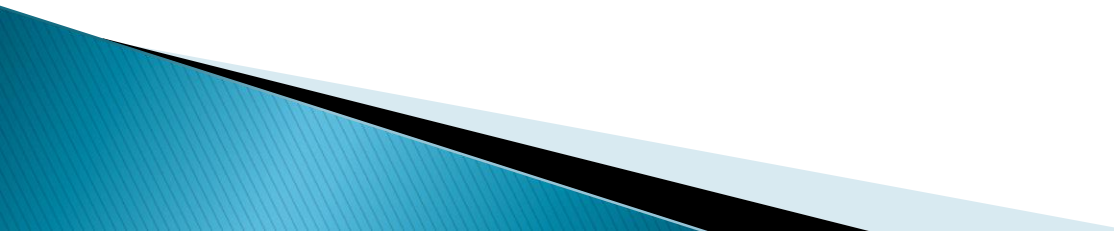


MERGERS AND DEMERGERS



Presented by Y. Suryanarayana, Advocate,

**MERGER
&
DEMERGER**



Preparation and Filing of Petitions with NCLT

Application & Documentation



Disclosures in the Application



Directions by Tribunal

Dispensation of Meetings

- Convening of Meetings/ Appointment of Chairperson
 - ▶ Notice of the Meeting to Creditors/Members

Preparation and Filing of Petitions with NCLT

- ▶ Notice to Statutory Authorities
- ▶ Disclosures in Notice
- ▶ Chairperson Report
- ▶ Filing of Petition

Practical aspects with the Application

1. Deferred Tax Liability Balance sheet
2. Provisions in the Balance sheet
3. Date of Conducting the Meeting/ Trade Creditors
4. Quorum – Voting by proxy -
5. Physical Meeting / Postal Ballot sec 230 (4)
6. Chairperson of the Meeting
7. Advertisement of place, date and venue of the meeting
8. Prayer

Applicable Laws

1. Companies Act, 2013 and Rules made thereunder
2. Foreign exchange Management Act, 1999
3. Depositories Act, 1996
4. Competition Act, 2002
5. LODR
6. State Stamp Act
7. Income Tax Act, 1961

9. Land allotment agreement with Government agencies.
10. RBI Guidelines/ Regulations
11. MCA Circulars
12. SEBI Circular dated 10th March, 2017

Critical aspects in Structuring, Drafting of Scheme

1. Enabling clause in MOA
2. Unision of Objects
3. Rationale of the Scheme/ Benefits/Objectives/Purpose
4. Appointed Date (appointed date shall be effective date – Sec 232 (6) of Companies Act, 2013).
3. Valuation and Swap Ratio
4. Stamp Duty on Wholly owned Subsidiaries.
5. Stamp Duty on Demergers.

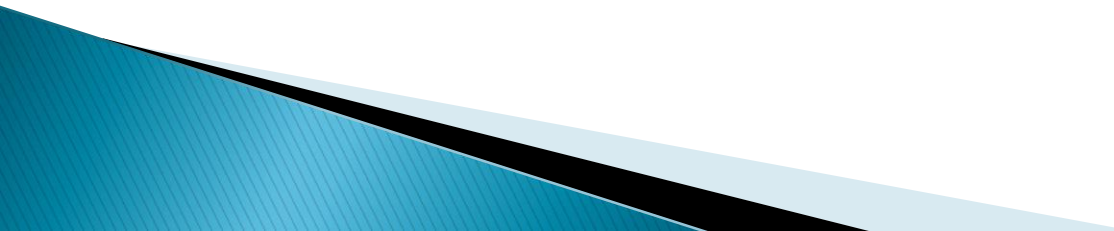
7. Change of Name
8. Authorized Capital
9. Amendment of object clause of the Transferee Company as part of the Scheme
10. Shifting of Registered office as part of the Scheme
11. Issue of preference shares, Debentures, Shares with DVR as part of the Scheme
12. Conversion of company as part of the Scheme
13. Variation of rights of the preference shareholders - compliance with the provisions of sec 48.- Sec 230 (7)

1. Scheme may include:

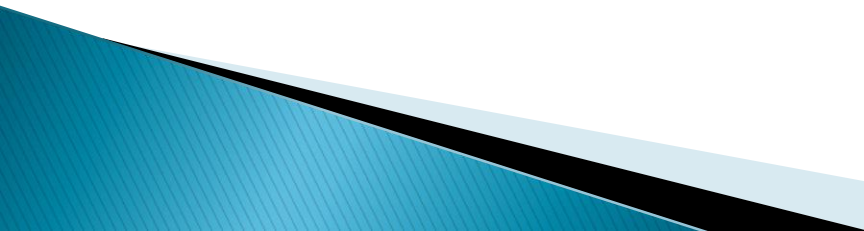
- Buy Back – Compliance of section 68 Section 230 (10)
- Takeover - Section 230 (11)
- Reduction of Capital

