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NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination November-December - 2024

Semester UG IXth Business Law (Honours)

Subject: Mergers and Acquisitions

Marks: 100

Time: Three Hours

Instructions:

- (1) The question paper contains six (06) questions out of which the student must attempt any five (05). **Question (1) is compulsory.**
- (2) No materials, aids and instruments are permitted, in this examination.
- (3) Students must start each answer by clearly identifying to which question they are responding.
- (4) All questions carry equal marks

Q.1) X Pvt Ltd is incorporated under the Companies Act 1956 and is a leading manufacturer of wall clocks in India. The company is controlled by family members of Mr A Khanna. Following is the shareholding pattern of X Pvt Ltd (as on 01 April 2021):

	Shareholder	Total no of shares
1.	Mr. A Khanna	1000
2.	Mrs. B Khanna (wife of Mr. A)	500
3.	Z Pvt Ltd	1000
4.	Khanna Trust (a Trust managed and controlled by Khannas)	1000
5.	Mr. D Khanna (brother of Mr. A Khanna)	500
6.	T Pvt Ltd	500
7.	Ms. R Khanna (sister of Mr. A Khanna)	500

[The face value of one share is Rs 1 and each share entitles 1 vote to the holder thereof.]

Since January 2019, profits of X have fallen tremendously and the company has reported losses over four consecutive quarters. The total debt on X has reached Rs 50 Crore. There are rumours that Mr. A Khanna is in talks with the closest rival, S Pvt Ltd, for a possible merger. Mounting debts, recurring losses and the inability to pay dividends to its shareholders and interest to creditors have further fuelled the speculation. The present crisis in X has presented a golden opportunity to Z Pvt Ltd and T Pvt Ltd, who have long harboured ambitions to further consolidate their control over it.



The creditors, driven by a genuine fear of default of debt by X, have decided to explore statutory remedies under Insolvency and Bankruptcy Code 2016. Khannas fear that such a move can lead to further erosion of company's value in the market and further diminish its chances of a revival. Hence, Mr A Khanna has led the talks of compromise with creditors and drafted a scheme of compromise under which the company has proposed conversion of Rs 15 Crore debt into equity under companies Act 2013. The proposed conversion will lead to reduction of debts but will also dilute the shareholding of existing shareholders. According to the media reports, all the creditors, secured as well as unsecured, have expressed their approval of the scheme to Mr. A Khanna through signed affidavits.

However, T Pvt Ltd has opposed the scheme arguing that conversion of debt into equity shares will affect the functioning of the company and, in particular, weaken the position of minority shareholders in X. It claims that the conversion is proposed only to help Khannas retain their control over X and it constitutes an act of "oppression" against minority shareholders and, thus, is prejudicial to public interest. T Pvt Ltd and Z Pvt Ltd have filed a representation before the Regional Director, MCA claiming that the scheme in its present form is prejudicial to the public interest as it fails to further the interest of all stakeholders and would result in serious devaluation of company's assets. Z and T have also expressed their fear of a possible "squeeze out" of minority shareholders by Khannas in the near future if the scheme is approved in its present form.

On 10th January 2022, Mr. A Khanna filed an application under section 230 of Companies Act 2013 before NCLT Delhi to explore a possible compromise with creditors. The Khannas (Mr A, Ms. B, Mr. D, Ms R and Khanna Trust) have also prayed for dispensation of meeting of shareholders and creditors claiming that the scheme has approval of majority of shareholders and creditors. Z and T have objected to the dispensation of meeting as well as the scheme of compromise.

Discuss the major legal issues involved in the problem and render advice to the X and Z/T based on your understanding of relevant law and with the help of decided case laws.

(Marks: 20)

Q. 2) There are two brothers, Mr. X and Mr. Y who hold 23% and 1%, of voting rights respectively (as on 1st April 2022) in Z Ltd. whose shares are listed on Bombay Stock Exchange. What would be the consequences under the SEBI SAST 2011 in the event of:

- a) Mr. X acquiring 2 % of additional voting rights in Z Ltd. on 27th September 2022.
- b) Post the above acquisition, another acquisition of 3% of voting rights by Mr. Y on 1st January 2023.
- c) Post the above acquisition, Mr. X acquired 1% of additional voting rights on 2nd February 2023.
- d) Lastly, Mr. Y acquired 3% of optionally fully convertible debentures (OFCDs) on 20th February 2023.

