

# Listing Status of Demerged Entities under Indian Corporate and Securities Law: Statutory Interpretation, Regulatory Practice, and Judicial Guidance

Corporate demergers involving listed companies frequently raise the question whether the resulting or transferee entity acquires listed status by operation of law. Despite recurring misconceptions, Indian corporate and securities jurisprudence has consistently maintained that listing is neither automatic nor inheritable. This article analyses the statutory framework under the Companies Act, 2013, the Securities and Exchange Board of India (SEBI) Scheme of Arrangement regulations, and judicial and regulatory precedents to establish that listing arises only upon fulfilment of specific legal and regulatory conditions. Through a structured examination of two practical scenarios — demerger from a listed company and merger of a demerged undertaking into an unlisted company — the article clarifies the settled legal position and provides guidance for structuring compliant schemes of arrangement.



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## INTRODUCTION

**D**emerger is a widely adopted restructuring mechanism in India, particularly among listed companies seeking to unlock shareholder value, segregate business verticals, or realign capital structures. However, while demergers are well-recognised under corporate law, their interaction with securities law — especially in relation to **listing status** — often gives rise to interpretational disputes.

A recurring assumption in corporate practice is that when a business is carved out of a listed company, the resulting entity must necessarily be listed. This assumption is legally flawed. Indian law draws a **clear and deliberate distinction between a business undertaking and listed securities**. Listing does not attach to an undertaking; it attaches only to equity shares admitted to trading on a recognised stock exchange.

This article critically examines this distinction by analyzing:

- Section 232 of the Companies Act, 2013;
- SEBI's Scheme of Arrangement framework;
- Stock Exchange practices; and
- Judicial and Regulatory precedents.

## STATUTORY FRAMEWORK GOVERNING DEMERGERS

### a. Sections 230-232 of the Companies Act, 2013

Schemes of arrangement, including mergers and demergers, are governed by Sections 230 to 232 of the Companies Act, 2013. These provisions replaced Sections 391-394 of the Companies Act, 1956, while substantially retaining their conceptual framework.

A demerger, though not expressly defined, is statutorily recognised under Section 232 through the mechanism of transfer of undertakings pursuant to a court-approved (now NCLT-approved) scheme.

### b. Section 232(3)(h): The Statutory Anchor

Section 232(3)(h) mandates that every scheme shall clearly state:

“the extent to which the share capital of the transferor company is proposed to be reduced or extinguished or modified and whether the transferee company is proposed to be listed or not.”

This provision is pivotal. It:

- Recognizes that a transferee or resulting company **may remain unlisted**, and
- Requires an **express declaration** regarding listing status.

The statutory language itself negates any presumption of automatic listing merely because the transferor company is listed.

## CONCEPTUAL DISTINCTION: BUSINESS VS. LISTING

Securities are listed under the SEBI Act, 1992 and the Securities Contracts (Regulation) Act, 1956 (SCRA), on the stock exchange and not businesses or undertakings.

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Section 2(h) of the SCRA defines “securities” to include shares, debentures, and other marketable instruments. An undertaking or business division does not fall within this definition.

### 1. Listing as a Regulatory Event

Listing is a regulatory event that occurs only when:

- a. Equity shares are issued,
- b. Admitted to trading, and
- c. Approved by a recognised stock exchange.

The Supreme Court has repeatedly emphasized that listing is a privilege regulated by statute, not a natural consequence of corporate restructuring.

## SCENARIO I: DEMERGER OF AN UNDERTAKING FROM A LISTED COMPANY

### 1. Default Legal Position

When an undertaking is demerged from a listed company, the **default rule** is that the resulting company remains **unlisted**, unless specific conditions are fulfilled.

There is **no automatic statutory listing** merely because the transferor company is listed.

This position flows directly from:

- a. Section 232(3)(h) of the Companies Act, 2013; and
- b. SEBI’s Scheme of Arrangement framework.

Listing is an independent legal event requiring express statutory and regulatory compliance. It does not follow the business, the group, or the origin of the undertaking.

While not a statutory requirement, promoter continuity has emerged as a settled regulatory expectation.

### 6. Stock Exchange In-Principle Approval

Final listing occurs only upon:

- In-principle approval from BSE and/or NSE, and
- Admission of equity shares to trading.

