

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Corporate Law II
Semester- VI (Batch: 2020-25)

End Semester Examination: May 2023

Date: 03rd May, 2023

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 Answer the following : (30-40 Words) | (3x2=6) |
| a) A company M/s Dycoke Ltd was incorporated on 12 th January, 2023. When should the first Annual General Meeting to be convened? | |
| b) Presuming the number of the members of the company as 1440, determine the quorum for an AGM. | |
| Q.2 Read the fact below and answer the questions as per the provisions of the Companies Act, 2013, applicable rules/regulations (if any) and decided cases (if necessary). | (2+2+3+3+5=17) |
| <p>The following four companies have proposed a scheme of Arrangement of Mergers and Amalgamations under section 230, 232 and 234 of the Companies Act, 2013.</p> <p>M/s Gatigo Aluminium Ltd. (hereinafter referred as T1) : T1 has been incorporated as a public limited company in 2002 having its registered office at Delhi. The main business of the company is to produce Aluminum plates and to export. It has listed its securities in National Stock Exchange, The company has 30,000 equity shareholders, 8 secured creditors, 16 preference shareholders.</p> <p>M/s Depathology Ltd (hereinafter referred as T2): T2 has been incorporated as a public limited company in 1998, having its registered office at Indore, Madhya Pradesh. The main business of the company is to establish diagnosis centers in different cities of India. It is a profitable company. It has 4 secured creditors, 5 unsecured creditors, 45 equity shareholders.</p> <p>M/s Mintechnology Ltd (hereinafter referred as T3): T3 has been incorporated as a private Limited Company in 2000, having its registered office at Bombay, Maharashtra. The main object and business of the company is to manufacture medical equipment and to sale in India. The company has listed its securities in the Bombay Stock Exchange. The company is a profitable company. There are 45,000 equity shareholders, 40 preferential shareholders, and 55 debenture holders and 6 secured creditors. The secured creditors have provided their consent to the proposed scheme.</p> <p>M/s Gatigo Aluminium Private Ltd. (hereinafter referred as T4): T4 has been registered as a private limited company in 1997 having the registered office at Singapore.</p> | |

The object of the company is to produce textiles for health sector, specifically for hospitals. T4 is a loss-making company and the subsidiary company of T3.

Some relevant information about the scheme:

The company T1 and T2 will get merge with T3 by absorption. The companies T1 and T2 will be dissolved without winding up after the merger. Finally, the company T3 will take over the company T4.

The directors of company T2 have not disclosed about a CDR, which was introduced to restructure the outstanding debt of the company in 2021.

The company T3 will repay the outstanding debts to the creditors of company T4.

The employees of the T1 and T2 will be absorbed by the merged entity.

The company T3 will have to reduce the share capital by Reduction of share capital

The share exchange ratio is as follows:

5 fully paid up equity shares with face value of Rs 10 of T3 will be issued against 8 fully paid equity shares with face value of Rs 10 of T1 and T2.

As T3 is the holding company of T4 (subsidiary), the equity shares held by company T3 will be cancelled following the appropriate procedure of law.

- a) What is the nature of Mergers in the proposed scheme between T1, T2, T3 and T4?
What is the nature of Mergers in between T3 and T4?
- b) What are the disclosures to be made in the notice of the meeting/s ?
- c) Which statutory authorities will have to give approval to the scheme?
- d) Being the member of the NCLT, give appropriate direction to the company T3 for convening the meeting.
- e) Describe in brief the legal procedure for reduction of share capital by company T3.
- f) Describe the procedure for sanction of the proposed scheme of Arrangement between company T1, T2, T3 and T4.

- Q.3 Read the fact below and answer the questions as per the provisions of the Companies act, 2013, applicable rules/regulations (if any) and decided cases (2+3=5)

A company M/s MTri Ltd is a public company limited by shares. The securities of the company are listed in Bombay Stock Exchange. There is a complaint by the investors of the company related to fraudulent allotment of shares in the IPO, which was issued in 2017. The SEBI started investigation and found that the company has fraudulently allocated the shares in the IPO and debarred the company from accessing the capital market for five years. As a consequence, the business suffered huge losses, the creditors have approached multiple forums for recovery of debt. Three fully paid up shareholders, who are holding shares since 1st July, 2020 have approached you for filing a winding up petition against the company.

- a) Being the corporate advocate for the shareholders, decide the appropriate ground to file the petition for winding up
- b) Being the corporate advocate for the company, make objections to the petition.

- Q.4 M/s Int Real Estate and Consultant Pvt. Ltd (hereinafter referred as company) is a private company having its registered office at Bangalore. The main business of the company is real estate constructions and consultancy related to real estate sector (4x2=8)

business. The State Bank of India (SBI) had sanctioned a loan, INR 350 crore to the company in 2002. As per the terms and conditions, the company was required to repay the entire debt amount within 20 years from the date of sanction of the loan. The date of sanction of the loan is 14th December 2002. The company could repay 300 crore by 13th December 2022. On 14th December 2002, the outstanding debt with interest was 80 crore. During the COVID 19 outbreak, the company had suffered financial losses and was not able to repay the outstanding debt to SBI. At the same time the company could not give possession of the houses to the allottees on the scheduled date in two projects named Int-HillTop project and Int-seaface project. The scheduled date for possession of the houses (in both the projects) was on 12th March, 2021. The total number of home allottees in both the projects are 400 i.e. 200 in each project. The cost of each house in both the projects was two crore. The LMG Cement company had provided cement to the company. The company was not able to pay (the outstanding debt amount which was one crore and fifty lakhs) to the LMG Cement company. The unpaid tax amount to the Income Tax department was 50 Lakhs which was payable by 31st March, 2021. The company was not able to repay to any one of the creditors.

Read the above fact and answer the following questions as per the provisions of the Insolvency and Bankruptcy Code, 2016 and established principles.

- a) Identify the nature of creditors in the below list and examine if the debt amount is appropriate amount to initiate CIRP and if the debt is defaulted to trigger the provisions of the IBC for initiation of the CIRP.
 - i. The home allottees
 - ii. The SBI
 - iii. The Income tax Department
 - iv. The LMG Cement company
- b) Presuming that the debt is defaulted for the LMG Cement company, explain the prerequisites for filing the petition for CIRP by LMG and being the NCLT member, decide the petition filed by LMG Cement company and pass the order.

Q.5 Answer the following: (**Any Two**)

(3x2=

- a) Write the objections made in the Hindustan Lever Limited Employees Union V Hindustan Lever Limited.
- b) What was the issue in Zee Entertainment Enterprises Ltd. Vs Invesco Developing Markets Fund, HC, Bom, 2021?
- c) What was the observation of the Supreme Court on section 29 A of the IBC in SWISS RIBBONS Pvt. Ltd Vs Union of India, 2018 SC?

6)

Q.6 Distinguish the following: (**Any Two**) (40-50 words)

(4x2=

- a) Stake holders Consultation Committee and Committee of Creditors
- b) Special Resolution and Ordinary Resolution
- c) Financial Debt and Operational Debt
- d) Acquisition of shares and Creeping Acquisition

8)
