# CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY

<table>
<thead>
<tr>
<th>CHAPERS NAME</th>
<th>Jun-09</th>
<th>Jun-10</th>
<th>Jun-11</th>
<th>Jun-12</th>
<th>Jun-13</th>
<th>Jun-14</th>
<th>Jun-15</th>
<th>Jun-16</th>
<th>Total</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PART - A - Corporate Restructuring</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporate Restructuring</td>
<td>4</td>
<td>5</td>
<td>4</td>
<td>15</td>
<td>10</td>
<td>10</td>
<td>6</td>
<td>5</td>
<td>59</td>
<td>3.69</td>
</tr>
<tr>
<td>Introduction and Concepts</td>
<td>42</td>
<td>41</td>
<td>20</td>
<td>10</td>
<td>34</td>
<td>36</td>
<td>18</td>
<td>42</td>
<td>25</td>
<td>23</td>
</tr>
<tr>
<td>Mergers and Amalgamations</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td>8</td>
<td>10</td>
<td>10</td>
<td>5</td>
<td>6</td>
<td>60</td>
<td>3.75</td>
</tr>
<tr>
<td>Legal and Procedural Aspects</td>
<td>9</td>
<td>4</td>
<td>1</td>
<td>7</td>
<td>5</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>56</td>
<td>3.5</td>
</tr>
<tr>
<td>Economic and Competition Law Aspects of Mergers and Amalgamizations</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>7</td>
<td>5</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>56</td>
<td>3.5</td>
</tr>
<tr>
<td>Mergers and Amalgamations</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>34</td>
<td>2.13</td>
<td></td>
</tr>
<tr>
<td>Accounting Aspects of Amalgamations</td>
<td>11</td>
<td>12</td>
<td>10</td>
<td>5</td>
<td>16</td>
<td>8</td>
<td>6</td>
<td>10</td>
<td>96</td>
<td>6.00</td>
</tr>
<tr>
<td>Financial, Stamp Duty and Taxation Aspects of Amalgamations</td>
<td>17</td>
<td>8</td>
<td>13</td>
<td>13</td>
<td>20</td>
<td>7</td>
<td>15</td>
<td>4</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>Interest of the Small Investors in Mergers</td>
<td>21</td>
<td>27</td>
<td>30</td>
<td>33</td>
<td>31</td>
<td>29</td>
<td>2</td>
<td>5</td>
<td>28</td>
<td>1.75</td>
</tr>
<tr>
<td>Mergers and Amalgamations</td>
<td>12</td>
<td>5</td>
<td>21</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>25.94</td>
</tr>
<tr>
<td>Takeovers</td>
<td>3</td>
<td>4</td>
<td>3</td>
<td>5</td>
<td>3</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>34</td>
<td>2.13</td>
</tr>
<tr>
<td>Funding of Mergers and Takeovers</td>
<td>12</td>
<td>5</td>
<td>21</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>25.94</td>
</tr>
<tr>
<td>Financial Restructuring</td>
<td>17</td>
<td>8</td>
<td>13</td>
<td>13</td>
<td>20</td>
<td>7</td>
<td>15</td>
<td>4</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>Corporate Demergers and Reverse Mergers</td>
<td>5</td>
<td>6</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td>10</td>
<td>5</td>
<td>6</td>
<td>56</td>
<td>3.5</td>
</tr>
<tr>
<td>Takeovers</td>
<td>12</td>
<td>5</td>
<td>21</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>42</td>
<td>25.94</td>
</tr>
<tr>
<td>Case Studies</td>
<td>17</td>
<td>8</td>
<td>13</td>
<td>13</td>
<td>20</td>
<td>7</td>
<td>15</td>
<td>4</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td><strong>PART - B - Valuation</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Valuation Introduction and Techniques</td>
<td>4</td>
<td>5</td>
<td>18</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>10</td>
<td>5</td>
<td>19</td>
<td>15</td>
</tr>
<tr>
<td>Regulatory Aspects of Valuation with Reference to Corporate Strategies</td>
<td>4</td>
<td>7</td>
<td>4</td>
<td>15</td>
<td>10</td>
<td>11</td>
<td>10</td>
<td>20</td>
<td>81</td>
<td>5.56</td>
</tr>
<tr>
<td><strong>PART - C - Insolvency</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insolvency Concepts and Evolution</td>
<td>7</td>
<td>5</td>
<td>5</td>
<td>7</td>
<td>4</td>
<td>6</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>59</td>
</tr>
<tr>
<td>Revival and Restructuring of Sick Companies</td>
<td>19</td>
<td>15</td>
<td>19</td>
<td>13</td>
<td>5</td>
<td>21</td>
<td>13</td>
<td>20</td>
<td>6</td>
<td>9</td>
</tr>
<tr>
<td>Securitization</td>
<td>10</td>
<td>5</td>
<td>10</td>
<td>4</td>
<td>9</td>
<td>8</td>
<td>5</td>
<td>4</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Debt Recovery</td>
<td>8</td>
<td>15</td>
<td>19</td>
<td>20</td>
<td>12</td>
<td>15</td>
<td>17</td>
<td>12</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>Winding Up</td>
<td>5</td>
<td>10</td>
<td>0.63</td>
<td>5</td>
<td>10</td>
<td>0.63</td>
<td>5</td>
<td>10</td>
<td>0.63</td>
<td>5.25</td>
</tr>
</tbody>
</table>

MOHIT EDUCOMP PVT. LTD.
Main Centre- 59 Jatindra Mohan Avenue
9830741471/8017567120/03325551197
Website- www.mohitedu.com
www.facebook.com/education.mohit
PART—A

1. (a) “Measuring the shareholders’ value” is the objective of Good Corporate Governance. Comment on the statement, how buy back of shares achieves it. 

(5 marks)

(b) A scheme of Merger of Happy Limited with Lucky Pvt. Ltd. was filed with the National Company Law Tribunal (NCLT). The Regional Director raised objections that the additional filing fees and stamp duty on the increased share capital of the Lucky Pvt.Ltd. is to be paid and also against the changing name of the transferee company, for not complying with Section 61 of the Companies Act 2013. Will the objection of the Regional Director hold good ? Explain. 

(5 marks)
(c) Discuss “Strategic Alliance” and “Joint Venture” as corporate restructuring strategies. (5 marks)

(d) How the rights of the minority shareholders are protected during merger/amalgamation/takeover? (5 marks)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) What are the obligations of the Committee of the Independent Directors of a target company in connection with providing reasonable recommendation on the open offer made by the acquirer? (5 marks)

(b) Enumerate the common mistakes made by the corporate leading to pitfalls in mergers and acquisition? (5 marks)

(c) What is a “Voluntary Offer” as per Regulation 6 of Takeover Code 2011? (5 marks)

OR (Alternate question to Q. No. 2)

2A. (i) M/s Brite Instruments Pvt. Limited is acquiring M/s Sunshine Pvt.Limited. You are the Company Secretary of M/s Brite Instruments Pvt Limited. Help your management (Board of Directors) to prepare a checklist in this regard. (5 marks)

1/2017/CRVI Contd. .......
In case of Takeover, what are the cases in which the amount is released from Escrow Account?

(5 marks)

Scheme of Reconstruction pursuant to order of competent authority does not trigger, an open offer under SEBI (SAST) Regulations. Discuss the regulation citing the case laws.

(5 marks)

3. Examine and explain the following statements citing relevant provisions of laws:

(a) The reduction of share capital can result in extinguishment of class of shares.

(3 marks)

(b) The amalgamated company has to issue new shares to Non-resident Indians in amalgamation and for that it has to obtain permission of Reserve Bank of India under the provisions of the Foreign Exchange Management (FEMA) Act, 1998.

(3 marks)

(c) Name various documents which requires Stamping in case of merger.

(3 marks)

(d) M/s Happy Exports Limited was merged with M/s Smart Exports Limited. The order passed by High Court was filed with the Registrar of Companies (ROC). But the same was not taken on record by ROC. Will the scheme still be effective?

(3 marks)
(e) The Tribunal can modify transfer date proposed in a scheme of amalgamation.

PART—B

4. (a) What is the Valuation documentation and what is the objective of this?

(b) Write a note on International Valuation Standards Council.

(c) “Valuation is an important aspect in merger and acquisition and it should be done by a team of experts.” Comment on the statement, mentioning which type of experts should be in the team.

5. (a) Bell Limited is planning to merge with (take over) Ring Limited. The following is the data regarding both the companies:

<table>
<thead>
<tr>
<th></th>
<th>Bell Ltd.</th>
<th>Ring Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up Capital</td>
<td>₹ 40,00,000</td>
<td>₹ 24,00,000</td>
</tr>
<tr>
<td>(Fully Paid Up Equity Shares of ₹ 10 each)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Market Price of Shares</td>
<td>₹ 40</td>
<td>₹ 24</td>
</tr>
<tr>
<td>(Latest traded in Stock Exchange)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit After tax (PAT)</td>
<td>₹ 20,00,000</td>
<td>₹ 14,40,000</td>
</tr>
</tbody>
</table>

What should be the basis of exchange ratio so that the Bell Limited gains?

1/2017/CRVI Contd. .......
Swan Limited is the holding company of Duck Limited. Swan Limited wants to merge Duck Limited with it.

Swan Limited holds 30,000 Equity Shares of ₹ 10 each fully paid up in Duck Limited. The following details are available with us:

<table>
<thead>
<tr>
<th></th>
<th>Swan Ltd.</th>
<th>Duck Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up Equity shares</td>
<td>50,00,000</td>
<td>40,00,000</td>
</tr>
<tr>
<td>(₹ 10 each)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Market value of shares</td>
<td>50</td>
<td>25</td>
</tr>
<tr>
<td>(Latest traded in Stock Exchange)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit After Tax (PAT)</td>
<td>25,00,000</td>
<td>12,00,000</td>
</tr>
</tbody>
</table>

Calculate the no. of shares Swan Ltd. will issue to the shareholders of Duck Ltd. If exchange ratio is on the basis of:

(i) Earning Per Share (EPS)

(ii) Market Price.

(c) The method of valuation of a business, however, depends to a great extent on the acquisition motive. What are those motives of valuation?
PART—C

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (a) Explain the steps to be followed for the “Corporate Insolvency Resolution” process with timelines.

(8 marks)

(b) Explain the different functions of Insolvency professionals.

(6 marks)

(c) Explain “Property” under Recovery of Debts (and Bankruptcy) Act 1993.

(4 marks)


(2 marks)

OR (Alternate question to Q. No. 6)

6A. (i) Measures to be taken by Assets Reconstruction or Securitisation Company for the purpose of Assets Reconstruction.

(5 marks)
(ii) Assistance to take possession of secured assets from the Chief Metropolitan Magistrate or the District Magistrate under (SARFAESI) Act, 2002. (5 marks)

(iii) Right to lodge a “Caveat” under (SARFAESI) Act, 2002. (5 marks)

(iv) “Demand Notice” under Security Interest (Enforcement) Rules 2002. (5 marks)
PART—A

1. (a) “Corporate Restructuring aims at significant change in a Company’s business model, management team or financial structure to address challenges and increase shareholders’ value.” Elucidate the statement with relevance to business strategy.

   (5 marks)

(b) “Restructuring is resorted to in various forms with objectives such as profitability improvement, augmenting more resources, relief from competition and methods take the forms like acquisition, merger, takeover, leveraged buy outs, slump sale, overseas acquisitions etc.” Illustrate certain instances that have happened in India setting examples of benefits in Corporate Restructuring.

   (5 marks)

(c) “Scheme of Reconstruction pursuant to order of competent authority does not trigger open offer under SEBI (SAST) Regulations.” Explain the regulation with reference to any event occurred since promulgation of said regulation in 2011.

   (5 marks)
333

: 2 :

(d) As a Company Secretary, one should advice the Board regarding compliances under various legislations. Refering the cases of mergers or amalgamations, state the circumstances that warrant compliances under any or all of such legislations.

(5 marks)

Attempt all parts of either Q. No. 2 or Q. No. 2A

2. (a) “Events taking place outside India but having an effect on competition in India is also subject to jurisdiction of Competition Commission of India.” Comment on extra territorial jurisdiction provided under Competition Act, 2002.

(5 marks)

(b) State the distinctive features of Ind AS 103 in contrast to existing AS 14 for accounting treatment in cases of amalgamations and combinations.

(5 marks)

(c) ABC Bank Ltd. contemplates to merge with PQR Bank Ltd. Accordingly, draft scheme of amalgamation is placed before the Board of Directors of both the banks. The said scheme is aimed to be placed in the shareholders meeting thereafter. Mention the aspects which board of both the companies should consider in approving draft scheme of amalgamation.

(5 marks)

OR (Alternate question to Q. No. 2)

2A. (i) “A Scheme, even approved by majority, can be rejected by Court but such a Scheme must be held to be unfair to the meanest intelligence.” Analyse the statement citing important judicial pronouncements.

(5 marks)

2/2017/CRVI Contd. ........
Comment, briefly explaining the procedure for amalgamation of banking companies.

(5 marks)

Apart from availing the benefit of set off and carry forward of unabsorbed depreciation and accumulated losses, what are the other tax benefits if the strategy of the acquirer to merge with a loss making company is in the form of a reverse merger?

(5 marks)

3.

(a) “Optimum capitalization is desired to maintain robust financial health of an enterprise.” Identify the symptoms of over capitalization or under capitalization.

(3 marks)

(b) “Reduction of capital requires the approval of National Company Law Tribunal (NCLT) is a general perception.” Elucidate.

(3 marks)

(c) What are the key indicators that need to be measured apart from expected financial results such as earnings and cash flow to evaluate extent of success of merger?

(3 marks)

(d) State the salient features of Reconstruction that differs with Demerger.

(3 marks)

(e) What is a Voluntary Offer in acquiring shares in another company? State the restrictions in terms of SEBI (SAST) Regulations, 2011.

(3 marks)
PART—B

4. (a) In calculating fair value, element of guesswork or arbitrariness is imminent. Comment. (5 marks)

(b) Balance Sheet of Smileheavy Ltd as at 31-3-2017 reveals as under:

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Amount in INR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,50,000 equity shares of ₹ 10/- each fully paid up</td>
<td>15,00,000</td>
</tr>
<tr>
<td>2,00,000 equity shares of ₹ 6/- each fully paid up</td>
<td>12,00,000</td>
</tr>
<tr>
<td>60,000 12% cumulative preference shares of ₹ 10/- each fully paid up</td>
<td>6,00,000</td>
</tr>
<tr>
<td>Secured Loans</td>
<td>14,00,000</td>
</tr>
<tr>
<td>Trade Payables</td>
<td>6,50,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53,50,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assets</th>
<th>Amount in INR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land &amp; Buildings</td>
<td>23,00,000</td>
</tr>
<tr>
<td>Furniture, Fixture &amp; Fittings</td>
<td>3,90,000</td>
</tr>
<tr>
<td>Profit &amp; Loss Account Debit Balance</td>
<td>13,00,000</td>
</tr>
<tr>
<td>Inventories</td>
<td>8,30,000</td>
</tr>
<tr>
<td>Trade Receivables</td>
<td>4,10,000</td>
</tr>
<tr>
<td>Balance with Bank</td>
<td>1,20,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53,50,000</strong></td>
</tr>
</tbody>
</table>
Current value of Land & Buildings is ₹ 30,00,000/-, Furniture, Fixture & Fittings is ₹ 2,50,000/-. Inventory is valued at ₹ 9,11,000/-. Debtors are expected to realise 90% of their book value. You are informed that preference dividend has not been paid for the last 5 years. Calculate the intrinsic value of per equity shares by Net Assets Method.

(5 marks)

(c) “Courts and Tribunals do not substitute or impose their opinion on the valuation report unless there are noticeable irregularities.” Offer your comments with certain judicial pronouncements.

(5 marks)

5. (a) The net profits earned during the last 5 years of XYZ Ltd. was ₹ (in lacs) 42, 47, 45, 39 and 47 respectively on the capital employed during all the period was ₹ 4 Crores. Market peers in the said industry expect 10% return of capital employed.

You are required to calculate the goodwill of XYZ Ltd. using:

— Capitalization of Average Profit Method and

— Capitalization of Super Profit Method.

(5 marks)

(b) What are the preliminary steps that are to be followed for a proper valuation?

(5 marks)

(c) What are the common strategies that warrant valuation of shares, business or even an undertaking?