### 3. Issuance of Shares to Public Shareholders (Mirror Shareholding)

A crucial requirement is that Public shareholders of the listed transferor company receive shares in the resulting company.

This ensures continuity of public participation and prevents misuse of schemes for backdoor listings.

### 4. Minimum Public Shareholding (MPS)

The resulting company must meet the minimum public shareholding requirement of **25%**, as mandated under Rule 19A of the Securities Contracts (Regulation) Rules, 1957.

Failure to meet MPS disqualifies the entity from listing.

### 5. Continuity of Promoter Control

SEBI scrutinizes whether:

- There is a change in promoter control, and
- The scheme is being used to circumvent IPO norms.

## CONDITIONS FOR LISTING OF THE RESULTING COMPANY WITHOUT AN IPO

A resulting company may be listed without an IPO only if **all** of the following conditions are cumulatively satisfied.

### 1. NCLT Approval of the Scheme

The scheme must be sanctioned by the NCLT under Sections 230-232. Listing consequences flow only upon the scheme becoming effective.

### 2. Compliance with SEBI Circulars on Schemes of Arrangement

SEBI regulates schemes involving listed entities through its circular dated 10 March 2017 (as amended and consolidated into the SEBI Master Circular).

These circulars require:

- a. Prior stock exchange approval,
- b. Independent valuation,
- c. Fairness opinions, and
- d. Detailed disclosures to shareholders.

## SITUATIONS WHERE THE DEMERGED ENTITY REMAINS UNLISTED

### 1. Demerger into a Wholly-Owned Subsidiary

Where the undertaking is transferred to a wholly-owned subsidiary and no shares are issued to public shareholders, the resulting entity remains unlisted.

This structure is commonly used for internal reorganizations.

### 2. Private Holding Structures

If promoters or a holding company retain complete ownership and no public float is created, listing does not arise.

### 3. Scheme Silent on Listing

If the scheme:

- Does not seek stock exchange approval, and
- Does not provide for public share issuance,

the resulting company remains unlisted, regardless of the listed status of the transferor.

## IMPACT ON THE ORIGINAL LISTED COMPANY

A demerger does not affect the listing status of the original company unless:

- It is merged into another entity, or
- It is dissolved without winding up.

This principle was affirmed under the Companies Act, 1956 and continues under the Companies Act, 2013.

## SCENARIO II: DEMERGED UNDERTAKING MERGED INTO AN UNLISTED COMPANY

### 1. Core Legal Position

Where a demerged undertaking of a listed company is merged into an unlisted company, the transferee company **remains unlisted**.

There is no automatic listing, even though the business originates from a listed entity.

### 2. Statutory Recognition under Section 232

Section 232(3)(h) expressly contemplates that transferee companies may remain unlisted. This statutory recognition is decisive.

### 3. SEBI's Settled Position

SEBI has consistently held that:

- Listing status is not transferable,
- Undertakings cannot be listed,
- Only equity shares admitted to trading acquire listed status.

### 4. Practical Structure

Typical structure:

- Company A (Listed).
- Company B (Unlisted).
- Business demerged from Company A and merged into Company B.

Even if Company B issues shares to shareholders of Company A, Company B remains unlisted unless a listing process is separately undertaken.

## SUBSEQUENT LISTING OF THE UNLISTED TRANSFEE COMPANY

### 1. Listing through IPO

The unlisted company may subsequently undertake an IPO under the SEBI ICDR Regulations, subject to eligibility and disclosure norms.

### 2. Listing through Scheme (Exceptional)

Listing through a scheme is possible only if:

- Public shareholders are allotted shares,

- MPS norms are satisfied, and
- Stock exchange approval is obtained.

This intention must be expressly stated in the scheme.

## JUDICIAL AND REGULATORY PRECEDENTS

### 1. Piramal Pharma Limited – SEBI Adjudication Order

SEBI held that:

- Listing obligations under SEBI LODR apply only upon actual listing,
- Origin of business from a listed company is irrelevant.

This decisively reinforces the principle that listing is an event, not an inheritance.

### 2. Case Law: Miheer H. Mafatlal vs. Mafatlal Industries Ltd.

The Supreme Court held that courts sanction schemes only if they comply with statutory requirements and public interest.

This principle underpins SEBI's insistence on regulatory compliance for listing.

