

COMPLIANCE



**FAST TRACK MERGERS & SQUEEZE OUT
ACQUISITIONS**

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- *Ion Exchange (India) Ltd., In re* [2001] 105 Comp Cas 115 (Bom) Justice Dr. Dhananjay Chandrachud said:

*“Corporate enterprise must be armed with the ability to be efficient and to meet the requirements of a rapidly evolving business reality. **Corporate restructuring is one of the means that can be employed to meet the challenges and problems which confront business.** The law should be slow to retard or impede the discretion of corporate enterprise to adapt itself to the needs of changing times and to meet the demands of increasing competition. The law as it has evolved in the area of mergers and amalgamations has recognized the importance of the court not sitting as an appellate authority over the commercial wisdom of those who seek to restructure business. The need for this restatement is greater today where the interplay of competition and the forces of the market demand, efficiency, cost effectiveness and high levels of productivity.”*

Navjivan Mills Co Ltd in re (1972) (42 Com Cas.265) (Guj)

The word “arrangement” is such that even where there is no dispute, arrangement can be brought in. “Compromise” postulates the existence of a dispute and giving and taking on either side. “Arrangement”, on the other hand, is something by which parties agree to do a certain thing notwithstanding the fact that there was no dispute between the parties. If such is the wide connotation of the word “arrangement” as used in Section 391, obviously the arrangement by which shares of one company are taken over by the other company would not be outside the scope of “arrangement”. **“Compromise” and “Arrangement” covered by Section 391 are of the widest character, ranging from simple composition or moratorium to an amalgamation of various companies, with a complete re-organisation of their share and loan capital. If this is the scope of Section 391 , it does appear that Section 391 is a complete code by itself.**

IS AMALGAMATION AN ARRANGEMENT?

- Union Services Pvt. Ltd In re (45 Com Cas 146) Mad

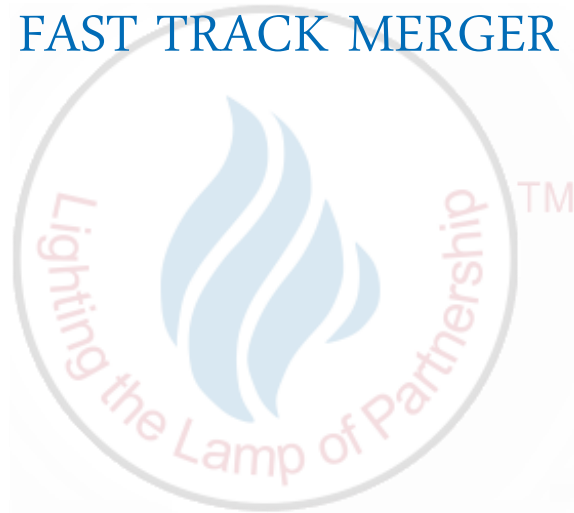
A scheme of amalgamation is an “arrangement” between the transferee company and its members also within the meaning of Section 390(1)(b) and the court is entitled to give directions to both the transferor and the transferee company to hold a statutory meeting of their shareholders to approve the scheme of amalgamation

- Absence of power to amalgamate in the object clause of MoA of the transferor / transferee company cannot be a ground to refuse amalgamation – Sir Mathuradas Vissanji Foundation, In re (1 Comp LJ 530 Bombay)
- Absence of objects clause in the transferee company to carry on the business of transferor company cannot be a ground to refuse amalgamation –W.A.Beardsell & Co Ltd In re (38 Comp. Cas 197 Mad)
- Provision in the scheme to amend the objects clause of MoA of Transferee Company to enable to carry on the business of the transferor company by the transferee company accepted – P.M.P Auto Industries Ltd (5 Comp LJ 598)
- Change of name of the transferee company from the appointed date as provided in the scheme accepted – Hipolin Products Ltd (2 CLJ 61 1996)
- AS-14 applies only to mergers and not to demerger. – Sony India P Ltd – Delhi HC
- The excess of value of the assets over liabilities (amalgamation reserve) can be credited to general reserves – Sutlej Industries Ltd. in Re [2007] 76 CLA 227(Raj.)
- Transfer of all assets in an undertaking is not necessary as long as such non-transfer does not impact the business of the resulting company – Indo Rama Textile Ltd-DHC

