



**All About Mergers, Demergers
& Amalgamations at NCLT
including recent landmark
judgements**



Disclaimer

The views expressed in this presentation are entirely personal. References made to any Government departments, Authorities, Benches of Hon'ble NCLT and Hon'ble NCLAT are for knowledge sharing and research purposes only.

Effect of Transition of Scheme matters from High Court to NCLT

- Practising Professionals other than Advocates got opportunity to pursue career at NCLT
- Precept for transferred matter for listing
- No dispensation from Dec'2016 to Jan'2019 from shareholder meetings
- First Dispensation on 11th March, 2019 in the matter of Malti Securities Private Limited
- NCLAT judgment on dispensation of meetings in the matter of DLF Limited
- Amalgamation cannot be stopped, if nothing contrary to law is established. (in Idea Cellular Limited, AHM Bench)



MERGERS &
AMALGAMATIONS
U/S 230-232

Stages of the Amalgamation/Demerger process

Stage 1: Prerequisite to decide whether the case is fit for Amalgamation and/or Demerger

Stage 2: Estimation of Cost involved in the process

Stage 3: Arranging for Prerequisites required for filing Application with NCLT

Stage 4: Filing of First Motion Application with NCLT

Stage 5: Course of action after filing of First Motion Application with NCLT

Stage 6: Course of action after passing of First Motion Order by NCLT

Stage 7: Filing of Petition with NCLT (2nd Motion)

Stage 8: Hearing of Petition

Stage 9: Course of action after sanction of Scheme

Stage 1: Prerequisite to decide whether the case is fit for Amalgamation and/or Demerger

- Understanding the necessity and objective of Merger/Demerger.
- Financial Statements and Annual Return of the Companies.
- Details of immovable assets, if any.
- Details of cross holding and Reduction of share capital, if any.
- Income Tax Provisions w.r.t. Demergers to be considered.
- Swap/exchange ratio.
- Goodwill/Capital Reserve.
- Details of pending litigation between the Company and shareholders and/or Company and its Creditors.
- Qualifications, if any in the Auditor's Report.
- Jurisdiction of the Company (across the states).
- Statutory Compliances and records.
- Sectoral Regulators.
- Provisional Financial Statements.
- Defining “**UNDERTAKING**” and Statement of Assets and Liabilities in case of Demerger.

Stage 2: Estimation of Cost involved in the process

COST AND FEES

- Statutory fees (Bharat Kosh)
- Fees for Filing First Motion Application with NCLT.
- Auditors fees
- Advertisement Cost
- Professional Fees for Valuation Report
- Chairman & Scrutinizer fees (in case meetings are held)
- Payment of cost to Regional Director and Official Liquidator, if Ordered
- Stamp Duty on transfer of Assets of the Company
- Other incidental expenses like printing, stationery etc.
- Professional fees

Cost calculation sheet

| Sr. No. | Particulars | Amount in Rs. |
|---------|--|--------------------------|
| 1. | Professional fees | XXXXXXX |
| 2. | Professional fees to Registered Valuer | XXXXXXX |
| 3. | First Motion Application to NCLT | Rs. 5000 |
| 4. | Auditor's fees (for Transferor Companies only) | Average of last 5 years |
| 5. | Advertisement Cost | Rs. 25,000 to Rs. 40,000 |
| 6. | Payment to RD as per the direction of NCLT | If Ordered |
| 7. | Payment to Official Liquidator as per the direction of NCLT | If Ordered |
| 8. | Stamp Duty | XXXX |
| 9. | Chairman & Scrutinizer fees (in case meetings are held) | As per NCLT direction |
| 10. | Other incidental charges (printing, notary, franking, stationery, conveyance etc.) | XXXX |

Stage 3: Prerequisites for filing an application to NCLT First Motion

- Preparing Checklist.
- Drafting Scheme of Amalgamation/Demerger.
- Conducting Board Meetings.
- Appointment of the Registered Valuer for finalising the swap ratio.
- Consent of Shareholders & Creditors, if can be made available.
- Auditor's Certificate for accounting treatment u/s 133. (UDIN)
- Authority to Professional to file First Motion Application and appear before NCLT.

