

MERGER AND AMALGAMATION U/S 230 TO 233 OF THE COMPANIES ACT, 2013 TO CAB, 2020



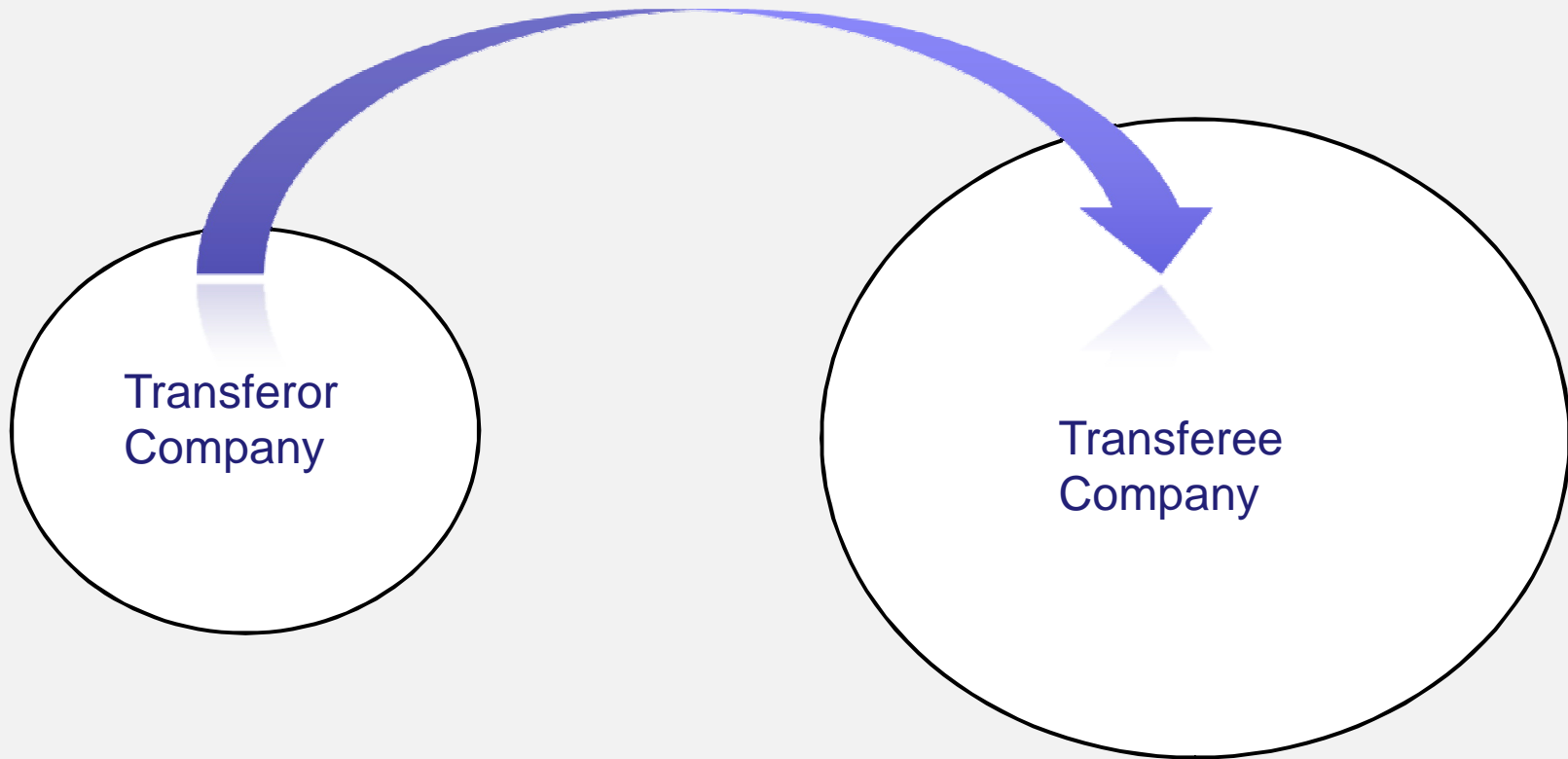
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MEANING OF MERGER/ AMALGAMATION:



- The term ‘merger or Amalgamation’ is not defined under the Companies Act, 2013.
- AS 14 – Accounting for Amalgamations
- 2(1B) of the Income Tax Act, 1961

