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Project Presentation by Team 3

Topic: **Corporate Restructuring - Impact of Companies Act 2013 & Fast Track Merger**.

on

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TEAM 3 – Participants

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- 2. **Kadambi S. Bhagavan** – Merger & Amalgamation
- 3. **Jayashree** – Demerger & Buy Back
- 4. **Kaveri Agarwal** - Takeover
- 5. **Khushboo Sharma** – Fast track Merger Reduction of Capital & Joint Venture.

Introduction to Corporate Restructuring:

Definition: The Corporate Restructuring is the process of making changes in the composition of a firm's one or more business portfolios in order to have a more profitable enterprise. Simply, reorganizing the structure of the organization to fetch more profits from its operations or is best suited to the present situation.

CORPORATE RESTURCTING WITH RESPECT TO COMPANIES ACT, 2013.

The main objective of every organization is to get maximum profit every year to increase the wealth of shareholders by giving them high dividends. Every organization adopts different techniques and tools to maximize its profit and survive in the fast growing market. Corporate Restructuring has historically been the favourite tool for creating shareholder's wealth, achieving synergies with existing operations, Pooling of financial resources and providing a platform that enables the firm to enter into new potential markets.

In India, Business restructuring has been typically undertaken through mergers, demergers and capital reduction and a large number of these cases are governed by the provisions of the Companies Act.

Sections 391 to 394 of the Companies Act, 1956 gave full power to the High Courts to sanction any alterations in the corporate structure of the company. Till date, all schemes of arrangement and compromise are filed with High Court since the provisions of Companies Act, 2013 related to compromises, arrangements and amalgamations were not notified.

Now, the erstwhile provisions of sections 391-394 shall cease to exist and new provisions will be operative from December 15, 2016 as Ministry of Corporate Affairs vide notification no. S.O. 3677(E) dated December 7,2016 notified sections 230 [except sub section (11) and (12)], and sections 231 to 240 [except section 234 which provides merger with foreign company] of the Companies Act, 2013, related to compromises, arrangements, and amalgamations.

THE CORPORATE RESTRUCTURING TAKES PLACE IN TWO FORMS:

1. **Financial Restructuring**: The Financial Restructuring may take place due to a drastic fall in the sales because of the adverse economic conditions. Here, the firm may change the equity pattern, cross-holding pattern, debt-servicing schedule and the equity holdings. All this is done to sustain the profitability of the firm and sustain in the market. Generally, the financial or legal advisors are hired to assist the firms in the negotiations. The two components of financial restructuring is :

   - Debt Restructuring
   - Equity Restructuring

   To quote an example of financial restructuring, Kingfisher Airlines which had finical losses of $240 Million in Q3 of 2014 due to high fuel cost, a weaker rupee and competition opted for financial restructuring to cover their losses.

2. **Organizational Restructuring**: The Organizational Restructuring means changing the structure of an organization, such as reducing the hierarchical levels, downsizing the employees, redesigning the job positions and changing the reporting relationships. This is done to cut the cost and pay off the outstanding debt to continue with the business operations in some manner.

   For example, we can take the case of auto-giant, General Motors, which in 1991 decided to shut down 21 plants and lay off 74,000 employees to counter its losses as a part of downsizing strategy.

TYPES OF RESTRUCTURING:

Types of Corporate restructuring can be broadly dived into the following:

a. **Expansion**
   - Mergers & Acquisition
   - Takeovers
   - Tender off
   - Joint Venture

b. **Contraction**
   - Sell off's
   - Spin off's
   - Split up's
   - Divestitures
   - Equity Carve outs

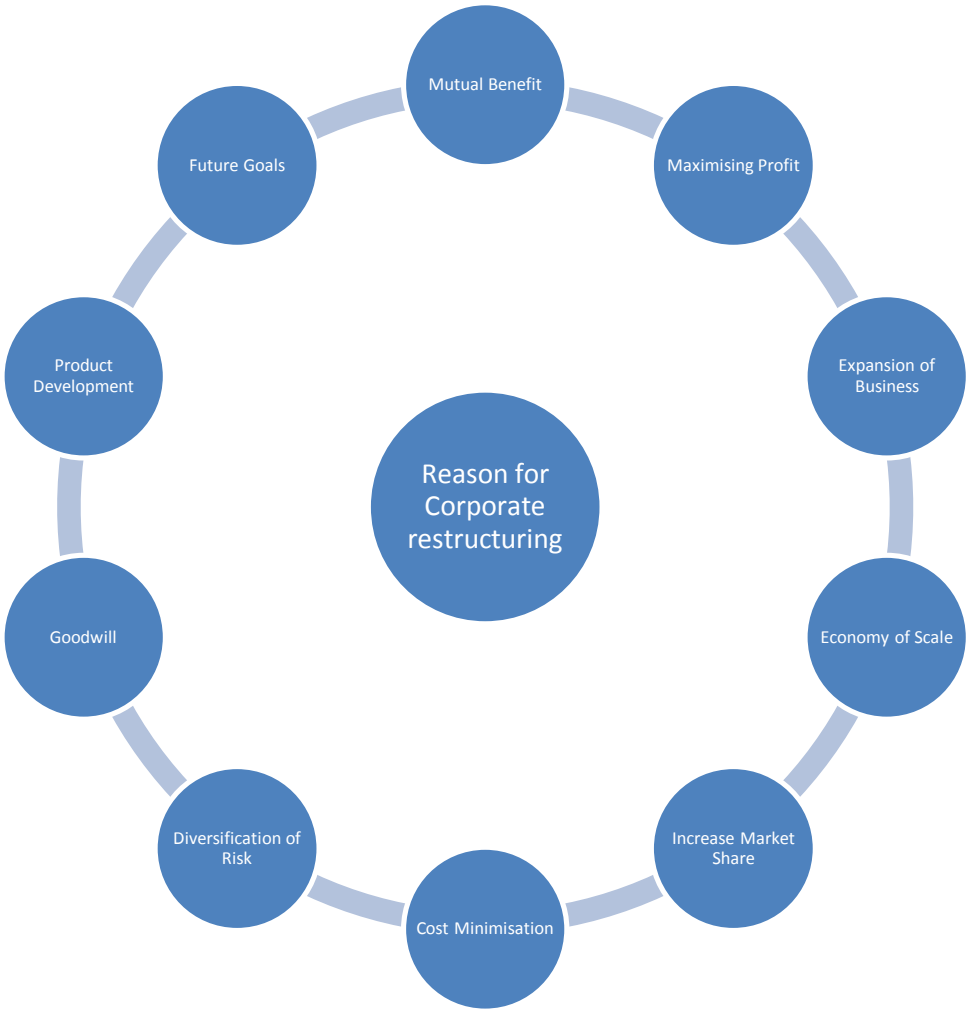
c. **Corporate Control**
   - Takeover defences
   - Share repurchase
   - Exchange offers

d. **Change in Ownership**
   - Leverage Buyout
   - Going private

SIGNIFICANCE & RATIONALE OF CORPORATE RESTRUCTURING:

The significance for a corporate restructuring arises because of the change in company's ownership structure due to a merger or takeover, adverse economic conditions, adverse changes in business such as bankruptcy or buyouts, over employed personnel, lack of integration between the divisions, etc.

Just as there are many reasons companies might restructure, there are many benefits of restructuring a company. Some benefits are financial, such as reviving a declining business, increasing a company's value, and preparing it for sale or transfer to the next generation. Other benefits involve gaining a competitive advantage, such as helping a company position itself for growth, allowing for the addition of new accounts or enabling expansion into other geographical areas. Two words, however, sum up the overall benefits of corporate restructuring: survival and success.



Corporate restructuring can be driven by a need for change in the organizational structure or business model of a company, or it can be driven by the necessity to make financial adjustments to its assets and liabilities. Frequently, it involves both. Companies restructure for a variety of reasons:

- To reduce costs
- To concentrate on key products or accounts
- To incorporate new technology
- To make better use of talent
- To improve competitive advantage
- To spin off a subsidiary company
- To merge with another company

- To decrease or consolidate debt

Merger & Amalgamation:

Till the year 1988, the concept of Merger and Amalgamation in India was not much popular. During that period a very small percentage of businesses in the country used to come together, mostly into a friendly acquisition with a negotiated deal. The key factor contributing to fewer companies involved in the merger is the regulatory and prohibitory provisions of MRTP (Monopolistic and Restrictive Trade Practices) Act, 1969 now known as Competition Act 2002. According to erstwhile MRTP Act, a company or a firm had to follow a pressurized and burdensome procedure to get approval for the Merger and Amalgamations.

Merger and Amalgamations (M&A) have been a very important market entry strategy as well as an expansion strategy. The concept of mergers and acquisitions is very much popular in the current scenario. Consolidation through mergers and amalgamations is considered as one of the best ways of restructuring of corporate units. M&A gives a new life to the existing companies.

Merger means absorption of one company into another with one losing its corporate entity. Mergers may be in the form of Horizontal merger, Vertical Merger, Co generic Merger, Conglomerate Merger, Reverse merger, Down stream Merger, Upstream Merger, Cash Merger.

Amalgamation means BLENDING of two or more Companies into one Company.

Section 230 of the New Companies Act 2013 deals with Compromise and Arrangement (C & A) while Section 232 of the New Companies Act 2013 deals with Merger & Amalgamation (M&A). Merger and Amalgamation is a special type of Compromise and Arrangement and hence we have to follow Section 230 of the Companies Act 2013 .

Under lying objectives in Mergers/Amalgamations

Major objectives and their benefits:

- **Market Leadership:**

In case of the amalgamation of Reliance Petroleum Limited (RPL) with Reliance Industries Limited (RIL), the main consideration had been that the amalgamation will contribute towards strengthening Reliance's existing market leadership in all its major products. It was forseen that the amalgamated entity will be a major player in the energy and petrochemical sector, bringing together Reliance's leading position in different product categories.