Stage 4: Filing of Application with NCLT

- Preparation and submission of Application to NCLT
- Joint /Separate Application in Form NCLT-1.
- Synopsis in Paragraph Form
- List of date and events (Separately)
- NCLT checklist.
- Notice of Admission in Form NCLT-2.
- Board Resolutions.
- Scheme of Amalgamation / Arrangement
- Latest Audited financial Statements.
- Provisional Financial Statements.
- NCLT President have powers to consolidate applications of different jurisdiction

[2. Stargaze-Principal Bench Order.pdf](#)

Stage 4: Filing of Application with NCLT

- Valuation Report for Swap Ratio (need not be attached to Application)
- List of Directors, shareholders and creditors.
- Consent on affidavit from Shareholders and Creditors.
- Updated Memorandum and Articles of Association.
- Certificate of Accounting Treatment issued by Auditors.
- Single side printing on Standard Legal paper and restriction upto 200 pages per volume.
- Margin: Top/Bottom -4 cm, Right – 2.5 cm & left 5 cm and Double line Spacing
- Signature/Initials on each and every page.
- 3 copies in paper book form (Brown Files). One Original and 2 photo copies duly stitched in green thread.
- Affidavit verifying Application & Memorandum of Appearance
- Covering letter with office copy
- Bharatkosh payment receipt & E-filing receipt.

Stage 5: Course of action after filing application with NCLT

- Follow up in the Registry for removal of Office objection, if any & the numbering of the application accompanied with details of Court room allocation after about two working days.
- Check the Cause List of all the courts on daily basis for the date of First hearing.
- Preparation for hearing.
 - Proper Attire - Blazer (Preferably Black or dark blue) and Tie for Men & Blazer with any sober attire for Women.
 - Fact Sheet/Summary of the case to be kept handy with page numbers.
 - Preparation of Minutes of Order. [(CIN, PAN and ward number of Income Tax, Appointed Date, Business of the Company, Rationale etc.)(Contents of Minutes differ from courtroom to courtroom)]
 - Obtaining the details of Auditor appointed by the NCLT.
 - Soft Copy of Minutes of Order and Application.
 - Extra Copy of Application.
 - Follow up for the order in case hearing is completed and matter is Reserved for Order.
 - Once Order is pronounced, make application for CTC of Order.
 - Preparation and Submission of Documents w.r.t. RD's Query Letter.

Stage 6: Course of action after admission of Application in case of dispensation of meetings of Shareholders/creditors

- Arranging documents and information from the Company as per the Auditor's Checklist.
- Service of Notice to the Sectoral regulators
 - Registrar of Companies
 - Regional Director
 - Official Liquidator
 - Income Tax for all Companies separately by hand delivery quoting PAN
 - Other Regulators wherever applicable.
- Filing of affidavit of Service to NCLT containing acknowledgements of service as directed.
- Inspection of documents and conducting of Audit by Auditors appointed by the NCLT.

.....Contd.

Stage 6: Course of action where meetings are held

- Arranging documents and information from the Company as per the Auditor's Checklist.
- Service of Notice to the sectoral regulators
 - Registrar of Companies
 - Regional Director
 - Official Liquidator
 - Income Tax for all Companies separately by hand delivery quoting PAN
 - Other Regulators wherever applicable.
- Issue of Notice to Shareholders/creditors atleast 30 days before the date of meeting (in case dispensation is not granted by the NCLT).
- Advertisement of Notice of Meetings in at least one English newspaper and in at least one vernacular newspaper as directed by NCLT in its Order.
- File the Affidavit of Service to NCLT.
- Convening the meeting(s).
- Filing of Chairman's Report with NCLT on Affidavit in case of meeting of Shareholders/Creditors along with Scrutinizer's Report.
- Inspection of documents and conducting of Audit by Auditors appointed by the NCLT.