(5 marks)
6. (a) What is meant by Principle of Supremacy of International Obligations as enunciated in Article 3 of Model Law.

     (5 marks)

(b) Who are entitled and who are not eligible to make application to adjudicating authority for corporate insolvency resolution process as per Insolvency & Bankruptcy Code, 2016?

     (5 marks)

(c) “Insolvency & Bankruptcy Code, 2016 as on date is an offshoot of reports by several committees established to make Indian economy free from industrial sickness resulting in loss of production and to boost the economy.” Explain the evolvement of Insolvency & Bankruptcy Code, 2016 through recommendations from various committees with consequent reforms made in India over a period of time.

     (5 marks)

(d) What is a securitisation and who are the parties involved in securitization? Briefly explain the action points or steps in securitisation?

     (5 marks)
OR (Alternate question to Q. No. 6)

6A. (i) “Liquidator appointed by the Tribunal has unquestionable sole authority to deal and disburse the properties during liquidation process.” Elaborate your answer citing circumstances in which a liquidator can be removed.

(5 marks)

(ii) What were the reasons that prompted enactment of Insolvency & Bankruptcy Code, 2016? How does Corporate Insolvency Resolution Process differ with revival plans under repealed SICA or liquidation under Company Law?

(5 marks)

(iii) State the procedure for serving notice to foreign creditors under UNICITRAL Model Law.

(5 marks)

(iv) “Recovery Officer acts in an arbitrary manner.” Analyse the statement in the light of the provisions of Recovery of Debts and Bankruptcy Act, 1993 citing judicial pronouncements, if any.

(5 marks)
NOTE : 1. Answer ALL Questions.

2. All references to sections relate to the Companies Act, 2013, unless stated otherwise.

PART—A

1. (a) “Global competition drives enterprises to become globally fit to face global challenges prompting them for corporate restructuring”. Elucidate.

(5 marks)

(b) “Inorganic growth provides an organisation with an avenue for attaining accelerated growth as compared to the organic growth in general”. Comment on the statement.

(5 marks)

(c) ABC Ltd. intends to delist its shares from Delhi Stock Exchange (DSE) for which it made required public announcement. Surewin Ltd., a substantial shareholder in the said Company made a counter offer.

Advise Board with a short note in accordance with the relevant and applicable regulations of Securities Exchange Board of India (SEBI).

(5 marks)

(d) “Inability to pay debts was generally a ground for moving an application for winding up of a Company under the Companies Act, 1956. But such a ground no longer exists under the Companies Act, 2013”. State the circumstances which compel a company to be wound up under the Companies Act, 2013.

(5 marks)
2. (a) XYZ Ltd. and ABC Ltd. filed applications before National Company Law Tribunal (NCLT) for amalgamation of both the companies to form a new Company PQR Ltd. Regional Director by an affidavit pointed out the following inconsistencies in the application(s):

(i) Main objects of XYZ Ltd. are not similar to that of ABC Ltd; and

(ii) Authorized capital of PQR Ltd. is not sufficient to cover the total consideration.

As a Company Secretary, you are requested to brief the facts and background, along with the judicial precedents, to the counsel enabling him to proceed in the matter.

(5 marks)

(b) “Mergers, Demergers or Reverse Mergers are resorted to enhance, utilise or protect the brand value already earned by an enterprise”. Explain how the reputation and goodwill associated with a brand name of the Company could be advantageously exploited.

(5 marks)

(c) “Anti-trust laws world over believe that the free trade benefits the economy and at the same time, the legislations are formulated to forbid several types of restraints of trade and monopolisation”. Justify the statement in the context of the provisions of Competition Act, 2002 with respect to mergers, demergers or reverse mergers.

(5 marks)
2A. (i) A Ltd. was a listed Company with Kanpur Stock Exchange but got delisted in 2012. In the year 2017, the Board passed a resolution approving a scheme of arrangement and petitioned before the National Company Law Tribunal (NCLT). Subsequent to that, scheme was placed before the members which the NCLT ordered. Two (2) shareholders holding 80% shares opposed the scheme.

As a Company Secretary, advise the Board on the next course of action(s) pursuant to the provisions of the Companies Act, 2013.

(5 marks)

(ii) Progression Ltd. is a listed Company with a paid up capital of ₹ 200 Crore divided into 20 crore shares of ₹ 10 each. R, S, T and U are the promoters of the said company holding 2 crore, 5.40 crore, 0.80 crore and 2.20 crore shares respectively.

The following situations occurred at different times:

Situation 1 : T transfers 0.30 crore shares each to R & U

Situation 2 : S transfers 0.22 crore shares to T

Situation 3 : R transfers 0.20 crore shares each to T and U

As a Company Secretary, you need to advise on the required compliances, if any, under the Securities Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for the above three situations respectively.

(5 marks)
While standard parameters play a crucial role, funding/borrowing for takeover should be organized in such a way that best suits the facts and circumstances of the specific case and should also meet the immediate needs and objectives of the management. Elucidate the statement with emphasis on the demerits of borrowing from the financial institutions and banks.

3. (a) What corrective measures a Company can take to restructure its internal finance having noticed symptoms of either under capitalization or over capitalization?

(b) “Consequent to restructuring, more particularly through mergers, amalgamations or takeovers, the management needs to be sensitive to employees’ morale”. Briefly comment on the validity of the statement.

(c) What is the purpose of observation letter issued by Stock Exchange(s) under SEBI (Obligations and Disclosure Requirements) Regulations, 2015?

(d) Several Credits Finance Company Ltd., a Non-Banking Finance Company (NBFC) is in the process of merging with Hatke Bank Ltd, a Scheduled Bank. Recommend the steps/actions to be undertaken by Hatke Bank Ltd with respect to the relevant statutory provisions as may be applicable in this case.

(e) “Demerger is not expressly defined under the Companies Act, 2013”. How does an application move before the National Company Law Tribunal (NCLT) for Demerger under the said Act?
PART—B

4. (a) “Fair value of shares is in fact not precisely fair but a compromise effort for bringing the parties to an agreement, just like providing extra play time in a Hockey or Football match especially in case of a tie”. Justify the statement with your views.

(5 marks)

(b) Fast Growth Ltd. gave the following information with a request to calculate the value of each of its equity shares:

(i) Subscribed capital consists of fully paid up shares as follows:

10 lakh 13% Preference shares of ₹ 10 each and
20 lakh Equity shares of ₹ 10 each

(ii) Profit after depreciation but before taxation is ₹ 180 lakh

(iii) Transfer to general reserve ₹ 34.50 lakh

(iv) Provision for taxation is 30%

(v) Expected dividend is 20% for the relevant industry.

(5 marks)

(c) Simran Simple Synthetics Ltd. is contemplating to issue Sweat equity shares for their staff in R&D department. Shares are listed on both the exchanges i.e., BSE and NSE. As a Company Secretary, you are tasked with enlightening the Board on the manner of fixing price per Sweat equity share in line with the SEBI regulations.

(5 marks)
5.  (a) Despite having a statutory warning by Mutual Fund Companies as “Past performance may or may not sustain in future”, past share market price data is quite often used in equity valuation while investing/acquiring equity and SEBI regulations also take into account weekly highs and lows of such market prices as litmus test. However, there may be certain inherent flaws and/or limitations while going by such market based valuation(s). Highlight to your Board of directors certain possible flaws and limitations in such market price based valuation(s) which may be misleading.  

(5 mark)

(b) Explain the following methods of valuation:

(i) Net Realisable Value Method

(ii) Valuation in case of Slump Sale

(5 marks)

(c) From the following data noticed from published financials, ascertain intrinsic value of equity shares:

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goodwill</td>
<td>₹ 56,400</td>
</tr>
<tr>
<td>Market value of other assets</td>
<td>₹ 18,00,000</td>
</tr>
<tr>
<td>Debentures</td>
<td>₹ 10,00,000</td>
</tr>
<tr>
<td>Trade payables</td>
<td>₹ 2,50,000</td>
</tr>
<tr>
<td>Preference capital</td>
<td>₹ 2,00,000</td>
</tr>
</tbody>
</table>

Equity capital consists of 10000 shares of ₹ 10 each fully paid up.

(5 marks)
PART—C

Attempt all parts of either Q. No. 6 or Q. No. 6A

6. (a) “Default by debtor was a crime punishable with imprisonment or death”. This forgotten perception with respect to the laws of bankruptcy has now got transformed giving opportunity to a bankrupt or insolvent for revival. Express the views in the current context of evolution of Insolvency Laws in Britain and U.S.A and now even in India. (5 marks)

(b) “Vasudev Kutumbakam or one world one family is the motto of any business entity in addition to political and cultural togetherness. This has prompted to the formation of United Nations Organisation (UNO) to ensure smooth universal trade”. Comment on the statement with special emphasis on efforts being made with respect to Cross Border Insolvency. (5 marks)

(c) “More and more banks are embarking on forming of Asset Reconstruction Companies such that they can manage their risks better and can concentrate on lending”. Explain the salient features and functions of an Asset Reconstruction Company in the context of the above statement. (5 marks)

(d) Unlike Companies Act, 1956 winding up can be resorted to only when resolution plan either could not be finalised or failed within 30 days of approval by adjudicating authority as per Insolvency and Bankruptcy Code, 2016. Are there any exceptions to such perception? Who all are entitled to move petitions for winding up? (5 marks)
6A. (i) “Banks and financial institutions do have free hands to take possession of assets of a defaulting debtor under Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002”. Are there any exceptions to the statement under the Act? Explain.

(5 marks)

(ii) Progress of enforcement of Insolvency and Bankruptcy Code, 2016 depends on four pillars apart from the adjudicating authorities. State briefly the role of such pillars.

(5 marks)

(iii) UNICITRAL Model Law is binding on member countries but at the best obiter dicta for Courts of the member countries dealing in disputes relating to cross border insolvency and international trade. Elucidate.

(5 marks)

(iv) M/s Speed Airways Pvt Ltd. a borrower, filed a case before a civil court that Diligent Bank, a secured creditor, has not issued any letter to the company for demanding of repayment of loan and stating its intention to enforce the secured interest. Rather, fraudulently transferred the funds from its account to another company only to classify it as NPA as per the provisions of SARFAESI Act, 2002. In the light of the decided case, state whether the case is maintainable.

(5 marks)
Lawpoint's
CS
Solutions
Corporate Restructuring, Valuation and Insolvency
Professional Programme
Module 1 • Paper 3
June 2017 Examination Paper’s Solution

Part – A

Question 1

(a) "Measuring the shareholders’ value" is the objective of Good Corporate Governance. Comment on the statement, how buy back of shares achieves it. (5 marks)

Ans. The business environment is rapidly changing with respect to technology, competition, products, people, geographical area, markets, customers etc. It is not enough if companies keep pace with these changes but are expected to beat competition and innovate in order to continuously maximize shareholder value.

Corporate governance means that company manages its business in a manner that is accountable and responsible to the shareholders. In a wider interpretation, corporate governance includes company’s accountability to shareholders and other stakeholders such as employees, suppliers, customers and local community.

Buy-back of shares means the company purchasing its own shares. It is a widely followed method of capital restructuring all over the globe. It is a financial strategy which restructures the capital of the company with the aim of increasing the earnings per share, preventing hostile takeovers, increasing the returns to the stakeholders and re-arranging the capital structure. The laws related to buy-back of shares in India are covered by the Companies Act, 2013, Companies (Share Capital and Debentures) Rules, 2014, SEBI (Buy-back of Securities) Regulations, 1998. Share buy-back is made by a company when the company uses its huge cash balance in repaying certain shares reducing the capital base and cash position. In such circumstances the company has no better option to invest its money in other markets. When the shares of a company is trading below their intrinsic value, companies having high fund position go for buy back of shares. The shareholders are remunerated with sufficient fund at market value of even better price.

Section 68 of the Companies Act, 2013 permits the buy-back of shares if certain conditions are fulfilled like the Articles of Association of the company should warrant the buy-back of shares by the company, special resolution of the shareholders is required for a buy-back of shares, the funds for buy-back of shares are limited to the company’s free reserves or its securities premium account or the money from the issue of any shares or another specified security. The company must maintain and update a register containing all the particulars of the shares which it has bought back. A declaration of solvency must be filed with the ROC and SEBI before the resolution for buy-back is given effect to.

As seen from the above conditions, corporate governance plays an indisputable role in the buy-back of shares whether directly or indirectly and enhances shareholders’ value.

(b) A scheme of Merger of Happy Limited with Lucky Pvt. Ltd. was filed with the National Company Law Tribunal (NCLT). The Regional Director raised objections that the additional filing fees and stamp duty on the increased share capital of the Lucky Pvt. Ltd. is to be paid and also against the changing name of the transferee company, for not complying with Section 61 of the Companies Act 2013.

Will the objection of the Regional Director hold good? Explain. (5 marks)

Ans. In Jaypee Cement Limited v. Jayprakash Industries Limited (2004) 2 Comp LJ 105 All, the Allahabad High Court held that the combining of the authorised share capital of the transferor company with that of the
transferee company resulting in an increase in the authorised share capital of the transferee company does not
require the payment of registration fee or the stamp duty because there is no reason why the same fee should be
paid again by the transferee company on the same authorised capital.
In case of change of name of the transferee company, the court may approve a change in the name of the
transferee company as part of scheme of amalgamation. However, the Mumbai High Court in re: Govind
Rubber Ltd. (1995) 83 Comp Cas 556 (Bom) held that change of name cannot be effected merely on amal-
gamation becoming effective, the transferee company should independently comply with the provisions of the
Companies Act for change of name.
In the given case, the Regional Director's objection that the additional filing fees and stamp duty on the in-
creased share capital of the Lucky Pvt. Ltd. is to be paid is not sustainable. However, as regards change of
name, the objection is sustainable.

(c) Discuss “Strategic Alliance” and “Joint Venture” as corporate restructuring strategies. (5 marks)
Ans. Corporate Restructuring is defined as the process involved in changing the organization of a business. It
can involve making changes to a business by cutting out or merging departments. It is the process of signifi-
cantly changing a company’s business model, management team or financial structure to address challenges
and increase shareholder value. Various types of corporate restructuring strategies include merger, amalgama-
tion, joint venture, strategic alliance etc
Strategic Alliance - Any agreement between two or more parties to collaborate with each other, in order to
achieve certain objectives while continuing to remain independent organizations is called strategic alliance.
Joint Venture - A joint venture is an entity formed by two or more companies to undertake activities together.
The parties agree to contribute equity to form a new entity and share the revenues, expenses, and control of
the company. It may be project based joint venture or functional based joint venture.

(d) How the rights of the minority shareholders are protected during merger/amalgamation/takeover? (5 marks)
Ans. The rights of minority shareholders during mergers/amalgamations/takeovers are protected in the fol-
lowing manner.
(a) Approval of the Tribunal is required in case of corporate restructuring which, includes, mergers, amalga-
mations etc. by a company. The Scheme is also required to be approved by shareholders.
(b) The Tribunal, while approving the scheme, follows judicious approach by mandating publicity about the
proposed scheme in newspaper to seek objections, if any, against the scheme from the shareholders.
Any interested person including a minority shareholder may appear before the Tribunal.
(c) Specific provisions have been made in the Companies Act, 2013 for acquisition of remaining 10% shares
in a company, of which 90% has been acquired by an acquirer.
(d) In case of takeover, as per SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011
SEBI has powers to appoint investigating officer to undertake investigation, in case complaints are re-
ceived from the investors, intermediaries or any other person on any matter having a bearing on the alle-
gations of substantial acquisition of shares and takeovers. SEBI may also carry out such investigation suo
moto upon its own knowledge or information about any breach of these regulations.
(e) Dissenting shareholders have been provided with opportunity to approach the Tribunal.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

(a) What are the obligations of the Committee of the Independent Directors of a target company in connection
with providing reasonable recommendation on the open offer made by the acquirer? (5 marks)
Ans. Upon a public announcement of an open offer for acquiring shares of a target company being made, the
board of directors of such target company shall ensure that during the offer period, the business of the target
company is conducted in the ordinary course consistent with past practice. The board of directors of the target
company shall constitute a committee of independent directors to provide appropriate recommendations on such open offer, and the target company shall publish such recommendations. Such recommendations shall be published at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published. Simultaneously, a copy of the same shall be sent to (i) the Board; (ii) all the stock exchanges on which the shares of the target company are listed; and (iii) to the manager to the open offer, and where there are competing offers.