- **Operating Economics:**

The merger of Sundaram Clayton Ltd (SCL) with TVS Suzuki Ltd (TSL) was motivated by operating economies and by virtue of this, TSL became the second largest producer of two wheelers. TSL needed to increase its volume of production but also needed a large manufacturing base to reduce its production costs. Large amount of funds would have been required for creating additional production capacity. SCL was also required to upgrade its technology and increase its production. Both the firms plants were closely located offering various advantages, the most versatile being the capability of share common research and development facilities.

- Synergies:

One of the most important reason for mergers and amalgamations is to realise synergies, either through cheaper production basis as in case of Jindal Strips purchase of two units from Bethlehem in US.

Cost savings and pooling of resources in R&D marketing and distribution as in case of Astra's 36 Billion merger with Zeneca, Pharma mergers.

TOP MERGER & AMALGAMATIONS DEALS IN INDIA

- **Tata Steel – Corus**

Tata Steel is one of the biggest ever Indian's steel company and the Corus is Europe's second largest steel company. In 2007, Tata Steel's takeover European steel major Corus for the price of $12.02 billion, making the Indian company, the world's fifth-largest steel producer.

- **Vodafone – Hutchison Essar**

Vodafone India Ltd. is the second largest mobile network operator in India by subscriber base, after Airtel. Hutchison Essar Ltd (HEL) was one of the leading mobile operators in India. In the year 2007, the world's largest telecom company in terms of revenue, Vodafone made a major foray into the Indian telecom market by acquiring a 52 percent stake in Hutchison Essar Ltd, a deal with the Hong Kong based Hutchison Telecommunication International Limited. This is a case of Horizontal Merger.

- **Sterlite – ASARCO**

Sterlite is India's largest non-ferrous metals and mining company with interests and operations in aluminum, copper and zinc and lead. Sterlite has a world class copper smelter and refinery operations in India. Asarco, formerly known as American Smelting and Refining Company, is currently the third largest copper producer in the United States of America. In the year 2009, Sterlite Industries, a part of the Vedanta Group signed an agreement regarding the acquisition of copper mining company Asarco for the price of $ 2.6 billion. The deal surpassed Tata's $2.3 billion deal of acquiring Land Rover and Jaguar. After the finalization of the deal Sterlite would become third largest copper mining company in the world.

- **TATA Motors - Jaguar Land Rover**

Tata Motors Limited (TELCO), is an Indian multinational automotive manufacturing company headquartered in Mumbai, India and a subsidiary of the Tata Group and the Jaguar Land Rover Automotive PLC is a British multinational automotive company headquarters in Whitley, Coventry, United Kingdom, and now a subsidiary of Indian automaker Tata Motors. Tata Motors acquisition of luxury car maker Jaguar Land Rover was for the price of $2.3 billion. This could probably the most ambitious deal after the Ranbaxy won. It certainly landed Tata Motors in a lot of troubles.ATA Mortors – Jaguar Land Rover

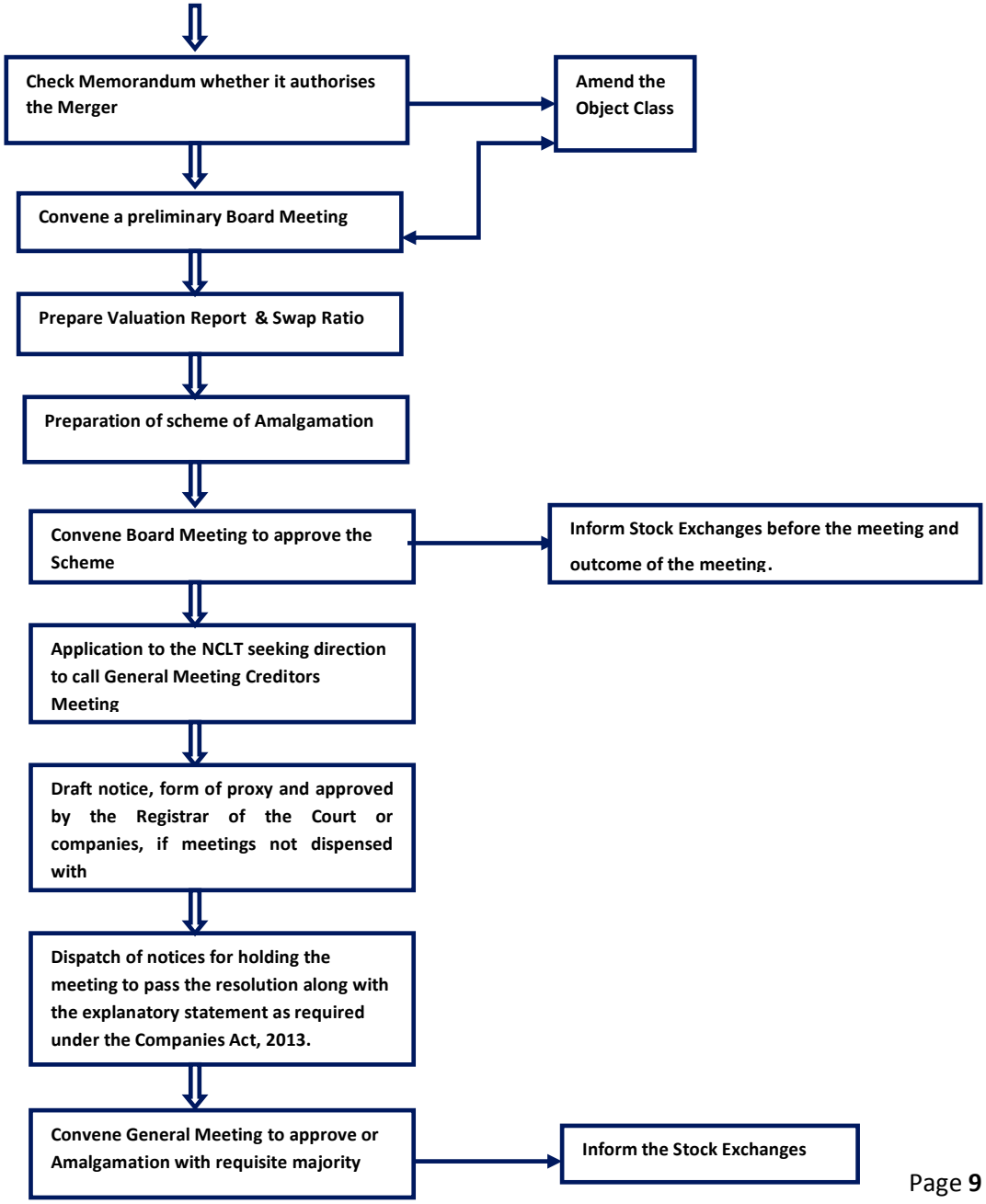
- **RIL- RPL Merger**

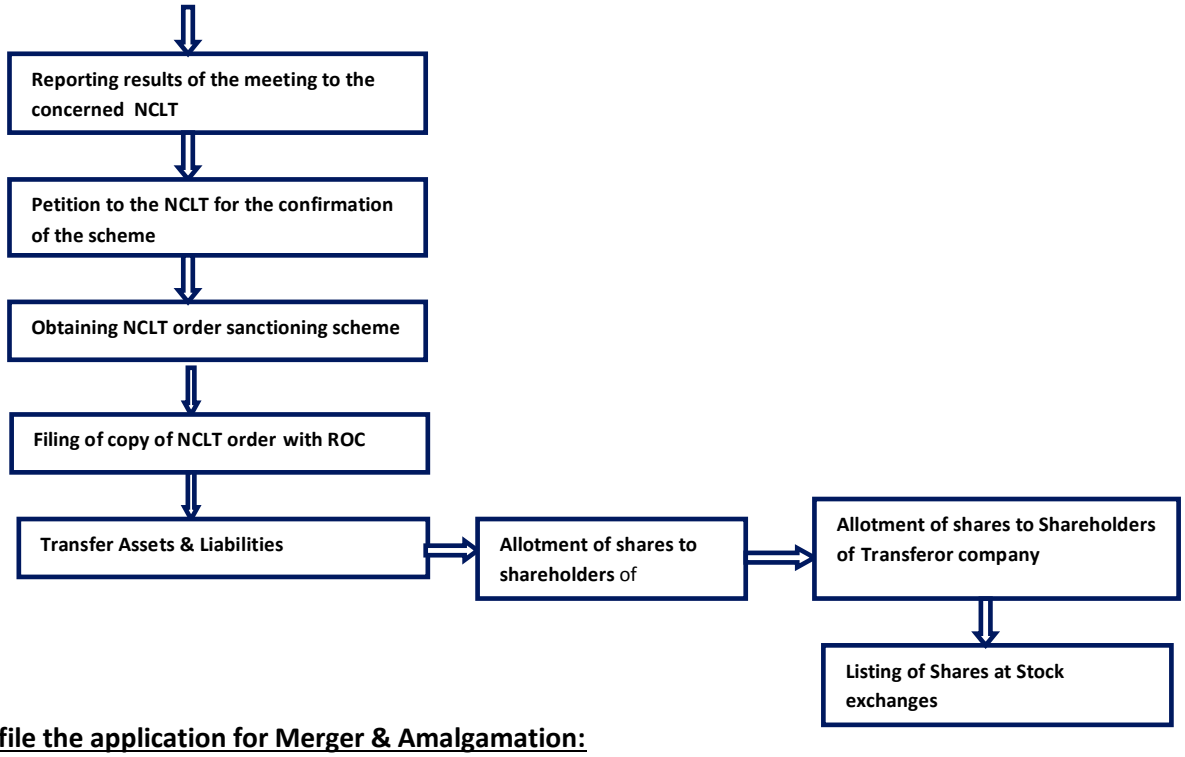
Reliance Industries Limited (RIL) is an Indian Conglomerate holding company headquartered in Mumbai, India. Reliance is the most profitable company in India, the second-largest publicly traded company in India by market capitalization. Reliance Petroleum Limited was set up by Reliance Industries Limited (RIL), one of India's largest private sector companies based in Ahmedabad. Currently, Reliance Industries taking over Reliance Petroleum Limited (RPL) for the price of 8,500 crore Rupees or $1.6 billion.