Stage 7: Filing of Petition with NCLT

Second Motion

- Preparation and submission of petition to NCLT.
 - Synopsis in Paragraph Form.
 - List of date and events (separately).
 - Updated Memorandum and Articles of Association.
 - Latest Audited Financial Statements.
 - Board Resolution(s).
 - Scheme of Amalgamation / Arrangement.
 - Copy of Order Passed by the Hon'ble NCLT allowing the application.
 - Certificate of Accounting Treatment as issued by the Auditors.
 - Affidavit of Service
 - Chairman's Report
 - Affidavit verifying Petition
 - Memorandum of Appearance

Stage 8: Hearing of Petition

- Attend hearing and press for admission of Petition and seek date for final hearing.
- Publish advertisement for final hearing.
- Issue notice to regulatory Authorities again intimating them the date of final hearing.
- File Affidavit of Service.
- Check OL and RD report for specific observations.
- File affidavit in reply to RD's Report.
- Obtain Supplementary Report from RD

First Motion Application Order

Affidavit of Service

Affidavit of Service, Chairman

Chairman's Report



Second Motion Petition Admission Order

Publication of Final Hearing Notice

Affidavit of Service



Final Hearing Order

Obtaining Certified Copy of Order with Scheme

Filing with ROC and Stamp Office

Representation by Authorities to NCLT

Registrar of
Companies



Regional Director



Auditor's Appointed
by NCLT



Official Liquidator



National Company Law
Tribunal

Stage 9: Course of action after approval of Scheme

- ❑ Filing an application for the CTC of Order immediately upon pronouncement of Order.
- ❑ Payment of cost to Regional Director & Official Liquidator through bharatkosh portal online, if Ordered.
- ❑ Transferor Companies should not have any pending SRN with RoC.
- ❑ The Transferor Company should not file any other form with ROC except Form INC-28 once the final hearing is completed.
- ❑ Filing of CTC of Order with ROC in Form INC-28 within 30 Days from the date of receipt of CTC of Order.
- ❑ Application/Letter to ROC for combining the Authorised Share Capital for attaching in Form INC 28 of Transferee Company.
- ❑ Filing of Order with Stamp Authority within 60 days from the date of Passing Order or as specified in the Order.

OBSERVATIONS OF REGIONAL DIRECTOR AND RESPONSE OF PETITIONER

STANDARD OBSERVATIONS:

- *Compliance of AS-14 (IND-AS 103), passing of accounting entries and compliance of AS- 5 (IND AS-8) etc.*
- *To comply with the “Appointed Date” circular.*
- *To comply with section 232(3)(i) of the Companies Act, 2013 on differential fees on Auth. Sh. Capital*
- *Decision of Income Tax Authority are binding*
- *Scheme attached to Application and Petition are same*
- *Interest of creditors are to be protected*

SPECIFIC OBSERVATIONS

- *Companies did not have any business in last 2 or more years.*
- *Companies are having negative networth.*
- *Auditors of Company has qualified and/or has made observations. Companies are directed to compound the offence.*
- *Objection of the Creditor to the proposed scheme. NOC to be obtained.*
- *Appointed date is too old. Change the Appointed date*
- *Violation of Section 185/186 w.r.t. Loans & Investments*
- *Obtain NOC from RERA*
- *Transferor Company has foreign shareholder, issue notice to RBI /Obtain NOC from RBI*
- *Companies attracts the NBFC provisions (50:50 test), Obtain NOC from RBI*
- *Transferor Company has open charges*
- *Change of name upon merger*
- *Transferor Company is foreign company corporation, similar approvals be obtained in accordance with the laws of Country*



- **1. Observation:- (27.07.2020/MB)**

i. Reliance Holding USA, Inc., (Transferor Company-1) is foreign company corporation incorporated pursuant to and in accordance with the General Corporation Law of the State of Delaware (as amended from time to time) having Employer Identification Number: 27-2270026 and having its principal office at 2000, West Sam Houston Park Way S., Suite 700, Houston, TX77042 in the United States of America; and does not fall within the jurisdiction of this Tribunal. Accordingly, similar approvals be obtained by the above said Transferor Company-1 in accordance with the laws of United States of America;



- Response:

- i. As far as the observation made in the Report of the Regional Director is concerned, the Petitioner Companies submitted that Transferor Company-1 is a foreign company incorporated pursuant to and in accordance with the General Corporation Law of the State of Delaware and does not fall within the jurisdiction of this Tribunal. The Petitioner Companies further submitted that similar approvals, as may be applicable, will be obtained by the Transferor Company-1 in accordance with the applicable laws of United States of America.

