

Merger and Amalgamation under section 233 (Fast Track Merger)

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INTRODUCTION AND HISTORY

Section 233 of the Companies Act, 2013 read with Rule 25 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 came into force w.e.f. 15th December 2016. It provides the concept of simplified merger. The significance of the fast track merger process is that it does not require court intervention — i.e., the mandatory approval of the National Company Law Tribunal (NCLT). Under Companies Act, 1956 all the mergers and restructurings had to go through with lengthy proceedings, intervention of High Court was mandated thus making the process very time consuming and costly also.

Mergers & Acquisitions (M&A) are going to be huge indicator of how Indian economy is going to recover from Covid-19 pandemic. Looking to the extraordinary burden that NCLT is faced with due to IBC cases. It is advisable to opt Amalgamation or merger under section 233 of the Companies Act, 2013.

For small companies and Medium Size Companies, this benefit is really beneficial in terms of time, money and ease of doing.

For Professionals Like Company Secretaries also this is better opportunity so that they can advise their clients for in organic growth and can have value addition to Management.

BENEFITS OF FAST TRACK MERGER

1. No Mandatory approval of NCLT required.
2. No Need of Issuing Public Advertisement.
3. No Court Convened Meeting.
4. Less Administrative Burden.
5. Series of Hearing may be avoided.
6. Registration of scheme shall deemed to have effect of dissolution of transferor companies without the process of winding up.
7. **Comparatively less cost and time Saving.**

UNDERSTANDING OF SECTION 233:

PROCEDURE FOR FAST TRACK MERGER:

- Both the Transferor and Transferee Company shall be authorized by their Articles of Association for merger. If Not they need to alter their Articles of Association. Merger shall be permissible as per the Object Clause of Memorandum of Association of both the Companies.
- **Conducting Board Meeting For approval of Scheme.**
- **Submission of Notice inviting Objections or Suggestions**
- **Filing Declaration of Solvency**

PROCEDURE FOR FAST TRACK MERGER:

- **Convening General Meeting of Members or Class of Members**
- **Convening Meeting of Creditors or Class of Creditors**
- **Filing Copy of Scheme and Results of Meeting with Regional Director**
- **Approval of Scheme by the Regional Director**
- **The Confirmation Order filed in Form INC 28 shall be deemed to have the effect of dissolution of the transferor company without the process of winding up. Effects of Registration of scheme**

KEY POINTS:

- COMPLIANCE OF ACCOUNTING STANDARDS:
- REGISTERED VALUER:
- MERGING OF AUTHORISED CAPITAL
- DISPENSATION OF MEETINGS

KEY POINTS:

- CENTRAL GOVERNMENT HAS POWER TO REFER THE SCHEME TO THE NCLT
- REGULATORY AUTHORITIES
- CHANGE IN APPOINTED DATE
- WORD “CONFIRMATION ORDER”
- STAMP DUTY

CASE STUDIES:

Scheme of Amalgamation where more than two Companies are involved.

- Scheme of Amalgamation between MPS Telecom Private Limited ('Transferor Company – 1) and Oneworld Teleservices Private Limited ('Transferor Company – 2) with Optimus Infracom Limited (Transferee Company). The said scheme is approved by Regional Director (NR) in year of 2018.
- Scheme of Amalgamation between Qess Corp Limited and its wholly-owned subsidiaries being (i) Greenpiece Land-scapes India Private Limited; (ii) Golden Star Facilities and Services Private Limited; (iii) MFX Infotech Private Limited; and (iv) Trimax Smart Infracom Projects Private Limited under section 233 of Companies Act, 2013.

CASE STUDIES:

Scheme of Amalgamation where Transferor Company is holding company and wholly-owned subsidiary is Transferee Company i.e Reverse Merger.

The law says that a scheme of merger or amalgamation may be entered into between a holding company and its wholly-owned subsidiary company. Here Law does not restrict holding Company to be merged with subsidiary Company.

CASE STUDIES:

Scheme of De-merger

Let us take one example where M/s ABC Limited have three units located in different places now, Can ABC Limited demerge one unit and transfer it to its Wholly own subsidiary????

CASE STUDIES:

TWO STATES, outside thinking of Chetan Bhagat.

where the Companies are situated in different States

When in the arrangement, if the Companies are situated in different States then it is most advisable to opt for merger under section 233. Because in Merger under Section 230-232 both transferor and transferee Company has to file application in NCLT within their jurisdiction. So, two NCLTs are involved in the matter.

CASE STUDIES:

PROCEDURE UNDER SECTION 233 WHERE THE COMPANIES ARE SITUATED IN DIFFERENT STATES

- Submission of Notice inviting Objections or Suggestions to **respective ROC and OL in CAA – 9** by both Companies. Secondly **the role of OL comes in case of the Transferor Company, who is going to be dissolved.**

For Example, Scheme of Amalgamation between ABC Info Private Limited ('Transferor Company), situated in the state of Maharashtra within the of Jurisdiction of MUMBAI ROC, with XYZ Info Limited (Transferee Company), situated in the state of Gujarat within the of Jurisdiction of AHMEDABAD ROC.

So, In the above case following authorise will be involved.

- ROC, Ahmedabad and ROC, Mumbai
- OL, Mumbai because transferor Company is going to be dissolved
- RD (NWR), Ahmedabad because the transferee company is situated in Ahmedabad.

CASE STUDIES:

PROCEDURE UNDER SECTION 233

- Filing Declaration of Solvency with Respective ROC and OL, of transferor Company
- Filing Copy of Scheme and Results of Meeting with Regional Director where the transferee Company is situated.
- Approval of Scheme by the Regional Director of transferee company

The Order of RD approving the scheme shall be filed in E Form INC-28 with the ROC within 30days having jurisdiction over the transferee and transferor company

CASE STUDIES:

Forms in Brief related to Fast Track Merger

Form No.	By	Provisions
CAA 9	Transferor & Transferee Company	Sec 233(1)(a) r/w 25(1)
CAA10	Transferor & Transferee Company	Sec 233(1)(c) r/w 25(2)
CAA11	Transferee Company	Sec 233(2) r/w 25(4)(A)
CAA 12	Regional Director	Sec 233 r/w25(2)

CASE STUDIES:

E-Forms related to Fast Track Merger under Companies Act, 2013

Form No.	By	Particulars
GNL-1	Transferor & Transferee Company	The notice inviting objection from ROCs in form CAA 9 is to be filed in Form GNL-1.
GNL 2	Transferor & Transferee Company	The Declaration of Solvency in Form CAA 10 is to be filed with the ROC in Form GNL-2
MGT-14	Transferor & Transferee Company	Board resolution and Special resolution passed for approving the scheme. (Need not be filed for board resolution if the company is a private limited company.)
GNL-1	Transferee Company	Filing of scheme and Form CAA11 with the Regional Director.
RD-1	Transferee Company	Report of meeting in Form CAA 11 is to be filed with the Regional Director in Form RD-1.
INC-28	Transferor & Transferee Company	Confirmation order to be filed with ROCs.

Thank you