Top Mergers & Amalgamations during 2016 & 2017

- **1. Reliance Communications & Aircel merger (Mar 2017)**
- **2. ITC Holdings merges with Fortis (Feb 2016)**

Steps involved in MERGER & AMALGAMATION – FLOW CHART.





Who can file the application for Merger & Amalgamation:

Section 230(1) [1]. An application for Merger & Amalgamation can be file with Tribunal (NCLT). Both the transferor and the transferee company shall make an application in the form of petition to the Tribunal under section 230-232 of the Companies Act, 2013 for the purpose of sanctioning the scheme of amalgamation.

Joint Application: Rule 3(2)

Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application.

[2]However, where the registered office of the Companies are in different states, there will be two Tribunals having the jurisdiction over those, companies, hence separate petition will have to be filed.

Application to the tribunal for Merger & Amalgamation will be submitted in form no. NCLT-1 along with following documents: Rule 3(1)

a) A notice of admission in Form No. NCLT-2

b) An affidavit in form no. NCLT-6

c) A copy of Scheme of C&A (Merger & Amalgamation)

d) A disclosure in form of affidavit including following points Section 230(2)

All material facts relating to the company, such as:

i. latest financial position of the company,

ii. latest auditor's report on the accounts of the company and

iii. the pendency of any investigation or proceedings against the company.

Judicial interpretations of Mergers and Amalgamations:

- There need not be unison or identity between objects of transferor company and transferee company. Companies carrying entirely dis-similar business can amalgamate. - PMP Auto Industries Limited 1994 .

- Sanction to scheme of amalgamation cannot be refused on the ground that the transferee company does not have sufficient authorised capital on the appointed date. If the scheme is sanctioned, the transferee company can thereafter increase its Authorised Capital to give effect to the scheme. – Mahavir Weaves Pvt Ltd (1985)

- The Supreme Court of India in Meghal Homes Private Limited v. Shreeniwas Girmikk Samiti and Others 2007 held that the Court could sanction a scheme even in the case of a company where an order of winding up has been made and a liquidator has been appointed. The essential factors to be seen by the Court are whether the scheme is bonafide and whether there is a genuine attempt to revive the company and such attempt is in public interest.

CASE ANALYSIS

Reliance Communications & Aircel

Reliance Comunications, in September last year, announced it will merge its wireless telecom business with smaller rival Aircel (Malaysia based promoters Maxis Communications Berhard) to create what will be the country's 3rd-biggest mobile phone operator, with asset base of more than Rs 65,000 crore and net worth of Rs 35,000 crore. The transaction will reduce RCom's debt by Rs 20,000 crore (USD 3 billion), while Aircel's debt would go down by Rs 4,000 crore (USD 600 million) on closing in 2017.

Both the companies will transfer Rs 14,000 crore of debt each to the joint venture, taking the total debt of the new company to Rs 28,000 crore.

The merged company will also have a total subscriber count of more than 177 million.

The Competition Commission of India's nod to RCom and Aircel merger comes amid a massive consolidation drive in the telecom sector. The Approval for the Merger is awaited from NCLT.

Rational For an M&A (Inorganic Growth) Rcom and Aircel

- Reduced Debt : Both RCom and Aircel were reeling under heavy debt, and this merger will give them some room to breathe. As a result of the merger, a new entity would be created, along with a new brand name to sell telecom services. And the best part is that, this new entity will absorb most of the ongoing debt of RCom as well as Aircel. A smart business move, none the less.

- Larger user-base: Telecom is a capital-centric business, and disruptions such as Jio's entry with free voice shakes up the industry, leading to consolidations and mergers. Aircel-RCom merger is a perfect example of this theory.

After this merger, the combined user-base of the new entity would be around 180 million, with a revenue market share of 6%. It will push Idea Cellular (175 million) to #4 and would be ranked 3 after Airtel (251 million users) and Vodafone (198 million users).

- More spectrum : In terms of spectrum control, the new entity of RCom-Aircel will be the second biggest entity in India. Total spectrum of 448 MHz would be now controlled by this new entity, across 850, 900, 1800, and 2100MHz bands; the validity of which is till 2033-35.

Considering that the controlled spectrum by RCom-Aircel spans across 2G, 3G and 4G services pan-India, the behemoth can now introduce competitive pricing, and more value-additions, compared to their stand-alone existence.

- More firepower to fight Jio: Traditionally, both RCom and Aircel were voice-centric telecom firms, having just a presence in data services. However, the entry of Jio has changed the equations by 180 degree. By providing free voice and dirt cheap data, that too 4G, a new standard has been introduced by Jio, which RCom and Aircel clearly understood and comprehended.

By combining forces, they have not only climbed the ranking but also pushed Idea down one slot, and created a barrier for Jio which is swiftly moving towards 100 million customer mark.

With reduced debt, 3rd largest userbase and 2nd largest spectrum holding, RCom-Aircel merger has now formed a third front after Airtel and Vodafone to take on the might of Jio.

A September 14 IDFC (Infra structure Development Finance Company) Infrastructure Development Finance Company is a finance company . It provides finance and advisory services for infrastructure projects as well as asset management and investment banking. Securities report says the new entity will have an RMS (Root Mean Square) RMS Voltage or Root Mean Square Voltage of an AC Waveform is the amount of AC power that produces the same heating effect as DC Power. of 11.3 percent and subscriber market share of 15.4 percent; it is expected to have an Ebitda (earnings before interest, tax, depreciation and amortisation) between Rs 4,600 crore and Rs 6,000 crore. "The combined entity will enjoy substantial benefits of scale driving significant revenue growth, and capex and opex synergies with a net present value of around Rs 20,000 crore.

Impact of Companies Act 2013 & Fast Track Merger

- National Company Law Tribunal (NCLT) to assume jurisdiction of High Court

- Cross border merger is permitted. – Indian Companies are allowed to merging into foreign companies

- Notice of the Meetings: Section 230 (5) of the New Act obligates companies to send a notice of meeting to approve a merger/acquisition to various Government Authorities such as

Central Government, the Income Tax Authorities, SEBI, RBI, Registrar of Companies, respective stock exchanges, CCI (Competition Commission of India).

- The New Act provides only a time period of 30 (thirty) days to reply for any authority likely to be affected

- Section 233 – Fast track mergers introduced.
  The new Act enables fast track merger without the approval of NCLT between Two or more small companies, Holding & wholly owned subsidiary company other class of companies as may be prescribed.

Key requirements of the 2013 Act concerning mergers, amalgamation are given below:

- A company will file a scheme with Tribunal for approval for (i) reduction in share capital, (ii) making compromise/ arrangement with creditors and members, and (iii) merger/ amalgamation of companies.
- Subject to the RBI approval, both inbound and outbound cross-border mergers and amalgamations between Indian and foreign companies will be permitted. However, the overseas jurisdictions where cross-border mergers and amalgamations are allowed will be notified.
- 2013 Act permits Articles of the company to have entrenchment provisions/ amendments to include restrictive conditions. In case of merger/amalgamation of companies, the following documents should also be circulated for meeting proposed between the company and concerned persons:
- Report of the expert on valuation, if any
- Supplementary accounting statement if the last annual financial statements of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for approving the scheme.
- Option has been given to the following companies to undertake corporate reorganisations like amalgamation, demerger, etc. without NCLT (Court) process:
  - Between two or more small companies;
  - Between holding company and WOS; and
  - Other prescribed class of companies
- The merger of a listed company into an unlisted company will not automatically result in the listing of the transferee company.
- 2013 Act defines undertaking as having an investment of more than 20% of net worth; or generating 20% of total revenue of the company.
- Also defines the term “substantially whole of the undertaking” as at least 20% of the value of the undertaking.
- Only persons holding not less than 10% of the shareholding or having outstanding debt not less than 5% of total outstanding debt can raise objections to the scheme.

Role of Company Secretary in Mergers & Amalgamation and possible Opportunites available to CS

- The Companies Act, 2013 has considerably enhanced the role and responsibilities of company secretaries both in employment and in practice. Company secretary is a key managerial person in a company, responsible to ensure the effective and efficient administration of the company and certifying the company’s compliance with the provision of the Act.

  Role of CS

- Pivotal role in Merger/Amalgamation – Valuation, taxation implications, Approval from NCLT, Share holders, Creditors.

  Apart from the above role, the General would be:

- To ensure as a Compliance Officer, that all the rules and Regulations are followed by the Company & Board.
- To report to the Board about the compliance with the provisions of this Act.
- To ensure that the company complies with the applicable secretarial standards.
- To provide to the directors of the company the guidance they require in discharging their duties, responsibilities and powers.
- To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
- To obtain approvals from the Board, general meeting, the Government and such other authorities as required under the provisions of the Act.
- To assist the Board in the conduct of the affairs of the company.

To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices

The need and the role of the company secretaries have been increased with the advent of the new Companies Act 2013, and if the company does not comply with the aforesaid provisions there is a penalty for the same.

DEMERGER

INTRODUCTION

Demerger is the business strategy is a form of corporate restructuring wherein company transfers one or more of its business undertakings to another company. In other words, when a company splits off its existing business activities into several components, with the intent to form a new company that operates on its own or sell or dissolve the unit so separated, is called a demerger. In this case, the entity's business operations are segregated into one or more components. It is the converse of a merger or acquisition.