Recent Judgements.

1. Future Enterprise Limited and Ors. (CA(CAA)8/MB/2021)

In this case, the NCLT, Mumbai Bench ruled that objection at the First Motion Stage i.e, just before the holding of the meetings of shareholders and creditors is premature and that the same can be dealt with during the Second Motion Stage or before the final sanction/approval. [CA 24 of 2021, Amazon.com vs Future Enterprise Limited]

The Scheme contemplated:

- *Consolidation of the logistics & warehousing and retail and wholesale businesses by Future Group of 19 Transferor Companies into Future Enterprises Ltd.*
- *Sale of logistics & warehousing and retail & wholesale business and related assets as a going concern on Slump Sale basis to Reliance Group.*

An Application was filed with the NCLT for holding meetings of shareholders and creditors by the Future Group for the purpose of considering the Scheme.

Amazon.com objected to the Scheme citing Emergency Arbitrator (EA) Order of Singapore International Arbitration Centre (SIAC) Order wherein the EA restricted the Future group from taking any steps w.r.t. arrangement with Reliance group.

The objector Amazon.com cited that as per their agreement with Future Group, FRL would remain the sole vehicle for the conduct of retail business carried on by FRL and would not transfer its retail assets of 1,534 retail stores without the consent of the FCPL and also not transfer to its retail assets to a restricted person. The list of restricted person as mentioned by Amazon.com in the FCPL Shareholders Agreement includes Reliance Group.

Amazon filed Petition before Delhi High Court to enforce the EA Order against the Future Group in which a single Judge Bench directed Status Quo to be maintained w.r.t. all matter in violation of EA order till the final Order.

Future Group approached the Division Bench of Delhi High Court against the above Order wherein the said Bench stayed the Order of Single Bench Judge. (para 25.3/46)

Amazon Approached Supreme Court against the Division Bench order of Delhi High Court. The Hon'ble Supreme Court held that NCLT proceedings will be allowed to go on but will not culminate in any final Order sanctioning the Scheme

Question before the NCLT:

Whether the court at this stage (First Motion Application) can consider the objections filed by the applicant / objector (Amazon.com)?

NCLT observed that in view of the Order of the Hon'ble Supreme Court dated 22.02.2021, the Bench does not have any doubt that it is well within its rights to allow the Applicants to hold the meeting of various stakeholders, creditors etc., which is only the initial stage in the process of Approval of the composite scheme. The Bench as per the direction of the said Order will not pass any final order sanctioning the scheme.

Supreme Court further vide order on 9.09.2021 clarified that the parties have approached the SIAC for vacating the Emergency Award and that authorities i.e., NCLT, CCI and SEBI not to pass any final order for a period of four weeks.

Current Status

Meetings are yet to be held. Future Group has approached Delhi Court seeking directions to NCLT to proceed further in the matter.

Recent Judgements.

2. GMR Infrastructure Limited and Ors. (CA(CAA)109/MB/2021)

The Scheme contemplated Amalgamation and Demerger of GMR Group Companies.

The Objector who was neither a creditor nor a shareholder contended that GMR has not disclosed the latest financial position as their application is more than six months the old.

The question before the NCLT was whether the Intervenor/Objector has any locus to object the present scheme?

In this case, the NCLT, Mumbai Bench ruled that the Objector who is neither a shareholder nor a creditor has no locus to object the Scheme.

- NCLT observed that the application was filed on 5.03.2021, and had been filed giving details of latest financial position of the company, however, the applicant Companies reiterated that can be no material change in the financial statement from the time of filing of the Application and date of hearing and that the time gap between the filing and hearing was beyond their control as NCLT was listing only urgent matters due to the Pandemic and that they had filed an Interlocutory Application seeking urgent listing of the matter. The Applicant Company 2 being a listed company is governed by SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the financial statements for the period ending on 31 March, 2021 and 30th June, 2021 is published on the website. **Therefore, the objection of the Objector is rejected.**
- NCLT further observed that the bench is of the considered view that the objection raised is untenable on two grounds, namely the objector is neither a shareholder nor a creditor and has no locus to file any intervening Application at this stage, the Objector has not furnished any order or award restraining the approval of this application nor has any decree in its favour and that there is no material change in the financial statements within the six months time as the Applicant Company is a listed company and is obliged to disclose the financial statements as per SEBI(LODR).