(b) Enumerate the common mistakes made by the corporate leading to pitfalls in mergers and acquisition? (5 marks)

Ans. The following are some of the leading common mistakes made by the corporates leading to pitfalls in mergers and acquisition:

(i) Ego problems on both the buyer and seller rear up very frequently resulting clashes.
(ii) Attempt to hasten the integration between both the parties raises the likelihood of making serious errors. Sudden changes like relocating the company’s production operations should be carefully considered before implementation.
(iii) Many buyers assert their ownership by moving quickly to convert the acquired company which does not always work in right direction.
(iv) While the company has focussed on integration, it furnishes an ideal time for competitors to make a run on the market.
(v) Where the acquired business is not in the exact same field, different dynamics might apply.
(vi) A common mistake may lay off crucial employees from the acquired company which is a very complicated and even the seller might not have an accurate idea as job titles can be misleading.

(c) What is a “Voluntary Offer” as per Regulation 6 of Takeover Code 2011? (5 marks)

Ans. As per regulation 6 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 a voluntary open offer is an offer made by a person who himself or through persons acting in concert, if any, holds 25% or more shares or voting rights in the target company but less than the maximum permissible non-public shareholding limit.

A voluntary offer cannot be made if the acquirer or persons acting in concert with him has acquired any shares of the target company in the 52 weeks prior to the voluntary offer. The acquirer is prohibited from acquiring any shares during the offer period other than those acquired in the open offer. The acquirer is also not entitled to acquire any shares for a period of 6 months, after completion of open offer except pursuant to another voluntary open offer.

Or (Alternate question to Q. No. 2)

Question 2A

(i) M/s Brite Instruments Pvt. Limited is acquiring M/s Sunshine Pvt. Limited. You are the Company Secretary of M/s Brite Instruments Pvt Limited. Help your management (Board of Directors) to prepare a checklist in this regard. (5 marks)

Ans. Check List for acquisition of shares by M/s Brite Instruments Pvt. Limited:

(i) To consider and prepare a draft scheme of amalgamation or arrangement.
(ii) To prepare financial statements not preceding the date of application by more than six months, if the yearly financial statements would be more than preceding 6 months.
(iii) To finalise the scheme of merger or amalgamation.
(iv) To finalise and appoint Legal adviser.
(v) To appoint Valuer and make valuation of shares and assets.
(vi) To obtain fairness opinion on the valuation from a Chartered Accountant in Practice.
(vii) To hold a Board meeting of all concerned companies and pass necessary resolutions for –
   a) Approving the valuation,
   b) Approving the Scheme,
c) Making application to NCLT,
d) Authorising Directors/ Company Secretary to make application to NCLT.

(viii) To prepare draft notice with explanatory statement to members/creditors.
(ix) To prepare draft Notice of Admission.
(x) To prepare draft affidavit verifying the application.
(xi) To get the Notice of Admission and the Affidavit Notarised.
(xii) To make application to NCLT in Form NCLT.1.
(xiii) To make application to NCLT.

(ii) In case of Takeover, what are the cases in which the amount is released from Escrow Account? (5 marks)

Ans. As provided in regulation 17(10) of the SEBI (SAST) Regulation 2011, the amount lying in escrow account can be released in the following cases:

(a) In case of withdrawal of offer, the entire amount can be preleased only after certification by the managers to the open offer.
(b) The amount deposited in special escrow account is transferred to special bank account opened with the Bankers to an issue. The amount so transferred shall not exceed 90% of the cash deposit.
(c) The balance 10% is released to the acquirer on the expiry of thirty days from the completion of all obligations under the offer.
(d) The entire amount to the acquirer on the expiry of 30 days from the completion of all obligations under the offer where the open offer is for exchange of shares or other secured instruments.
(e) In the event of forfeiture of amount, the entire amount is distributed in the following manner:
   (i) 1/3 of the amount to Target Company;
   (ii) 1/3 of the escrow account to the Investor Protection and Education Fund;
   (iii) Residual 1/3 is to be distributed to the shareholders who have tendered their shares in the offer.

(iii) Scheme of Reconstruction pursuant to order of competent authority does not trigger an open offer under SEBI (SAST) Regulations. Discuss the regulation citing the case laws. (5 marks)

Ans. Regulation 10(1)(d)(ii) of SEBI(SAST) Regulations 2011 states that acquisition pursuant to a scheme of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of the Tribunal, Indian or foreign does not trigger open offer as required under Regulation 3 or Regulation 4 of the Regulations even if the acquisition crosses the specified threshold limit for open offer.

Question 3

Examine and explain the following statements citing relevant provisions of laws:

(a) The reduction of share capital can result in extinguishment of class of shares. (3 marks)

Ans. Reduction of share capital can result in extinguishment of class of shares. Section 66 of the Companies Act, 2013 provides that subject to confirmation by the Tribunal, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may—

   (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
   (b) either with or without extinguishing or reducing liability on any of its shares,—
      (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
      (ii) pay off any paid-up share capital which is in excess of the wants of the company,
         alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(b) The amalgamated company has to issue new shares to Non-resident Indians in amalgamation and for that it has to obtain permission of Reserve Bank of India under the provisions of the Foreign Exchange Management (FEMA) Act, 1999. (3 marks)
Ans. Where the scheme of amalgamation envisages issue of shares/cash option to Non-Resident Indians, the amalgamated company is required to obtain the permission of Reserve Bank of India subject to conditions prescribed under the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 framed under the FEMA Act, 1999.

(c) Name various documents which require stamping in case of merger. 

Ans. Stamp duty is a duty payable on certain specified instruments / documents. In case of merger payment of stamp duty is paid on various documents depending upon the scheme of the merger. Further, stamp duty is payable under the State laws as per the requirement depending the registered office of the companies. These are stated below:

(i) Stamp duty on court order for mergers/demergers.
(ii) Stamp duty on share transfer deeds in case of physical shares.
(iii) Stamp duty on shareholder agreements, if any.
(iv) Stamp duty on share purchase agreements, if any.

(d) M/s Happy Exports Limited was merged with M/s Smart Exports Limited. The order passed by High Court was filed with the Registrar of Companies (ROC). But the same was not taken on record by ROC. Will the scheme still be effective?

Ans. As per section 232(5) of the Companies Act, 2013 (5) every company in relation to which the order of merger is made shall cause a certified copy of the order to be filed with the Registrar for registration within 30 days of the receipt of certified copy of the order. If the copy is not filed, the filing will not be considered and legal action will be taken by the ROC but the merger would not be invalid.

In the given case, M/s Happy Exports Limited was merged with M/s Smart Exports Limited. The order passed by High Court was filed with the Registrar of Companies (ROC). But the same was not taken on record by ROC. Still the scheme would be effective.

(e) The Tribunal can modify transfer date proposed in a scheme of amalgamation.

Ans. The Hon'ble Supreme Court in Marshal Sons & Co. (India) Ltd. v. ITO (1977) 1 Comp LJ P.1, observed that it is true that while sanctioning the scheme, it is open to the Court to modify the transfer date. But when the Court does not prescribe any specific date, the date specified in the scheme is the transfer date. Therefore the, Tribunal can modify transfer date proposed in a scheme of amalgamation.

PART – B

Question 4

(a) What is the Valuation documentation and what is the objective of this?

Ans. During valuation process, the valuer goes through various documents, records his observation, makes relevant calculation and records these calculation and analysis results. In this process a lot of documents are generated which forms the basis of his conclusion on the valuation. Documentation is an essential element of Valuation quality. These documents are to be preserved so that these documents may help him in substantiate his conclusion on valuation. Moreover, these documents also become a matter of reference in future.

Objectives of Documentation:
Valuation documentation provides the principal written record to support the following:

(i) The Valuer's report assertion that the valuation exercise was performed with due diligence and in accordance of generally accepted valuation principles and

(ii) The Valuers' conclusions about valuation of the subject matter of the valuation exercise and other related aspects of valuation.
Valuation documentation must clearly demonstrate that the Valuation exercise was in fact performed in compliance with generally accepted valuation principles and applicable standards. It must provide a clear link to valuation conclusions and must contain sufficient information, in sufficient detail, for a clear understanding of the following:

(a) The nature, timing, and extent of the valuation exercise.
(b) The work performed;
(c) The purpose of the valuation
(d) The source of the information analyzed and supporting evidential matter obtained, examined, and evaluated;
(e) The conclusions reached.

The following are the more specific purposes of documentation in valuation exercise:

(i) Assisting Valuer to plan and perform the valuation exercise
(ii) Assisting those responsible to direct, supervise, and review the work performed;
(iii) Providing and demonstrating the accountability of those performing the work;
(iv) Assisting quality-control reviewers to understand and assess how the engagement team reached and supported significant conclusions;
(v) Enabling internal and external inspection teams and peer reviewers to assess compliance with professional, legal, and regulatory standards and requirements;
(vi) Assisting successor Valuer.

(b) Write a note on International Valuation Standards Council.

Ans. The International Valuation Standards Council (IVSC) is the established international standard setter for valuation. Through the International Valuation Standards Board, the IVSC develops and maintains standards on how to undertake and report valuations, especially those that will be relied upon by investors and other third party stakeholders. The IVSC also supports the need to develop a framework of guidance on best practice for valuations of the various classes of assets and liabilities and for the consistent delivery of the standards by properly trained professionals around the globe. The IVSC has published International Valuation Standards (IVS) since 1985. Membership of IVSC is open to organisations of users, providers, professional institutes, educators, and regulators of valuation services. IVSC members appoint the IVSC Board of Trustees.

Valuations of businesses, business ownership interests, securities, tangible or intangible assets may be performed for a wide variety of purposes including the following:

(i) Valuation for financial transactions such as acquisitions, mergers, leveraged buyouts, initial public offerings, employee stock ownership plans and other share based plans, partner and shareholder buy-ins or buy-outs, and stock redemptions.
(ii) Valuation for Dispute Resolution and/or litigation/pending litigation relating to matters such as marital dissolution, bankruptcy, contractual disputes, owner disputes, dissenting shareholder and minority ownership oppression cases, employment disputes and intellectual property disputes.
(iii) Valuation for Compliance-oriented engagements, like financial reporting and tax matters such as corporate reorganizations; income tax, Property tax, and Wealth tax compliance; purchase price allocations; and charitable contributions.
(iv) Other purposes like valuation for planning, internal use by the owners etc.

The same business may have different values if different standard of value is used and different approaches are adopted. IVSC standards neutralise such diversions of valuation.

(c) "Valuation is an important aspect in merger and acquisition and it should be done by a team of experts." Comment on the statement, mentioning which type of experts should be in the team.

Ans. Valuation is an important aspect in merger and acquisition and it should be done by a team of experts keeping into consideration the basic objectives of acquisition. The team should comprise of financial experts.
accounting specialists, technical and legal experts who should look into aspects, of valuation from different angles.

Accounting expert has to foresee the impact of the events of merger on profit and loss account and balance sheet through projection for next 5 years and economic forecast. Using the accounting data he must calculate performance ratios, financial capacity analysis, budget accounting and management accounting and read the impact on stock values, etc. besides, installing accounting and depreciation policy, treatment of tangible and intangible assets, doubtful debts, loans, interests, maturities, etc.

Technician has its own role in valuation to look into the life and obsolescence of depreciated assets and replacements and adjustments in technical process, etc. and form independent opinion on workability of plant and machinery and other assets.

Legal experts advice is needed on matters of compliance of legal formalities in implementing acquisition, tax aspects, review of corporate laws as applicable, legal procedure in acquisition strategy, laws affecting transfer of stocks and assets, regulatory laws, labour laws preparing drafts of documents to be executed or entered into between different parties, etc.

Question 5

(a) Bell Limited is planning to merge with (take over) Ring Limited. The following is the data regarding both the companies:

<table>
<thead>
<tr>
<th></th>
<th>Bell Ltd.</th>
<th>Ring Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up Capital</td>
<td>₹ 40,00,000</td>
<td>₹ 24,00,000</td>
</tr>
<tr>
<td>(Fully Paid Up Equity Shares of ₹ 10 each)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Market Price of Shares</td>
<td>₹ 40</td>
<td>₹ 24</td>
</tr>
<tr>
<td>(Latest traded in Stock Exchange)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit After tax (PAT)</td>
<td>₹ 20,00,000</td>
<td>₹ 14,40,000</td>
</tr>
</tbody>
</table>

What should be the basis of exchange ratio so that the Bell Limited gains? (5 marks)

**Ans.** Exchange Ratio

(i) Based on EPS

<table>
<thead>
<tr>
<th></th>
<th>Bell Ltd.</th>
<th>Ring Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit after tax (₹)</td>
<td>20,00,000</td>
<td>14,40,000</td>
</tr>
<tr>
<td>No. of shares</td>
<td>4,00,000</td>
<td>2,40,000</td>
</tr>
<tr>
<td>EPS</td>
<td>5.00</td>
<td>6.00</td>
</tr>
<tr>
<td>Exchange ratio = 6.00/5.00 = 1.2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(ii) Bases on market price per share

<table>
<thead>
<tr>
<th></th>
<th>Bell Ltd.</th>
<th>Ring Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market price per equity share (₹)</td>
<td>40</td>
<td>24</td>
</tr>
<tr>
<td>Exchange ratio = 24/40=0.6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The exchange ratio based on market price is worked out to be 0.6, whereas the exchange ratio based on EPS is 1.2 which is higher, hence gains for Bell Limited. Thus, Bell Limited should opt for exchange ratio based on EPS as it is beneficial for them.

(b) Swan Limited is the holding company of Duck Limited. Swan Limited wants to merge Duck Limited with it.

Swan Limited holds 30,000 Equity Shares of ₹ 10 each fully paid up in Duck Limited. The following details are available with us:

<table>
<thead>
<tr>
<th></th>
<th>Swan Ltd.</th>
<th>Duck Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid up Equity Shares</td>
<td>₹ 50,00,000</td>
<td>₹ 40,00,000</td>
</tr>
<tr>
<td>( ₹ 10 each)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Question 6

**Attempt all parts of either Q. No. 6 or Q. No. 6A**

(a) Explain the steps to be followed for the "Corporate Insolvency Resolution" process with timelines.  

**Ans.** The Corporate Insolvency resolution process shall be completed within 180 days from the date the application is admitted by the National Company Law Tribunal. If the process cannot be completed within 180 days

<table>
<thead>
<tr>
<th>Market value of shares</th>
<th>50</th>
<th>25</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Latest traded in Stock Exchange)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Profit After Tax (PAT)</td>
<td>25,00,000</td>
<td>12,00,000</td>
</tr>
</tbody>
</table>

Calculate the no. of shares Swan Ltd. will issue to the shareholders of Duck Ltd. If exchange ratio is on the basis of:

(i) Earning Per Share (EPS)

(ii) Market Price.

**Ans.**

(i) **Based on EPS**

<table>
<thead>
<tr>
<th>Swan Ltd.</th>
<th>Duck Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit after tax (₹)</td>
<td>25,00,000</td>
</tr>
<tr>
<td>No. of shares</td>
<td>5,00,000</td>
</tr>
<tr>
<td>EPS</td>
<td>5.00</td>
</tr>
</tbody>
</table>

Exchange ratio = 3.00/5.00 = 0.6

Issue of Shares = \((25,00,000 - 30,000) \times 0.6 = 2,22,000\) shares

(ii) **Bases on market price per share**

<table>
<thead>
<tr>
<th>Swan Ltd.</th>
<th>Duck Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market price per equity share (₹)</td>
<td>50</td>
</tr>
</tbody>
</table>

Exchange ratio = \(25/50 = 0.5\)

Issue of Shares = \((4,00,000 - 30,000) \times 0.5 = 1,85,000\) shares

(c) The method of valuation of a business, however, depends to a great extent on the acquisition motive. What are those motives of valuation?  

**Ans.** An important aspect in the merger/amalgamation/takeover activity is the valuation aspect. The method of valuation of business, however, depends to a great extent on the acquisition motives. The acquisition activity is usually guided by strategic behavioural motives. The reasons could be (a) either purely financial (taxation, asset-stripping, financial restructuring etc.) or (b) business related (expansion or diversification) or (c) behavioural, which is more to do with the personnel ambitions or objectives of the top management.