SCOPE

- Section 230 – Arrangements and Compromises
- Section 232 – Merger and Amalgamation of Companies
- Section 233 – Fast Track Mode
- Section 234 – Merger with Foreign Company
- Sections 235, 236 – Squeeze out Provisions
- Section 237 – Amalgamation of companies in public interest

FAST TRACK MERGER



Section 233 and Applicable rules of
Companies (Compromise, Arrangements and
Amalgamations) Rules, 2016 – with effect
from 15th December 2016

- MERGER AND AMALGAMATION BETWEEN-
 - Two or more small companies or
 - Holding and wholly owned subsidiaries
- OBJECTIONS / SUGGESTIONS [[RULE 25](#)]
 - The notice [[Form No.CAA.9](#)] inviting objections/suggestions if any shall be sent to Registrar and Official Liquidator by the transferee and transferor company.
 - If there is any objections/ Suggestions it shall be intimated to the Company within 30 days from the date of receipt of notice.
- The Companies involved in the scheme of merger and amalgamation shall file the Declaration of solvency in [Form CAA.10](#) with the Registrar before convening the meeting.

NOTICE OF THE MEETING

- A Notice (minimum 21 days must for creditors meeting) of meeting to the members and creditors shall be accompanied by
- Statement as referred under section 230(3)
- Declaration of solvency
- Copy of scheme
- The Company shall consider the objections/suggestions, if any received in the general meeting and approve the same by the members holding atleast 90% of the total number of shares
- On receipt of notice, the creditors shall approve the scheme by majority representing 9/10th in value.

- The copy of approved scheme shall be filed with the Central Government, Registrar and Official Liquidator by the transferee company within seven days of the conclusion of the meeting in [Form CAA.11](#).
- The Registrar or the Official Liquidator files any objections with the CG within 30 days from the date of receipt of scheme.
- The Central Government is of the opinion that the scheme is in public interest it shall approve the scheme in [Form CAA.12](#)
- If the Central Government is of the view that the scheme is against the public interest or in the interest of creditors, then it shall file with the Tribunal in [Form CAA.13](#) within 60 days from the date of receipt of scheme.

- The Tribunal after considering the objections of the Central Government, it may consider the scheme under Section 232 and pass order as it may deem fit.
- Within 30 days of receipt of confirmation of the Scheme by the Tribunal, it shall be filed with the Registrar in Form INC-28 by the transferee company.
- The Registrar shall confirm it to the respective companies and Such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

- Property or liabilities of the transferor company becomes the property or liabilities of the transferee company.
- The charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company.
- Legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company.
- Where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

- The transferee company shall not hold any shares on merger/amalgamation and all such shares shall be cancelled or extinguished on the merger or amalgamation.
- The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital
- This section shall apply mutatis mutandis in respect of scheme of compromise or arrangement specified under Section 230 or 232 – demerger, compromise or arrangement
- A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

- A and B are respectively wholly owned subsidiaries of AB & Co Limited. They have 5000 and 3500 employees respectively and both the subsidiaries are large enterprises. The Board of AB & Co resolves to amalgamate A with B. **Will Fast Track Provisions help?**
- The Appointed Date for the merger of two small companies. Immediately after the Appointed Date but before the Application is filed, the Transferee company loses its status as a Small Company. **Will Fast Track Provisions help?**
- The holding company proposes to merge with its wholly owned subsidiary. **Will Fast Track Provisions help?**