Recent Judgements.

3. Kumaka Industries Limited. (CP/190/MB/2017) decided on 06.07.2020

In the instant case, the NCLT, Mumbai Bench approved an Scheme of Arrangement wherein the Petitioner in guise of an Scheme was contemplating ratification of illegal reduction of share capital done in the year 1998 despite objection raised by the RD and one Minority shareholder.

The Scheme contemplated:

- *Ratification of Reduction of Share Capital w/o High Court approval.*
- *Regularisation of Allotment of shares in IPO against terms of Issue.*
- *Issue of Bonus shares to public shareholders with Promoters foregoing their rights.*

Observation of NCLT:

- *The term arrangement is a term capable of widest import.*
- *Arrangements can take on multiple hues and a bewildering assortment of forms.*
- *The fairness of the Scheme qua the objecting has also to be kept in view inline with the celebrated SC judgment of Mihir Mafatlal vs Mafatlal Industries.*

- *Objections of Regional Director are more on the procedural aspect than anything else and it has not raised any objection regarding illegality in the Scheme or against public policy and hence they are overruled.*
- *The objecting shareholder holds only 15 shares (0.00012%) and thus lacks locus standi to object and even on merits the objections are unsustainable. [Kumaka NCLT Order.pdf](#)*

Appeal to NCLAT by Minority Shareholder (Company Appeal (AT)136/2020) decided on 20.10.2020

Mr. Ashish O. Lalpuria, the minority shareholder holding only 15 shares filed an appeal against the impugned Order of NCLT.

Observation of NCLAT:

- *Proposed Scheme of C&A should not be violative of any provisions of law or contrary to public policy.*
- *Past records show irregularities and non compliances due to which action was taken against the Company.*
- *Objections raised by RD need to be given weightage and seem to be just and reasonable for dismissing the Petition.*



- Duty of NCLT to ensure that before sanctioning of Scheme all procedural aspects to be complied failing which a wrong precedent would be set by which companies would violate the law and have it ratified by the court under the "UMBRELLA OF SCHEME".
- Compliance of law in itself is a part of public policy.
- No actions must be pending against the Company by the public authorities before sanctioning of the Scheme under section 230 of the Act.
- NCLT should encourage compliance and not default.

The Appellate Tribunal set aside the decision of NCLT and rejected the Scheme of Arrangement.

[Kumaka Industries NCLAT Order.pdf](#)

Recent Judgements.

3. Baramati Agro Limited and Ors. [CP(CAA)996/MB/2020] decided on 20.09.2021

The Scheme contemplated Scheme of Amalgamation and Arrangement between group Companies.

One of the Rationale for the Scheme was:

- *The Transferee Company is having 21,675 Shareholders holding A Class Equity Shares. Out of 21,675, approximately 21,000 are shareholders holding small amount of equity shares in the Transferee Company. The smaller shareholders of the Transferee Company have been requesting for regular dividends on their investments since they are not interested in seeking management control or running the operations of the Transferee Company. Considering the shareholding pattern of the Transferee Company it is difficult to pass on the benefit of dividend to these small shareholders. The Transferee Company had received requests from some of its smaller shareholders to redeem their investments within a fixed timeframe and also to start paying dividends on such investments on a regular basis. In view of this, it is proposed to convert certain A class Equity Shares into 9% non-cumulative optionally convertible redeemable Preference shares of Rs 10/- each.*

[Order Baramati_CP_996 NCLT highlighted.pdf](#)

Besides standard observations RD also referred to observation of ROC, Pune who pointed out:

Part D of the Petition contains conversion of equity shares into preference shares which is not permissible to issue Redeemable Preference Shares against existing equity shares as its value, terms, rights are different and cannot be terms as same kinds of shares to exchange in ratio for consideration. Further , Ministry vide letter no, 03/08/2019. CL V, dated 27th July, 2020 has stated that one litigation in on going w.r.t. conversion of equity shares into preference shares and vice versa whereby reclassification of such type was rejected by ROC, Delhi and has also asked for comments on the conversion of Equity shares into preference shares or vice versa. It is submitted that the equity shareholders are having rights different to that of the preference shareholders which include voting rights. Further, the instant scheme is placed before member of the transferee company having only 48.45% of value which is not representing majority. Hence such conversion may be considered undesirable.

