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FOR CS PROFESSIONAL EXAM PREPARATION

CS Professional 2024 Question Paper · Corporate Restructuring, Valuation and Insolvency

EXAM
CS Professional

YEAR
2024

TYPE
Question Paper

SUBJECT
Corporate Restructuring, Valuation and Insolvency

DATE
June 2024

NEW SYLLABUS

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Roll No. .....

Time allowed : 3 hours ***Maximum marks : 100***

Total number of questions : 6 ***Total number of printed pages : 12***

NOTE : *Answer* ***ALL*** *Questions.*

PART–I

1. Case Study :

ABC Ltd. was incorporated on May 12, 1986, under the Indian Companies Act, having its registered office at Mumbai, Maharashtra. The present capital structure of the petitioner company is as follows :

₹ 1,000 crore Authorised Capital-100 crore equity shares of ₹ 10 each. Issued Subscribed Capital and paid-up capital of ₹ 780 crore -78 crore equity shares of ₹ 10 each [includes equity shares represented by GDRs]. The company is having 4 business segments related to manufacturing of products L, M, N and O. Turnover of O product is around ₹ 1,300 crore. Asset of ABC Ltd are ₹ 2,700 crore out of which product O related asset are ₹ 1,400 crore.

XYZ Ltd. is a company having its registered office at Surat, Gujrat. Authorised, issued and paid up capital of company is ₹ 750 crore having turnover of ₹ 820 crore. It is engaged in the business of manufacture and sale of product O. Assets of XYZ Ltd. are ₹ 1,500 crore.

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XYZ Ltd. already hold 14.98% of the equity shares of the ABC Ltd. acquired at ₹ 267 per share from Six ventures and got two directors in Board of Directors of ABC Ltd. XYZ Ltd. has made an open offer to shareholders of ABC Ltd at ₹ 190 per share to acquire controlling stake of ABC Ltd. ABC Ltd. Management opposed the open offer citing reasons of low price that was not beneficial to the shareholders of ABC Ltd. but in reality the management of ABC Ltd. had fear of losing control over the company. XYZ Ltd. had an eye on the Product O business of ABC Ltd. for a long time. The open offer was a step towards fulfilling the dream. Full control of product O business was ultimate purpose of XYZ Ltd. ABC Ltd. script was trading at ₹ 207.50 on the closing hours of trading at the Bombay Stock Exchange.

After lot of fights and hassles, both companies came to truce. Pursuant to acquisitions through negotiated transactions, a proposal to demerge the ABC Ltd. company's Product O business into company TRM Ltd. and acquisition of 51% controlling stake in TRM Ltd. was given by XYZ Ltd. and after due deliberation, the Board of Directors of the ABC Ltd company accepted the proposal for demerger of the Product O business into TRM Ltd. and subsequent acquisition of 51% stake in same by XYZ Ltd. After demerger TRM Ltd. will have around 35% market share of product O business on pan India basis.

ABC Ltd. Employees Welfare Foundation is an employee welfare trust established under the Indian Trusts Act, 1882.

Contd. .....

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Shareholders of ABC Ltd. and XYZ Ltd. call meeting of shareholders, creditors and pass special resolution. They submit copy of resolution to ROC, NCLT and publish in newspaper about successful arrangement. Few members of ABC Ltd. having 1.5% shares of valued ₹ 10 lakh objected to scheme of Acquisition by XYZ Ltd. ABC Ltd. Employee trust also objected to acquisition. NCLT cancelled the scheme citing grounds of unfair, unjust and objections of members having 1.5% shares in company.

Based on above facts, answer the following with reasons quoting relevant provisions :

(*a*) Whether the proposed combination crosses the thresholds prescribed by the Competition Commission of India thus necessitating notice to CCI before going for proposed acquisition ?

(*b*) Is it a hostile or friendly acquisition ? Is it beneficial to go for taking control of ABC Ltd for gaining access to product O business or is it beneficial to cause demerger of Product O business by ABC Ltd into TRM Ltd and then acquiring of 51% controlling stake in same by XYZ Ltd ? Will it result in reduction of capital requiring separate approvals ? Explain briefly.

(*c*) Whether the compliance approvals given by the shareholders is sufficient for successful acquisition of product O business of ABC Ltd. Examine critically.

(*d*) Analyse whether NCLT will approve the draft scheme keeping in view the objection raised by shareholders of ABC Ltd ?

(*5 marks each*)

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

2. (*a*) PQR Ltd. is a company listed on the National Stock Exchange. The latest audited financial position of PQR Ltd. is as under :

Paid up equity Capital	₹ 780 Crore
Free Reserves	₹ 39,564 Crore
Share Premium	₹ 1,456 Crore

Total secured and unsecured debts ₹ 1,867 Crore

The company intends to buy-back its fully paid-up equity shares of ₹ 10 each not exceeding 21,617,000 equity shares at ₹ 1,945 per equity share payable in cash for aggregate consideration not exceeding ₹ 4,204.51 crore. Examine whether the above buy-back offer through tender route can be approved by the Board of Directors for all 21,617,000 equity shares, keeping in view the legal framework for buy-back of securities ?