MERGER/ AMALGAMATION



TYPES OF MERGERS

- Horizontal Merger - the same industry.
- Vertical Merger - same industry but at different stages of production or distribution system
- Congeneric Merger – the same or related industry but have different business lines or products
- Conglomerate Merger - unrelated business activities

PROCEDURE

1	Scrutiny of Memorandum & Articles of Association of the Companies involved in the merger
2	1st BM: Convene and hold Board Meeting - 1. In principal approval for Merger 2. Professionals for representation before NCLT 3. Appointment of Valuer for valuation of shares to determine share exchange ratio (swap ratio)
3	Preparation of the Draft Scheme of Amalgamation
4	Preparation of the Draft Valuation Report
5	Finalize Scheme of Amalgamation and Valuation Report and send the same to professional(s) for vetting
6	Comments of CS/Advocate (if any) to be integrated and FINALISE scheme and report
7	2nd BM: To consider and approve the following: (i) scheme of amalgamation (ii) Authority to Director to take necessary steps in connection with amalgamation (iii) Valuation Report and exchange ratio of shares

8	In case of listed companies : Application for NOC and draft scheme to Stock exchange under Clause 37 of SEBI LODR
9	Preparation of Provisional Balance Sheet
10	Drafting of Consent Letters from the Creditors/Shareholders
11	Dispatching of consent letters to the shareholders & Creditors (in case dispensation of meeting)
12	Drafting & Finalisation of Applications , Affidavits etc to be filed with the NCLT
13	Apply to the NCLT for seeking directions to dispense with holding the meeting of the Shareholders & Creditors alongwith the Affidavit
14	Application coming up for hearing before the NCLT
15	Obtaining Certified Copy of the Order for Directions and minutes of the order from the NCLT for dispensing with the need to hold the meeting of the Shareholders and the Creditors. (If all the shareholders and creditors of the Company give their individual no object to the scheme of amalgamation and that they would not object if the meetings are dispensed, then the NCLT may dispense with the requirement of the meeting of shareholders and creditors)
16	In case NCLT does not allow dispensation; then as per the directions, meeting of shareholders has to be convened
17	Draft Notice, Proxy Form and Explanatory Statement to be approved by the Registrar of the NCLT.



17	Drafting of Advertisement in English & Vernacular newspapers regarding holding of the Meeting.
18	Publication of Advertisement in English & Vernacular. Newspapers regarding holding of the Meeting, Company's Website, Stock Exchange website
19	Send notices for holding the meeting to pass the resolution enumerated below along with the Explanatory Statement
20	Chairman of the meeting to file affidavit regarding compliance with the NCLT's directions for sending the notices to individual equity shareholders and publishing the notices in newspapers for calling the equity shareholders meetings.
21	To hold NCLT Convened Meeting and pass the resolution. Note: This resolution should be passed by holders of not less than nine tenth (90%) in value of the shares.
22	File reports of Chairman of the Shareholder's and (Creditor's meetings) with the NCLT within period fixed by the Judge
23	File e-forms with the Registrar of Companies : GNL 1
24	Drafting the Petition & Affidavit verifying the Petition
25	Filing of Petition for sanctioning the Scheme of Amalgamation with the NCLT alongwith the Affidavit
26	Petition comes up for consideration (i.e. whether to be admitted) before the NCLT



27	<p>Compliance with NCLT procedure for sanctioning the Scheme of Amalgamation</p> <p>(i) Serving Copy of the Petition on the ROC, RD, OL</p> <p>(ii) Filing of the required documents with the ROC, RD, OL and obtaining a report</p> <p>(iii) Filing of Notice to Income Tax for their observations, if any</p> <p>(iv) SEBI & Stock Exchanges, CCI</p>
28	Appointment of auditor by OL and his reporting to OL.
28	Following up with ROC, RD, OL, Auditor for their Reports. Submitting the documents required by them.
29	Drafting the Notice of the hearing of the Petition to be sent to all Creditors and publishing the same in the newspaper
30	Dispatching individual notice and publishing the same in newspaper
31	Petition comes up for final hearing
32	Obtaining the Certified Copy of the Order passed by the NCLT approving the Scheme of Amalgamation
33	Filing the Certified Copy of the Order with the Registrar of Companies in form INC-28 Section 232 (Transferor and Transferee)
34	Filing the Certified Copy of the Order with the Registrar of Companies in form INC-28 for reduction of share capital (Section 66)
35	Adjudication of stamp duty on Order