The Company in its reply stated that:

The interpretation and reference of the ROC Pune is incorrect. The Petitioner Companies further state that the conversion of shares from one type to another, for example from Equity shares to Preference Shares, is not barred by any provision of the law, and in fact and in law, such conversion only amounts to reorganization of the Share Capital of the Companies which is permissible under section 61 of the Companies Act 2013. In accordance with the relevant provisions of the law and the judicial precedents being relied upon by the Petitioner Companies, a Scheme of Compromise or Arrangement may involve increase, consolidation, or sub-division of shares or reduction of share capital. Therefore, the conversion of equity shares into preference shares as sought by the Petitioners under the Scheme cannot be deemed to be impermissible. In reply to the comments of o/o ROC Pune the Petitioner Companies submit as follows:

- Pursuant to section 43 of the Companies Act, 2013 both equity share capital and preference share capital appear in the balance sheet under "Share Capital" and as per provisions of Section 43 of the Companies Act 2013 there can be only two classes of shares viz. Equity and Preference and combination of two depict the total share capital. When shares of one class are converted into another class (for instance, equity shares into preference or vice versa) and value of the paid-up share capital does not undergo any change, the subscribed and paid-up capital remains unchanged; only the nomenclature of shares undergo change.*

The Company further stated that under section 230 of the Act, a scheme of Compromise or Arrangement may be in the form of reorganization of share capital of a company and the Explanation appended to subsection (1) gives an inclusive definition of the expression 'arrangement' as including 'reorganization of share capital'.

The Company also cited one judgement of SC wherein it was held that *"Courts are not to act upon principal that every procedure is to be taken as prohibited unless it is expressly provided for by the Code , but on the converse principal that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principal prohibition cannot be presumed"* [SLP No 984 of 2006 **Rajendra Prasad Gupta verses Prakash Chandra Mishra & Ors**]

In continuance to above, the Company also stated w.r.t MCA circular referred by ROC Pune, that as per the settled principle by the Hon'ble Supreme court in several cases the said circular cannot be binding on the court or Tribunal or Petitioner companies unless the same are made part of substantive law or delegated legislation and in support of the same the Petitioner Companies cited a few case laws; (page 12)

Regional Director in its Supplementary report was satisfied w.r.t. reply pertaining to standard observations given by the petitioner Companies. However, RD was not convinced with the reply filed by the Companies w.r.t. MCA letter referred by ROC, Pune.

The Hon'ble Tribunal did not find merit in the arguments of RD and went on to sanction the Scheme and held that the Company cannot be restricted to reorganise its paid up share capital by converting its Equity Shares into Preference Shares or vice versa as a part of Scheme of Compromise or Arrangement as the same is permissible under the section 43 and 61 of the Companies Act, 2013.

Recent Judgement

Patel Engineering Limited (NCLT Mumbai /15.11.2021)

14 (Fourteen) wholly owned subsidiaries of Patel Engineering Ltd (PEL) were proposed to be merged with PEL.

The Companies filed application for dispensation of meetings of Eq. Shareholders and Unsecured Creditors on the ground that the Transferor Companies are Wholly Owned Subsidiaries of Transferee Company and relied on judgement of Bombay High Court in Mahaamba Investments Limited v/s. IDI Limited (2001)

Housing Development Finance Corporation Limited, in CSA No. 915 of 2017 (NCLT, Mumbai) and various other judgements that meetings of eq. shareholders and unsecured creditors is not required in case of Transferee Company when the Transferor Companies are WoS of Transferee Company.