The expansion and diversification objectives are achievable either by building capacities on one’s own or by buying the existing capacities. The decision criteria in such a situation would be the present value of the differential cash flows. These differential cash flows would, therefore, be the limit on the premium which the acquirer would be willing to pay. On the other hand, if the acquisition is motivated by financial considerations specifically taxation and asset-stripping, the expected financial gains would form the limit on the premium, over and above the price of physical assets in the company. Similarly, a merger with financial restructuring as its objective will have to be valued mainly in terms of financial gains. It would, however, not be easy to determine the level of financial gains because the financial gains would be a function of the use of which these resources are put.

The acquisitions are not really the market driven transactions, a set of non-financial considerations will also affect the price. The price could be affected by the motives of other bidders. The value of a target gets affected not only by the motive of the acquirer, but also by the target company’s own objectives.

**PART – C**
days then one time extension of 90 days subject to resolution passed at a meeting of the committee of creditors by a vote of 75% of the voting shares. Committee of creditors means the committee which shall comprise of all financial creditors of the Company. After admission of the application, National Company Law Tribunal shall by an order declare a moratorium, cause a public announcement, appoint interim resolution professional.

Steps for the Corporate Insolvency Resolution process are as under:
1. The Financial Creditor/Operational Creditor or Corporate Debtor as the case may be, initiate the CIRP by application to NCLT.
2. Financial creditor on default and operational creditor after 10 days from the date of delivery of demand notice can initiate CIRP.
3. A financial creditor and corporate debtor shall propose the name of IRP and operational creditor may propose the name of IRP.
4. NCLT within 14 days of receipt of application by order admit or reject application. Before rejecting the Tribunal shall give notice to rectify the defect within 7 days of receipt of notice.
5. Intimation of admission or rejection to be given by NCLT within 7 days of admission or rejection.
6. NCLT to declare moratorium, appoint IRP for a term not exceeding 30 days from the date of appointment and cause public announcement.
7. Insolvency Commencement date starts from the date of admission of application and is to be completed within 180 days of commencement which can be extended to 90 days (one time) by NCLT.
8. IRP to constitute Committee of Creditors comprising all financial creditors.
9. Management of affairs of corporate debtor as a going concern, powers of Board of Directors or the partners of debtor shall stand suspended and exercised by the IRP.
10. Committee of Creditors within 7 days of its constitution either to resolve to appoint IRP as Resolution Professional(RP) or replace IRP with another RP.
11. All decisions of committee of creditors shall be taken by vote of not less than 75% of voting share of financial creditor.
12. Preparation of information memorandum by RP for formulation of Resolution Plan by Resolution Applicant.
13. Resolution Applicant prepares the Resolution plan based on information memorandum.
14. Submission of Resolution Plan by Resolution Applicant to be examined by RP and to be approved by 75% of voting share of financial creditor.
15. RP to submit approved Resolution Plan to NCLT which shall approve or reject/order for liquidation.
16. The approved plan shall be binding on the corporate debtor and its employees, members, creditors, guar-antors and other stakeholders involved in the resolution plan.
17. Moratorium ends on the date of approval.

(b) Explain the different functions of Insolvency professionals.

Ans. An Insolvency Professional shall have the following functions:
(a) To act in good faith in discharge of his duties as an insolvency professional;
(b) To endeavour to maximize the value of assets of the debtor;
(c) To discharge his functions with utmost integrity and objectivity;
(d) To be independent and impartial;
(e) To discharge his functions with the highest standards of professional competence and professional ethics;
(f) To continuously upgrade his professional expertise;
(g) To perform duties as quickly and efficiently as reasonable, subject to the timelines under the Code;

(h) To comply with applicable laws in the performance of his functions; and

(i) To maintain confidentiality of information obtained in the course of his professional activities unless required to disclose such information by law.

(c) Explain "Property" under Recovery of Debts (and Bankruptcy) Act 1993. (4 marks)

Ans. As defined in section 2(jb) of the Recovery of Debts (and Bankruptcy) Act 1993 "property" means—

(a) immovable property;

(b) movable property;

(c) any debt or any right to receive payment of money, whether secured or unsecured;

(d) receivables, whether existing or future;

(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, as may be prescribed by the Central Government in consultation with Reserve Bank.


Ans. Section 2(1)(l) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 "financial asset" means debt or receivables and includes—

(a) a claim to any debt or receivables or part thereof, whether secured or unsecured; or

(b) any debt or receivables secured by, mortgage of, or charge on, immovable property; or

(c) a mortgage, charge, hypothecation or pledge of movable property; or

(d) any right or interest in the security, whether full or part underlying such debt or receivables; or

(e) any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

(f) any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or

(g) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain licence of the intangible asset; or

(h) any financial assistance.

Question 6A

(i) Measures to be taken by Assets Reconstruction or Securitisation Company for the purpose of Assets Reconstruction. (5 marks)

Ans. As provided in section 9 of the SARFAESI Act, 2002 the following measures be taken by Asset Reconstruction Company for asset reconstruction:

(a) Proper management of the business of the borrower, by change in, or takeover of, the management of the business of the borrower.

(b) The sale or lease of a part or whole of the business of the borrower.

(c) Rescheduling of payment of debts payable by the borrower.

(d) Enforcement of security interest in accordance with the provisions of the Act.

(e) Settlement of dues payable by the borrower.

(f) Taking possession of secured assets in accordance with the provisions of the Act.

(g) To convert any portion of debt into share of a borrower company.
(ii) Assistance to take possession of secured assets from the Chief Metropolitan Magistrate or the District Magistrate under SARFAESI Act, 2002. (5 marks)

**Ans.** Section 14 of the SARFAESI Act, 2002 provides provisions for assistance for taking possession of secured asset from the Chief Metropolitan Magistrate or the District Magistrate.

Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(i) take possession of such asset and documents relating thereto; and

(ii) forward such asset and documents to the secured creditor.

Any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorized officer of the secured creditor. On receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets.

(iii) Right to lodge a “Caveat” under (SARFAESI) Act, 2002. (5 marks)

**Ans.** As per Section 18C of the SARFAESI Act, 2002 where an application or an appeal is expected to be made or has been made under section 17 or section 17A or section 18 or section 18B of the said Act, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

Where a caveat has been lodged the secured creditor by whom the caveat has been lodged shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made.

After a caveat has been lodged, any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveat.

Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

Where a caveat has been lodged, such caveat shall not remain in force after the expiry of the period of 90 days from the date on which it was lodged unless the application or appeal has been made before the expiry of the said period.

(iv) “Demand Notice” under Security Interest (Enforcement) Rules, 2002. (5 marks)

**Ans.** Rule 3(1) of the Security Interest (Enforcement) Rules 2002 provides that the service of demand notice as referred to in section 13(2) of the SRFAESI Act, 2002 shall be made by delivering or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service.
However, where authorised officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality. Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate. Where there are more than one borrower, the demand notice shall be served on each borrower.
PART - A

Question 1

(a) "Corporate Restructuring aims at significant change in a Company's business model, management team or financial structure to address challenges and increase shareholders' value." Elucidate the statement with relevance to business strategy.

Ans. Corporate Restructuring aims at different things at different times for different companies and the single common objective in every restructuring exercise is to eliminate the disadvantages and combine the advantages. Various needs for undertaking a Corporate Restructuring exercise are as follows:

(i) To focus on core strengths, operational synergy and efficient allocation of managerial capabilities and infrastructure.

(ii) Consolidation and economies of scale by expansion and diversion to exploit extended domestic and global markets.

(iii) Revival and rehabilitation of a sick unit by adjusting losses of the sick unit with profits of a healthy company.

(iv) Acquiring constant supply of raw materials and access to scientific research and technological developments.

(v) Capital restructuring by appropriate mix of loan and equity funds to reduce the cost of servicing and improve return on capital employed.

(vi) Improve corporate performance to bring it at par with competitors by adopting the radical changes brought out by information technology.

(b) "Restructuring is resorted to in various form with objectives such as profitability improvement, augmenting more resources, relief from competition and methods take the forms like acquisition, merger, takeover, leveraged buy outs, slump sale, overseas acquisitions etc."

Illustrate certain instances that have happened in India setting examples of benefits in Corporate Restructuring are as follows:

1. **DEMERGER - LARSEN &TOUBRO LIMITED**

Gresim Industries Ltd. (GIL) a flagship company of Aditya Birla Group was trying to take over control in L&T management by purchasing shares of L&T from the open market. The company first acquired 15 percent stake in L&T and also made an open offer to L&T shareholders to increase its stake which does not succeed. In the year 2004, shareholders approved the demerger of L&T's cement division with a resulting entity named UltraTech CemCo Ltd. (UCL).

**Benefits of Demerger to L&T:**
- Lead to immediate realization of value from cement business;
- Create two distinct listed entities for (a) engineering and (b) cement;
- Enable L&T to become focussed Engineering, Construction and Technology Company.
2. **OVERSEAS ACQUISITION – TATA - CORUS DEAL**

This acquisition of Corus Group Plc by Tata Steel Limited (TSL), was the biggest overseas acquisition by an Indian company. TSL emerged as the fifth largest steel producer in the world after the acquisition. The acquisition gave Tata Steel access to Corus' strong distribution network in Europe.

**Tata Corus Deal Synergy**

1. Tata was one of the lowest cost steel producers in the world and had self-sufficiency in raw material. Corus was fighting to keep its productions costs under control and was on the look out for sources of iron ore.

2. Tata had a strong retail and distribution network in India and South East Asia and was a major supplier to the Indian auto industry and hence there would be a powerful combination of high quality developed and low cost high growth markets.

3. Technology transfer and enhanced R&D capabilities between the two companies that specializes in different areas of the value chain.

4. There was a strong culture fit between the two organizations both of which highly emphasized on continuous improvement and ethics, i.e. 'The Corus Way' with the core values and code of ethics, integrity, creating value in steel, customer focus, selective growth and respect for people etc. were strong synergies.

3. **MERGER OF ICICI WITH ICICI BANK**

After consideration of various corporate structuring alternatives in the context of the emerging competitive scenario in the Indian banking industry, and the move towards universal banking, the managements of ICICI and ICICI Bank formed the view that the merger of ICICI with ICICI Bank would be the optimal strategic alternative for both entities, and would create the optimal legal structure for the ICICI group's universal banking strategy. The merger would enhance value for ICICI shareholders through the merged entity's access to low-cost deposits, greater opportunities for earning fee-based income and the ability to participate in the payments system and provide transaction-banking services. The merger would enhance value for ICICI Bank shareholders through a large capital base and scale of operations, seamless access to ICICI's strong corporate relationships built up over five decades, entry into new business segments, higher market share in various business segments, particularly fee-based services, and access to the vast talent pool of ICICI and its subsidiaries.

4. **LEVERAGED BUY-OUT – BHARTI - ZAIN DEAL**

A leveraged buyout, is an acquisition of a company or its division majorly financed with borrowed funds. The acquirer resorts to a combination of a small investment and a large loan to fund the acquisition. The loan capital is availed through a combination of repayable bank facilities and/or public or privately placed bonds. Alternatively, the acquiring company could float a Special Purpose Vehicle ("SPV") as a 100% subsidiary with a minimum equity capital. The SPV can leverage this equity to gear up significantly higher debt to buyout the target company. The target company's assets can be used as collaterals for availing the loan and once the debt is redeemed, the acquiring company has the option to merge with the SPV. The debt will be paid off by the SPV using the cash flows of the target company. The purpose of leveraged buyouts is to allow companies to make large acquisitions without having to commit a lot of capital.

During the first quarter of 2010, Bharti Airtel announced that it had entered into exclusive agreement with Mobile Telecommunications Company KSC ("Zain") for the acquisition of Zain Africa International BV ("Zain Africa") and thereby the entire African operations of Zain, excluding the operations in Sudan and Morocco.

The deal makes Bharti Airtel the seventh largest mobile group in the world by subscriber connections and the second-largest African operator, behind MTN for an offer of USD 10.7 billion. In the Indian telecom space, the deal is the second largest after the USD 11.2 billion (approximately) Vodafone Hutchison transaction in 2007.
(c) "Scheme of Reconstruction pursuant to order of competent authority does not trigger open offer under SEBI (SAST) Regulations." Explain the regulation with reference to any event occurred since promulgation of said regulation in 2011.  
Ans. Regulation 10(1)(d)(ii) of SEBI (SAST) Regulations 2011 states that acquisition pursuant to a scheme of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court/Tribunal or a competent authority under any law or regulation, Indian or foreign does not trigger open offer as required under regulations 3 or 4 of the regulations even if the acquisition crosses the specified threshold limit for open offer.

A case covering the matter came up in acquisition of Spice Jet Ltd. by Mr. Ajay Singh.

Since the Ministry of Civil aviation, a Competent Authority approved the scheme of reconstruction, the acquirer Mr. Ajay Singh did not go through the open offer process as mandated under SEBI (SAST) Regulations 2011. Regulation 10(6) the regulations provides that in respect of any acquisition made pursuant to exemption provided for the regulations, the acquirer should file a report with the stock exchanges where the shares of the company are listed, in prescribed form not later than 4 working days from the acquisition and the stock exchange shall forthwith disseminate such information to the public. Mr. Ajay Singh, the acquirer accordingly filed such report in respect of acquisitions made.

(d) As a Company Secretary, one should advice the Board regarding compliances under various legislations. Referring the cases of mergers or amalgamations, state the circumstances that warrant compliances under any or all of such legislations.

Ans. The Regulatory Framework of Mergers and Amalgamations covers the following:
1. The Companies Act, 2013
3. Companies (Compromise, Arrangements and Amalgamations) Rules, 2016
5. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015
6. Competition Act, 2002

Question 2
(a) "Events taking place outside India but having an effect on competition in India is also subject to jurisdiction of Competition Commission of India." Comment on extra territorial jurisdiction provided under Competition Act, 2002.

Ans. Section 32 of the Competition Act, 2002 extends the jurisdiction of Competition Commission of India to inquire and pass orders in accordance with the provisions of the Act into an agreement or dominant position or combination, which is likely to have, an appreciable adverse effect on competition in relevant market in India, notwithstanding that,
(i) an agreement referred to in section 3 has been entered into outside India; or
(ii) any party to such agreement is outside India; or
(iii) any enterprise abusing the dominant position is outside India; or
(iv) a combination has taken place outside India; or
(v) any party to combination is outside India; or
(vi) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India.

The above clearly demonstrate that acts taking place outside India but having an effect on competition in India will be subject to the jurisdiction of Commission. The Competition Commission of India will have jurisdiction even
if both the parties to an agreement are outside India but only if the agreement, dominant position or combination entered into by them has an appreciable adverse effect on competition in the relevant market of India.

(b) State the distinctive features of Ind AS 103 in contrast to existing AS 14 for accounting treatment in cases of amalgamations and combinations.

**Ans.** Major distinctive features of Ind AS 103 in contrast to existing AS 14 for accounting treatment in cases of amalgamations and combinations are stated below:

(i) Ind AS 103 defines business combination which has a wider scope whereas the AS 14 deals only with amalgamation.

(ii) Under the AS 14 there are two methods of accounting for amalgamation, the pooling of interest method and the purchase method. Ind AS 103 prescribes only the acquisition method for each business combination.

(iii) Under the AS 14, the acquired assets and liabilities are recognised at their existing book values or at fair values under the purchase method. Ind AS 103 requires the acquired identifiable assets and liabilities and non-controlling interest to be recognised at fair value under acquisition method.

(iv) Ind AS 103 requires that for each business combination, the acquirer shall measure any non-controlling interest in the acquire either at fair value or at the non-controlling interest's proportionate share of the acquiree's identifiable net assets. On other hand, the AS 14 states that the minority interest is the amount of equity attributable to minorities at the date on which investment in a subsidiary is made and it is shown outside shareholders' equity.

(v) Under Ind AS 103, the goodwill is not amortised but tested for impairment on annual basis in accordance with Ind AS 36. The AS 14 requires that the goodwill arising on amalgamation in the nature of purchase is amortised over a period not exceeding five years.

(vi) Ind AS 103 deals with reverse acquisitions whereas the AS 14 does not deal with the same.

(vii) Under Ind AS 103, the consideration the acquirer transfers in exchange for the acquiree includes any asset or liability resulting from a contingent consideration arrangement. The AS 14 does not provide specific guidance on this aspect.

