SUGGESTED SOLUTION

CS EXECUTIVE

Subject – securities laws and Capital Markets

Topic –

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ANSWER : 1

(A) Buy-back is a process whereby a company purchases its own shares or other specified securities from the holders thereof. To Strategically increase promoters' shareholding subject to compliance with SEBI (SAST) Regulations:

1. To improve earnings per share;
2. To improve return on capital, return on net worth and to enhance the long-term shareholder value;
3. To enhance consolidation of stake in the company;
4. To prevent unwelcome takeover bids;
5. To return surplus cash to shareholders and allow profitable deployment of cash surplus;
6. To achieve optimum capital structure
7. To support share price during periods of sluggish market conditions; and
8. To service the equity more efficient.
9. To provide an additional exit route to shareholders when shares are under valued or are thinly traded;

The decision to buy-back is also influenced by various other factors relating to the company, such as growth opportunities, capital structure, sourcing of funds, cost of capital and optimum allocation of funds generated.

(5 Marks)

(B) In voluntary delisting, the promoters of the listed company decides on their own to permanently remove its securities from a stock exchange. Chapter III of 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. The difference between two options is that of giving 'exit opportunity' to the shareholders. This is described as under:

Option 1

- No 'Exit opportunity' required to be given : In this option, if after the proposed delisting from any one or more recognised stock exchanges, the equity shares still remain listed on any recognised stock exchange which has nation-wide trading terminals, no exit opportunity needs to be given to the public shareholders. The procedure for such delisting of shares can be through a board resolution, public notice and application to the concerned exchange.

Option 2

- 'Exit opportunity' must be given : This option requires that if after the proposed delisting, the equity shares do not remain listed on any recognised stock exchange having nation-wide trading terminals, exit opportunity shall be given to all the public shareholders holding the equity shares sought to be delisted, through reverse book building.

(5 Marks)

(C) **1. 25% Shares or Voting Rights**

An acquirer, along with Persons acting in concert (PAC), if any, who intends to acquire shares which along with his existing shareholding would entitle him to exercise 25% or more voting rights, can acquire such additional shares only after making a Public Announcement (PA) to acquire minimum twenty six percent shares of the Target Company from the shareholders through an Open Offer.

Name	Per Holding	Creeping Acquisition	Post Holding	Applicability of SEBI Takeover Regulation, 2011
A	23%	3%	26%	Open Offer Obligations
B	7%	2%	9%	–

2. Creeping Acquisition Limit

An acquirer who holds 25% or more but less than maximum permissible non-public shareholding of the Target Company, can acquire such additional shares as would entitle him to exercise more than 5% of the voting rights in any financial year ending March 31 only after making a Public Announcement to acquire minimum twenty six percent shares of Target Company from the shareholders through an Open Offer.

(5 Marks)

(D) General Employee Benefits Scheme (GEBS).

General Employee Benefits scheme or GEBS has been defined as any scheme of a company framed in accordance with SBEB regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company. Therefore, any employee welfare scheme holding / dealing in shares of the company or the shares of its listed holding company is covered under the scope of SEBI (Share Based Employee Benefits) Regulations, 2014, including the timelines prescribed thereunder.

Administration and Implementation

GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated. At no point in time, the shares of the company or shares of its listed holding company shall exceed ten percent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet for the purposes of GEBS.

(5 Marks)

ANSWER : 2

(A)

- The recognized stock exchange shall form a panel of expert valuers from whom the valuer or valuers shall be appointed.
- Where equity shares of a company are delisted by a recognised stock exchange under this Chapter, the recognised stock exchange shall appoint an independent valuer or valuers who shall determine the fair value of the delisted equity shares.
- The promoter of the delisted company shall acquire equity shares from the public shareholders by paying them the value determined by the valuer within three months of the date of delisting from the recognised stock exchange, subject to their option of retaining their shares.

(4 Marks)

(B) "Retirement Benefit Scheme" means a scheme of a company, framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India.

"Stock Appreciation Right or SAR" means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.

Explanation – An SAR settled by way of shares of the company shall be referred to as equity settled SAR.

"Stock Appreciation Right Scheme" means a scheme under which a company grants SAR to employees.