(*5 marks*)

(*b*) Dragon Esquire Ltd. Indian company demerged plastic toys division into Zen Ltd. If demerger satisfies conditions of section 2(19AA) of the Income Tax Act, 1961, advise Zen Ltd, regarding the tax concession available to the Zen Ltd, the Resulting Company.

(*5 marks*)

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(*c*) ABC and Co. (P) Ltd. and XYZ Ltd. have finalized a scheme of arrangement. The registered offices of both the companies are located in Delhi. A joint-petition is proposed to be filed before the Tribunal for sanction of the scheme.

Give your brief opinion in the light of the provisions of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 whether such a joint-petition can be filed ?

(*5 marks*)

(*d*) X Ltd. acquired Y Ltd. under the scheme of merger sanctioned by the Tribunal, Y Ltd. ceases to exist. Consideration is discharged by way of issue of equity shares of X Ltd. to the shareholders of Y Ltd. in the ratio of 1 : 1 X Ltd. already held 5% in Y Ltd. as an investment prior to the effective date of merger i.e., 1st October 2022. 86% of the shareholders (by face value) of Y Ltd. excluding X Ltd. agreed to become shareholders of X Ltd. Examine critically whether the above case will qualify to be classified as merger as per AS-14.

(*5 marks*)

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OR (Alternate question to Q. No. 2A)

2A. (*i*) In any scheme of compromise and arrangement, merger and amalgamation share exchange ratio is needed to be calculated which requires basic calculation of EBITA, PAT and Super Profit for valuation of shares. From the following information related to Wise Ltd., calculate :

(*a*) EBITA

(*b*) PAT

(*c*) Super profit

(₹ Figures are given in lakh)

Net tangible assets ₹ 900

Operational Revenue ₹ 2,150

Employment Cost ₹ 340 (including onetime payment of ₹ 40 lakh, not likely to occur in future) Managerial Remunerations ₹ 75 (to be increased by ₹ 20 lakh from next year)

Cost of goods sold ₹ 920

Finance charges ₹ 170

Depreciation/Amortization ₹ 70

Tax provision is to be made @ 30%.

Expected rate of return on assets is to be assumed @ 25%.

(*5 marks*)

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(*ii*) Petition by Frugal Industries Limited (19.12.2019), under a scheme of arrangement under Section 230-234 of the Companies Act, 2013 [in the nature of demerger] was filed before National Company Law Tribunal (''NCLT''), Mumbai Bench. Demerger application contemplated transfer of hiving off two specified undertakings of Frugal Industries Limited into two overseas Resulting Companies, viz. Frugal (Sweden) B. V., and Frugal Holdings USA Inc.

Since, Petitioner Frugal Comapany is listed company having its shares listed on BSE Limited and National Stock Exchange of India Limited, therefore the company sought the approval of the Stock Exchanges and SEBI which provided their no objection to the Scheme of Demerger. Further, meetings of equity shareholders and unsecured creditors were convened, whereby demerger scheme was approved by majority of equity shareholders and unsecured creditors. However, Regional Director of Companies red flagged the following observation on scheme of demergers :

(*a*) Section 234 refers to cross border mergers and amalgamations and not to demergers.

(*b*) Section 2 (19AA) of the Income Tax, 1961 is violated and same will not amount to tax neutral transaction.

(*c*) Company to comply with provisions of FEMA and RBI.

Advice as Company Secretary of the Company on the observations raised by RD. (*5 marks*)

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(*iii*) Raja Ltd has sold entire engineering division to Vibha Ltd for ₹ 2,500 crore while retaining other remaining business of chemicals and fertilisers with it :

– Is this sale of engineering division slump sale ?

– How the gain/loss on slump sale is calculated ?

– Explain the taxation aspects of slump sale.

(*5 marks*)

(*iv*) ''Documentation is an important aspect in fulfilment of legal requirements and obligations in merger and amalgamation for an effective and successful venture.'' Analyse the statement indicating the important steps to be involved for successful completion of mergers or amalgamations.

(*5 marks*)

PART-II

3. (*a*) ''Valuers must follow the ethical principles of integrity, objectivity, impartiality, confidentiality, competence and professionalism to promote and preserve the public trust.'' Explain the core principles of valuation to be followed by valuers.

(*b*) Mr. VG is a practicing member of ICSI and he has also passed PMQ course exam on Valuation conducted by ICSI in the year 2022. Recently VG was appointed as valuer by RJ Electronics Ltd. for valuation of assets/liabilities under merger scheme. Mr. VG has submitted valuation report which has been challenged by directors on grounds of valuers' credentials. Evaluate director's objection giving relevant provisions.

(*5 marks each*)

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4. (*a*) ''Determining the value of a business is complicated and intricate process. Valuing a business requires the determination of its future earnings, potential and risk inherent in it.'' Examine the statement explaining major factor influencing the valuation of a business.