(viii) Ind AS 103 requires bargain purchase gain arising on business combination to be recognised in other comprehensive income and accumulated in equity as capital reserve, unless there is no clear evidence for the underlying reason for classification of the business combination as a bargain purchase, in which case, it shall be recognised directly in equity as capital reserve. Under AS 14 the excess amount is treated as capital reserve.

(ix) Ind AS 103, deals with accounting for common control transactions, which prescribes a method of accounting different from Ind AS 103. AS 14 does not prescribe accounting for such transactions different from other amalgamations.

(c) ABC Bank Ltd. contemplates to merge with PQR Bank Ltd. Accordingly, draft scheme of amalgamation is placed before the Board of Directors of both the banks. The said scheme is aimed to be placed in the shareholders meeting thereafter. Mention the aspects which board of both the companies should consider in approving draft scheme of amalgamation.

**Ans.** As per master circular issued by RBI, the Boards should give particular attention to the following:

(i) The values at which the assets, liabilities and the reserves of the amalgamated company are proposed to be incorporated into the books of the amalgamating company and whether such incorporation will result in a revaluation of assets upwards or credit being taken for unrealised gains.

(ii) Whether due diligence exercise has been undertaken in respect of the amalgamated company.

(iii) The nature of the consideration, which, the amalgamating company will pay to the shareholders of the amalgamated company.

(iv) Whether the swap ratio has been determined by independent valuers having required competence and experience and whether in the opinion of the Board such swap ratio is fair and proper.
(v) The shareholding pattern in the two banking companies and whether as a result of the amalgamation and the swap ratio, the shareholding of any individual, entity or group in the amalgamating company will be violative of the Reserve Bank guidelines or require its prior approval.

(vi) The impact of the amalgamation on the profitability and the capital adequacy ratio of the amalgamating company.

(vii) The changes which are proposed to be made in the composition of the Board of Directors of the amalgamating banking company, consequent upon the amalgamation and whether the resultant composition of the Board will be in conformity with the Reserve Bank guidelines in that behalf.

**Question 2A**

(i) "A Scheme, even approved by majority, can be rejected by Court but such a Scheme must be held to be unfair to the meanest intelligence." Analyse the statement citing important judicial pronouncements.  *(5 marks)*

**Ans.** Any scheme which is fair and reasonable and made in good faith will be sanctioned if it could reasonably be supported by sensible people to be for the benefit to each class of the members or creditors concerned. In *Sussex Brick Co. Ltd.*, Re, *(1960) 1 Ali ER 772 : (1960) 30 Com Cases 536 (Ch D)* it was held, *inter alia*, that although it might be possible to find faults in a scheme that would not be sufficient ground to reject it. It was further held that in order to merit rejection, a scheme must be obviously unfair, patently unfair, unfair to the meanest intelligence. It cannot be said that no scheme can be effective to bind a dissenting shareholder unless it complies with the basic requirements to the extent of 100%. It is the consistent view of the Courts that no scheme can be said to be fool-proof and it is possible to find faults in a particular scheme but that by itself is not enough to warrant a dismissal of the petition for sanction of the scheme. If the court is satisfied that the scheme is fair and reasonable and in the interests of the general body of shareholders, the court will not make any provision in favour of the dissentients. For such a provision is not a *sine qua non* to sanctioning a fair and reasonable scheme, unless any special case is made out which warrants the exercise of court’s discretion in favour of the dissentients. *Re, Kami Cement & Industrial Co. Ltd.*, *(1937) 7 Com Cases 348, 364-65 (Bom)***.

The Courts have gone further to say that a scheme must be held to be unfair to the meanest intelligence before it can be rejected. It must be affirmatively proved to the satisfaction of the Court that the scheme is unfair before the scheme can be rejected by the Court as observed in *English, Scottish & Australian Chartered Bank*, Re, *(1993) 3 Chancery 385*.

(ii) "In amalgamation of two or more banking companies, Company Law is not applied." Comment, briefly explaining the procedure for amalgamation of banking companies.  *(5 marks)*

**Ans.** The Banking Regulation Act, 1949 is the legislation with regard to licensing of commercial banks, their operation, supervision and restructuring and winding up. The provisions of applicable company legislation would apply to the commercial banks which are incorporated as companies to the extent the same not superseded in the Banking Regulation Act, 1949 and the rules and regulations framed thereunder.

In terms of paragraph 6 of the master direction, the decision of amalgamation is required to be approved by the Board of the Bank concerned with a two thirds majority and not just those present and voting. This means that if the Board has say 12 directors, then 8 directors must be present and vote in favour of the amalgamation. The Banks shall also have to bear in mind the deed of covenants as recommended by the Ganguly Working Group on Corporate Governance. The draft scheme of amalgamation is also required to be approved by the Board of Directors with the same majority.

As stated in paragraph 7, in terms of section 44A of the Banking Regulation Act, 1949, the draft scheme of amalgamation shall be approved by the shareholders of each banking company by a resolution passed by a majority in number representing two thirds in value of the shareholders, present in person or by proxy at a meeting called for the purpose. The ceiling on voting rights under section 12(2) i.e. 10 of maximum vote
irrespective of holding by the shareholder would apply in the context of section 44A when there is a poll to determine whether the resolution has been passed by requisite majority.

(iii) Apart from availing the benefit of set off and carry forward of unabsorbed depreciation and accumulated losses, what are the other tax benefits if the strategy of the acquirer to merge with a loss making company is in the form of a reverse merger?

**Ans.** Apart from availing the benefit of set off and carry forward of unabsorbed depreciation and accumulated losses, the following tax benefits are also available in a reverse merger:

- **Development allowance** - Under section 33A of the Income Tax Act, 1961, an assessee who is carrying on the business of growing and manufacturing tea in India is entitled to a deduction while computing his profits by way of development allowance with reference to the actual cost of planting tea bushes. The allowance is granted under this section at the following rates:

- **Expenditure on scientific research** - According to section 35(5), where, in a scheme of amalgamation, the amalgamating company sells or otherwise transfers to the amalgamated company (being an Indian company) any asset representing expenditure of a capital nature on scientific research the amalgamating company shall not be allowed the deduction; and the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the latter had not so sold or otherwise transferred the asset.

- **Expenditure on acquisition of patent rights or copyrights** - Section 35 A of the Income Tax Act deals with expenditure on acquisition of patent rights or copyrights.

- **Amortisation of certain preliminary expenses** - Section 35D of the Income Tax Act deals with amortization of certain preliminary expenses. Accordingly, where an assessee being an Indian Company or a person (other than a company) who is resident in India, incurs, after the 31st day of March, 1970, any expenditure in connection with the extension of his industrial undertaking or in connection with his setting up a new industrial unit, the assessee shall be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in which the extension of the industrial undertaking is completed or the new industrial unit commences production or operation.

- **Amortisation of expenditure in case of amalgamation or demerger** - Section 35DD provides for amortization of expenditure in case of amalgamation and demerger.

**Question 3**

(a) "Optimum capitalization is desired to maintain robust financial health of an enterprise." Identify the symptoms of over capitalization or under capitalization.

**Ans.** A company is said to be over-capitalized, if its earnings are not sufficient to justify a fair return on the amount of share capital and debentures that have been issued. Otherwise, it is said to be over capitalized when total of owned and borrowed capital exceeds its fixed and current assets i.e. when it shows accumulated losses on the assets side of the balance sheet.

If the owned capital of the business is much less than the total borrowed capital than it is said to be under capitalization. We may say that the owned capital of the company is disproportionate to the scale of its operation and the business is dependent more upon borrowed capital.

Under capitalization may be the result of excess volume of trading and over capitalization may be due to insufficient volume of trading.

(b) "Reduction of capital requires the approval of National Company Law Tribunal (NCLT) is a general perception." Elucidate.

**Ans.** Section 66 of the Companies Act, 2013 provides that subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital (a) extinguish or reduce the liability on any of its shares
in respect of the share capital not paid-up; or (b) either with or without extinguishing or reducing liability on any of its shares, (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or (ii) pay off any paid-up share capital which is in excess of the wants of the company. However, in the following cases which amount to reduction of share capital, confirmation by the Tribunal is not necessary:
(a) Surrender of shares
(b) Forfeiture of shares
(c) Diminution of capital.
(d) Redemption of redeemable preference shares
(e) Buy-back of its own shares

(c) What are the key indicators that need to be measured apart from expected financial results such as earnings and cash flow to evaluate extent of success of merger? (3 marks)

Ans. The main purpose of a merger or acquisition is to deliver the expected financial results namely earnings and cash flow. However, there are certain other measures that serve as key indicators and they also need to be measured. The indicators may be grouped as:
(i) Financial outcomes.
(ii) Component measures of these outcomes namely revenues, costs, net working capital and capital investments.
(iii) Organisational indicators such as customers, employees and operations.

All the areas being integrated and both the acquirer and target, or in a merger, both partners, should be brought within the ambit of continuous appraisal. The appraisal should be based on benchmarks to ensure that merger or acquisition are yielding the financial and strategic objective so intended and are not resulting in value leakage.

(d) State the salient features of Reconstruction that differs with Demerger. (3 marks)

Ans. “Demerger” means transfer, pursuant to a scheme of arrangement under the Companies Act, 2013 by the demerged company of its one or more undertakings to a new company formed for the purpose, known as the resulting company. This is done in such a manner that all the property of the undertaking, being transferred by the demerged company becomes the property of the resulting company by virtue of the demerger. All the liabilities relatable to the undertaking, being transferred by the demerged company become the liabilities of resulting company by virtue of the demerger.

In the case of reconstruction, a new company (called transferee company) is formed, the existing company (called the transferor company) is dissolved by passing a special resolution for members’ voluntary winding up and authorising the liquidator to transfer the undertaking, business, assets and liabilities of the transferor company to the transferee company. The transferee company, instead of paying cash in lieu of their shares in the transferor company, issues and allots its shares to the shareholders of the transferor company in accordance with the pre-determined shares exchange ratio. In this process, the old company is demolished and is reconstructed in the form of new company with substantially the same shareholders and the same undertaking and business.

(e) What is a Voluntary Offer in acquiring shares in another Company? State the restrictions in terms of SEBI (SAST) Regulations, 2011. (3 marks)

Ans. Regulation 6 of the SEBI (SAST) Regulations, 2011 provides for voluntary offer. A voluntary open offer under Regulation 6, is an offer made by a person who himself or through or along with persons acting in concert (PAC) with him if any, holds 25% or more shares or voting rights in the target company, but less than the maximum permissible non-public shareholding limit, for such number of shares such that the aggregate of the shareholding of the acquirer after the offer shall not exceed the maximum permissible non-public shareholding.
Restrictions on voluntary open offer - A voluntary offer cannot be made if the acquirer or PACs with him has acquired any shares of the target company in the 52 weeks prior to the voluntary offer without attracting the provisions of the regulations, to make a public announcement. The acquirer is prohibited from acquiring any shares during the offer period other than through the acquisitions in the open offer. The acquirer is also not entitled to acquire any shares for a period of 6 months, after completion of open offer except pursuant to another voluntary open offer.

PART - B

Question 4

(a) In calculating fair value, element of guesswork or arbitrariness is imminent. Comment.

Ans. Valuation can be done on the basis of fair value. However, resort to valuation by fair value is appropriate when market value of a company is independent of its profitability. The fair value of shares is arrived at after consideration of different modes of valuation and diverse factors. There is no mathematically accurate formula of valuation. An element of guesswork or arbitrariness is involved in valuation. The following four factors have to be kept in mind in the valuation of shares:

(i) Capital cover,
(ii) Yield,
(iii) Earning capacity, and
(iv) Marketability.

For arriving at the fair value of share, three well-known methods are applied:

(a) the manageable profit basis method (the earning per share method).
(b) the net worth method or the break-up value method, and
(c) the market value method.

The fair value of a share is the average of the value of shares obtained by the net assets method and the one obtained by the yield method. This is, in fact not a valuation, but a compromise formula for bringing the parties to an agreement.

The average of book value and yield-based value incorporates the advantages of both the methods and minimizes the demerits of both the methods. Hence, such average is called the fair value of share or sometimes also called the dual method of share valuation.

The fair value of shares can be calculated by using the formula:

Fair value of shares = (Value by net assets method + Value by yield method)/ 2

(b) Balance Sheet of Smileheavy Ltd. as at 31-3-2017 reveals as under:

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>Amount in INR</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,50,000 equity shares of ₹ 10/- each fully paid up</td>
<td>15,00,000</td>
</tr>
<tr>
<td>2,00,000 equity shares of ₹ 6/- each fully paid up</td>
<td>12,00,000</td>
</tr>
<tr>
<td>60,000 12% cumulative preference shares of ₹10/- each fully paid up</td>
<td>6,00,000</td>
</tr>
<tr>
<td>Secured Loans</td>
<td>14,00,000</td>
</tr>
<tr>
<td>Trade Receivables</td>
<td>6,50,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53,50,000</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assets</th>
<th>Amount in INR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land &amp; Buildings</td>
<td>23,00,000</td>
</tr>
<tr>
<td>Furniture, Fixtures &amp; Fittings</td>
<td>3,90,000</td>
</tr>
<tr>
<td>Profit &amp; Loss Account Debit Balance</td>
<td>13,00,000</td>
</tr>
<tr>
<td>Inventories</td>
<td>8,30,000</td>
</tr>
<tr>
<td>Trade Receivables</td>
<td>4,10,000</td>
</tr>
<tr>
<td>Balance with Bank</td>
<td>1,20,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>53,50,000</strong></td>
</tr>
</tbody>
</table>
Current value of Land & Buildings is ₹ 30,00,000/-, Furniture, Fixture & Fittings is ₹ 2,50,000/-, Inventory is valued at ₹ 9,11,000/-. Debtors are expected to realise 90% of their book value. You are informed that preference dividend has not been paid for the last 5 years. Calculate the intrinsic value of per equity shares by Net Assets Method.

Ans.
Current value of Land & Buildings is ₹ 30,00,000
Furniture, Fixture & Fittings is ₹ 2,50,000
Inventory is valued at ₹ 9,11,000
Debtors are expected to realise 90% of ₹ 4,10,000 = ₹ 3,69,000
Cash ₹ 1,20,000
Notional Call on 2 lakh equity shares @ ₹ 4 per share = ₹ 8,00,000
Total ₹ 54,50,000
Secured Loans ₹ 14,00,000
Trade Payables ₹ 6,50,000
Total ₹ 20,50,000
Net Assets ₹ 34,00,000
Less: Preference share Capital ₹ 6,00,000
Preference Dividend (60,000 × 10 × 12% × 5 years) ₹ 3,60,000
Intrinsic value of 350000 equity shares ₹ 24,40,000
Intrinsic value of fully paid equity share 24,40,000/3,50,000 = ₹ 6.97
Intrinsic value of ₹ 6 paid equity shares 6.97 - 4.00 = ₹ 2.97

(c) "Courts and Tribunals do not substitute or impose their opinion on the valuation report unless there are noticeable irregularities." Offer your comments with certain judicial pronouncements.

Ans.Courts and Tribunals do not substitute or impose their opinion on the valuation report unless there are noticeable irregularities. Some of the court observations are given below:

Bahoo J. Coyaee v. Shanta Genevieve Prommeret Parulekar (1991)(3) Bom. LR 319, - The Court observed that - “If the thing complained of is a thing which in substance the majority of the company are entitled to do or if something has been done irregularly which the majority of the company are entitled to do regularly, or if something has been done illegally which the majority of the company are entitled to do legally, there can be no use in having litigation about it, the ultimate end of which is only that a meeting has to be called, and then ultimately the majority gets its wishes”.

Re. Maknam Investments Ltd. (1995) (4) Comp.LJ page 330 - The Calcutta High Court observed that “Court does not go into the matter of fixing of exchange ratios in great detail or to sit in appeal over the expert decision of concerned chartered accountant of repute. Court only sees whether there is any manifest unreasonableness or manifest fraud involved in the matter”.

Hindustan Lever Employees Union v. Hindustan Lever Limited (1995) (Supp.) (1) SCC 499 at 517(519) - The Hon’ble Court stated - “The valuation of shares is a technical matter. It requires considerable skill and experience. There are bound to be differences of opinion among accountants as to what is the correct value of the shares of a company. .... The Court should not interfere with such valuation”.