### 3. SEBI vs. Sterlite Industries (India) Ltd.

The Court recognised SEBI's wide regulatory powers to protect market integrity and prevent circumvention of listing norms.

## SUMMARY TABLES

### Scenario I

Structure	Listing Status
Mirror shareholding to public	Listed
Wholly-owned subsidiary	Unlisted
Asset transfer only	Unlisted

### Scenario II

Situation	Listing Status
Demerged unit merged into unlisted company	Unlisted
Separate IPO	Listed

## ADDITIONAL AND COMPLEX SCENARIOS AFFECTING LISTING STATUS IN DEMERGERS

While the principal scenarios discussed above cover the most common restructuring structures, corporate practice has evolved several complex variants of demergers that raise nuanced questions on listing status. These scenarios further reinforce the settled principle that **listing is neither automatic nor transferable**, but arises only through express statutory and regulatory compliance.

**SCENARIO III: REVERSE DEMERGER / DEMERGER INTO AN UNLISTED HOLDING COMPANY****1. Structure**

- Company A – Listed subsidiary.
- Company B – Unlisted holding company.
- An undertaking is demerged from Company A and transferred to Company B.

**2. Legal Position**

The unlisted holding company **does not acquire listed status** merely because:

- The transferor subsidiary is listed, or
- The business originates from a listed entity.

Section 232(3)(h) of the Companies Act, 2013 applies equally, requiring an express declaration regarding listing status of the transferee company.

**3. Regulatory Practice**

SEBI and stock exchanges treat this structure as a **pure transfer of undertaking**, not a listing event. Stock exchange approvals for such schemes routinely include a clarification that the holding company shall continue to remain unlisted.

**4. Standard NCLT Clause**

“The Transferee Company being an unlisted company shall continue to remain unlisted upon the Scheme becoming effective.”

**5. Key Principle**

**Listing does not travel vertically within a corporate group, whether upward or downward.**

This position aligns with SEBI’s consistent stance that **listing is entity-specific and security-specific**, not group-based.

**SCENARIO IV: DEMERGER RESULTING IN CHANGE OF PROMOTER CONTROL****1. Structure**

- Demerger from a listed company.
- Promoter group or control of the resulting company changes post-scheme.

**2. Legal Position**

A resulting company **may still be listed**, provided all statutory conditions are met. However, SEBI applies **enhanced regulatory scrutiny** where:

- Promoter continuity is disrupted, or
- Control passes to a new promoter group.

**3. SEBI’s Regulatory Concern**

SEBI examines whether the scheme is being used as a:

- **Backdoor listing**, or
- Mechanism to introduce new promoters without IPO-level disclosures.

**4. Possible Regulatory Outcomes**

SEBI may:

- Require IPO-equivalent disclosures,
- Impose lock-in on promoters,
- Direct modifications to the scheme, or
- Withhold listing approval.

**5. Judicial Support**

The Supreme Court has upheld SEBI’s authority to prevent circumvention of securities regulations in restructuring exercises.

**6. Practical Insight**

While promoter continuity is not a statutory requirement, it has evolved into a **de facto regulatory benchmark** in scheme-based listings.

**SCENARIO V: CROSS-BORDER DEMERGER INVOLVING A LISTED INDIAN COMPANY****1. Structure**

- Indian listed company.
- Undertaking demerged into a foreign company (or vice versa).

**2. Legal Position**

The foreign resulting entity:

- **Cannot be listed on Indian stock exchanges** by operation of a demerger,
- Must comply independently with Indian securities law for any listing.

**3. Additional Laws Triggered**

- FEMA (Cross Border Merger) Regulations, 2018.
- RBI approvals (automatic or otherwise).

SEBI has **no jurisdiction to automatically list foreign equity securities** pursuant to a scheme.

**4. Outcome**

- Indian transferor company continues to remain listed, if applicable.
- Foreign transferee company remains unlisted in India.

**5. Key Principle**

**Listing jurisdiction is territorial; origin of business is irrelevant.**

**SCENARIO VI: DEMERGER OF AN UNDERTAKING INTO AN LLP****1. Structure**

- Listed company.
- Undertaking demerged into a Limited Liability Partnership (LLP).