NCLT, Mumbai did not agree and directed holding of meetings of Eq. Shareholders of Transferee Company and obtaining consent affidavits of 90% of unsecured creditors of Transferee Company.

[Patel Hydro NCLT.pdf](#)

Recent Judgement

Patel Hydro Power Private Limited (COMPANY APPEAL (AT) No. 137 of 2021)

NCLAT observed:

To reiterate, we observe that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Therefore, we are of the considered view that when the 'Transferor and Transferee Company' involve a parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the facts of this case substantiate that the rights of the Equity Shareholders of the 'Transferee Company' are not being affected. Therefore, we hold that obtaining 90% consent Affidavits from its unsecured Creditors is not required keeping in view the facts of the attendant case.

[Patel Hydro.pdf](#)

Recent Judgement

Accelyst Solutions Pvt Ltd (COMPANY APPEAL (AT) No. 15 of 2021)

Whether Appointed date can be changed by Tribunal?

NCLT Mumbai modified the Appointed date from 07.10.2017 to 01.04.2018 on the ground that considerable time has lapsed from the Appointed date as mentioned in scheme and the Board Resolution of the Scheme is dated 27.03.2018 and Valuation Report is dated 22.03.2018.

NCLAT Observed after relying on various judgements:

We are of the considered view that the exercising jurisdiction by the NCLT Mumbai to modify the Appointed date from 07.10.2017 to 01.04.2018 in the facts of this case was unwarranted. Thus, the impugned order so far as the modification of Appointed date is concerned is set aside and the Appointed date as per the scheme is fixed 07.10.2017, which is approved by the shareholder of the Appellant Company. [Accelyst Solutions_NCLAT Final Judgement \(24.03.2021\).pdf](#)

Recent Judgement

Chawla Brothers Private Limited

Can reduction of share capital can be done by transferring an asset, property?

In the matter of Chawla Brothers Private Limited, NCLT, Mumbai after relying on various judgements has held that the reduction of share capital against property/land can be done under section 66 of the Companies Act.

In this case, the Company reduced its Share Capital equivalent to the value of land and transferred the land to the shareholder whose share capital was reduced.

[Chawla Brothers.pdf](#)

Recent Judgement

Ericsson India Private Limited & Ericsson India Global Services Pvt Ltd (NCLT Delhi)

The Companies filed first motion application and prayed for dispensation of meetings of Eq. Shareholders & Unsecured Creditors based on various judgements.

Companies filed an Affidavit that they do not have any material investigation/proceedings.

NCLT dismissed the First Motion Application on the ground that the Company has not filed proper affidavit in compliance with provision of section 230(2)(a) and has not obtained consents from the secured creditors.

While dismissing the Application, NCLT Delhi observed that the Companies has not provided the details of material investigations/proceedings as required under section 230(2)(a) and that the said section does not provide any criteria for considering an event as material. [Ericsson order NCLT.pdf](#)

Recent Judgement

Ericsson India Private Limited & Ericsson India Global Services Pvt Ltd (NCLAT)

The applicant Companies appealed against the Order of NCLT, Delhi before NCLAT.

NCLAT set aside the Order of NCLT Delhi and observed that

We are of the considered view that the wording of Section 230(2)(a) should be interpreted as all material facts relating to the Companies, such as, pendency of any investigation of any proceeding against the Company". The Affidavit filed by the Appellant Companies discloses all the duly Audited Financial Statements along with the investigations and enquiries which are material to the implementation of the Scheme. In any event, as per Clause 6 of the Scheme upon this implementation, all proceedings in the name of the 'Transferor Company' shall be continued and enforced against the 'Transferee Company' and such proceedings shall not be discontinued or prejudicially affect anyone by reason of the Scheme. Accordingly, the requirements of Section 230(2)(a) of the Act read with Rule 6(3)(viii) of the Rules are met.

[Ericsson order NCLAT.pdf](#) Para 5, 6

Recent Judgement

Chawla Brothers Private Limited

Can reduction of share capital can be done by transferring an asset, property?

In the matter of Chawla Brothers Private Limited, NCLT, Mumbai after relying on various judgements has held that the reduction of share capital against property/land can be done under section 66 of the Companies Act.