2. Transferee Company can be a foreign Company – Sec 234 (2)

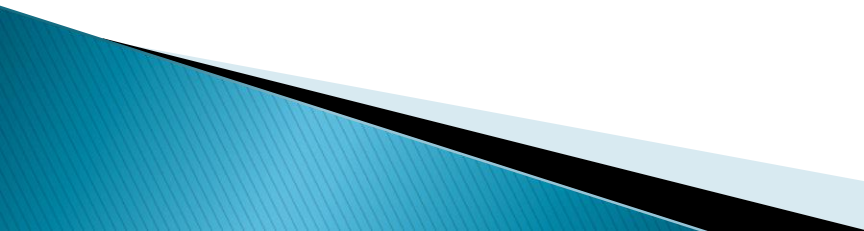
For Listed Companies

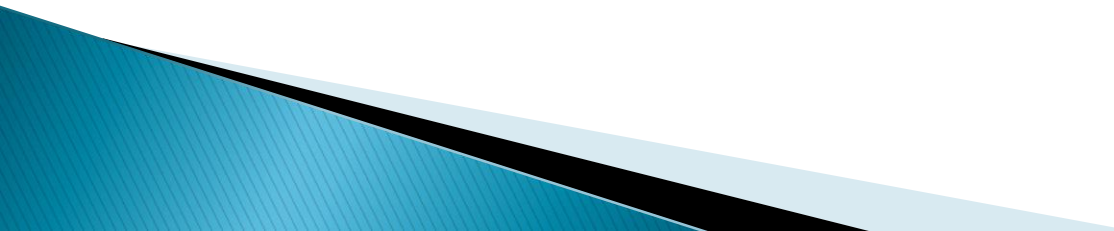
- ▶ Compliance of SEBI Circular dated 10th March, 2017 & Regulation 37 of LODR.
 - ▶ Prior approval of the Stock Exchanges
 - ▶ Listing and Delisting
- 

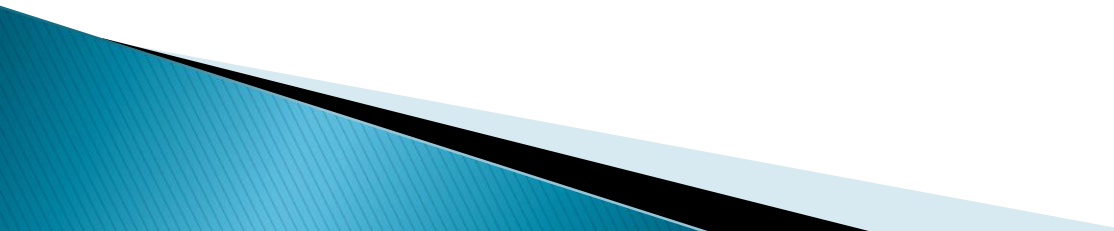
Drafting of the Scheme

- ▶ Preamble
 - ▶ Description of Companies
 - ▶ Rationale, scope, Purpose of the Scheme
 - ▶ Operation of the Scheme
 - ▶ Definitions, Appointed date, Amalgamating Undertaking
 - ▶ Share Capital
 - ▶ Transfer of Amalgamating undertaking
 - ▶ Validity of existing resolutions, etc. in respect of the prior acts
- 

Drafting of the Scheme

- ▶ Compliance with Section 2(1B) of the Income Tax Act, 1961
 - ▶ Contract, Deeds and other instruments
 - ▶ Legal Proceedings
 - ▶ Saving of concluded transactions
 - ▶ Staff, workmen and employees
 - ▶ Clubbing of Authorised Share Capital
 - ▶ Re-organisation of Share Capital
- 

- ▶ Conduct of business by transferor company till effective date
 - ▶ Consideration by the Transferee Company
 - ▶ Accounting treatment
 - ▶ Dissolution of the Transferor Companies
 - ▶ Impact of the Scheme on creditors
 - ▶ Dividends
 - ▶ Filing of applications / petitions with NCLT
- 

- ▶ Modification of Scheme
 - ▶ Conditions / Approvals / sanctions to which the Scheme is subject to
 - ▶ Effect of non-receipt of approvals
 - ▶ Severability
 - ▶ Costs, charges, etc.
- 

