

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Corporate Law-II
Semester-VII (Batch: 2016-21)

End Semester Examination: October-2019

Date: 18th October, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

Part-A		Marks
Q.1	Write the conceptual analysis of the following: (Any four) (Max 30 words) (a) Creeping Acquisition (b) Arrangement u/s 230 (c) Appointed and Effective Date (d) Moratorium (e) Operational Creditor	(4x1= 04)
Q.2	Write short note on the following: (Any two) (Max 150 words) (a) Summary procedure of winding up (b) Fast Track CIRP (c) Bank Merger	(2x3.5= 07)
Q.3	Read the following set of facts and answer the questions accordingly. (Any five) (Max 120 words) (a) The business of company A is to manufacture, sell, export electronic products. The object of the company B is to produce silk materials. A scheme of arrangement of Mergers is being proposed between the companies A and B. What kind of Merger would be this? (b) Company A having the registered office at Chennai, company B having the registered office at Pune, company C having registered office at Jodhpur and company D having the registered office at Hyderabad are intending to amalgamate. Decide the jurisdiction for filing the scheme of amalgamation. (c) ABC a cement manufacturing company, XYZ an export-import company, MNO a software company want to get merge with ZZB a construction company in December, 2019. Can they get merge? If so, what kind of merger is this? (d) M/s KANG co Ltd. is a multi-national company (transferee) situated in Singapore wants to merge with M/s Hind co Ltd. (transferor) another multi-national company in India. Can they merge? If so, what kind of merger is this? Give one real example.	(5x3= 15)

- (e) Can a scheme of arrangement of Mergers and Amalgamation u/s 230 of the Companies Act, 2013 be proposed after the passing of a liquidation order in a liquidation process under the IBC, 2016?
- (f) Who are the disqualified to make application for CIRP under the IBC, 2016?

Part-B

- Q.4 Read the following fact and answer the questions according to the principles of Company law and decided cases. (6+4+1+1+3=15)

The following are three companies, are intending to propose a scheme of arrangement of Mergers and Amalgamation. A brief description about the three companies are as follows.

Company 1: M/s DELt Ltd. is a public listed company and is having the registered office at Ahmedabad. The company has 90 Lakhs shareholders and its business activities are related to manufacture, sale, export of motor parts. The securities of the company are being listed in the National Stock Exchange. The company is running with losses since 2013 and the share value of the company has gone down. The company has lost the substratum.

Company 2: M/s Mfel Pvt Ltd. is a private limited company and is having the registered office at Hyderabad. The company is a profitable company. The business activities of the company is related to export and import of textile products.

Company 3: M/s Zantiago Telecom Ltd. is an Indian telecom company and is having the registered office at Delhi. The object of the company is to provide telecom services in western and north India.

For the purpose of the revival of the **company 1**, the **company 1** will take over the **company 2**. All the companies will get merge after the takeover of **company 2** by **company 1** and a new entity will be created in the name of **M/s Mykel-TIM co Ltd.** The registered office of the new company will be situated at Delhi. The main object of the new entity will be multiple business activities. The physical assets and properties of all the companies will be transferred to the new entity. Through a Share Holder Agreement, the shareholding in the new entity will be held. The share Exchange Ratio between the merged (resulting) company 1 & 2 and 3 are decided as 1:1 respectively. There will be 9 directors in the Board of the new entity. Two directors from each company (1,2,3) will be nominated to the Board of the new entity **M/s Mykel-TIM co Ltd**. All the employees of company 2 and 3 will be employed in the new company. But 50 % of the employees of company 1 will be employed by the new entity and the other employees of the company 1 will be removed.

- (a) Being a corporate advocate, write the detailed procedure for the approval of the **scheme** between the companies as per the prevailing provisions of the company law of India answering the following points:
- Pre Application Stage requirements
 - Jurisdiction to file the applications
 - Application process
 - Role of the Adjudicating authorities in sanctioning the scheme
- (b) Being the judge, examine the scheme and approve/disapprove the scheme with justification.
- (c) Who are the regulators, from whom the approval of the said scheme is required?

- (d) If company 2 will take over the company1, what is the nature of the restructuring (merger)?
- (e) How can you decide the applicability of stamp duty for the scheme or write the settled position of law about the stamp duty for a scheme of arrangement in India?

Part-C

- Q.5 M/s PWac Co. Ltd. has been incorporated as a public limited company in 1979. The main object of the company was entertainment business. There was potential growth of the company during 1990 to 2010. In the beginning of 2009, allegations were made against the company for violation of copyright and cases are pending in different forums. There were actions taken by SEBI for violation of ICDR regulation in a public issue and the company was barred from the capital market up till 2015. Gradually, the company started accumulating losses. In 2017, it was observed that the company had accumulated huge losses. Some of the secured creditors including SBI and the Corporation Bank have filed petition against the company in DRT for recovery of Debt. Another company M/s Kdrc & co (one IT company) had supplied CDs and other materials to the company M/s PWac Co. Ltd. But there was no payment made by M/s PWac Co. Ltd since January 2018. Mr Rajneesh, the CEO of M/s Kdrc & co, had sent a demand notice to the company demanding for the repayment of debt on 19/10/2018. Till today the company has not responded to that notice. M/s PWac Co. Ltd has communicated (via email) to Mr Rajneesh, the CEO of M/s Kdrc & co on 19/06/2019 that the amount of the outstanding debt claimed by M/s Kdrc & co is not correct. (2+4+3=09)

The SBI, the Corporation Bank and of M/s Kdrc & co want to initiate Corporate Insolvency Resolution Process against the company M/s PWac Co. filing petitions in the NCLT.

Read the above fact and answer the following as per the provisions of the Insolvency and Bankruptcy Code, 2016:

- (a) What kind of creditors are SBI and M/s Kdrc & co? Under which section, they can file the petitions to the NCLT?
- (b) Being the corporate advocate of SBI, the Corporation Bank and of M/s Kdrc & co, frame issues.
- (c) Being the corporate advocate of M/s PWac Co, make arguments to defend the company.
