed the interest accrued and due on the secured loan and thereby violated the provisions of section 211 read with Schedule VI to the Companies Act, 1956. Explain."

Gemini Ltd. in its reply to ROC has given following facts :

"As per provisions of section 211 every balance sheet of a company shall give a true and fair view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part 1 of the Schedule VI to the Companies Act, 1956 or as near thereto as circumstances admit.

As far as not showing the interest accrued and due on secured loans under appropriate sub-head under the head secured loans, we would like to state that the same has been clubbed with secured loan under Schedule 3 of the annual report and we believe that the disclosure is as per the format set out in Part 1 of the Schedule VI or as near thereto and there is no violation of the provisions of section 211 read with Schedule VI to the Companies Act, 1956."

ROC has not agreed with the above views of the Gemini Ltd. and issued show cause notice for violation of section 211 read with Schedule VI to the Companies Act, 1956. In its show cause notice ROC has stated that "whereas during the course of technical scrutiny of the balance sheet as at 31st March, 2008, it has been observed that company has not separately disclosed the interest accrued and due on secured loans separately and as such the balance sheet is not drawn up in accordance with the requirements of provisions of section 211 read with Schedule VI to the Companies Act, 1956. Whereas in view of the above observations, the provisions of section 211 read with Schedule VI to the Companies Act, 1956 have been contravened and every officer of the company who is in default have rendered themselves liable to be prosecuted under section 211(7) read with section 209(6).

Now in view of what is stated herein above, every officer in default of the company as the case may be are hereby called upon to show cause as to why legal action under section 211(7) read with section 209(6) should not be taken."

ROC has served notice in terms of section 51 to the Managing Director, Executive Director (Finance) and the Company Secretary.

You as the Vice-President and Company Secretary of the company, prepare a note for the Board on consequences of the situation and remedies, if any.

(8 marks)

5. (a) In case of amalgamation, merger, arrangement, de-merger, etc., various courts have pronounced different opinions for valuation of shares of companies involved. In view of such pronouncements, state the principles for valuation with example of two cases. (*Name of the case is not essential.*)

(7 marks)

- (b) Comment on the following in the light of judicial pronouncements :

- (i) Once the exchange ratio is determined by an independent expert in the field of valuation of securities and who has used his expertise to value the exchange ratio, then court has limited jurisdiction to substitute its exchange ratio.

(4 marks)

- (ii) In a scheme of arrangement by way of demerger – one of the unsecured creditors took an objection that it will amount to transfer of technology and thereby the terms of supply agreement will be violated. Is the objection maintainable ?

(4 marks)

P A R T – B

(Answer ANY TWO questions from this part.)

6. (a) What is meant by 'securitisation' under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) ? What are the main motives of securitisation ?

(5 marks)

- (b) The Government of India is of the opinion that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 would bring about a financial discipline and reduce burden of NPA's on banks and financial institutions.

The ICICI Bank initiated action under this Act against Mardia Chemicals Ltd. and the later, aggrieved by the Act, challenged the same on the grounds that the Act was loaded heavily in favour of lenders, giving little chance to the borrower to explain their views, therefore is not constitutional and pleaded the following against Union of India :

- (i) There was no occasion to enact such a draconian legislation to find a short cut to realise NPA's without their ascertainment when there already existed the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Recovery of Debts Act) for doing so;
- (ii) No provision had been made to take into account lenders liability;
- (iii) That the mechanism for recovery under section 13 of the SARFAESI Act, 2002 does not provide for an adjudicatory forum of *inter se* disputes between lender and borrower; and
- (iv) That the appeal provisions were illusory because the appeal would be maintainable after possession of the property or management of the property was taken over or the property sold and the appeal is not entertainable unless 75% of the amount claim is deposited with the Debt Recovery Tribunal (DRT).

State whether the Mardia Chemicals Ltd. will succeed on the stands taken by them. Give reasons.

(10 marks)

7. (a) There must be strong grounds for liquidating a company as it is the last resort to be adopted and mere allegations would not constitute just and equitable ground for winding-up of a company. Comment.

(5 marks)

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- (b) The Board of directors can refuse to file a petition for winding-up of a company on their own even though members have given authorisation for filing the petition by passing ordinary resolution. Comment.

(5 marks)

- (c) What do you mean by 'Lok Adalat' under the Legal Services Authorities Act, 1987 and what is the purpose, scope and purview of the same ? What is the need of setting-up of Lok Adalats ?

(5 marks)

8. (a) "It is cardinal principle of law that a person can be insolvent but a company cannot be adjudged insolvent." In the light of this statement, state the reasons why a company can't be adjudged insolvent but, it can be dissolved that too in case it is running in proper health and able to pay its obligation.

Further, you are required to differentiate between the 'insolvency of an individual' and 'winding-up of a company' and their legal status during insolvency and winding-up process.

(9 marks)

- (b) Write short notes on the following :

- (i) Cross boarder insolvency
- (ii) Meaning of 'State' within the UNCITRAL Model Law
- (iii) Requirements and stipulations to become a merchant banker of an acquirer for making a takeover bid.

(2 marks each)

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