Miheer H. Maliatil v. Maliatil Industries Ltd. (1996) 87 Comp. Cas. 792 (SC) - The Hon’ble Supreme Court held - “If Share Exchange Ratio is fixed by Chartered Accountant upon consideration of various factors and approved by majority of shareholders in meeting, the Court will not disturb ratio”.

Question 5
(a) The net profits earned during the last 5 years of XYZ Ltd. was ₹ (in lacs) 42, 47, 45, 39 and 47 respectively on the capital employed during all the period was ₹ 4 Crores. Market peers in the said industry expect 10% return of capital employed.

You are required to calculate the goodwill of XYZ Ltd. using:
— Capitalization of Average Profit Method and
— Capitalization of Super Profit Method

**Ans.** Net profits earned during the last 5 years of XYZ Ltd. was ₹ (in lacs) 42, 47, 45, 39 and 47
Average profits earned during the last 5 years of XYZ Ltd. was ₹ (in lacs) (42 + 47 + 45 + 39 + 47)/5 = ₹ 44

**Capitalised Average Profit method:**
Capitalised value of average Profit = (average profit/rate of return)100 = (44/110)100 = 400 lakhs = ₹ 4.4 cr

Goodwill = Capitalised Average Profit - Capital employed = 4.4 cr - 4.4 cr = ₹ 40 lakh

**Capitalised Super Profit method:**
Normal profit = Capital employed x (rate of return/100) = 4 crore x (10/100) = ₹ 40 lakh
Super profit = Average profit – normal profit = 44 - 40 = ₹ 4 lakh
Goodwill = Super profit x 100/Rate of return = 4 x (100/10) = ₹ 40 lakh

(b) What are the preliminary steps that are to be followed for a proper valuation?  
**Ans.** A business/corporate valuation involves analytical and logical application and analysis of historical and future tangible and intangible attributes of business. The preliminary study to valuation involves the following aspects:

(i) Analysis of Business History
(ii) Profit trends
(iii) Goodwill/Brand name in the market
(iv) Identifying economic factors directly affecting business
(v) Study of Exchange risk involved
(vi) Study of Employee morale
(vii) Study of market capitalization aspects
(viii) Identification of hidden liabilities through analysis of material contracts.

(c) What are the common strategies that warrant valuation of shares, business or even an undertaking?  
**Ans.** The following are the common strategies that warrant valuation of shares, business or even an undertaking:

(i) Determining the consideration for Acquisition;
(ii) Determining the swap ratio for Merger/Demerged;
(iii) Sale/Purchase of Intangible assets including brands, patents, copyrights, trademarks, rights;
(iv) Determining the Fair value of shares for issuing ESOP;
(v) Disinvestment of PSU stocks by the Government;
(vi) Liquidation /insolvency of company.

**PART - C**  
**Attempt all parts of either Q. No. 6 or Q. No. 6A**

**Question 6**

(a) What is meant by Principle of Supremacy of International Obligations as enunciated in Article 3 of Model Law.  
**Ans.** Article 3 of the Model Law provides that to the extent the Model Law conflicts with an obligation of the State enacting the Model Law arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

(b) Who are entitled and who are not eligible to make application to adjudicating authority for corporate insolvency resolution process as per Insolvency & Bankruptcy Code, 2016?  
**Ans.** As per section 6 of the Insolvency and Bankruptcy Code, 2016 where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor. As provided in section 11 of the said Code, the following persons shall not be entitled to make an application to initiate corporate insolvency resolution process:
(a) a corporate debtor undergoing a corporate insolvency resolution process; or
(b) a corporate debtor having completed corporate insolvency resolution process 12 months preceding the date of making of the application; or
(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application; or
(d) a corporate debtor in respect of whom a liquidation order has been made.

A corporate debtor includes a corporate applicant in respect of such corporate debtor.

(c) "Insolvency & Bankruptcy Code, 2016 as on date is an offshoot of reports by several committees established to make Indian economy free from industrial sickness resulting in loss of production and to boost the economy." Explain the evolution of Insolvency & Bankruptcy Code, 2016 through recommendations from various committees with consequent reforms made in India over a period of time. (5 marks)

Ans. The insolvency law enacted in India is a process through number of recommendation of various committees over the years.

Tiwari Committee - Due to the incidence of industrial sickness which was resulting in loss of production, loss of employment, loss of government revenue, blockage of funds advanced by the banks etc, a committee was constituted under the Chairmanship of Dr. K. Tiwari, Chairman, Industrial Reconstruction Corporation of India to look into the causes of Industrial sickness and to suggest remedial measures. Based on the recommendations of Tiwari Committee SICA was enacted.

N L Mitral Committee - A Standing Committee on International Financial Standards and Codes has been set up by Governor, Reserve Bank of India on December 8, 1999 with the objectives of identifying and monitoring developments in global standards and codes pertaining to various segments of the financial system.

Justice Eradi Committee - In the year 1999, the Government of India set up a High Level Committee headed by Justice V. B. Eradi, to examine and make recommendations with regard to the desirability of changes in existing law relating to winding up of companies so as to achieve more transparency and avoid delays in the final liquidation of the companies; The Committee recommended after considering international practices that the law of insolvency should not only provide for quick disposal of assets but in Indian economic scene, it should first look at the possibilities of rehabilitation and revival of companies.

Dr. J.J. Irani Expert Committee - Dr. J.J. Irani Expert Committee on Company Law was set up by the Government to recommend a new company law as a part of the on-going legal and financial sector reform process in the country. The Committee submitted its report to the Government of India on 31 May, 2006. The Committee proposed significant changes in the law to make the restructuring and liquidation process speedy, efficient and effective. Recommendations are directed at restoring the eroded confidence of key stakeholders in the insolvency system while balancing their interest.

Mr. T. K. Viswanathan Committee - Mr. T. K. Viswanathan Committee [Bankruptcy Law Reforms Committee (BLRC)] under the Ministry of Finance was set up on August 22, 2014, to study the corporate bankruptcy legal framework in India. On the recommendation of the Committee, Government of India placed a comprehensive Insolvency and Bankruptcy Code, 2015 in Lok Sabha on December 21, 2015. After public consultation; the code was referred to a Joint Parliamentary Committee of both the Houses for scrutiny. The report was presented to the Lok Sabha and Rajya Sabha on April 28, 2016. On May 05, 2016, Lok Sabha passed the Insolvency and Bankruptcy Code, 2016 and the Rajya Sabha approved it on May 11, 2016. The Code received the assent of the President of India on 28 May 2016. The Code was published in the Gazette of India, Extraordinary, Part II—Section 1 by the Ministry of Law and Justice (Legislative Department), New Delhi, the 26th May, 2016/Jyaistha 7, 1938 (Saka). Various sections of the Code have become effective from different dates as notified by the Government.

(d) What is a securitisation and who are the parties involved in securitization? Briefly explain the action points or steps in securitisation? (5 marks)
Ans. "Securitisation" means acquisition of financial assets by any asset reconstruction company from any origination, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise. Securitisation is a method of raising funds by way of selling receivables for money.

**Parties Involved in Securitisation:**

Primary parties

(i) The Originator (Banks/FIs who has lent loan against properties)

(ii) SPVs (Asset Reconstruction Company)

(iii) Investors (To whom securities are issued, which is a participative interest against the pool of receivables which is bought by the SPVs from the originator)

Besides above parties the following are involved in the process of securitizations:

(i) The obligator (i.e. original borrower of the loan)

(ii) Rating agency

(iii) Administrator etc.

**Steps in securitisation:**

(i) Acquisition of Financial Assets by Asset Reconstruction Company (i.e. SPVs) from the originator.

(ii) The SPV, with the help of an investment banker, issues security receipts which are distributed to investors.

(iii) The SPV pays the obligator for the financial assets purchased with the proceeds from the sale of securities.

**OR (Alternate question to Q. No. 6)**

**Question 6A**

(i) "Liquidator appointed by the Tribunal has unquestionable sole authority to deal and disburse the properties during liquidation process. Elaborate your answer citing circumstances in which a liquidator can be removed. (5 marks)

Ans. As per section 290(1) of the Companies Act, 2013 the liquidator appointed by the Tribunal is empowered to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels; and also to sell the whole of the undertaking of the company as a going concern. Notwithstanding the above provisions, the Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

As per section 276 of the Act, the Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds:

(a) misconduct;

(b) fraud or misfeasance;

(c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;

(d) inability to act as provisional liquidator or as the case may be, Company Liquidator;

(e) conflict of interest or lack of independence during the term of his appointment that would justify removal.

(ii) What were the reasons that prompted enactment of Insolvency & Bankruptcy Code, 2016? How does Corporate Insolvency Resolution Process differ with revival plans under repealed SICA or liquidation under Company Law? (5 marks)

Ans. To overcome the multiplicity of litigation and legal jargons, the Insolvency and Bankruptcy Code, 2016 has been enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the
stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.

Mr. T. K. Viswanathan Committee [Bankruptcy Law Reforms Committee (BLRC)] under the Ministry of Finance was set up on August 22, 2014, to study the corporate bankruptcy legal framework in India. On the recommendation of the Committee, Government of India placed a comprehensive Insolvency and Bankruptcy Code was enacted.

Under the SICA and the Company Law corporate resolution process is the process of liquidation and winding up of the company whereas under the Insolvency law, it is a process to set the company in right position through a process of financial management and if the process fails, then only liquidation is to be considered.

(iii) State the procedure for serving notice to foreign creditors under UNICITRAL Model Law. (5 marks)

**Ans.** Article 14 of the Model Law provides that whenever under laws of the enacting State relating to insolvency, a notification is to be given to creditors, such notification shall also be given to the known creditors that do not have addresses in the State. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known. The main purpose of notifying foreign creditors is to inform them of the commencement of the insolvency proceeding and of the time-limit to file their claims. Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required. When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

(a) Indicate a reasonable time period for filing claims and specify the place for their filing;
(b) Indicate whether secured creditors need to file their secured claims; and
(c) Contain any other information required to be included in such a notification to creditors pursuant to the law of this State and the orders of the court.

(iv) "Recovery Officer acts in an arbitrary manner." Analyse the statement in the light of the provisions of Recovery of Debts and Bankruptcy Act, 1993 citing judicial pronouncements, if any (5 marks)

**Ans.** Recovery officers are appointed by the Central Government to each Tribunal who acts as per procedure laid down. They act as per the order of the Presiding officer. They have no scope to act arbitrary manner. In the case of *Union of India and another v. Delhi High Court Bar Association and others*(2002) 4 SCC 275, the three-Judge Bench, while dealing with the constitutional validity of the RDB Act, Supreme Court observed that "By virtue of Section 29 of the Act, the provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income and the Income Tax (Certificate Proceedings) Rules, 1962, have become applicable for the realization of the dues by the Recovery Officer. Detailed procedure for recovery is contained in these Schedules to the Income Tax Act, including provisions relating to arrest and detention of the defaulter. It cannot, therefore, be said that the Recovery Officer would act in an arbitrary manner."
Question 1

(a) “Global competition drives enterprises to become globally fit to face global challenges prompting them for corporate restructuring”. Elucidate.

Ans. Global competition drives enterprises to become globally fit to face global challenges. Competition drives technological development. Competition from within a country is different from cross-country competition. Innovations and inventions happen out of necessity to meet the challenges of competition. Lower cost and value addition are two major things that get highlighted in a highly competitive globe. Global Competition drives people to think big and it makes them fit to face global challenges and drives enterprises to become fit globally.

In order to become a competitive force, Corporate Restructuring exercise could be taken up. The scope of Corporate Restructuring encompasses enhancing economy and improving efficiency in profitability. When a company wants to survive in a competitive environment, it needs to restructure itself and focus on its competitive advantage. The survival and growth of companies in this environment depends on their ability to pool all their resources and put them to optimum use. A larger company, resulting from merger of smaller ones, can achieve economies of scale. Availability of funds allows the enterprise to grow in all levels and thereby become more and more competitive.

Various types of corporate restructuring strategies include the following:

(i) Merger
(ii) Demerger
(iii) Reverse Mergers
(iv) Disinvestment
(v) Takeovers
(vi) Joint venture
(vii) Strategic alliance
(viii) Franchising
(ix) Slump Sale.

(b) “Inorganic growth provides an organisation with an avenue for attaining accelerated growth as compared to the organic growth in general”. Comment on the statement.

Ans. Inorganic growth provides an organisation with an avenue for attaining accelerated growth as compared to the organic growth in general. There are primarily two ways of growth of business organization, i.e. organic and inorganic growth. Organic growth is through internal strategies, which may relate to business or financial restructuring within the organization that results in enhanced customer base, higher sales, increased revenue, without resulting in change of corporate entity. Inorganic growth provides an organization with an avenue for attaining accelerated growth enabling it to skip few steps on the growth ladder. Restructuring through mergers, amalgamations etc., constitute one of the most important methods for securing inorganic growth. Inorganic growth is the rate of growth of business by increasing output and business reach by acquiring new businesses by way of mergers, acquisitions and takeovers and other corporate restructuring strategies that
may create a change in the corporate entity. The business environment is rapidly changing with respect to technology, competition, products, people, geographical area, markets, customers etc. It is not enough if companies keep pace with these changes but are expected to beat competition and innovate in order to maximize shareholder value. Inorganic growth strategies like mergers, acquisitions, takeovers and spin-offs are regarded as important engines that help companies to enter new markets, expand customer base, cut competition, consolidate and grow in size quickly, employ new technology with respect to products, people and processes. Thus, the inorganic growth strategies are regarded as fast track corporate restructuring strategies for growth.

(c) ABC Ltd. intends to delist its shares from Delhi Stock Exchange (DSE) for which it made required public announcement. Surelin Ltd., a substantial shareholder in the said Company made a counter offer. Advise Board with a short note in accordance with the relevant and applicable regulations of Securities Exchange Board of India (SEBI).

Ans. SEBI (Delisting of Shares) Regulations, 2009 gives an option to the listed company to either get itself delisted from all the recognised stock exchanges where it is listed or only from some of the few stock exchanges and continue to be listed on the exchange(s) having nation wide terminals.

(i) It shall be approved by a resolution of the board of directors of the company in its meeting;
(ii) The company shall give a public notice of the proposed delisting in at least one English national daily with wide circulation, one Hindi national daily with wide circulation and one regional language newspaper of the region where the concerned recognised stock exchanges are located;
(iii) The company shall make an application to the concerned recognised stock exchange regarding this;
(iv) The public notice shall mention the names of the recognised stock exchanges from which the equity shares of the company are intended to be delisted, the reasons for such delisting and the fact of continuation of listing of equity shares on recognised stock exchange having nation wide trading terminals;
(v) An application shall be disposed off by the recognised stock exchange within a period not exceeding thirty working days from the date of receipt of such application complete in all respects.
(vi) The fact of delisting shall be disclosed in the first annual report of the company prepared after the delisting.

Rule 5A(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) 2011 provides that where a competing offer is made the acquirer shall not be entitled to delist the company. Therefore, ABC Ltd. cannot delist its shares.

(d) "Inability to pay debts was generally a ground for moving an application for winding up of a Company under the Companies Act, 1956. But such a ground no longer exists under the Companies Act, 2013". State the circumstances which compel a company to be wound up under the Companies Act, 2013.

Ans. Section 271 of the Companies Act, 2013 provides the circumstances in which company may be wound up by Tribunal. These are stated below:

(a) If the company has, by special resolution, resolved that the company be wound up by the Tribunal;
(b) If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
(c) If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
(d) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
(e) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.
Question 2

(a) XYZ Ltd. and ABC Ltd. filed applications before National Company Law Tribunal (NCLT) for amalgamation of both the companies to form a new Company PQR Ltd. Regional Director by an affidavit pointed out the following inconsistencies in the application(s):

(i) Main objects of XYZ Ltd. are not similar to that of ABC Ltd; and
(ii) Authorized capital of PQR Ltd. is not sufficient to cover the total consideration.

As a Company Secretary, you are requested to brief the facts and background, along with the judicial precedents, to the counsel enabling him to proceed in the matter. (5 marks)

**Ans.** In case of amalgamation of companies, the companies may be merged with one company or a new company is formed to takeover the companies. It has to be ensured that the objects clause of the Memorandum of Association of the transferee company cover the objects of the transferor company or companies. If not then it will be necessary to follow the procedure for amendment of objects by passing a special resolution at an Extraordinary General Meeting convened for this purpose. However, in practical from legal point of view, the situation is different.

