Professional Programme

Module II,

Paper-4

(Corporate Restructuring & Insolvency)

Solutions to December 2012 Paper-

Answer [1] (a) Please refer 2004 -Dec [1] (a) on page no.

Answer [1] (b)

(i) The scheme of amalgamation must be approved by majority in number representing three-fourth in value of the creditors or members or a class of them, as the case may be, present and voting in the meeting. Thus, only 75% in value is not sufficient, but majority in number is also required.

(ii) Yes, the application for approval of scheme of compromise or arrangement can be made by the company, creditor/ Member or Liquidator in case of the company being wound up.

(iii) According to the provision of Section 391, the resolution relating to the approval of amalgamation has to be approved by a majority of members representing three-fourth in value of the creditors or class of creditors or members or class of members as the case may be present & voting either in person or by proxy, where proxies are allowed under rules made under section 643. Accordingly proxies may be allowed at the meeting convened in accordance with the directions of the court.

(iv) Copies of the order of high court sanctioning the scheme of arrangement are required to be affixed to all copies of Memorandum and Articles of Association of the transferee company issued, subsequent to filing of certified copy with Registrar of Companies.

Answer [1] (c)

Demerger - Demerger in relation to companies means the transfer, pursuant to a scheme of arrangement under section 391 to 394 of the Companies Act, 1956 by a demerged company of its one or more undertaking to any resulting company.

Slump Sale- Slump sale means the transfer of one or more undertaking as a result of the sale of lump sum consideration without value being assigned to the individual assets and liabilities in such sales.

Both demerger & slump sale results in hiving of a division or undertaking, but there are various differences which are as follows:

1. In case of slump sale values are not assigned to individual assets and liabilities and the sale of undertaking is for a lump sum consideration. In demerger, valuation of individual assets and liabilities are mandatory.
2. In case of demerger, the resulting company has to continue the business of transferred undertaking of demerged company, whereas in slump sale it is not so.
3. Demerger results into reorganization of capital where as slump sale does not result in reorganization of capital.
4. In case of demerger, the shareholders of demerged company has to be issued shares of resulting company and in case of slump sale the issue of shares does not take place.

Answer [1] (d)

Please refer 2008-Dec (a) (ii) and 2010-Dec [1] (d) on page no.

Answer [2] (a)

Calculation of Number of shares to be issued to Narrow Ltd.

No. of equity shares of Narrow Ltd. =	5,00,000
Less: Shares held by Wide Ltd.	(1,00,000)
Less: Shares held by Small Ltd.	(1,00,000)
	3,00,000

The Exchange ratio being 1:3 Wide Limited will issue 1,00,000 shares to shareholders of Narrow Ltd.

Calculation of No. of shares to be issued to Small Ltd.

No. of equity shares of Small Ltd.	4,00,.000
Less: Shares held by Wide Ltd.	(1,00,000)
Less: Shares held by Small Ltd.	(1,00,000)
	2,00,000

The Exchange ratio being 1:2, Wide Ltd. will issue 1,00,000 shares to shareholders of Small Limited.

Post Issue Capital of Wide Ltd. after cancellation of cross holdings:

Post Issue Capital	10,00,000
Less: Shares held by Narrow Ltd.	(1,00,000)
Less: Shares held by Small Ltd.	(1,00,000)
	8,00,000
Add: Issue of new shares to the shareholders of Narrow Ltd.	1,00,000
Add: Issue of new shares to the shareholders of Small Ltd.	1,00,000
Post Issue Capital	10,00,000

Answer: [2] (b)

Please refer 2009 - June [2] (c) on page no.

Answer [3] (a) (i)

According to SEBI (ICDR) Regulations, the cap on price bond shall be less than or equal to one hundred and twenty percent of the floor price.

For example, if the floor price is ` 100, then the ceiling on the price bond is ` 120.

Answer [3] (a) (ii) (a)

The issuer is required to announce the floor price or price bond at least five working days before the opening of the bid (in case of initial public offer).

Answer [3] (a) (ii) (b)

The issuer is required in case of further public offer, at least one working day before the opening of the bid in all the newspapers in which pre issue advertisement was released.

Answer [3] (b)

Corporate restructuring activities such as merger, acquisitions, takeovers, demergers, hive off etc. enables an enterprise to achieve economies of scale, global competitiveness, right size, and a host of other benefit including reduction of cost of operations and administration.

A merger or amalgamation is capable of offering various financial synergies and benefits such as eliminating financial constraints ,deployment of surplus cash, enhancing debt capacity and lowering the cost of financing.

Answer [3] (c)

Please refer 2007- Dec [3] (v) on page no.