(4 Marks)

(C)

1) The price of sweat equity shares shall not be less than the higher of the following:
2) 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
3) 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.
4) if the shares are listed on more than one stock exchange, but quoted only on one stock exchange on given date, then the price on the stock exchange shall be considered.
5) 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.
6) if the shares are not quoted on the given date, then the share price on the next trading day shall be considered.

Note that: "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 clause (a) of sub section (1) of section 54 of the companies Act, 2013.

(4 Marks)

(D) Connected person means:

- any person who is or has during six months prior to the concerned Act has been associated with a company, directly or indirectly;
- in any capacity (including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relation); or
- is a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company, whether temporary or permanent; or
- that allows such person, directly or indirectly, access to unpublished price-sensitive information or reasonably expected to allow such access.

Insider

Insider" means any person who is:

(i) a connected person; or

(ii) in possession of or having access to unpublished price sensitive information.

(4 Marks)

(E)

- Upon collection or substantial recovery of the monetary sanctions amounting to at least twice the Reward, the SEBI may at its sole discretion, declare an Informant eligible for Reward and intimate the Informant or his or her legal representative to file an application in the format provided in Schedule-E for claiming such Reward.
- However, the amount of Reward shall be ten percent of the monetary sanctions collected or recovered and shall not exceed Rupees One crore or such higher amount as the SEBI may specify from time to time.
- The SEBI may if deemed fit, out of the total Reward payable, grant an interim reward not exceeding Rupees Ten lacs or such higher amount as the SEBI may specify from time to time, on the issue of final order by the SEBI against the person directed to disgorge.
- In case of more than one Informant jointly providing the Original Information, the Reward, shall be divided equally amongst the total number of Informants. The Reward under these regulations shall be paid from the Investor Protection and Education Fund.

(4 Marks)

ANSWER : 3

(A)

(1) 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.

(2) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not, –

a. alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefore outside the ordinary course of business;

b. effect any material borrowings outside the ordinary course of business;

c. issue or allot any authorised but unissued securities entitling the holder to voting rights. However, the target company or its subsidiaries may, –

(i) issue or allot shares upon conversion of convertible securities issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion;

(ii) issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or

(iii) issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;

d. implement any buy-back of shares or effect any other change to the capital structure of the target company;

e. enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and

f. accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.

(3) In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub-regulation

(4) the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.

(5) The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the tendering period and until the expiry of the tendering period.

(6) The target company shall furnish to the acquirer within two working days from the identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the target company: However, the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.

(7) Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations. However, such committee shall be entitled to seek external professional advice at the expense of the target company.

(8) The committee of independent directors shall provide its written reasoned

recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be specified, 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, and simultaneously, a copy of the same shall be sent to, –

(i) the SEBI;

(ii) all the stock exchanges; and

(iii) to the manager to the open offer, and where there are competing offers, to the manager to the open offer for every competing offer.

(9) The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.

(10) The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.

(11) Upon fulfilment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer. **(8 Marks)**

(B) Regulation 4 prescribes that an insider shall not trade in securities, which are listed or proposed to be listed on stock exchange, when in possession of unpublished price sensitive information, except in the following situations:

- where there is an off-market inter-se transfer between insiders who were in possession of the same UPSI, or
- the transaction was carried through the block deal window mechanism between persons who were in the possession of the UPSI,

  Provided that: a. there should be no breach of Regulation 3;

  b. both the parties had made a conscious and informed trade decision;

  c. UPSI should not have been obtained under Regulation (3).

  Provided further that, off-market trades shall be reported by the insiders to the Company within two working days which shall further notify the particulars of these trades to the stock exchange(s) where the securities are listed within two working days of receipt of such disclosure or from becoming aware of such information.
- the transaction in question, was carried out pursuant to a statutory or regulatory obligation to carry out a bona-fide transaction,
- the transaction in question, was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance of with applicable regulations,
- in case of non-individual insiders, individuals taking the trade decision & individuals possessing the UPSI are different from each other and while taking the trade decision the individuals were not in possession of such UPSI and appropriate & adequate precautionary arrangements were made to ensure that these regulations are not violated and there are no evidence also of such arrangements having been breached;
- the trades were in accordance to trading plan set up in accordance with Regulation 5. Explanation, for the purpose of above Regulation:
- When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.
- In the case of connected persons, the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the SEBI.
- The SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations. **(2 Marks)**