RATIONALE BEHIND DEMERGER

De-merger allows a large company,

- to split off its various brands
- to invite or prevent an acquisition,
- to raise capital by selling off components that are no longer part of the business's core product line, or
- to create separate legal entities to handle different operations.

MEANING OF UNDERTAKING, DEMERGED COMPANY AND RESULTING COMPANY

Undertaking : includes any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole, but excludes individual assets or liabilities or combination of both not constituting a business activity.

Demerged Company : means the company whose undertaking is transferred to a resulting company pursuant to a demerger.

Resulting Company: means one or more companies (including wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking, issues shares to the share holders of the demerged company.

DEMERGED COMPANY AND RESULTING COMPANY AS PER INCOME TAX ACT 1961

According to Sub-section (19AAA) of Section 2 of the Income-tax Act, 1961, "de-merged company" means the company whose undertaking is transferred, pursuant to a de-merger, to a resulting company.

According to Sub-section (41A) of Section 2 of the Income-tax Act, 1961 "resulting company" means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the de-merged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the de-merged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

Analysis of the definition:

The definition of 'resulting company' has clearly brought out three important requirements while establishing its relationship with de-merging company:

1. Consideration for transfer of undertaking would be by issue of shares only by resulting company. [Price Consideration]

2. Such consideration would be paid only to the shareholders of de-merged company.

3. Resulting company can also be a subsidiary company of a de-merged company.

TAX PROVISIONS APPLICABLE TO COMPANY

Capital Gains (Sections 47(vi) and 47(vid))

- Gains arising on transfer of a capital asset in a scheme of amalgamation/demerger to the amalgamated/resulting company being an Indian Company is exempt.
- Amalgamated/Resulting company has to fulfill the following conditions to avail the benefit:
- It continuously holds 3/4th of the book value of the fixed assets acquired in a scheme of amalgamation for at least five years from the date of amalgamation

➢ It continues to carry on business of amalgamating company for at least five years from the date of amalgamation

➢ It achieves at least the level of 50% of the installed capacity before the end of 4 years from the date of amalgamation and maintains that level till the 5th year

Amalgamating/Demerged company has to fulfill the following conditions:

- It was engaged in the business in which the accumulated loss has occurred or the unabsorbed depreciation remains unabsorbed for three or more years.
- It has continuously held 3/4th of the book value of fixed assets held by it two years prior to amalgamation.
- Accumulated loss and unabsorbed depreciation of a demerged company can be carried forward by the resulting company for set off against its profits (Section 72A(4)):
- Where it is directly relatable to undertaking transferred, it should be such relatable amount.
- Where it is not directly relatable to the undertaking transferred, it should be apportioned in the ratio of assets retained by the demerged company and transferred to resulting company.
- Carry forward of accumulated loss and/or unabsorbed depreciation of the banking company in a scheme of amalgamation with banking institution (Section 72AA)

➢ Allowability of expenditure relating to amalgamation/demerger (Section 35DD)

➢ An Indian company will be allowed a deduction of 1/5th of the expenditure incurred for the purposes of amalgamation or demerger for five years from the year in which amalgamation/demerger takes place.

➢ Depreciation in the year of amalgamation/demerger (Fifth proviso to Section 32(1))

➢ Depreciation to amalgamated company and amalgamating company in the year of amalgamation and depreciation to demerged company and the resulting company in the year of demerger shall be apportioned in the ratio of the number of days for which the assets were used.

➢ Written Down Value ('WDV') (Sections 32 and 43(6)(c))

➢ WDV in the hands of amalgamated company shall be the WDV of the block of assets in the hands of the amalgamating company immediately before amalgamation.

➢ WDV in the hands of the resulting company shall be the WDV of transferred assets of the demerged company immediately before demerger.

➢ WDV in the hands of the demerged company shall be the WDV of the block of assets before demerger less WDV of assets transferred to the resulting company.

➢ Cost of acquisition of shares of:

➢ The amalgamated company will be the cost incurred for acquiring shares of amalgamating company. (Section 49(1))

➢ The resulting company in case of demerger will be the (Section 49(2C)):

➢ The demerged company will be the original cost of shares of demerged company as reduced by the cost of shares of the resulting company as computed above (Section 49 (2D)).

<u>Restrictions</u>:

In case conditions specified in section 47(xiii)/(xiv) are not complied with, any set off of business loss or allowance for depreciation claimed by the successor company will be deemed to the income of the successor company in the year in which such conditions are not compiled with.

Similar provisions are also applicable to private company or unlisted public company succeeded by a limited liability partnership fulfilling conditions laid down u/s. 47(xiiib).

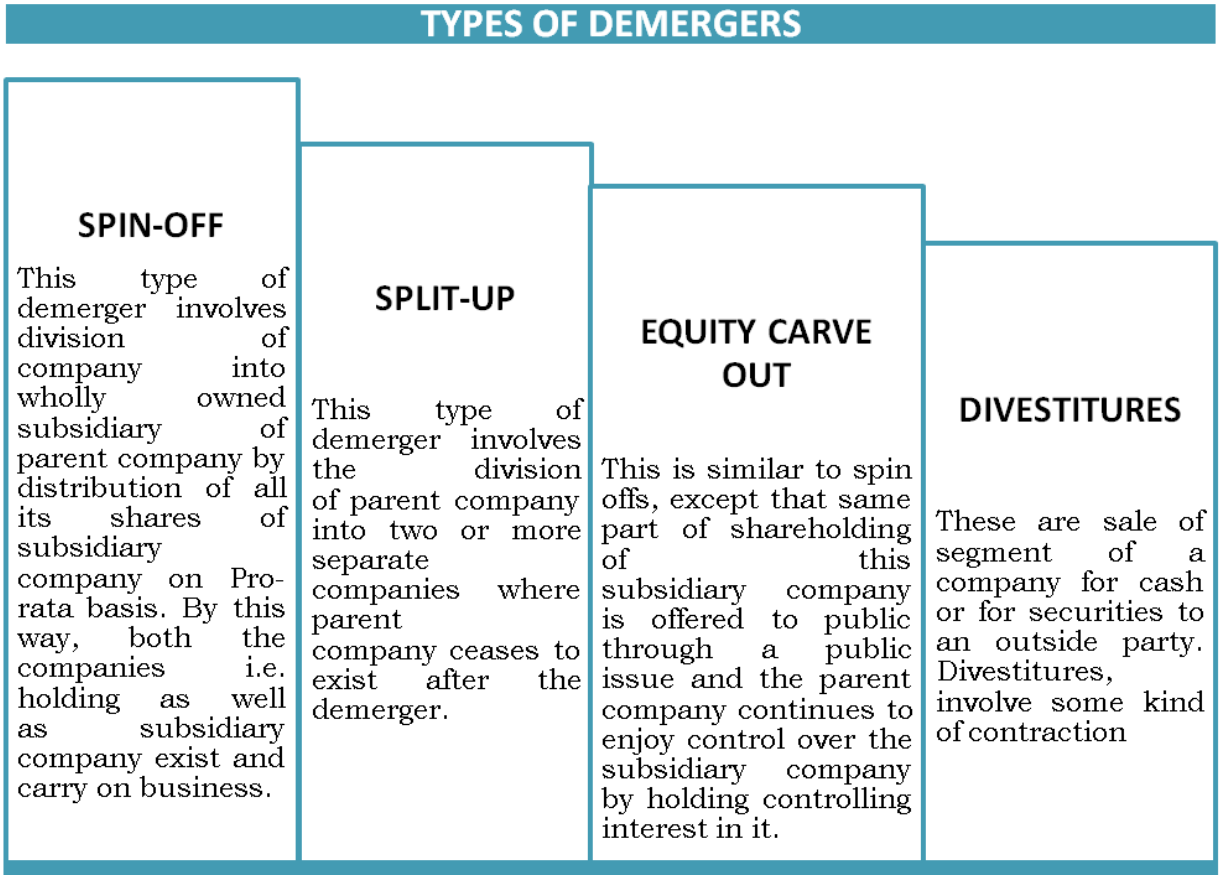
Provisions applicable to Share holders

Capital Gains arising on transfer of shares of amalgamating company in exchange of shares of amalgamated company, being an Indian Company is exempt (Section 47(vii)).

Acquisition of shares of the resulting company by the shareholders of demerged company pursuant to demerger will not be taxed either as capital gains or deemed dividend. (Sections 47 (vid) and 2(22)(v))

Period of holding of shares of the amalgamated / resulting company will include the period for which the shares in the amalgamating / demerged company were held by the share holder. (Sections 2(42A)(c) and 2(42A)(g))

Types of demergers



Benefits of demerger

- The demerger of relevant Division of the concerned Applicant Company in a different company would enable the said division to grow as a focused business entity and help attract capital /strategic investors and facilitate the Company in becoming a major market player in the said business.

- It will unlock the value of the relevant Division for the shareholders of the Demerged Company and paves way for funding future growth of the relevant Division by attracting equity from various sources, globally.
- Further upon the approval of the Scheme of Arrangement, the shareholders of the Applicant Company would also become shareholders in another company namely Resulting Company thereby providing them with an opportunity to participate in the management, operations, decision making process and profits of the Applicant Company as well as the Resulting Company.
- It will ensure better operational management and focus on accelerated growth of individual units and will also ensure higher returns to the shareholders, creditors, employees and is also in general public interest.
- The growth in size of the business of the Applicant Company normally may result in a situation where the need for focus and operational and financial independence begin to overshadow the need for the earlier strategy of diversification. The restructuring will enable greater focus on the respective business operations and products.

