

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Corporate Law-II
Semester-VII (Batch: 2012-17)



End Semester Examination: Oct-Nov. 2015

Date: 21st October, 2015

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.
- Bare Act is not allowed.

Answer of the following questions**Marks**

Q.1 Read the following set of facts and answer the following according to the given instruction. (3+4+3=10)

Fact-I M/s Lianto Co. Ltd. has been incorporated as a public limited company in 1994 as per the provisions of the company law of India. The company could not commence the business up till 2000 due to financial crisis. The company has not filed return for the said period due to the non-commencement of business.

- (a) In the above mentioned fact, determine the proper ground of winding up and the eligible petitioner for the same.

Fact-II M/s Plato 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 1979 to 2008. 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. Some of the secured creditors including SBI and HDFC have filed case in DRT for recovery of Debt. Gradually, the company started accumulating losses. The Board of Directors have resigned in 2012. New BOD is not appointed yet. Mr Rajneesh, a creditor along with other creditors have sent a demand notice to the company demanding for the repayment of debt on 19/10/2014. Till today the company has not responded to that notice. Towards the end of 2014, it was noticed that, there was a deadlock in the company.

- (a) Being the corporate advocate for the creditors, determine the proper ground of winding up and analyse with proper provisions of the Companies Act and decided cases.
- (b) Being the corporate advocate for the company, advance your argument

- Q.2 Read the following fact and answer the questions as per the principles of company law in India. (2+5+4+2+2=15)

M/s ALTEGY Co. Ltd was incorporated as a public company in 1959 with the objective of manufacturing motor parts having the registered office at Ahmedabad. M/s RENSHA Co Ltd was incorporated as a public listed company in 2000 with the objective of import and export business, having the registered office at Delhi. M/s TANSE Co. Ltd was incorporated in 1998 as a subsidiary of M/s FIAAGO Co. Ltd and the registered office is situated at Ahmedabad. M/s SMART KING International Ltd. is one USA based foreign company and carries on the business of electronics product and has obtained the permission of ROC, Ahmedabad to carry on business in India. The Board of Directors of all the four companies have proposed for a scheme of arrangement of Mergers and Amalgamation in October, 2012.

There is a criminal case pending against M/s ALTEGY Co. Ltd. relating to misstatement in prospectus, which was not disclosed in the scheme of Mergers and Amalgamation. The Regional Director (referred to Central Government in the question) has made an objection to the scheme referring to the pending criminal case against M/s ALTEGY Co. Ltd.

The commissioner of Income Tax (Ahmedabad) has raised an objection to the scheme on the ground of evasion of tax by the transferor companies. The reason being the sale of immovable properties after the completion of mergers and amalgamation. The employees of the transferor companies have challenged the scheme.

The proposed scheme (in brief) is as follows:

- The effective date will be the date of sanction of the scheme.
- Transfer of the assets will take place after the repayment of all the dues of M/s TANSE Co.Ltd and M/s RENSHA Co Ltd.
- The employees of the transferor companies will be transferred to the transferee company. However, the new posts and designations will be decided by M/s ALTEGY Co. Ltd after the completion of mergers and amalgamation. The new posts and designations may be at a lower grade also.
- All the immovable properties will be sold after the completion of merger and the amount would be transferred to the account of the resulted company.
- The share exchange ratio was decided as 3:5:2 for M/s TANSE Co. Ltd, M/s RENSHA Co Ltd. And M/s ALTEGY Co. Ltd. (3 shares of M/s TANSE Co. Ltd is equal to 5 shares of M/s RENSHA Co Ltd and 2 shares of M/s ALTEGY Co. Ltd).
- Preferential allotment to SMART KING International Ltd. will be done as will be decided by the resulted company.

Explanation: M/s ALTEGY Co. Ltd- Transferee Company
M/s TANSE Co. Ltd-----Transferor Company
M/s RENSHA Co Ltd.-Transferor Company
M/s SMART KING International Ltd. - Transferor Company

- (a) What would be the jurisdiction to file the application for the approval of the said scheme?
- (b) Being the corporate advocate, advice the BOD of the companies about the legal procedure to be followed for the proposed scheme.
- (c) Being the judge, approve or disapprove the scheme after analysing all the considerable factors as per the company law and practice in India.
- (d) Whether Central Government has the power to object the scheme?
- (e) What kind of merger is this?

- Q.3 M/s JAGCAT Ltd was incorporated as a public limited company with authorised share capital of 20,000 Crore. The objective of the company is telecom business. The company has industrial units at various places in India. In 2005, the company has entered into a joint venture with one Malaysian company M/s SIDAN BV Ltd. to expand the business in rural areas of India. However, due to the 2G spectrum controversy in India, M/s SIDAN BV Ltd was not interested to continue the joint venture. The joint venture agreement was repudiated by M/s SIDAN BV Ltd. M/s JAGCAT Ltd has spent huge amount for the joint venture. In 2014, it was noticed that the company has accumulated losses approximately 25,000 crore. The shareholders have started selling the shares. There are four secured creditors SBI, UTI, Corporation Bank, Bank of Baroda. They hold together 100 % of the outstanding debt. SBI and Bank of Baroda hold 78% of the outstanding debt. (3+3+4+2=12)

Based on the above fact, answer the following questions as per the given situation.

- (a) The company wants to approach the BIFR for revival. The Bank of Baroda and SBI have taken action u/s 5 of the SARFAESI Act.
Can the company approach the BIFR for revival?
- (b) Presuming that, the reference has been made and all the secured creditors have taken action u/s 13 of the SARFAESI Act.
What will be the legal consequence?
- (c) Presuming that, the reference has been accepted by BIFR, write the procedure for the revival of the said company.
- (d) If the scheme of revival is failed, can the BIFR wind up the company?

- Q.4 Write the conceptual analysis of **any two** of the followings: (2x4=08)
- (a) Initial Trigger Threshold and Creeping Acquisition
- (b) Voluntary Winding up (By members and creditors)
- (c) Bank Mergers (Voluntary and Compulsory)

- Q.5 'Inability to pay debt' as a ground for winding up by court (Tribunal), is a favourable remedy for the creditors in India to recover debt. Do you agree with the statement? Substantiate your answer with the analysis of relevant case laws. (Word limit: 300 -350) (05)



1. The first part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the company. The names are listed in alphabetical order, and each name is followed by the position to which he or she has been appointed.

2. The second part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the company.

3. The third part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the company.

4. The fourth part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the company.

5. The fifth part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the company.

6. The sixth part of the document is a list of the names of the persons who have been appointed to the various positions of the Board of Directors of the company.