Answer [4] (a)

In case of High Court of Gujrat, Gallops Realty (P) Ltd., under section 391, read with section 394 and 100, of the Companies Act, 1956 petitioner companies i.e., demerged company and resulting company, sought for sanction of composite scheme of arrangement in nature of purchase of share and demerger of hotel business of demerged company to resulting company and consequent restructuring of share capital of demerged company under section 391, read with sections 394, 78 & 100 consisting of reduction of paid up share capital as well as utilisation of share premium amount.

Regional Director states that as per scheme, capital profit on demerger would be transferred to general reserve in books of resulting company which was in consonance with generally accepted accounting principles as also Accounting Standard-14. AS-14 provide that any profit arising out of a capital transaction, like that in case of merger or demerger, ought to be treated as capital profit and hence would be transferred to capital reserve and not to general reserve.

So, it was held that observation of Regional Director was not in consonance with accounting principles in general and Accounting Standard- 14 in particular, as AS- 14 is applicable only in case of amalgamation and not in case of demerger, as envisaged in this scheme.

Answer [4] (b)

The court applies the principle of res- judicata where a proposed scheme of compromise or arrangement has already been rejected by the court and the same person proposes another scheme which is substantially the same as the earlier one.

Answer [4] (c)

"Resolved that M/S_____ being Category- 1Merchant Banker be and is hereby appointed as Merchant Banker, on the terms & conditions as contained in the draft letter of appointment placed before the meeting duly initialed by the chairman for the purpose of identification, for making public announcement of takeover offer in the newspapers, forward the same to SEBI and to target company and to draft, the letter of offer to be sent to shareholders of _____, target company and other incidental matters relating there to, in accordance with the SEBI (Substantial Acquisition of Shares and Takeover) Regulation 2011.

Answer [5] (a)

In the High Court of Judicature at Mumbai

ORIGINAL JURISDICTION

IN THE MATTER OF COMPANIES ACT,1956

AND IN THE MATTER OF:
COMPANY APPLICATION NO.--- OF _____
(Under section 391/394 of Companies Act)
IN THE MATTER OF SCHEME OF AMALGAMATION
BETWEEN
_____Limited
AND
_____Limited.
having their registered office at _____APPLICANTS,

NOTICE CONVENING MEETING.
To,
Creditor of
_____Limited.

Take notice that by an order made on_____2012, the Hon'ble Court held at____on____at ____P.M. for the purpose of considering and if though fit, approving, with or without modification, the proposed sheme of amalgamation as named above.

Take further that in pursuance of the said order, a meeting of creditors of the company will be held at____on____at_____, when you are requested to attend.

Take further notice that you may attend and vote at the said meeting in person or by proxy, provided that a proxy in prescribed form, duly signed by you, is deposited at the Registered Office of the Company at____, not later than 48 hours before the meeting.

This court has appointed shri ____to be the Chairman and shri____to be the alternative Chairman of the said meeting.

A copy each of the scheme of Amalgamation and a form of proxy is enclosed.

shri_____

(Chairman)

Dated this_____

Answer: [5] (b)

Price- earning ratio (or PE ratio) is the ratio between the market price and earnings per share. It is an indicator to measure company's market performance. The higher price earning ratio, the more is market willing to pay.

In cases of takeover, price earning of both offeror & offeree companies are compared to judge the relative growth prospects. Company with lower PER show a record of low growth earning per share which depressed market price of shares in comparison to high growth potential company.

Answer [5] (c)

Forms which are required to be filed under companies (court) Rules, 1959 in respect of scheme of demerger are as follows:

Form No. 33 - Summons for directions to convene a class meeting under section 391- Rule 67.

Form No. 34 - Affidavit in support of summons -Rule 67

Form No. 35 - Order on summons for direction- Rule 69

Form No. 36 - Notice convening meeting- Rule 73

Form No. 37 - Form of proxy - Rule 73

Form No. 38 - Advertisement of Notice convening meeting of creditors/ shareholders etc. Rule 74.

Form No. 39 - Report by chairman of the meeting -Rule 78

Form No. 40 - Petition to sanction the scheme of compromise or arrangement -Rule 79

Form No. 41 -Order on petition -Rule 81.

Part -B

Answer [6] (a) The combined affect of Section 35 and 37 is that in case of any conflict, then the SRFAESI Act 2002 shall have the overriding effect over such Act or Acts.

Therefore the provisions of SRFAESI Act, 2002 shall have the binding power and cannot be put on hold because of conflict with any other legislation.

In addition to this Section 34 of SRFAESI Act 2002, no civil court shall have any jurisdiction to entertain any suit or proceeding in respect of any matter in which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under this SRFAESI Act, 2002.

Answer [6] (b)

In case of union of India V/s Delhi High Court, petitioners challenged the constitutional validity of the Recovery of Debt due to Banks and Financial Institutions Act 1993 on the ground that the Act is unreasonable & is violative of article 14 of the constitution and it is beyond the legislative competence of Parliament to enact such a law.