DEMERGER as per income Tax Act 1961

Section 2(19AA) of the Income Tax Act, 1961 added by the Finance Act, 1999 provides that "demerger" in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956 (1 of 1956), by a demerged company of its one or more undertakings to any resulting company in such a manner that—

(i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

(ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;

(iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

(iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

(v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become share-holders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;

(vi) the transfer of the undertaking is on a going concern basis;

(vii) the demerger is in accordance with the conditions, if any, notified under sub-section (5) of section 72A by the Central Government in this behalf.

In cases of demergers where only one of the many undertakings or part of an undertaking is transferred as an exercise in corporate restructuring, the transferor company would continue to exist to carry on its other businesses. However in case where all the undertakings of a business are transferred to different transferee companies, there is no need for the transferor company to exist and therefore it can be dissolved without winding up.

Certificate from a Chartered Accountant is to be submitted to the Tribunal to the effect that both 'demerged company' and 'resulting company' have complied with conditions as above and accounting treatment prescribed in this rule

Checklist

- Ensure that what is being Demerged is an Undertaking as per the Income-tax Act or else the tax benefits may be jeopardized
- Decide whether the Resulting Company would be a New Company or an Existing Company
- Reduction in capital of the Demerged Company
- Accounting Adjustments, if any
- Resulting Company to take over the assets and liabilities of the Demerged Company
- Valuation
- Allot the securities to the shareholders of the Transferor Company
- Ensure that what is being sold satisfies the conditions of an 'undertaking' under the Income-tax Act
- Ensure that the Main Objects in Memorandum of Association of Transferor contain the power to sell a business undertaking and in case of Transferee contain object(s) for carrying on such business
- Audited Balance Sheets of the undertaking / business to be sold

PROCEDURE/ROLE OF CS

1.The articles should authorise the Board to effect such an arrangement or else the Articles of Association has to be altered by a special resolution.

A scheme is prepared in consultation with all the interested parties and in principle approval of the board of directors is obtained at the meeting after issuing notice to all the directors as per section 173 of the Companies Act, 2013.

Appoint an independent valuer for valuing shares to determine the share exchange ratio and merchant banker to give fairness report on valuation of shares / assets done by the independent valuer.

2. Both the demerged company and resulting company must make an application to respective high Courts to take out judge's summons ex parte for a meeting of the members/ creditors or any class of them likely to be affected by the proposed demerger and its details as an exhibit along with an affidavit, after the receipt of observation letter from the stock exchanges.

Affidavit must be before filing, either notarised by the Notary public or sworn before the oath commissioner.

3. In the application for summons the class of members or creditors whose meetings are to be held should be indicated.

4. Upon hearing or any adjourned hearing thereof, the Judge shall, unless he thinks fit for any reason to dismiss, give such directions as he may think necessary in respect of the following matters-

- Determining the class or classes of creditors and/of members whose meeting have to be held for the purpose of considering the proposed demerger.
- Fixing the time and place of such meetings.
- Appointing a chairman or chairman for the meeting or meetings to be held.
- Fixing the quorum and the procedure to be followed at the meeting including voting by proxy.
- Determining the values of the creditors and/or members or of any class whose meetings have to be held.
- Notice to be given of the meeting and the advertisement of such notice.
- The time within which the chairman of the meeting is to report to the Court and the result of the meeting.

5. The notice of the meeting to be given to the creditors and/ or members, or to the creditors or members of any class, as the case may be, shall be sent to them individually the chairman appointed for the meeting, or, if the Court so directs, by the company (or its liquidator), or any other person as the Court may direct, by post under certificate of posting to their last known address not less than 21 clear days before the date fixed for the meeting. It shall be accompanied by a copy of the proposed compromise or arrangement and of the statement required to be furnished.

7. The notice of the meeting shall be advertised in such newspapers and in such manner as the Judge may direct, not less than 21 clear days before the date fixed for the meeting. The advertisement shall be in Form as stated in the NCLT rules.

8. Furnish to every member entitled to attend the meeting convened by the concerned National Company Law Tribunal free of charge and on requisition being made in this behalf a copy of the proposed demerger together with a statement required to be furnished unless the same has already been furnished to the member

9. The chairman appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit for the holding of the meeting or the holding of the first of the meetings, as the case may be showing that the directions regarding the issue of notices and the advertisement have been duly complied with.

10. After the meeting is held as directed by the court, and if in the meeting majority in number representing three-fourths in value of the members or creditors or their class, as the case may be present either in person or by proxy agree to the demerger, the scheme when sanctioned by the Tribunal shall be binding upon all members or creditors or the class as the case may be.

11. The Tribunal before sanctioning the scheme needs to be satisfied that the company moving the application has disclosed by affidavit or otherwise, all material facts relating of the company, such as the latest financial position of the company, latest auditor's report on the accounts of the company, the pendency of any investigation proceedingsor applicable provisions of Chapter XIV of the Companies Act, 2013 dealing with Inspection, Inquiry and Investigation.

12. Furnish all the material facts and the documents in this behalf along with the application itself for taking out the summons.

13. The chairman has to give a report to the High Court after the demerger is sanctioned by the shareholders and creditors.

14. The Tribunal shall fix a date of hearing of the petition and a notice will be issued in the newspapers in which the original notice of the meeting was given about ten days before the date of hearing.

15. When the Tribunal shall sanction the scheme, or pass an order and in the order as the court deems fit.

16. The Court shall also direct that a certified copy of the order shall be filed with the ROC within 14 days from the date of order or within such time as the Court may deem fit. The order shall be in Form 41 of Companies (Court) Rules, 1959.

17. After the filing of the order with the ROC, it shall become fully binding and effective

CASE STUDY

- For example, in 2001, British Telecom conducted a de-merger of its mobile phone operations, BT Wireless, in an attempt to boost the performance of its stock. British Telecom took this action because it was struggling under high debt levels from the wireless venture. This was done to separates its business into two components: one to manage the utility's infrastructure assets and another to manage the delivery of energy to consumers.

- Demerger of Ultra Tech Cement by L & T . L & T was India's largest engineering and construction conglomerate, Cement business covered South & Middle east and handful of plants in North east. L & T in the fear of losing control proposed the demerger and was later acquired by Grasim.

BUY BACK OF SHARES

Sections applicable:

- Section 68
- Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014.

Authorisation in AOA

A Company intending to purchase its own shares shall do so, if authorised by its Articles.

Buy back limit:

- If buy-back is less than 10% of total paid-up capital and free reserves it has to be approved by the Board.

- If the buy-back is 25% or less of the aggregate of paid-up capital and free reserves of the company it has to be approved by way of Special Resolution.
- Ratio of the debt to capital and free reserves is 2:1.

Procedure for Buyback of Shares

Step 1: Check for the authorisation in the Articles and Convene a Board Meeting after giving notice to all the directors for the following:

- To pass the necessary Board resolution and
- Approve the notice of general meeting of the company(depends on quantum of buy-back) and
- Letter of offer for buy-back.

Step 2: Convene a General Meeting and pass the necessary special resolution and file Form MGT-14 to the Registrar within 30 days of passing the resolution.

Step 3: Dispatch the Letter of offer to the shareholders within 21 days from filing with the Registrar of Companies.

Step 4: The offer shall remain open for 15 days to 30 days.

Step 5: The verification of the offers received shall be completed within 15 days from the date of closure of offer.

Step 6: Separate bank account has to be opened after the date of closure of the offer.

Step 7: In case of non-acceptance, consideration has to be paid or the share certificates have to be returned within 7 days from the date of verification of the offers:

Step 8: Extinguish and physically destroy the shares/ other specified securities bought back within 7 days of the last date of completion of buy back.

Disclosure:

The Explanatory statement under section 102 as annexed to the notice calling general meeting shall disclose the particulars as specified in section 68 (3) Read with Rule 17 (1).

FORMS TO BE FILED/ROLE OF CS

Form MGT-14 – for filing of Resolutions

Form No. SH.8 - letter of offer

Form No. SH.9 filed with the Registrar of Companies and SEBI - Declaration of solvency and verified by an affidavit

Form No SH-10 - Register of bought- back Shares

Form No SH.15 - Certificate of compliance in respect of buy-back of securities

Note:

- The acceptance shall be on proportionate basis the number of shares or other specified securities offered by the shareholders is more than the total number of shares or securities to be bought back by the company.
- No offer of buy-back shall be made within a period of one year from the date of the closure of the preceding offer of buy-back.
- Where the audited accounts are more than six months old, the calculations shall be on the basis of un-audited accounts not older than six months from the date of offer document.
- The company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure.

- The company shall not withdraw the offer once it has been announced.
- The Company shall not make a further issue of the same kind of shares or other securities including allotment of new shares under section 62 or within a period of six months from completion of buy-back.

BRITANNIA CASE STUDY ON BUY BACK OF SHARES

Stock Exchanges - BSE & NSE.

Merchant Bankers- IL&FS Merchant Banking Services.

Brokers - Investmart India Ltd, JM Morgan Stanley, Kotak Securities.