(i) It has been held by various decisions of the courts that there need not be unison or identity between objects of transferor company and transferee company. Companies carrying entirely dissimilar businesses can amalgamate. [Re: PMP Auto Inds Ltd. (1994) 80 Comp Cas 291 (Bom); Re: EITA India Ltd. (ibid); Re: Mcleod Russel (India) Ltd. (1997) 13 SCL 126(Cal)].

(ii) Sanction to scheme of amalgamation cannot be refused on the ground that the transferee company does not have sufficient authorised capital on the appointed date. If the scheme is sanctioned, the transferee company can thereafter increase its authorised capital to give effect to the scheme [Re: Mahavir Weaves Pvt. Ltd. (1985) 83 Comp. Cas 180].

(b) “Mergers, Demergers or Reverse Mergers are resorted to enhance, utilise or protect the brand value already earned by an enterprise”. Explain how the reputation and goodwill associated with a brand name of the Company could be advantageously exploited. (5 marks)

**Ans.** Mergers, Demergers or Reverse Mergers are resorted to enhance, utilise or protect the brand value already earned by an enterprise. Brand name of an enterprise carries its goodwill and reputation. Acquiring a new product is different from acquiring a brand name. A company may be able to build a brand name for a particular line of business. In a related field, the company might think of introducing another product so that reputation and goodwill associated with a brand name of the company could be advantageously exploited. In this situation, the company would be either installing a manufacturing facility for the new product or looking for a good party in the market with a reasonable market share. If the company acquires its manufacturing facility, the company can save a lot of time and energy in creating a new industry. The combination of the ability of the company to takeover the manufacturing facility and build the said product with the company’s brand name develops a great market for the company.

(c) “Anti-trust laws world over believe that the free trade benefits the economy and at the same time, the legislations are formulated to forbid several types of restraints of trade and monopolisation”. Justify the statement in the context of the provisions of Competition Act, 2002 with respect to mergers, demergers or reverse mergers. (5 marks)

**Ans.** Anti-trust laws world over believe that the free trade benefits the economy and at the same time, the legislations are formulated to forbid several types of restraints of trade and monopolisation. The Competition Act, 2002 is an Act to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried
on by other participants in markets, in India, and for matters connected therewith or incidental thereto. As the
countries are getting integrated into one global platform, the businesses across the jurisdictions are also
competing on the flat platform, providing multiple choices to consumers and calling for highest quality of
output supported by innovation and technology. The paradigm requires the corporates to possess multiple
expertise, through business restructuring. Mergers, acquisitions and takeovers are widely accepted business
strategies in the global platform. The economic reasons behind such strategies may be increased market
share, cost reduction, managing competition, financial/tax benefits, increased economies of scale etc.,

OR (Alternate Question to Q. No. 2)

Question 2A
(i) A Ltd. was a listed Company with Kanpur Stock Exchange but got delisted in 2012. In the year 2017, the
Board passed a resolution approving a scheme of arrangement and petitioned before the National Company
Law Tribunal (NCLT). Subsequent to that, scheme was placed before the members which the NCLT ordered.
Two (2) shareholders holding 80% shares opposed the scheme.
As a Company Secretary, advise the Board on the next course of action(s) pursuant to the provisions of the
Companies Act, 2013.

Ans. Section 230(6) of the Companies Act, 2013 states that when at a meeting held in pursuance to order of
the Tribunal, majority of persons representing 3/4th in value of the creditors, or class of creditors or members
or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any
compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an
order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of
members, as the case may be, or, in case of a company being wound up, on the liquidator and the
contributories of the company.
This law thus provides for two-fold approval, (i) majority in number and (ii) 3/4th in value.
In the case of A Ltd. 2 shareholders holding 80% shares opposed the scheme. A Ltd. is a public company
having minimum 7 members. 2 members who oppose the move do not constitute majority in number of
shareholders though holding 80% shares hold more than 3/4th shares. Therefore, there contention is not valid
and the resolution for approving the scheme is approved.

(ii) Progression Ltd. is a listed Company with a paid up capital of ₹ 200 Crore divided into 20 crore shares of ₹ 10
each. R, S, T and U are the promoters of the said company holding 2 crore, 5.40 crore, 0.80 crore and 2.20
crore shares respectively.
The following situations occurred at different times:
Situation 1: T transfers 0.30 crore shares each to R & U
Situation 2: S transfers 0.22 crore shares to T
Situation 3: R transfers 0.20 crore shares each to T and U
As a Company Secretary, you need to advise on the required compliances, if any, under the Securities
Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for the above
three situations respectively.

Ans. In terms of regulation 10(1)(a)(ii) of the SEBI (Substantial Acquisition of Shares and Takeovers)
Regulations, 2011 acquisition pursuant to inter se transfer of shares amongst qualifying persons, being
persons named as promoters in the shareholding pattern filed by the target company in terms of the listing
agreement or these regulations for not less than three years prior to the proposed acquisition shall be exempt
from the obligation to make an open offer under regulation 3 and regulation 4 of the Regulation subject to
fulfillment of the conditions stipulated therefore.
As per regulation 10(5), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in prescribed form at least 4 working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public. In terms of the aforesaid provisions, the given cases are to be treated as stated below:

Situation 1: T transfers 0.30 crore shares each to R & U – R and U to intimate the stock exchange 4 days before the transfer.

Situation 2: S transfers 0.22 crore shares to T – T to intimate the stock exchange 4 days before the transfer.

Situation 3: R transfers 0.20 crore shares each to T and U – T and U to intimate the stock exchange 4 days before the transfer.

It is assumed that the promoters are named within 3 years prior to the transfer of the shares.

(iii) “While standard parameters play a crucial role, funding/borrowing for takeover should be organized in such a way that best suits the facts and circumstances of the specific case and should also meet the immediate needs and objectives of the management”. Elucidate the statement with emphasis on the demerits of borrowing from the financial institutions and banks. (5 marks)

Ans. Funding of a merger or takeover with the help of loans from financial institutions, banks etc, has its own merits and demerits. While deciding the takeover of a going concern, various matters like capital gains tax, stamp duty on immovable properties, carrying forward of accumulated losses play important role. With parameters playing a critical role, the takeover should be organized in such a way that best suits the facts and circumstances of the specific case and also it should meet the immediate needs and objectives of the management. There would be a planning for organizing the necessary funding or the acquisition. If borrowings from domestic banks and financial institutions have been identified, all the financial and managerial information must be placed before the banks and financial institutions for the purpose of getting the necessary resources.

The advantage of funding is that the period of such funds is definite which is fixed at the time of taking such loans but the interest burden on such loans, is quite high which must be kept in mind by the Board while deciding to use borrowed funds from financial institution.

Such funding should be availed of only when the Board is sure that the merged company or the target company will, give adequate returns i.e., timely payment of periodical interest on such loans and re-payment of the loans at the end of the term for which such loans have been taken.

Question 3

(a) What corrective measures a Company can take to restructure its internal finance having noticed symptoms of either under capitalization or over capitalization? (3 marks)

Ans. An under-capitalized company may restructure its capital by taking one or more of the following corrective steps:

(a) Injecting more capital whenever required either by resorting to rights issue/preferential issue or additional public issue.

(b) Resorting to additional borrowings from financial institutions, banks, other companies etc.

(c) Issuing debentures, bonds, etc.

(d) Inviting and accepting fixed deposits from directors, their relatives, business associates and public.

If a company is over-capitalized, its capital requires restructuring by taking following corrective measures:

(a) Buy-back of own shares.

(b) Paying back surplus share capital to shareholders.

(c) Repaying loans to financial institutions, banks, etc.

(d) Repaying fixed deposits to public, etc.

(e) Redeeming its debentures, bonds, etc.
"Consequent to restructuring, more particularly through mergers, amalgamations or takeovers, the management needs to be sensitive to employees' morale". Briefly comment on the validity of the statement. (3 marks)

Ans. In merger, amalgamation or takeover there is great uncertainty for the employees of the organizations concerned. The uncertainty relates to job security and status within the company leading to fear. This creates low morale among the employees. It is natural for employees to fear the loss of their revenue or change in their status within the company after a merger since many of these employees literally invest their whole lives in their jobs. The possibility of a change in their position is likely to be viewed with fear and resentment. The possibility of a change in compensation and benefits also creates a feeling of insecurity. The influx of new employees into the organisation can create a sense of invasion at times and ultimately leads to resentment. It further leads to frustrations resulting into poor performance and low productivity.

The successful merger demands that strategic planners are sensitive to the human issues of the organizations. For the purpose, following checks have to be made: constantly to ensure that:

(i) To ensure that sensitive areas of the company are pinpointed and personnel in these sections carefully monitored;

(ii) To ensure that serious efforts are made to retain key people;

(iii) To ensure that a replacement policy is ready to cope with inevitable personnel loss;

(iv) To ensure that records are kept of everyone who leaves, when, why and to where;

(v) To ensure that employees are informed of what is going on, even bad news is systematically delivered.

(vi) Uncertainty is more dangerous than the clear, logical presentation of unpleasant facts;

(vii) To ensure that training department is fully geared to provide short, medium and long term training strategy for both production and managerial staff;

(viii) To ensure that likely union reaction be assessed in advance;

(ix) To ensure that estimate cost of redundancy payments, early pensions and the like assets;

(c) What is the purpose of observation letter issued by Stock Exchange(s) under SEBI (Obligations and Disclosure Requirements) Regulations, 2015? (3 marks)

Ans. Observation letter is the letter issued by stock exchanges when any scheme of merger or amalgamation is to be made, any prospectus is issued for any issue of shares etc. certifying compliance by the company of statutory requirements and that no complaint is pending against the company. Regulation 37 of the SEBI (LODR) Regulations, 2015 provides provisions in this regard. According to the said regulation, the listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement, proposed to be filed before the Tribunal under sections 230-234 and Section 66 of Companies Act, 2013, whichever applicable, with the stock exchange(s) for obtaining Observation Letter or No-objection letter, before filing such scheme with the Tribunal, in terms of requirements specified by the Board or stock exchange(s) from time to time.

The listed entity shall not file such documents with the Tribunal unless it has obtained observation letter or No-objection letter from the stock exchange(s).

The listed entity shall place the Observation letter or No-objection letter of the stock exchange(s) before the Tribunal at the time of seeking approval of the scheme of arrangement. The validity of the ‘Observation Letter’ or No-objection letter of stock exchanges shall be 6 months from the date of issuance, within which the draft scheme of arrangement shall be submitted to the Tribunal.

(d) Several Credits Finance Company Ltd., a Non-Banking Finance Company (NBFC) is in the process of merging with Hatke Bank Ltd, a Scheduled Bank. Recommend the steps/actions to be undertaken by Hatke Bank Ltd with respect to the relevant statutory provisions as may be applicable in this case. (3 marks)

Ans. Approval of the merger of NBFC with a Banking Company would be obtained from the National Company Law Tribunal in terms of Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
As per paragraph 17 of the master direction issued by RBI, to enable the RBI to consider the application for approval, the banking company shall furnish to it information as specified in the schedule to the direction (except certificate in respect of names of shareholders who gave notice in writing at or prior to the meeting to the NBFC that they dissented from the scheme of amalgamation) and also the information and documents relating to the valuation along with its computation and the quoted price details.

(e) "Demerger is not expressly defined under the Companies Act, 2013". How does an application move before the National Company Law Tribunal (NCLT) for Demerger under the said Act? (3 marks)

Ans. Demerger is a form of corporate restructuring in which the entity’s business operations are segregated into two or more components. A demerger is often done to help each of the segments operate more smoothly, as they can focus on a more specific task after demerger.

The expression ‘demerger’ is not expressly defined in the Companies Act, 2013 (the Act). However, the Explanation to Section 230(1) gives a clue about the word demerger.

Section 230(1) of the Act states that where a compromise or arrangement is proposed, the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

The Explanation to Section 230(1), thus provides an inclusive definition of arrangement i.e. consolidation or by the division of shares into shares of difference classes or by both the methods and the literary meaning of demerger is somewhat explained.

PART – B

Question 4

(a) “Fair value of shares is in fact not precisely fair but a compromise effort for bringing the parties to an agreement, just like providing extra play time in a Hockey or Football match especially in case of a tie”. Justify the statement with your views. (5 marks)

Ans. Valuation can be done on the basis of fair value. Resorting to valuation by fair value is appropriate when market value of a company is independent of its profitability. The fair value of shares is arrived at after consideration of different modes of valuation and diverse factors. There is no mathematically accurate formula of valuation. An element of guesswork or arbitrariness is involved in valuation. The factors have to be kept in mind in the valuation of shares are: (i) Capital cover, (ii) Yield, (iii) Earning capacity, and (iv) Marketability. For arriving at the fair value of share, three well-known methods are applied:

(i) Earning per share method;
(ii) Net worth method;
(iii) Market value method.

The fair value of a share is the average of the value of shares obtained by the net assets method and the one obtained by the yield method. This is, in fact not a valuation, but a compromise formula for bringing the parties to an agreement. As in case of a tie in a hockey or football match, the fair value method is pursued to arrive at a result.

(b) Fast Growth Ltd. gave the following information with a request to calculate the value of each of its equity shares:

(i) Subscribed capital consists of fully paid up shares as follows:
   10 lakh 13% Preference shares of ₹ 10 each and 20 lakh Equity shares of ₹ 10 each
(ii) Profit after depreciation but before taxation is ₹ 180 lakh
(iii) Transfer to general reserve ₹ 34.50 lakh
(iv) Provision for taxation is 30%
(v) Expected dividend is 20% for the relevant industry. (5 marks)
Ans.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit after Depreciation but before Tax</td>
<td>1,80,00,000</td>
</tr>
<tr>
<td>Less: Tax @ 30%</td>
<td>54,00,000</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Less: Transfer to General Reserve</td>
<td>34,50,000</td>
</tr>
<tr>
<td>Amount available for Dividend</td>
<td>91,50,000</td>
</tr>
<tr>
<td>Less: Preference Dividend</td>
<td>13,00,000</td>
</tr>
<tr>
<td>Amount available for Equity Dividend</td>
<td>78,50,000</td>
</tr>
<tr>
<td>Expected Rate of Dividend</td>
<td>39.25%</td>
</tr>
<tr>
<td>Normal Rate of Dividend</td>
<td>20%</td>
</tr>
<tr>
<td>Value of an Equity Share</td>
<td>19.63</td>
</tr>
</tbody>
</table>

(c) Simran Simple Synthetics Ltd. is contemplating to issue Sweat equity shares for their staff in R&D department. Shares are listed on both the exchanges i.e., BSE and NSE.

As a Company Secretary, you are tasked with enlightening the Board on the manner of fixing price per Sweat equity share in line with the SEBI regulations. 

**Ans.** Under the SEBI (Issue of Sweat Equity) Regulations, 2002, the price of sweat equity shares shall not be less than the higher of the following:

(a) The average of the weekly high and low of the closing prices of the related equity shares during last six months preceding the relevant date; or

(b) The average of the weekly high and low of the closing prices of the related equity shares during the two weeks preceding the relevant date.

"Relevant date" for this purpose means the date which is thirty days prior to the date on which the meeting of the General Body of the shareholders is convened.

In terms of the provisions of the Companies Act, 2013:

(i) If the shares are listed on more than one stock exchange, but quoted only on one stock exchange on the given date, then the price on that stock exchange shall be considered.

(ii) If the share price is quoted on more than one stock exchange, then the stock exchange where there is highest trading volume during that date shall be considered.

(iii) If shares are not quoted on the given date, then the share price on the next trading day shall be considered.

**Question 5**

(a) Despite having a statutory warning by Mutual Fund Companies as "Past performance may or may not sustain in future", past share market price data is quite often used in equity valuation while investing/acquiring equity and SEBI regulations also take into account weekly highs and lows of such market prices as litmus test. However, there may be certain inherent flaws and/or limitations while going by such market based valuation(s).

Highlight to your Board of directors certain possible flaws and limitations in such market price based valuation(s) which may be misleading.

**Ans.** Past share market price data is quite often used in equity valuation. SEBI regulations also take into account weekly highs and lows of such market prices for share prices. However, there are certain inherent flaws while going by such market based valuation.

(i) Stock exchange price is mostly determined by bull and bear factors rather than yield or net asset based methods.