However, Supreme Court held that there is no such right that the dispute should be adjudicated only by a civil court, and the replacement of the jurisdiction of civil courts by independent and specialized tribunals is completely legal as well as

constitutional .**Answer [6]** (c)

Section 582 of the Act specifies " Unregistered Companies" which may be wound up by the order of the court under the provisions of Part X of the Act. By virtue of that section, on " Unregistered company" does not include the following:

(a) A railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom.

(b) a company registered under the Companies Act, 1956, or.

(c) a company registered under any previous company law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India.

Except as aforesaid, any partnership, association, or company consisting of more than seven members at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the Court, will be deemed to be an unregistered company and may be wound up by the order of the Court.

Circumstances under which an unregistered company is deemed to be unable to pay its debts.

An unregistered company shall be deemed to be unable to pay its debts.

(1) If a creditor to whom the company owes more than ` 500 has served on the company a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand, neglected to pay the sum or to secure or to compound for it to the satisfaction of the creditor.

(2) If any other suit or legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character as a member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company, the company has not, within ten days after service of the notice, paid, secured or compounded for the debt.

(3) If execution or other process issued on a decree of court is returned unsatisfied; or

(4) If it is otherwise proved that the company is unable to pay its debt.

Answer [7] (a)

NPAs constitute a real economic cost to the nation because they reflect the application of scarce capital and credit funds to unproductive uses. Moneys which got locked up in NPAs are not available for productive use. Banks have to create a provision or need to write them off which is charge on their profit.

Increase in NPA affects the financial strength of banks.

Earlier, banks used to take recourse to the long route of filing cases in courts against faulty borrowers, court cases take lot of time. Thereafter Debt Recovery Tribunals were set up which again does not prove to be of much help as they were overburdened by the huge number of cases referred to them.

Thereafter a new Act was introduced which is known as securitization & Reconstruction of Financial Asset & Enforcement of Security Interest Act, 2002 (SRFAESI Act, 2002) which is proving to be very useful to bank in collecting dues from faulty borrowers.

Answer [7] (b)

(1) **Originator**

Originator means the owner of a financial asset which is acquired by a securitization company or reconstruction company for the purpose of securitisation or asset reconstruction.

(2) **Security Receipt**

It means a receipt or other security, issued by a securitization company to any qualified Institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof , of on undivided right, title or interest in the financial asset involved in securitization.

(3) **Qualified Institutional buyer**

It means a Financial Institution, Insurance Company, Bank, State Financial Corporation, State Industrial Development Corporation, Trustee or Securitisation Company or Reconstruction Company which has been granted a certificate of registration under sub- section 4 of section 3 or any asset management company making investment on behalf of mutual fund or a foreign institutional investor registered under SEBI Act, 1992 or regulations made thereunder, or any other body corporate as may be specified.

Answer [7] (c)

Prior approval of Reserve Bank is required by Securitization Company or Reconstruction Company where it is looking for a substantial change in management or change of location of its registered office or change in its name.

Answer [8] (a)

If the Court is of the opinion at the time of hearing that it is just and equitable that the company should be wound up, it may be ordered to be wound up. The court has wide powers and has a complete discretion to decide where it is just & equitable that the company should be wound up.

The Cases in which wound up was not ordered under just & equitable clause are as follows:

(1) Where the company was under a loss but there was a change of its making profit and the majority of shareholders were against winding up.

(2) Where the directors in the exercise of their power to do so, refused to register the executors of the deceased shareholder even when this caused hardship to the shareholders.

(3) When there is a honest difference between the petitioner, a director and the other director and he has been outvoted.

(4) Where the business of the company was temporarily suspended owing to trade depression and was intended to be continued when conditions improved.

(5) When there is a deadlock in the management of public company.

(6) If the ' just and equitable' ground does not exist at the time of hearing the petition though it might have existed at the time of presenting the petition.

Thus, Court may not order for wound up on just &equitable ground' when just and equitable ground does not exist at the time of hearing the petition though it might have existed at the time of presenting the petition.

Answer [8] (b) (i)

Please refer 2011-June [8] (b) (iii)

Answer [8] (b) (ii)

It was held by supreme court that it was not necessary for DRTs to always cross examine a witness. Evidence could be taken by affidavits also on the pattern of High Courts and Supreme Courts where the cases can be decided merely on the basis of documents & affidavits filed before them.

The court observed that most of the transaction with banks are with written document & rarely any oral transaction occurs. So the need for oral examination of witness rarely arise. The court may at any time for sufficient reason order that

any particular fact be proved by affidavit.

Answer [8] (c)

Please refer 2009- June [7] (b) on page no.