

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Corporate Law
Semester- I (Batch: 2022-23)

End Semester Examination: November 2022 (LL M)

Date: 28th Nov, 2022

Duration: 3 hours

Max. Marks: 50

Instructions:

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

Marks

- Q.1 “The existence of an efficient and smooth-functioning market for takeovers plays an important role in the economic development of a country. It is a widely recognized fact that one of the key elements of a robust corporate governance regime in any country is the existence of an efficient and well-administered set of Takeover Regulations. Regulations on takeovers seek to ensure that the takeover markets operate in a fair, equitable and transparent manner.” (*Report of the Takeover Regulations Advisory Committee 2010, p 6.*) (10)
- Analyse the above-mentioned statement in the light of the experience regarding hostile takeovers in India.
- Q.2 “In exercising its power of sanction the Court will see, first that the provisions of the statute have been complied with, second, that the class was fairly represented by those who attended the meeting and that statutory majority are acting bona fide and are not coercing the minority in order to promote interest adverse to those of the class whom they purport to represent, and thirdly, that the arrangement is such as an intelligent and honest man, a member of the class concerned and acting in respect of his interest, might reasonably approve.” (*Buckley on the Companies Act, 14th Edition*) (10)
- Discuss how far the above-mentioned statement is reflected in the approach of the Indian judiciary on amalgamations in India.
- Q.3 “An auditor is not bound to be a detective, or as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound. He is justified in believing tried servants of the Company in whom confidence is placed by the Company. He is entitled to assume that they are honest, and to rely upon their representations, provided he takes reasonable care. If there is anything calculated to excite suspicion he should prove it to the bottom; (5)

but in the absence of anything of that kind he is only bound to be reasonably cautious and careful.” (*Justice Lope in Kingston Cotton Mill Co. [1896] 2 Ch. 279*)

Do you agree with the above-mentioned observation in the light of performance of auditors in India? Substantiate your views with cogent reasons.

Q.4 Read the below fact and answer the questions: (4x2=8)

M/s Volrint Ltd. is a public limited company, incorporated in 2003 as per the provisions of the Companies Act, 1956. The registered office of the company is situated at Ahmedabad and Mr Rajiv is the promoter of the company. He was appointed as the Managing Director of the company in accordance with the Article of Association of the company. The Board of the Director of M/s Volrint Ltd is composed of Mrs Rajiv, Mr Goenka, Mr Gupte and 2 other independent directors. In M/s Volrint Ltd, Mr Goenka is holding 2.46 % of the issued share capital, Mrs Goenka (wife of Mr Goenka) holds 3.99 % of the issued share capital. Elder son of Mr Goenka holds 1.99 % of the issued share capital, Daughter in law of Mr Goenka holds 1.59 % of the issued share capital. Apart from the Goenka family, Mr Sehgal's company i.e. M/s Sehgal & Co Pvt. Ltd is a majority shareholder. There was a dispute between the Goenka family and Mr Sehgal family related to the appointment of a director, who was to be nominated by M/s Sehgal & Co Pvt. Ltd as per the shareholder's agreement. One special resolution was passed in an EGM dated 22nd August, 2022 to replace Mr Goenka from the Board of Director of M/s Volrint Ltd. and to appoint Mr Sehgal as the director of the company. Mr Goenka is objecting to the said special resolution and his removal on the ground of procedural irregularity. Mr Goenka has also stated that the EGM was called with 3 days' notice and Mr Goenka and his family members were not served any notice for the meeting.

- a) Whether Mr Goenka and family members are eligible to file a petition for prevention of oppression and mismanagement? If so, what is the jurisdiction to file the petition?
- b) Being a member of the Adjudicating Authority, determine, whether the alleged act by Mr Goenka will amount to oppression and mismanagement?

Q.5 Read the below fact and answer the questions: (4+5=9)

A company M/s Dailgo Ltd. has supplied 100 tonnes of Aluminium plates to Company M/s MinnT Ltd amounting to INR Two crore and twenty Lacs. The due date for payment by M/s MinnT Ltd was 28th October 2021. However M/s MinnT Ltd failed to make payment by the due date. M/s Dailgo Ltd wants to trigger the provisions of the IBC to initiate CIRP.

- a) Whether M/s Dailgo Ltd can file an application for initiation of the CIRP? If so, explain the pre requisites for application process by M/s Dailgo Ltd.
- b) Presuming that the application has been admitted, explain the procedure for CIRP.

Q.6 Write analytical note on any two of the following: (4x2=8)

- a) Conversion of a One Person Company to Public Company
- b) Cross Border Insolvency: Legal position in India
- c) Alteration of MOA