STAMP DUTY ASPECTS OF MERGERS AND DEMERGER

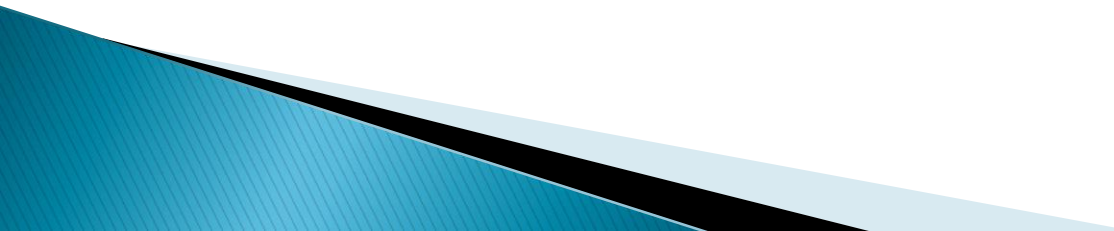


STAMP DUTY ASPECTS OF MERGERS AND DEMERGER

- ▶ Stamp Duty Payable on a Tribunal Order Sanctioning Amalgamation

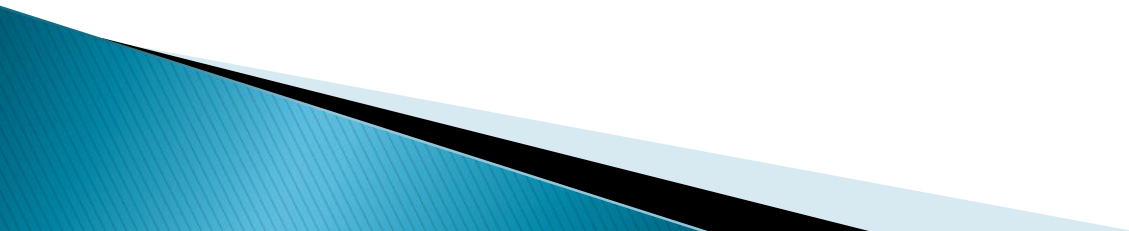
a) Hindustan Lever Vs. State of Maharashtra (2004)
order of the Court is an instrument

b) Madhu Intra Limited V. Registrar of Co. [2005]
Transfer by operation of Law – No stamp duty if not included in state Stamp Act.


- ▶ Order of Supreme Court in Tata Oil Mills Company Ltd (TOMCO) and HLL Merger
 - ▶ Article 20d of Schedule 1A of Indian Stamp Act as applicable in A.P. and Telangana
 - ▶ Landmark decision of Bombay High Court in Li Taka Pharmaceuticals v. State of Maharashtra (1996)
- 

- ▶ Amalgamation between Holding and Subsidiary Companies — Exemption from payment of Stamp Duty

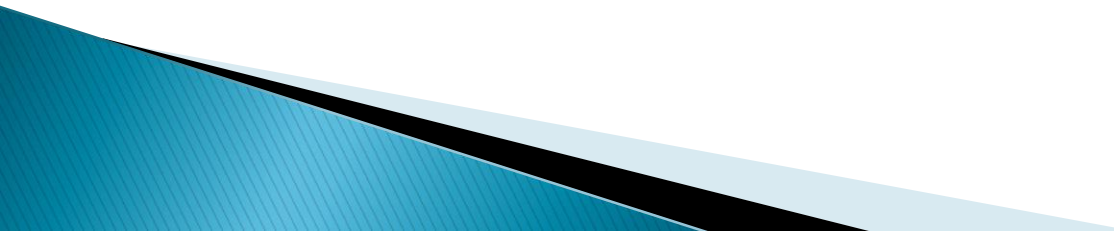
TAXATION ASPECTS OF MERGERS AND DEMERGERS



Taxation Aspects

- ▶ Exemption from Capital Gains Tax [Sec. 47(vi)]
 - ▶ Exemption from Capital Gains Tax in case of International Restructuring [Sec. 47(via)]
 - At least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and
 - Such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated
- 

Taxation Aspects

- ▶ Exemption from Capital Gains Tax in case of International Restructuring [Sec. 47(viab)]
 - ▶ Carry Forward and Set Off of Accumulated loss and unabsorbed depreciation of the amalgamating company [Sec. 72A]
- 

Taxation Aspects

- ▶ Exemption from Capital Gains Tax [Sec 47(vii)]
capital gains arising from the transfer of shares by a shareholder of the amalgamating companies are exempt if:
 - ❑ The transfer is made in consideration of the allotment to him of shares in the amalgamated company; and
 - ❑ Amalgamated company is an Indian company.

Representation before NCLT

THANK YOU!