THE OFFER:

- To buyback fully paid-up equity shares of face value Rs.10 each.
- Offer from the open market through the stock exchange.
- Offer to buyback a maximum of 10,00,000 shares at a price not exceeding Rs.750 per equity share, payable in cash.Maximum Buyback amount not exceeding Rs 550 million.
- Buyback Size represents 23.37% of the aggregate of the Company's paid up equity capital and free reserves.
- Maximum number of shares to be bought back i.e. 10,00,000 shares, represent 3.59% of the paid up equity capital of the Company.
- Maximum number of equity shares permitted to be bought back is 69,62,613 representing 25% of the total paid-up capital of the Company i.e. 278,50,450 equity shares of Rs. 10/- each.
- Maximum number of shares to be bought back i.e. 10,00,000 shares, representing 3.59% of the paid up equity capital of the Company.
- Maximum Buyback amount is 550 million which is 23.37% of the aggregate of the Company's paid up capital & free reserves.
- The Company has substantial reserves. The Company intends returning surplus cash to the shareholders.The Buyback is expected to enhance the earnings per share of the company in future and create long term shareholder value.
- Date of opening of Buyback - Not earlier than Sept 10, 2001
- Acceptance of Shares - Within 15 days of the relevant payout dates of the Stock Exchanges.
- Extinguishment of Shares - Within 7 days of acceptance
- Last date for Buyback - July 27, 2002 or earlier.
- The Company has appointed the brokers through whom the purchases and settlement on account of the Buyback would be made & the Company will pay the buyback consideration to the brokers on every settlement date.
- The Buyback of Shares will be made only through the order matching mechanism except "all or none" order matching system.
- The Shares of the Company will be traded in the compulsory demat mode.
- The shares shall be extinguished within 7 days from the date of acceptance of the shares

TAKEOVER

What is Takeover?

Takeover is an inorganic corporate growth device whereby one company acquires control over another company, usually by purchasing all or a majority of its shares. Takeover implies acquisition of control of a company, which is already registered, through the purchase or exchange of shares. Takeovers usually take place when shares are acquired or purchased from the shareholders of a company at a specified price to the extent of at least controlling interest in order to gain control of that company.

Ordinarily, a larger company takes over a smaller company. In a reverse takeover, a smaller company acquires control over a larger company.

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such a position;

Maximum Permissible non-Public Shareholding

It means such percentage shareholding in the target Company excluding the minimum Public Shareholding required under Securities Contracts Regulation (Rules) 1957. The SCRR requires minimum Public Shareholding in case of every listed company other than Public Sector Company to be at least 25%. In case of listed public sector company minimum Public Shareholding to be maintained at least 10%. Thus maximum permissible non public share holding is may be 75% and in case of Public Sector companies it shall be 90%.

Objects of Takeover:

a) To achieve product development through acquiring firms with compatible products and technological/manufacturing competence, which can be sold to the acquirer's existing marketing areas, dealers and end users;
b) To diversify through acquiring companies with new product lines as well as new market areas, as one of the entry strategies to reduce some of the risks inherent in stepping out of the acquirer's historical core competence;
c) To improve productivity and profitability by joint efforts of technical and other personnel of both companies as a consequence of unified control;
d) To create shareholder value and wealth by optimum utilization of the resources of both companies;
e) To increase market share;
f) To achieve market development by acquiring one or more companies in new geographical territories or segments, in which the activities of acquirer are absent or do not have a strong presence.

Kinds of Takeover:

(i) **Friendly Takeover:** Friendly takeover is with the consent of taken over company. In friendly takeover, there is an agreement between the management of two companies through negotiations and the takeover bid may be with the consent of majority or all shareholders of the target company. This kind of takeover is done through negotiations between two groups. Therefore, it is also called negotiated takeover.

(ii) **Hostile Takeover:** When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and unilaterally pursues efforts to gain control against the wishes of existing management.

Takeover Bids:

"Takeover bid" is an offer to the shareholders of a company, whose shares are not closely held, to buy their shares in the company at the offered price within the stipulated period of time. It is addressed to the shareholders with a view to acquiring sufficient number of shares to give the Offeror Company, voting control of the target company. A takeover bid is a technique, which is adopted by a company for taking over control of the management and affairs of another company by acquiring its controlling shares.

Regulation 3 – open offer threshold

Acquisition of 25% or more shares or voting rights:

An acquirer, who (along with PACs, if any) holds less than 25% shares or voting rights in a target company and agrees to acquire shares or acquires shares which along with his/PAC's existing shareholding would entitle him to exercise 25% or more shares or voting rights in a target company, will need to make a public announcement of making an open offer to acquire the shares before acquiring such additional shares.

Acquisition of more than 5% shares or voting rights in a financial year:

An acquirer who (along with PACs, if any) holds 25% or more but less than the maximum permissible non-public shareholding in a target company, can acquire additional shares in the target company as would entitle him to exercise more than 5% of the voting rights in any financial year beginning April 01, only after making a public announcement of making an open offer to acquire the shares.

Voluntary Offer – Regulation 6 & its Restrictions:

A voluntary open offer under Regulation 6, is an offer made by a person who himself or through or along with Persons acting in concert with him if any, holds 25% or more shares or voting rights in the target company, but less than the maximum permissible non-public shareholding limit, for such number of shares such that the aggregate of the shareholding of the acquirer after the offer shall not exceed the maximum permissible non public shareholding.

A voluntary offer cannot be made if the acquirer or PACs with him has acquired any shares of the target company in the 52 weeks prior to the voluntary offer without attracting the provisions of the regulations, to make a public announcement. The acquirer is prohibited from acquiring any shares during the offer period other than through the acquisitions in the open offer. The acquirer is also not entitled to acquire any shares for a period of 6 months, after completion of open offer except pursuant to another voluntary open offer.

Takeover Process:

1. Conduct a Board meeting for considering public offer.
2. Appoint Merchant Banker
3. Open Escrow Account, Escrow Limits are specified (Regulation 17)
4. Public Announcement (PA)/Detailed Public Statement (Regulation 13 & 14)
5. File Letter of Offer (LOO) with SEBI

6. To carry out the modifications recommended by SEBI
7. To dispatch LOO to Shareholders
8. Tendering Period
9. Payment of consideration

Merchant Banker:

A Merchant Banker of Category I have to be appointed. It has to be ensured that the merchant banker is not an associate of or group of acquirer or the target company.

Escrow Account: (Regulation 17)

An escrow account has to be opened and the following sum has to be deposited. The escrow amount shall be calculated in the following manner,

For consideration payable under the public offer,—

On the first 500 crores - 25 per cent; of the consideration

On the balance consideration - an additional amount equal to 10% of balance consideration.

If, an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

(2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.

(3) The escrow account referred to in sub-regulation (1) may be in the form of,—

(a) cash deposited with any scheduled commercial bank;

(b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or

Release of amount from escrow account:

The amount lying in escrow account can be released in the following cases only:

1. In case of withdrawal of offer, the entire amount can be released only after certification by the Managers to the open offer.

2. The amount deposited in special escrow account is transferred to special bank account opened with the Bankers to an issue; however the amount so transferred shall not exceed 90% of the cash deposited in the escrow account.

3. The balance 10% in the escrow account is to be released to the acquirer on the expiry of thirty days from the completion of all obligations under the open offer.

4. The entire amount to the acquirer on the expiry of thirty days from the completion of all obligations under the offer where the open offer is for exchange of shares or other secured instruments.

5. In the event of forfeiture of amount, the entire amount is distributed in the following manner:

- One third of the amount to Target Company;

- One third of the escrow account to the Investor Protection and Education Fund established under SEBI (Investor Protection and Education Fund) Regulations, 2009;

- Residual one third is to be distributed to the shareholders who have tendered their shares in the offer.

Public Announcement:

SEBI (SAST) Regulation, 2011 provides that whenever Acquirer acquires the shares or voting rights of the Target Company in excess of the limits prescribed under Regulation 3 and 4, than Acquirer is required to give a Public Announcement of an Open Offer to the shareholder of the Target Company. During the process of making the Public Announcement of an Open Offer, the Acquirer is required to give Public Announcement and publish Detailed Public Statement. The regulations have prescribed the separate timeline for Public Announcement as well as for Detailed Public Statement.

(i) Public Announcement
(ii) Detailed Public Statement

The Public Announcement shall be sent to all the stock exchanges on which the shares of the target company are listed. Further, a copy of the same shall also be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement. The public announcement should be **not later than 2 working days from the date of receipt of such information.**

Timing of Detailed Public Statement

In terms of Regulation 13(4) of SEBI (SAST) Regulations, 2011, a Detailed Public Statement shall be published by the acquirer through the Manager to the Open Offer within maximum 5 working days from the date of Public Announcement. And Publication in the following newspaper:

(a) One Hindi national language daily with wide circulation

(b) One English national language daily with wide circulation

(c) One regional national language daily with wide circulation language at a place where registered office of the company is situated.

(d) One regional language daily with wide circulation at the place of the stock exchange where the maximum volume of trading in the shares of the target company is recorded during the sixty trading days preceding the date of the public announcement.

A copy of 'Detailed Public Statement shall be sent to followings:

(a) Board

(b) All the stock exchanges in which the shares of the target company are listed

(c) The target company at its registered office

File Letter of Offer (LOO) with SEBI

Within 5 working days of publication Detailed Public Statement, the acquirer through the manager to the offer is required to file a draft letter of offer with SEBI for its observations.

The Board shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen working days of the receipt of the draft letter of offer and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer:

Provided that in the event the Board has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

Provided further that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

Offer Price:

Offer price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer.

Minimum size:

It has to be ensured that minimum of 26% of voting capital of the company is being offered subject to minimum public holding requirements.

Date of opening of offer:

The date of opening of offer has to be not later than the 12 working days from the date of receipt of recommendation from SEBI.

Period of offer:

The offer to acquire should remain open for a period of minimum 10 days.

Competitive Bid and Revision:

Ensure to revise the offer price in consultation with merchant bankers in case of competitive bid if any.

Payment of Consideration: (Regulation 21)

For the amount of consideration payable in cash, the acquirer shall open a special escrow account with a banker to an issue registered with the Board and deposit therein, such sum as would, together with cash transferred under clause (b) of sub-regulation (10) of regulation 17, make up the entire sum due and payable to the shareholders as consideration payable under the open offer, and empower the manager to the offer to operate the special escrow account on behalf of the acquirer for the purposes under these regulations.