(*b*) ABC Ltd is going through the report on valuation of assets/debts/property of company submitted by registered valuer. Discuss salient Contents of Summarized Valuation Report which must be invariably incorporated in valuation report ?

(*5 marks each*)

PART-III

5. (*a*) M/s SHIKSHA Pvt. Ltd (Operational Creditor) provided digital classroom services to M/s ABC Pvt Ltd. (Corporate Debtor) between 16th April 2015 and 23rd June, 2020 and accordingly the Operation Creditor raised 219 invoices. In light of the non-payment by Corporate Debtor, the Operation Creditor issued Demand Notice under Section 8 of the IBC, 2016 wherein date of default was mentioned as 16th April 2015 (the date of first invoice) and subsequently initiated proceedings under Section 9 of the IBC, 2016 wherein the date of default was mentioned as 23rd June, 2020 (the date of last invoice). As a company secretary of M/s SHIKSHA Pvt. Ltd. (Operational Creditor) advise whether ground of claim is time barred or not citing relevant case laws.

(*5 marks*)

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(*b*) Mr. G. (Appellant) filed an application under Section 7 of the IBC, 2016 with the National Company Law Tribunal (NCLT) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against BW Private Limited. On 26th August, 2022, NCLT dismissed the application. Subsequently, on 2nd September, 2022, the Appellant applied for a certified copy of the NCLT order, which the NCLT's registry received on 5th September, 2022. On September 15, 2022, the certified copy of order was provided to the Appellant. Following this, on 10th October, 2022, the Appellant e-filed an appeal with the National Company Law Appellate Tribunal (NCLAT) against the NCLT order along with an application for condonation of a five-day delay. As a Company Secretary of petitioner company [appellant] advise about time barred issues/ admissibility of appeal before NCLAT.

(*5 marks*)

(*c*) The Insolvency and Bankruptcy Code, 2016 read with Regulation 37 of CIRP Regulations provides for various measures to resolve the insolvency of corporate debtor ? Explain those measures.

(*5 marks*)

(*d*) In the third meeting of Committee of Creditors of ABC Company Ltd, the Interim Resolution Professional was replaced by another person as the Resolution Professional. The appellant wants to file an application before the Adjudicating Authority for confirmation of the RP's appointment. As legal advisor of ABC Company, advise with relevant case laws as to whether the Adjudicating Authority can reject the application on the basis that the Committee of Creditor's decision was taken in its third meeting (and not the first meeting, as prescribed in the IBC) and no reasons were given for not adopting the resolution to replace the Interim Resolution Professional in the first meeting ?

(*5 marks*)

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

6. (*a*) Examine whether the recommendations of the Insolvency Law Committee (ILS) on Cross-border insolvency are in line with the provisions set out in the UNCITRAL Model Law on Cross-border insolvency ?

(*b*) A Scheduled Indian Bank advanced money to XYZ limited and the debt due to non-payment has been classified as 'Doubtful' by the Bank. The lender Bank intends to proceed against the debtor under SARFAESI Act, 2002. What are the majors available to the Bank for recovering its secured debt ?

(*c*) Abid Industries Ltd filed petition for insolvency in NCLT, Delhi which admitted petition and subsequently resolution plan was submitted by RP to committee of creditors which was approved by 87% majority. Resolution plan provided for extinguishment of all claims (except criminal proceedings) against the Corporate Debtor, exemption of all taxes/dues by the Government/local authorities, and closure of all proceedings pending against the Corporate Debtor relating to such dues. The Resolution Plan, so approved, has been submitted to NCLT for approval. Referring to relevant section and case law, discuss the tenability of Resolution Plan duly approved by 87% majority.

(*d*) Operational Creditors of Joy Ltd moved a petition to NCLT against RP for directions under section 60(5) of the IBC, 2016 to direct the RP to give notice of all CoC meetings, to provide minutes of the meeting and to permit to attend the meetings of CoC. As per the operational creditors, their debt is more than 10% of the operational debt and hence, as per the Code they must be allowed to attend the meetings. Are operational creditors legally entitled to attend and vote at meeting of CoC ? Discuss by giving relevant case laws.

(*5 marks each*)

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

6A. (*i*) Who is contributory ? Critically examine IBC provisions regarding Liquidator's authority to realise amount due from contributory and Contributory's right to receive any surplus left after paying all dues by Liquidator.

(*ii*) Try & Win Ltd company has applied to Registrar of Companies (ROC) for striking off its name from register of companies on 22nd July, 2023. Company has recently [on 26th June 2023] shifted its registered office from Patna to Kolkata. What are legal provisions in this context ? Elucidate.

(*iii*) Section 208 (1) of the Insolvency and Bankruptcy Code 2016 says that where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take actions as may be necessary. What are the functions and obligations of Insolvency Professionals ?

(*iv*) Companies (Winding-up) Rules, 2020 allow certain classes of companies to close their business by making a winding-up application to Central Government without going to NCLT. Explain the summary procedure for liquidation under Companies (Winding-up) Rules, 2020.

(*5 marks each*)

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