Drafting of Scheme



Key points to be included:

- Brief History of Companies.
- Rationale of the Scheme.
- Define 'Appointed Date', 'Effective Date' & 'Record Date',
- Shares and Accounting Treatment.
- Combination of Authorised Capital
- Transaction between Appointed Date and Effective Date



- Conversion of shares, reduction
- Cancellation of Cross Holding
- Authority to modify/ amend the scheme
- Conditionality of the scheme: Approvals, Accounting treatments, ROC filing, etc.
- Declaration regarding pending enquiry, inspection or investigation.
- Dissolution without winding-up
- Cost Charges & Expenses of the Scheme.



Who can object to a Scheme of Amalgamation

- Asmitha Microfin Limited - creditor chose to remain absent in the meeting
- Maharashtra Apex Corporation Ltd. - Scheme as a weapon to pressurise the company to pay disputed debts
- Fiat India Private Limited and Emco Ltd – disputes regarding their liabilities

Arrangements under Section 230 of the Companies Act, 2013



- The word Arrangement technically has not been defined under the Companies Act, 2013.
- Hindustan Unilever Limited - Re-classification of reserves



Effective Date and Appointed Date

- Marshall Sons & Co. Ltd v. Income Tax Officer
- The Ministry of Corporate Affairs vide its circular dated August 21, 2019 clarified that Appointed date can either be a specific calendar date or a date based on the trigger of a specific event.



Dispensation with Meetings

- At least 90 % value agree by way of affidavit
- Wholly owned subsidiaries with it's holding company on certain grounds



Takeover of shares by the majority shareholders under a scheme of compromise and arrangement.

- Notification dated February 3, 2020
- Brought into effect eagerly anticipated Section 230(11) and Section 230(12) of the Act.
- Rule 80A and sub-rules 5 and 6 of Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016



Change in name and Other changes

- Sherno Investment & Finance Ltd Vs RoC (Gujarat High Court)
- Other changes



Schemes Of Compromise Or Arrangement for Companies In Liquidation

- *S.C Sekaran vs Amit Gupta and Ors*



Whether an Order sanctioning a Scheme be recalled or set aside

- Unique Delta Force Security Private Ltd and Sumeet Facilities Pvt Ltd
- Growth Stream Properties Private Limited vs. The Regional Director
- Test is whether scheme has become effective or not



Companies Amendment Bill 2020

- Amendment in Section 232 (8)
- Decriminalization of offence

Stamp Duty on merger



- Stamp Duty is a state subject
- For Listed Companies: The market value of shares on appointed date
- For Unlisted Companies: It may be either appointed date as mentioned in the scheme or date of an order of high court/ or date of registration of the order.
- States of Maharashtra, Gujarat & Karnataka have specifically amended the Stamp Act and included the order of amalgamation in the definition of “conveyance”.



Demerger

- The transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 by a demerged company of its one or more undertakings to any resulting company in such a manner as prescribed in the Income Tax Act, 1961.
- The term demerger is not defined in the Companies Act, 2013

Fast Track Merger - Section 233

- New concept introduced in India under the Companies Act, 2013.
- No requirement of NCLT approval
- Between:
 - a) Two or more small companies
 - a) Holding and its wholly owned subsidiary company.
- Sanction by jurisdictional Regional Directors based on reports by the Registrar of Companies and Official Liquidator is sufficient .
- To be approved by members holding at least 90% of total number of shares and 9/10th in Value of creditors.



Before and after the Companies Act, 2013 - Analysis and Implications



1. Under the 1956 Act, all mergers and amalgamations required court approval.

The 2013 Act Fast track mode is available for certain companies.

2. Mahaamba Investments Ltd. vs Idi Limited set aside by NCLT
3. Selective capital reduction
4. Dispensation of Shareholder's meeting

Things to be remembered while handling M&A assignment



1. Involve in negotiations stage
2. Keep everything in writing. Proposal signing is must
3. Understand ultimate benefit of arrangement
4. Importance of list of creditors
5. Taxation effect
6. Draft scheme carefully
7. No change in status of company is preferable during the merger process
8. Time is money
9. Liaisoning with authority
10. Adjudication of Order
11. Post merger events and compliances



**ANY
QUESTIONS?**

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*Thank
You*



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