(2) Subject to provisos to sub-regulation (11) of regulation 18, the acquirer shall complete payment of consideration whether in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

(3) Unclaimed balances, if any, lying to the credit of the special escrow account referred to in sub-regulation (1) at the end of seven years from the date of deposit thereof, shall be transferred to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

Withdrawal of open offer (Regulation 23)

23. (1) An open offer for acquiring shares once made shall not be withdrawn except under any of the following circumstances,—

(a) statutory approvals required for the open offer or for effecting the acquisitions attracting the obligation to make an open offer under these regulations having been finally refused, subject to such requirements for approval having been specifically disclosed in the detailed public statement and the letter of offer;

(b) the acquirer, being a natural person, has died;

(c) any condition stipulated in the agreement for acquisition attracting the obligation to make the open offer is not met for reasons outside the reasonable control of the acquirer, and such agreement is rescinded, subject to such conditions having been specifically disclosed in the detailed public statement and the letter of offer; or

(d) such circumstances as in the opinion of the Board, merit withdrawal.

Explanation. — For the purposes of clause (d) of sub-regulation (1), the Board shall pass a reasoned order permitting withdrawal, and such order shall be hosted by the Board on its official website.

Provided that an acquirer shall not withdraw an open offer pursuant to a public announcement made under clause (g) of sub-regulation (2) of regulation 13, even if the proposed acquisition through the preferential issue is not successful.

(2) In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two working days,—

(a) make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer; and

(b) simultaneously with the announcement, inform in writing to,—

(i) the Board;

(ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and

(iii) the target company at its registered office.

Competition Bid

Competition bid is an offer made by a person other than the acquirer who has made the first public announcement. The bid must be equal to the present and proposed shareholding of the first acquirer.

Role of CS in Takeover:

- Determination of offer price and to follow legal & procedural aspects.
- Documentation of public announcement & LOO
- Due-diligence with acquirer & target company
- Post offer compliances with authorities like SEBI & Stock Exchange
- Approval from board and shareholders from both the companies.

Case Study of ArcelorMittal:

About the company:

Mittal Steel

Based in Netherlands. Founded in 1989 as Ispat International in Sumatra, Indonesia and is the Largest producer of steel in terms of volume.

Arcelor

It is the 2nd largest producer of steel in terms of turnover & output. It was created by the merger of three companies:

Aceralia (Spain)

Arbed (Luxembourg)

Usinor (France)

The Bid…

- On Jan 27, 2006, Mittal Steel announced a hostile bid for Arcelor
- Mittal Steel offered €28.21 per Arcelor share, i.e a premium of 27% per share
- The offer was subject to three condition

  - A minimum acceptance of more than 50%
  - Mittal Steel shareholder approval and the Mittal family undertaking to vote in favor of the transaction
  - No disposal or acquisition from Arcelor was allowed during the offer
- The offer from Mittal consisted of a mixture of cash and stock

Reaction to the Bid:

The board of Arcelor stated that

- The company did not share the same strategic vision, business model or values as Mittal Steel
- Deal would have risking severe consequences on the group, shareholders, employees and its customers

Defense employed by Arcelor:

- Developed a communication plan, 'project tiger', to persuade its shareholders that the company was better off without Mittal Steel's involvement and to not sell their shares to Mittal Steel.
- Introduced a '2006-2008 plan' with the aim to 'maximize value creation for shareholders' and the board of Arcelor even promised an increase in results by 24 % and generous bonuses.
- Arcelor released a 13 billion Euros merger plan with Severstal, a Russian company. This merger would have made the new Severstal – Arcelor entity too big for Mittal steel to buy.
- Communicated that the French government was against this deal as it was concerned about the dismissal of about 28000 Arcelor employees.

Market Reaction on the possible merger of Severstal-Arcelor

- The possible merger of Severstal and Arcelor did not get positive reactions from analysts, who described a merger with Mittal Steel as a more attractive and reasonable option than merging with Severstal.
- Severstal-Arcelor would geographical have been mainly restricted to the EU Russia and Latin America whereas a merger with Mittal would contribute to a greater global presence, a larger production capacity and a greater self-sufficiency for iron ore.

Result:

Mittal agreed to pay €40.27 for each Arcelor share, almost double the amount they first offered, and a merger between the two giants occurred.

Furthermore, Arcelor had to pay Severstal a fine of €140 million, as a result in failing to close a deal after negotiations with the Russian giant

9 Biggest Takeover of all times:

Acquirer Company	Target Company	Amount (in billion $)
Vodafone AirTouch	Mannesmann	172
Verizon Communications	Verizon Wireless	130.1
America Online	Time Warner Inc	112.1
Pfizer	Warner-Lambert	111.8
Altria Group	Philip Morris International	111.3
AT&T	BellSouth	101.9
Royal Bank of Scotland Group	ABN AMRO Holding	95.6
Exxon	Mobil	85.6
Royal Dutch Shell	BG Group	81.5

Top 5 Hostile Takeovers of all time:

Acquirer Company	Target Company	Amount (in billion $)
AOL	**Time Warner**	**164**
Sanofi-Aventis	**Genzyme Corp**	**24.5**
Nasdaq OMX/ Intercontinental Exchange	**NYSE Euronext**	**13.4**
Icahn Enterprises	**Clorox**	**11.7**
Air Products & Chemicals	**Airgas**	**7.94**

Defensive Measures - Shark Repellent:

1. The **Golden Parachute** is a provision in a CEO's contract. It states that he will get a large bonus in cash or stock if the company is acquired. This makes the acquisition more expensive, and less attractive. Unfortunately, it also means that a CEO can do a terrible job of running a company, make it very attractive for someone who wants to acquire it, and receive a huge financial reward.

2. The **supermajority** is a defense that requires 70 or 80 percent of shareholders to approve of any acquisition. This makes it much more difficult for someone to conduct a takeover by buying enough stock for a controlling interest.

3. A **staggered board of directors** drags out the takeover process by preventing the entire board from being replaced at the same time. The terms are staggered, so that some members are elected every two years, while others are elected every four. Many companies that are interested in making an acquisition don't want to wait four years for the board to turn over.

4. **Dual-class stock** allows company owners to hold onto voting stock, while the company issues stock with little or no voting rights to the public. Investors can purchase stocks, but they can't have control of the company.

5. One of the more common defenses is the **poison pill**. A poison pill can take many forms, but it basically refers to anything the target company does to make itself less valuable or less desirable as an acquisition.

6. The **people pill** - High-level managers and other employees threaten that they will all leave the company if it is acquired. This only works if the employees themselves are highly valuable and vital to the company's success.

7. The **crown jewels defense** - Sometimes a specific aspect of a company is particularly valuable. For example, a telecommunications company might have a highly-regarded research and development (R&D) division. This division is the company's "crown jewels." It might respond to a hostile bid by selling off the R&D division to another company, or spinning it off into a separate corporation.

JOINT VENTURE

A Joint Venture (JV) is a cooperative enterprises entered into by two or more business entities for the purpose of a specific project or other business activity.

Forming a Joint Venture

All that's needed to form a joint venture is a written agreement between the parties.

The agreement should spell out the details of the purpose, how the two (or more) parties share in profits and losses, and how the parties share in making decisions about the joint venture. A joint venture, even if it's between two small businesses, should have at minimum this sort of written agreement.

How a Joint Venture Pays Taxes

When a joint venture is formed, the most common structure is to set up a separate business entity. Then the parties each own a specific percentage of the entity. If the joint venture is a corporation, for example, and two businesses have equal shares in the business, they structure the company so each partner entity has an equal number of shares of company stock and equal management and board of directors members.

The joint venture isn't recognized as a taxing entity by the IRS. So the business form that the joint venture company takes determines how taxes are paid.

If the joint venture is a separate business entity, it pays income taxes and all other taxes like that business form. For example, if the new joint venture company is an LLC, it pays taxes as an LLC.

Because the two parties have decided on how to split profits and losses, they will use that split to decide how each party receives profits, handles losses, and contributes to paying any taxes that are due.

If the joint venture is simply a contractual relationship with an agreement between two independent companies, the terms of the agreement will determine how the joint venture is taxed and how the tax is apportioned between the two entities.

Joint Venture vis-a-vis Partnership

A joint venture may have some similarity to a partnership, but it's not. A partnership is a single business entity formed by two or more people. A joint venture joins several different business entities (each of which may be any type of legal entity) into a new entity, which may or may not be a partnership. Partnership income taxes are paid by the owners individually.

Why Joint Venture?

With a joint venture, they share the risk with each other as well as the profits of the business. All the properties of the company or the entity created will be owned jointly and when the partnership ends or is dissolved, the properties will be divided equally unless otherwise stated of course in a legal agreement.

Besides risk sharing, many people and even companies opt for a joint venture because of the benefits that they give to people. One of which is access and knowledge.

Truly, joint ventures provide unending benefits to anyone but care must also be done when choosing a partner. The success of a joint venture after all depends on how compatible the partners are.

A joint venture differs from a merger in the sense that there is no transfer of ownership in the deal.

EXAMPLES

1. Tata Motors, Jayem Auto to Develop Special Performance Vehicles

Tata Motors has said it has formed a 50:50 joint venture with Coimbatore-based Jayem Automotives for developing special performance vehicles. The JV firm JT Special Vehicles will develop a range of performance vehicles in a phased manner at a dedicated line, currently being explored at Coimbatore.

We are delighted to partner with Jayem, a brand known for its capabilities in concept creation and prototyping of special performance vehicles," Tata Motors CEO and Managing Director Guenter Butschek said in a statement.