**2. Legal Position**

An LLP:

- Has no share capital,
- Issues no “securities” within the meaning of the SCRA, 1956.

Accordingly, **listing is legally impossible**.

### 3. Statutory Basis

- LLP Act, 2008
- Section 2(h), Securities Contracts (Regulation) Act, 1956

### 4. NCLT Practice

NCLT routinely approves such schemes with an express clarification that no listing consequences arise.

### 5. Standard Clause

“The Transferee LLP shall not be listed, and no securities are proposed to be issued pursuant to this Scheme.”

### 6. Doctrinal Significance

This scenario underscores that **listing is inseparable from equity share capital**.

## SCENARIO VII: DEMERGER FOLLOWED BY ISSUE OF CONVERTIBLE INSTRUMENTS

### 1. Structure

- Resulting company issues CCDs / CCPS instead of equity.
- Equity conversion deferred to a later date.

### 2. Legal Position

Until conversion:

- The company remains **unlisted**,
- SEBI LODR Regulations do not apply.

Convertible instruments, though securities, are **not equity shares admitted to trading**.

### 3. SEBI Position

Listing can occur **only after actual conversion into equity shares** and compliance with MPS norms.

### 4. Regulatory Risk

Such structures are closely scrutinized where they appear to:

- Delay public float,
- Postpone listing obligations.

## SCENARIO VIII: DEMERGER WHERE MINIMUM PUBLIC SHAREHOLDING FALLS BELOW 25%

### 1. Structure

- Shares issued to public shareholders.
- Public shareholding falls below 25% post-scheme.

### 2. Legal Position

The resulting company:

- Cannot be listed immediately, or
- May receive conditional listing approval subject to time-bound compliance.

### 3. Stock Exchange Practice

Exchanges may require:

- Offer for Sale (OFS),
- Promoter dilution, or
- Other corrective measures.

### 4. Relevant Law

Rule 19A, Securities Contracts (Regulation) Rules, 1957.

### 5. Practical Importance

Many otherwise valid schemes face delays **solely due to MPS non-compliance**, making this a critical structuring consideration.

## CONSOLIDATED PRINCIPLE EMERGING FROM ADDITIONAL SCENARIOS

Across all structures — reverse demergers, cross-border transactions, LLP transfers, promoter changes, or hybrid instruments — the governing rule remains consistent:

**Listing is an independent legal event requiring express statutory and regulatory compliance. It does not follow the business, the group, or the origin of the undertaking.**

## CONCLUSION

Indian corporate and securities law adopts a clear, consistent, and purposive approach where listing is not inheritable through restructuring. Section 232(3)(h) of the Companies Act, 2013, coupled with SEBI's regulatory framework, ensures that listing occurs only through transparent, regulator-approved processes.

For practitioners, promoters, and regulators alike, the lesson is unequivocal — businesses may move through schemes, but listing follows the securities, not the undertaking.

## REFERENCES:

- Clariant International Ltd. v. SEBI*, (2004) 8 SCC 524. <https://indiankanoon.org/doc/1264020/>
- Hindustan Lever Employees' Union v. Hindustan Lever Ltd.*, (1995) 83 Comp Cas 30 (SC). <https://indiankanoon.org/doc/157595362/>
- Miheer H. Mafatlal v. Mafatlal Industries Ltd.*, (1997) 1 SCC 579. <https://indiankanoon.org/doc/1687638/>
- Piramal Pharma Limited, SEBI Adjudication Order, 2021*. [https://www.sebi.gov.in/enforcement/orders/aug-2023/adjudication-order-in-respect-of-piramal-pharma-ltd-in-the-matter-of-piramal-enterprises-ltd-\\_76168.html](https://www.sebi.gov.in/enforcement/orders/aug-2023/adjudication-order-in-respect-of-piramal-pharma-ltd-in-the-matter-of-piramal-enterprises-ltd-_76168.html)
- SEBI Circular on Schemes of Arrangement dated 10 March 2017 (as amended)*. <https://www.aibi.org.in/Circulars/SEBI%20CIR%20dated%20March%2010,%202017-Schemes%20of%20Arrangement%20by%20Listed%20Entities.pdf>
- SEBI v. Sterlite Industries (India) Ltd.*, (2003) 113 Comp Cas 273 (SC). <https://indiankanoon.org/doc/214058/>

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