POWER TO ACQUIRE SHARES OF SHAREHOLDERS DISSENTING FROM SCHEME OR
CONTRACT APPROVED BY MAJORITY



Section 235 – Acquisition & Squeeze Out

- The transferee company(acquiring company) makes an offer through a scheme or contract to the shareholders of the transferor Company(to be taken over company), expressing its desire to acquire their shares
- Within 4 months of the offer, it should be approved by not less than 9/10th in value of the shares whose transfer is involved
 - The 9/10th in value is apart from the shares held by, or by a nominee of the transferee company or its subsidiary

- The shareholding Pattern of A Limited is as follows:
 - B Private Limited = 400,000 ES of Rs.10/- each - 40%
 - Promoters and Relatives = 200,000 ES of Rs.10/- each - 20%
 - Other Outside Shareholders = 400,000 ES of Rs.10/- each - 40%
- If B Private Limited wants to acquire the shares of A Limited, what will constitute 9/10th?
- It is not sufficient if B Private Limited acquires 900,000 shares which includes its present holding.
- It must acquire 540,000 more to make its aggregate holding 9,40,000.

- In case of transfer of shares from transferor company to transferee company under section 235
 - Circular containing such offer shall be accompanied by Form CAA 15 providing prescribed information.
 - Such offer shall contain a statement by Transferee Company, disclosing steps taken to ensure availability of cash for the proposed acquisition.
 - Such circular shall be presented to the Registrar for registration before issuing it.
 - Registrar may refuse in writing to register, within 30 days of the application for lack of information or on the grounds of false impression provided by Circular.

- Squeeze out is nothing but a change in the shareholding pattern of such nature that minority shareholders are eliminated.

- In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of 90% or more of the issued equity share capital of **a company**, or in the event of any person or group of persons becoming 90% majority or holding 90% of the issued equity share capital of **a company**, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify **the company** of their intention to buy the remaining equity shares.

- (2) *The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.*
- (3) *Without prejudice to the provisions of sub-sections (1) and (2), **the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding** of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).*

- (5) *In the event of a purchase under this section, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.*
- (6) *In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.*

- (7) *In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.*

- (8) *Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, **the shareholders holding 75% or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon,** of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a *pro rata basis*.*

- Any aggrieved party may file an appeal against the order of the Registrar refusing to register any circular, in Form No. NCLT.9 supported with an affidavit in the Form No. NCLT.6 with a fee of INR 2000.

- The Director who issues the circular without registration shall be punishable with fine not less than INR 25,000 but which may extend to INR 5,00,000.

- After expiry of 4 months, within a period of 2 months, the transferee Company, shall give notice to the **dissenting shareholders** (Form No.CAA.14) that it desires to acquire their shares.
 - The term “dissenting shareholders” includes a shareholder who has not assented to the scheme or who has failed or who has refused to transfer his shares to the acquiring company.
- Within 1 month from the date of the above notice, the dissenting shareholders may apply to the Tribunal.

- Where a notice has been given to the dissenting shareholder, unless the tribunal orders otherwise, the transferee company shall be **ENTITLED AND BOUND** to acquire their shares.
- If tribunal has not made an order in favour of the dissenting shareholder to their application, after expiry of 1 month from the notice, or when an application made by dissenting shareholder was pending and then disposed of by tribunal, the transferee company shall send to the transferor company, the following
 - A copy of notice sent to dissenting shareholders.
 - An instrument of transfer in respect of the shares of the dissenting shareholders
 - On behalf of dissenting shareholder – by any person appointed by the transferor Company - as transferor
 - On its own behalf - as transferee
 - The price payable on those shares

- The transferor Company shall register the transferee company as the holder of the shares. Within 1 month of such registration, the transferor company shall inform the dissenting shareholders of the fact of registration and of the receipt of consideration.
- The sum received by the transferor company shall be paid in a separate bank account, to be kept as trustee for the persons entitled to receive the amount. The amount shall be disbursed within 60 days.

- Books and papers of transferor companies need to be preserved.
- Disposal of such books and papers only with the prior permission of the CG.
- CG can appoint any person to examine such books and papers to ascertain commission of an offence in connection with promotion or formation or management of affairs, of the transferor company or the company whose shares are acquired.