2. 17 states have agreed to form joint ventures with Railways: Suresh Prabhu

Seventeen states have agreed to form joint ventures with the Railways to fast-track infrastructure projects, the Lok Sabha was informed today. Railways Minister Suresh Prabhu said by entering into a joint venture, the states will have ownership over projects and ensure that the infrastructure develops at a faster pace. Responding to supplementaries during Question Hour, he said a new scheme will be launched soon, under which people with waitlisted tickets will be able to get berths in other trains going to the same destination, in case it is not confirmed on the train they had originally opted for. Passengers with ordinary tickets will be able to travel on trains such as Rajdhani if their waitlisted ticket is not confirmed on other trains. He said once approved by the Parliament Secretariat, MPs can book and cancel their tickets online using a unique identity.

Reduction of Capital

Reduction of Capital was notified on 07th,December,2016-Further MCA has notified NCLT(Procedure for Reduction of Share Capital) Rules,2016 on 15th December,2016.

Sec.66 of the Companies Act, 2013 defines Reduction of Capital.

Reduction of capital means reduction of issued, subscribed and paid up capital of the Company. A company may want to reduce its share capital in order to eliminate losses ,return surplus capital to share holders, assist buyback or redemption of shares or distribute assets to shareholders. Generally eliminating losses is the main reason why a company reduces its share capital, a reserve arising from a reduction of capital can increase or create distributable reserves and reduce or eliminate losses.

Further Buyback of shares and redemption of Preference shares are also reduction of Share Capital but governed by specific provisions prescribed under the act.Such reductions in the Form of Buyback and Reduction do not require sanction/approval from tribunal.

Procedure/Role of C.S

1. Ensure that its articles of association contain a provision authorizing reduction of share capital. If there is no such provision then the articles have to be first altered in accordance with the provisions of Section 14 of the Companies Act, 2013.

2. Convene and hold a Board meeting to –

a. approve the scheme of reduction of share capital by a resolution;

b. fix time, date and venue for holding a general meeting of the company for passing a special resolution for reduction of share capital subject to confirmation by National Company Law Tribunal as per provisions of section 66 of the Act and for altering the capital clause in the memorandum of association of the company, as a consequence of reduction of share capital of the company;

c. Approve notice, agenda and explanatory statement to be annexed to the notice of the general meeting as per Section 102 of the Act; and

d. Authorize the company secretary or some other competent officer to issue notice of the general meeting as approved by the Board.

3. Soon after the conclusion of the Board meeting, send to the stock exchanges, where the securities of the company are listed, particulars of the proposed reduction in the share capital of the company as per the requirement of Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

4. Issue notice of the general meeting to all members, directors and auditors of the company. Also copies of the notice of the general meeting to the stock exchanges where the securities of the company are listed.

5. Hold the general meeting and have the special resolution(s) passed.

6. Forward a copy of the proceedings of the general meeting to the concerned stock exchanges as per the Listing Agreement.

7. File MGT-14 along with a certified true copy of the special resolution(s), copy of explanatory statement under Section 102 and copy of altered Memorandum of Association and Articles of Association with the ROC within thirty days of the passing of the resolutions along with the prescribed filing fee for its registration under Section 117 of the Act.

8. Apply to National Company Law Tribunal for confirmation of the capital reduction by way of a petition in Form No.RSC-1 of the NCLT (Procedure for Reduction of Share Capital of Company) Rules, 2016 (notified on 15th December, 2016).

9. A petition to confirm a reduction of share capital shall be accompanied along with following documents and a fee of Rs. 5,000:

- The list of creditors duly certified by the managing director or in his absence by the two directors, as true and correct, which is made on a date not earlier than fifteen days prior to the date of filing of an application showing the details of the creditors of the company, class wise indicating their names, addresses and amount owned to him.
- A certificate from the auditor of the company to the effect that the list of creditors referred in above clause is true and fair.
- A certificate from the auditor and director of the company that the company has not defaulting in repayment of deposits and interest thereon.
- A certificate from the Statutory Auditor to the effect that all the accounting treatment has been in conformity to the Accounting Statndards as prescribed under section 133 of the Companies Act.
- A certified true copy of the memorandum and articles of association of the company.
- A certified true copy of the notice of the general meeting together with the explanatory statement annexed to the notice, at which the special resolution had been passed.
- A certified true copy of the special resolution authorizing the reduction of share capital.
- A certified true copy of the latest audited balance sheet and profit and loss account of the company together with all the schedules and other papers attached/annexed thereto.
- A certified true copy of the minutes of proceedings at the general meeting at which the special resolution for reduction of share capital was passed.
- An affidavit verifying petition.
- Memorandum of Appearance with copy of board resolution.
- Bank Draft of Rs. 5,000 evidencing the payment of fees.
- Other requisite attachment.

10. National Company Law Tribunal will give notice to Central Government, Registrar of Companies and SEBI within 15 days from filing of petition.

11. The Notice to the creditors (as per list submitted to NCLT) in the Form RSC-3 shall be sent to each creditors within the seven days from the direction of the NCLT or such other period as may be prescribed by the NCLT for their objections, if any and the creditors will send their representations and objections within the three months.

12. Publish the notice in Form RSC-4 within the seven days from the directions of NCLT. Notice shall be published in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

13. The Company or the person who was directed to issue the notice shall file an affidavit in the Form RSC-5 confirming the despatch and publication of the Notice.

Here, it may be noted that all concerned parties will make their representations within the three months from the date of receipt of notice and where no representations has been made from the side of Central Government, Registrar of Companies, SEBI and Creditors, it shall be presumed that they have no objections for the said reduction.

14. The Company shall submit the NCLT, within the seven days of expiry of period up to which representations has been sought, the representations and objections so received and company reply on it.

15. At the hearing of petition the NCLT may, if it thinks fit gives such directions as may deem fit and issue its order.

16. File the order of the NCLT with Registrar of Companies in Form No. INC-28 within the 30 days from the date of Order.

17. Collect the existing share certificate and destroy them and issue fresh share certificates (in case of shares issued in physical form) or otherwise contact with RTA and Share Transfer Agent.

18. Take all other steps in accordance with the scheme of reduction of share capital of the company as approved by the Court, e.g. to pay-up share capital which is in excess of the wants of the company.

19. The company must send to the concerned stock exchanges in case of listed company three copies of all the notices, circulars etc. issued and/or published in newspapers by the company in connection with the reduction of the share capital of the company as per the Listing Agreements signed with the stock exchanges.

Reasons of Capital Reduction

1.To increase or to create distributable reserves to enable future dividends to be paid to the shareholders.

2. to return surplus capital to the shareholders.

3. To facllitate a share buyback or redemption of shares

4. As a part of scheme of arrangement.

Case Study

1. Tamil Nadu Newsprint and Papers Ltd v. Register of Companies: In this case the Madras high court allowed the Company to reduce its capital which was found to be in excess of its need by permitting it to pay the same partly in cash and partly in the form of non-convertible debentures.

2. AS Tallink Grupp, an Estonian shipping company that operates in the Baltic Sea and provides high-quality mini-cruises to its customers, reported that it would reduce its share capital on June 14, 2016. The company decided that it would move forward with a reduction of its share capital through the reduction of the book value of its shares. The €40 million capital reduction is to be paid out to the company's shareholdersin,December2016.

Fast Track Mergers

Introduction

The Companies Act, 2013 has introduced the concept of fast track merger for Small Companies and merger of Holding companies with its wholly owned Subsidiary Companies. This is the first significant change to merger and amalgamations regime over the last six decades which has sub-served the need of simplification of procedure.

Section 233 of Companies Act, 2013 read with Rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 deals with the procedure of Fast Track Merger.

Procedure

1. Issue of notice of the proposed scheme needs to be sent to ROC,OL,persons affected by the scheme in order to entertain the objections or suggestions raised by them.The objections can be raised with in 30 days from issue of notice.
2. Declaration of Solvency shall be filed by the companies involved in the merger separately in the form CAA-10 with the ROC.
3. A mandatory 21 days clear notice for holding general meeting must be sent to the members or class of members and creditors or class or creditors accompanied by –a statement disclosing the details of compromise / arrangement,declaration of solvency,and a copy of the scheme.
4. The scheme can be approved in the meeting by 90% of each class of shareholders (in number) and creditors(in value). It does not require majority in number, which means if 1 shareholder is holding 90% shares even he can approve the scheme. So there is a confusion whether this is 90% in number or not.
5. Thereafter the Transferee Company a copy of the scheme as agreed to by the members/Creditors and a report of the results of each of the meetings within 7 days of the conclusion of the meeting in Form CAA.11 to ROC,OL and CG(Regional Director)through form GNL1
6. Where no objection or suggestion is received to the scheme from the Registrar of Companies and Official Liquidator or where the objection or suggestion is deemed to be not sustainable and Central Government (Regional Director) is of the opinion that the scheme is in the public interest or in the interest of creditors, the RD shall issue a confirmation order in Form no.CAA-12 of such scheme of merger or amalgamation.wherein If the Central Government (Regional Director) after receiving the objections or suggestions or for any reason, is of the opinion that the scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of 60 (sixty) days of the receipt of the scheme under sub-section (2) stating its objections in Form CAA- 13.
7. The confirmation order of the scheme issued by the Central Government shall be communicated to the persons concerned and it shall be filed by the Transferee Company with Registrar of Companies having jurisdiction, in Form INC-28 within 30 days. The Registrar shall register the same and issue a confirmation thereof to the Companies and such confirmation shall be communicated to Registrars where Transferor Company or Companies were situated.
8. The registration of scheme shall deemed to have effect of dissolution of Company without the process of winding up.
9. Transferee Company shall file an application with Registrar along with registered Scheme for revision in authorised capital. By filing the form SH-7.

Conclusion

Corporate restructuring allows the company to continue to operate in some way. The management of the company tries all the possible measures to keep the entity going on. Even when the worst happens and the company is forced to pieces because of the financial troubles, the hope remains that the divested pieces can function good enough for a buyer to acquire the diminished company and take it back to profitability.