(Marks: 04 * 05 = 20)

Q. 3) "Anchit" is a promoter in X Ltd., a public limited company (registered in Singapore) which has its shares listed on BSE and NSE in India. As on 31st March, 2021, Anchit

held 90 equity shares (and some FCCB's) in X out of its total equity of 200 shares. However, due to conversion of FCCBs into equity shares the total share capital of "Pranay" and shareholding of Anchit increased in the Financial Year 2021-22. The pattern of increase is as follows:

Date	Share capital of "X"	Promoter's shares (in numbers)
31 March 2021	200	90
16 April 2021	200	91
01 August 2021	210	91
22 December 2021	210	94
05 February 2022	220	94
1 March 2022	220	95

On the basis of above data calculate whether Anchit has breached the "creeping threshold" limit for the Financial Year 2021-22 and therefore cannot make any further acquisition of shares in X without making a public announcement of Mandatory open Offer under the SEBI SAST (Takeover) code, 2011? If not, then how many shares can Anchit still acquire in X without triggering the mandatory open offer?

(Marks: 20)

Q. 4) Examine, with the help of decided case laws, how the determinative threshold of 'control' under Competition Act 2002 was diluted from "decisive influence" to "material influence". Also, comment on the various factors that would weigh in the decision of the competition authority on determination of control in a proposed combination.

(Marks: 20)

Q. 5) Chapter XV of the Companies Act, 2013 has witnessed enough controversies in a short span of three years of enforcement. The complex interface with the IBC 2016, introduction of objection threshold, allowing the promoters to further maim and maul the already bruised minority shareholders in name of "fast-track" merger, inchoate cross-border merger provisions, confusion over "compulsory" acquisition, etc. have earned it the epithet of "*pro-businessmen but anti-business*" from various stakeholders. Analyse the veracity of above-mentioned position with help decided case laws

(Marks: 20)

Q. 6) Write short notes on:

- Difference between Section 235 and Section 236 of Companies Act 2013.
- Mandatory Open Offer under Takeover code

(Marks: 20)

Q.3. The independence of the legal profession is characterised by its adoption and enforcement of self-imposed set of ethical rules and restrictions. The legislature has entrusted the responsibility for maintaining standards of professional conduct and discipline for lawyers to the State Bar Council or Bar Council of India. Discuss the procedure for disciplinary proceedings followed by the Bar Council of State/India for professional misconduct along with the punishment. (Marks 20)

Q.4. Critically analyse *any one* of the following cases: -

- i. R.D. Saxena vs Balram Prasad Sharma [(2000) 7 SCC 264]
- ii. Justice C.S. Karnan vs The Honourable Supreme Court of India W.P. (C) 6287/2017
Delhi High Court (Marks 20)

Q.5. It is well established that Rule of Law is a basic feature of the Indian Constitution and is in the sense of its supremacy. It entails interalia the right to obtain judicial redress through the administration of justice, which is imperative for civilized society. To administer justice in an undefiled manner, judiciary as a guardian of Rule of Law is entrusted with the extraordinary power to punish misconduct aimed at undermining its authority whether outside or inside the court. In the backdrop of the above statement discuss:

- i. Purpose and Object of the law of contempt in India.
- ii. Salient features of the Contempt of Court Act, 1971
- iii. Civil Contempt

(Marks 5+10+5=20)

Q.6. The power to punish for contempt is a rare species of the judicial power which by the very nature calls for its exercise with great care and caution. It is a drastic power which if misdirected, could result in curbing the liberty of the individual charged for the contempt. Justify the statement and also discuss:

- i. Truth as a defence
- ii. Contempt of court and freedom of speech.

(Marks 10+10=20)