(ii) Stock exchange price is basically determined by demand and supply and may reflect true value of shares.
(iii) Consideration of past price does not truly reflect the future change in the market and also the company.
(iv) Stock exchange price is taken as average price of certain period say two month or six month. It does not consider a whole cycle say yearly.
(v) Future prospects and development of the company is not considered in such pricing methodology.

(b) Explain the following methods of valuation:

(i) **Net Realisable Value Method**

**Ans.** Net Realisable Value method is used in case of liquidation. Where the business of the company is being liquidated, its assets have to be valued as if they were individually sold and not on a going concern basis. Liabilities are deducted from the liquidation value of the assets to determine the liquidation value of the business. One should also consider liabilities which will arise on closure such as retrenchment compensation, termination of critical contracts, etc. Tax consequences of liquidation should also be considered. Any distribution to the shareholders of the company on its liquidation, to the extent of accumulated profits of the company is regarded as deemed dividend. Dividend Distribution tax will have to be captured for such valuation.

(ii) **Valuation in case of Slump Sale**

**Ans.** The concept of Slump Sale was incorporated in the Income tax Act, 1961 by the Finance Act, 1999 when Section 2(42C) was inserted defining the term 'slump sale' as transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities. Prior to the insertion of Section 2(42C), Courts have held that slump sale is a sale of a business on a going concern basis where the lumpsum price cannot be attributed to individual assets or liabilities.

The consideration of slump sale should be arrived at without assigning values to individual assets and liabilities. As regards the valuation of slump sale it is appropriate to brief the provisions of Section 50B of the Income Tax Act, 1961. Section 50B provides the mechanism for computation of capital gains arising on slump sale. Capital gains arising on slump sale are calculated as the difference between sale consideration and the net worth of the undertaking. Net worth is deemed to be the cost of acquisition and cost of improvement for the purpose of calculation of capital gains tax.

Net worth is defined in Explanation 1 to Section 50B as the difference between 'the aggregate value of total assets of the undertaking or division' and 'the value of its liabilities as appearing in books of account'.

The 'aggregate value of total assets of the undertaking or division' is the sum total of:

(i) WDV as determined u/s.43(5)(c)(i)(C) in case of depreciable assets.

(ii) The book value in case of other assets.

(c) From the following data noticed from published financials, ascertain intrinsic value of equity shares:

- Goodwill: ₹ 56,400
- Market value of other assets: ₹ 18,00,000
- Debentures: ₹ 10,00,000
- Trade payables: ₹ 2,50,000
- Preference capital: ₹ 2,00,000

Equity capital consists of 10000 shares of ₹ 10 each fully paid up.

**Ans.**

<table>
<thead>
<tr>
<th>Goodwill</th>
<th>₹ 56,400</th>
</tr>
</thead>
<tbody>
<tr>
<td>Market value of other assets</td>
<td>₹ 18,00,000</td>
</tr>
<tr>
<td>Debentures</td>
<td>₹ 10,00,000</td>
</tr>
<tr>
<td>Trade payables</td>
<td>₹ 2,50,000</td>
</tr>
<tr>
<td>Preference capital</td>
<td>₹ 2,00,000</td>
</tr>
<tr>
<td>Net Asset</td>
<td>₹ 4,06,400</td>
</tr>
<tr>
<td>No of Equity shares</td>
<td>10,000</td>
</tr>
<tr>
<td>Intrinsic value of equity shares</td>
<td>₹ 4,06,400/10,000 = ₹ 40.64</td>
</tr>
</tbody>
</table>
PART– C

Attempt all parts of either Q. No. 6 or Q. No. 6A

Question 6

(a) "Default by debtor was a crime punishable with imprisonment or death". This forgotten perception with respect to the laws of bankruptcy has now got transformed giving opportunity to a bankrupt or insolvent for revival. Express the views in the current context of evolution of Insolvency Laws in Britain and U.S.A and now even in India.

Ans. Regulatory Framework in UK - In England, the first bankruptcy law was enacted in 1542, being Statute 34 Henry VIII. Under this act a debtor was still looked upon as in a sense an offender, and the law was mainly for the benefit of creditors, providing for an equal distribution of the debtor's assets among his creditors, but not releasing the debtor from his debts. The early bankruptcy laws of England was exclusively an instrument of debt-collection; its finality was to seize the debtor's assets against the strong protections to private property offered by the Common law, since medieval times. The procedure thus worked rather as a continuation of private remedies with different, collective, legal instruments.

The 1982 Report of the Insolvency Law review Committee, Insolvency Laws and Practice (commonly known as “the Cork Report”) recommended the adoption in the United Kingdom of Unified Insolvency legislation. Ultimately the Insolvency Act, 1986 (UK) was enacted and this encompasses both types of insolvency administrations, including corporate restructuring.

Regulatory Framework in USA

Early American bankruptcy laws were only available to merchants and generally involved imprisonment until debts were paid or until property was liquidated or creditors agreed to the release of the debtor. The laws were enacted by each individual state and were inconsistent and discriminatory. The lack of uniformity in bankruptcy and debt enforcement laws hindered business and commerce between the states. Until 1898 there was no bankruptcy law in continuous effect in the United States. The Congress enacted temporary bankruptcy statutes in 1800, 1841 and 1867 to deal with economic downturns. Those laws were temporary measures and were repealed as soon as economic conditions stabilized.

The National Bankruptcy Act of 1898 was based upon the liquidation of a debtor's non-exempt assets to pay creditors. In 1938 the law was amended to provide for the rehabilitation or reorganization of a debtor as an alternative to liquidation of assets. The Bankruptcy Act of 1898, together with its amendments, was known as the Bankruptcy Act. Under the Bankruptcy Act, the district court had jurisdiction over bankruptcy cases, but could appoint a referee in bankruptcy to oversee the administration of bankruptcy cases, the allowance of claims and the distribution of payments to creditors. The Bankruptcy Act governed bankruptcy in the United States for 80 years.

After a series of critical studies and review of the then existing law and practice, Congress passed the Bankruptcy Reform Act of 1978. The US Congress enacted the "Bankruptcy Code" in 1978.

Regulatory Framework in India

In the year 1999, the Government of India set up a High Level Committee headed by Justice V. B. Eradi, to examine and make recommendations with regard to the desirability of changes in existing law relating to winding up of companies so as to achieve more transparency and avoid delays in the final liquidation of the companies;

Dr. J.J. Irani Expert Committee on Company Law was set up by the Government to recommend a new company law as a part of the on-going legal and financial sector reform process in the country. Committee submitted its report to the Government of India on 31 May, 2005.

Mr. T. K. Viswanathan Committee [Bankruptcy Law Reforms Committee' (BLRC)] under the Ministry of Finance was set up on August 22, 2014, to study the corporate bankruptcy legal framework in India. The
Bankruptcy Law Reforms Committee (Chairman: Dr. T. K. Viswanathan) submitted its report to the Finance Ministry on November 4, 2015. The Companies Act 2013 provides for regulation of insolvency, including rehabilitation, winding up and liquidation of companies in time bound manner. It incorporates international best practices based on models suggested by the United Nations Commission on International Trade Law (UNCITRAL). The powers and jurisdiction of Company Law Board, Board of Industrial and Financial Reconstruction and High Court in this regard, is being exercised by National Company Law Tribunal and Appellate Tribunal. The purpose of creation of the Tribunal is to avoid multiplicity of litigation before various courts or quasi-judicial bodies or forums regarding revival or rehabilitation or merger and amalgamation, and winding up of companies. The Insolvency and Bankruptcy Code 2016 was enacted to provide procedural matters for insolvency matters.

(b) "Vasudev Kutumbakam or one world one family is the motto of any business entity in addition to political and cultural togetherness. This has prompted to the formation of United Nations Organisation (UNO) to ensure smooth universal trade". Comment on the statement with special emphasis on efforts being made with respect to Cross Border Insolvency. (5 marks)

Ans. Cross-border insolvency regulates the treatment of financially distressed debtors where such debtors have assets or creditors in more than one country. Typically, crossborder insolvency is more concerned with the insolvency of companies which operate in more than one country rather than the bankruptcy of individuals. Like traditional conflict of laws rules, cross-border insolvency focuses upon three areas: choice of law rules, jurisdiction rules and enforcement of judgment rules. However, in relation to insolvency, the principal focus tends to be the recognition of foreign insolvency officials and their powers.

The United Nations Commission on International Trade Law (UNCITRAL) was established in 1966 as a subsidiary body of the General Assembly of the United Nations with the general mandate to further the progressive harmonization and unification of the law of international trade.

The UN General Assembly is the main deliberative, policymaking and representative organ of the United Nations. Comprising all 193 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by its Charter. India is a member of UN General Assembly and UNCITRAL.

As part of this programme of harmonization, the UNCITRAL has developed a Model Law on Cross-Border Insolvency ("the Model Law"). In December 1997, the General Assembly endorsed the Model Law on Cross Border Insolvency, developed and adopted by the UNCITRAL. The Model Law was accompanied by a Guide to Enactment that provided background and explanatory information to assist those preparing the legislation necessary to implement the Model Law and judges and others responsible for its application and interpretation.

(c) "More and more banks are embarking on forming of Asset Reconstruction Companies such that they can manage their risks better and can concentrate on lending". Explain the salient features and functions of an Asset Reconstruction Company in the context of the above statement. (5 marks)

Ans. "Asset reconstruction company" means a company registered with Reserve Bank for the purposes of carrying on the business of asset reconstruction or securitisation, or both. The problem of non-performing loans created due to systematic banking crisis world over has become acute. Focused measures to help the banking systems to realise its NPAs has resulted into creation of specialized bodies called asset management companies which in India have been named asset reconstruction companies ('ARCs'). The buying of impaired assets from banks or financial institutions by ARCs will make their balance sheets cleaner and they will be able to use their time, energy and funds for development of their business. ARCs may be able to mix up their assets, both good and bad, in such a manner to make them saleable.
The main objective of asset reconstruction company is to act as agent for any bank or financial institution for the purpose of recovering their dues from the borrowers on payment of fees or charges, to act as manager of the borrowers' asset taken over by banks, or financial institution, to act as the receiver of properties of any bank or financial institution and to carry on such ancillary or incidental business with the prior approval of Reserve Bank wherever necessary. If an ARC carries on any business other than the business of asset reconstruction or securitisation or the business mentioned above, it shall cease to carry on any such business within one year of doing such other business.

(d) Unlike Companies Act, 1956 winding up can be resorted to only when resolution plan either could not be finalised or failed within 30 days of approval by adjudicating authority as per Insolvency and Bankruptcy Code, 2016. Are there any exceptions to such perception? Who all are entitled to move petitions for winding up? (5 marks)

Ans. As per regulation 31 of the Insolvency and Bankruptcy Code, 2016 if the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirements of the Code, it shall by order approve the resolution plan. Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements, it may, by an order, reject the resolution plan. At present, there is no such exceptions.

The following are entitled to move petition for winding up:
As per section 272 of the Companies Act, 2013 a petition to the Tribunal for the winding up of a company shall be presented by —
(a) the company;
(b) any contributory or contributories;
(c) all or any of the persons specified in clauses (a) and (b);
(d) the Registrar;
(e) any person authorised by the Central Government in that behalf; or
(f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.

OR (Alternative question to Q. No. 6)

Question 6A

(i) “Banks and financial institutions do have free hands to take possession of assets of a defaulting debtor under Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002”. Are there any exceptions to the statement under the Act? Explain. (5 marks)

Ans. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) enable Banks and Financial Institutions to recover defaulted loan from borrowers by adopting measures for recovery or reconstruction. The SARFAESI Act provides three alternative methods for recovery of Non-Performing Assets (NPAs): 1. Securitisation; 2. Asset Reconstruction; and 3. Enforcement of Security without the intervention of a Court or Tribunal. Out of these methods, the most important and widely used is the powers for Enforcement of Security without the intervention of a Court or Tribunal, which is discussed here.

The SARFAESI Act empowers Banks and FIs to issue demand notice to the defaulting borrowers and guarantors, calling upon them to discharge their dues in full within 60 days from the date of the notice. Thereafter, Banks are empowered to take possession of the security provided for the loan and sell or assign the right to the security, manage the same or appoint any person to manage the same.

A Security Interest can be enforced by a Secured Creditor without the intervention of Court or Tribunal in accordance with the provisions of the SARFAESI Act. Such action can be taken against a borrower, who is under liability to a Secured Creditor and makes any default in repayment of Secured Debt or any instalment thereof and the account is classified as NPA by the Secured Creditor.
Exceptions - A Security Interest cannot be enforced, if it is:

(i) a lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force;

(ii) a pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;

(iii) creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;

(iv) creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;

(v) any conditional sale, hire-purchase or lease or any other contract in which no security interest has been created;

(vi) any rights of the unpaid seller under section 47 of the Sale of Goods Act, 1930;

(vii) any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908;

(viii) it is an agricultural land

(ix) the debt due is less than ₹ 1,00,000/-

(x) the debt due is less than 20% of the principal amount and interest thereon, i.e. the borrower has repaid more than 80% of the principle amount and interest.

Further, a Security Interest cannot be enforced if the debt is time barred under the Limitation Act.

(ii) Progress of enforcement of Insolvency and Bankruptcy Code, 2016 depends on four pillars apart from the adjudicating authorities. State briefly the role of such pillars. (5 marks)

Ans. A key innovation of the Insolvency and Bankruptcy Code is four pillars of institutional infrastructure. The first pillar of institutional infrastructure is a class of regulated persons, the 'Insolvency Professionals'. They would play a key role in the efficient working of the bankruptcy process. They would be regulated by 'Insolvency Professional Agencies'.

The second pillar of institutional infrastructure is a new industry of 'Information Utilities'. These would store facts about lenders and terms of lending in electronic databases. This would eliminate delays and disputes about facts when default does take place.

The third pillar of institutional infrastructure is in adjudication. The NCLT will be the forum where firm insolvency will be heard and DRTs will be the forum where individual insolvencies will be heard. These institutions, along with their Appellate bodies, viz., NCLAT and DRATs will be adequately strengthened so as to achieve world class functioning of the bankruptcy process.

The fourth pillar of institutional infrastructure is a regulator viz., 'The Insolvency and Bankruptcy Board of India'. This body will have regulatory over-sight over the Insolvency Professional, Insolvency Professional agencies and information utilities.

The Insolvency and Bankruptcy Code is thus a comprehensive and systemic reform, which will give a quantum leap to the functioning of the credit market. It would take India from among relatively weak insolvency regimes to becoming one of the world's best insolvency regimes. It lays the foundations for the development of the corporate bond market, which would finance the infrastructure projects of the future. The passing of this Code and implementation of the same will give a big boost to ease of doing business in India.

(iii) UNICITRAL Model Law is binding on member countries but at the best obiter dicta for Courts of the member countries dealing in disputes relating to cross border insolvency and international trade. Elucidate. (5 marks)

Ans. The United Nations Commission on International Trade Law (UNCITRAL) was established in 1966 as a subsidiary body of the General Assembly of the United Nations with the general mandate to further the progressive harmonization and unification of the law of international trade.
The purpose of UNCITRAL was to harmonize and unify the law of international trade. As part of this programme of harmonization, the UNCITRAL has developed a Model Law on Cross-Border Insolvency ("the Model Law")

Cross-border insolvency regulates the treatment of financially distressed debtors where such debtors have assets or creditors in more than one country. Typically, crossborder insolvency is more concerned with the insolvency of companies which operate in more than one country rather than the bankruptcy of individuals. Like traditional conflict of laws rules, cross-border insolvency focuses upon three areas: choice of law rules, jurisdiction rules and enforcement of judgment rules. However, in relation to insolvency, the principal focus tends to be the recognition of foreign insolvency officials and their powers.

UNCITRAL model law on cross boarder insolvency guides the member countries in preparing their own law in the line with the model law.

(iv) M/s Speed Airways Pvt Ltd. a borrower, filed a case before a civil court that Diligent Bank, a secured creditor, has not issued any letter to the company for demanding of repayment of loan and stating its intention to enforce the secured interest. Rather, fraudulently transferred the funds from its account to another company only to classify it as NPA as per the provisions of SARFAESI Act, 2002. In the light of the decided case, state whether the case is maintainable.

**Ans.** Section 13(2) of the SARFAESI Act, 2002 provides that where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within 60 days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights.

In case the borrower fails to discharge his liability in full within the period, the secured creditor may take recourse to take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset.

M/s Speed Airways Pvt. Ltd. may in the given case appeal to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.