In this case, the Company reduced its Share Capital equivalent to the value of land and transferred the land to the shareholder whose share capital was reduced.

[Chawla Brothers.pdf](#)

OBSERVATION BY OFFICIAL LIQUIDATOR

Vigi Medsafe Pvt Ltd CP CAA 734-2020.pdf

Para 16-21 (11.08.2020/MB)



FAST TRACK MERGER (U/S 233)

Eligibility for Fast Track Merger

Following Companies are eligible for Fast Track Merger

- **Holding and its wholly-owned subsidiary Company.**
- **Between the small companies.**
 - **Company having paid-up share capital of which does not exceed fifty lakh rupees;**
 - and**
 - **Turnover of which as per its last profit and loss accounts for the immediately preceding financial year does not exceed 2 crore rupees.**

Procedure for Fast Track Merger

- Drafting of the Scheme of merger.
- Convening the Board Meeting for the approval of scheme.
- Filing of notice along with the copy of scheme of merger for inviting objections or suggestions, if any, in Form CAA-9 to:
 - Registrar of Companies in E-Form GNL-1.
 - Official Liquidator.
 - or persons affected by the scheme.
- Filing of declaration of solvency with Registrar of Companies in Form CAA-10 in E-form GNL-2 alongwith:
 - Copy of board resolution.
 - the Statement of assets and liabilities.
 - Auditor's report on the statement of assets and liabilities

Fast Track Merger


- Issuing notice of the meeting of Shareholders alongwith scheme of the Company.
- Issuing notice alongwith the scheme to the Creditors of the Company.
- Convening General Meeting of Shareholders and obtaining the approval of shareholder holding at least 90% of the total number of shares irrespective of those present in the meeting.
- Convening General Meeting of Creditors and obtaining the approval of the creditors majority representing 9/10th in value if the creditors irrespective of those present in the meeting.
- Transferee Company has to file the approved scheme and Report of the results of the meetings in Form CAA-11 along with the notice earlier sent to the:
 - Regional Director in Form RD-1 (within 7 days).
 - Registrar of Companies in form GNL-1.
 - Official Liquidator.

Fast Track Merger

- The Registrar of Companies and Official Liquidator may give objections or suggestions if any to the Regional director within 30 days of the receipt of the scheme.
- In case of no objection is received, the Regional Director shall register the same and issue the confirmation thereof to the Company in Form CAA-12.
- In case of any objections or suggestions from ROC & OL or if RD is of the opinion that the scheme is not in public interest, it may file an application before the Tribunal in form CAA-13 for consideration within a period of sixty days from the date of receipt of the scheme.
- Filing of the Order passed by the Regional Director approving the scheme in Form INC-28 with ROC within 30 days.

FREQUENTLY ASKED QUESTIONS (FAQS)

1. How do I prepare for hearing?
2. In the application we have prayed for convening meeting of creditors and shareholders. However, now we want to seek dispensation. Is it possible?
3. An order for convening meetings of Creditors and Shareholders has been passed. Is there still a possibility of seeking dispensation?
4. I have filed a merger application long time ago but same is not being listed for hearing. What should I do?
5. Is it mandatory to send notice to all the creditors?
6. The auditor appointed by OL is asking for documents from the Transferee Company. Whether he is entitled for the same?

- 
8. Can objections from The Income Tax department stop the merger? Whether NOC from The Income Tax Department is mandatory?
 9. Can I change the appointed date after filing the petition/Application?
 10. How do I apply for the certified copies of the final order? Any cost to be paid for the same?
 11. What precautions should be taken while filing form INC-28?
 12. What can be the issues in approval of form INC-28?
 13. I could not file form INC-28 on time. What do I do?
 14. After filing form INC-28. Do I need to file any form for Transferor Company?



THANK YOU...!!!!

**Ashish O. Lalpuria & Co.
Practising Company Secretary
Add: 204, Zee Square, M. G. Road,
Vile Parle East, Mumbai - 400 057
Ph: 022 2612 1371
Cell: 98204 73932
Email Id: ashishlalpuria@yahoo.co.in**