




PRESENTATION ON
REGULATORY FRAMEWORK OF
MERGERS AND AMALGAMATIONS UNDER COMPANIES
ACT, 2013 AND IBC, 2016

REGULATORY FRAMEWORK FOR THE MERGER


- Procedure under Companies Act under NCLT Route
- Stamp Duty in Telangana;
- Acquisition and arrangement under IBC, 2016.



SCHEME OF ARRANGEMENT UNDER NCLT ROUTE

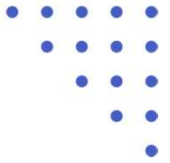
- Obtainment of valuation report on the valuation of assets/shares from a registered valuer and a fairness opinion from a SEBI registered merchant banker in case of listed company.
 - The board of directors of the amalgamated company and the amalgamating companies shall approve the scheme of merger. Report from Audit Committee and the Committee of Independent Directors should also be obtained in case of listed company that the scheme is not detrimental to the interests of the shareholders of the listed company.
 - Upon sanction of the Scheme by the Board, the companies shall submit the scheme to the SEBI/stock exchange for obtaining no-objection letter/observation letter, if involves listed company. Upon obtainment of no objection from SEBI an application along with the scheme shall be submitted to the respective National Company Law Tribunal ("NCLT").
 - Upon hearing the application, NCLT shall issue appropriate directions for convening the meeting of the creditors or the members or any class of creditors of both the companies or dispense the meetings depending on the consent affidavits obtained from the members and creditors.
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MERGER PROCESS UNDER NCLT ROUTE (CONTD...)

- Pursuant to the order of the Tribunal, the notice of the meeting shall be sent individually to each of the creditors or members as the case may be. The notice shall include the no objection/observation letter from SEBI, if involves listed company. The notice shall also provide e-voting facility to the public shareholders.
 - The notice of the meeting shall be advertised in atleast one English newspaper and in atleast one vernacular language in the state in which the registered office of the company is situated, atleast one month before the date of the meeting.
 - The scheme should be approved by the requisite majority of the shareholders and/or the creditors representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, of both the companies. Also, atleast more than 50% of public shareholders should approve the scheme, if listed. The chairperson of the meeting shall submit a report on the result of the meeting within 3 days after conclusion of the meeting.
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MERGER PROCESS UNDER NCLT ROUTE (CONTD...)

- Within a period of 7 days of the filing of the report by the chairperson, a petition shall be filed with the NCLT for sanction of the scheme.
 - NCLT shall fix a date for the hearing of petition and notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised not less than 10 days before the date fixed for hearing.
 - Once the scheme is sanctioned then the order sanctioning the scheme is required to be filed with the Registrar of Companies within a period of 30 days of the date of receipt of the order.
 - Steps for listing of specified securities should be completed and trading in securities to commence within 60 days of receipt of the order of the NCLT.
 - Also, the order along with other requisite documents may be submitted with the Stock Exchange, if it involves listed company.
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STAMP DUTY IMPLICATIONS

As per the Indian Stamp Act, 1899 as applicable for the state of Telangana & Andhra Pradesh, the stamp duty payable on the scheme of arrangement is 2% of the total value of shares issued or allotted to the shareholders as consideration for merger. For other states, respective stamp act of other States need to be referred.

MERGERS AND AMALGAMATIONS UNDER IBC



PROCESS UNDER IBC

A brief snapshot of how the process operates under IBC:

- Filing of application under the IBC by a financial creditor or the operational creditor;
- The CIRP commences from the date such application is admitted by NCLT;
- Once an application for commencing CIRP against a corporate debtor is admitted, a moratorium order is passed prohibiting the institution of suits or continuation of pending suits or proceedings against the corporate debtor;
- An interim resolution professional ("IRP") is appointed by the NCLT whose term continues till the date of appointment of the resolution professional
- The IRP is required to constitute a committee of creditors ("COC") comprising all financial creditors (other than related parties) of the corporate debtor.
- The committee of creditors once formed, either appoints the IRP as the RP or replaces the IRP by another resolution professional;
- From the date of appointment of the IRP/RP, the management of the affairs of the corporate debtor vests in the IRP/RP. The powers of the Board of Directors stand suspended and are exercised by the IRP/RP.
- The RP shall make an invitation for submission of resolution plan and eligible parties shall submit the resolution plan.

WHAT IS A RESOLUTION PLAN AND WHAT IT CAN PROVIDE:

A resolution plan means a plan proposed by a resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with the Act and the same may also include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger.

Further Regulation 17 of Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016 provide that Resolution Plan may provide measures including but not limited to the following:

- transfer of all or part of the assets of the corporate debtor to one or more persons;
- sale of all or part of the assets whether subject to any security interest or not;
- the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons;
- cancellation or delisting of any shares of the corporate debtor, if applicable;
- curing or waiving of any breach of the terms of any debt due from the corporate debtor

WHAT IS A RESOLUTION PLAN AND WHAT IT CAN PROVIDE:



- reduction in the amount payable to the creditor;
- extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
- amendment of the constitutional documents of the corporate debtor;
- issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
- change in portfolio of goods or services produced or rendered by the corporate debtor;
- change in technology used by the corporate debtor;
- obtaining necessary approvals from the Central and State Governments and other authorities.

CASE STUDIES:

CASE 1:

Restructuring of the corporate debtor pursuant to the resolution plan submitted by resolution applicants during the CIRP process, which involve mergers.

CASE 2:

Restructuring of the corporate debtor pursuant to the scheme of arrangement submitted through a liquidator post liquidation order passed by the NCLT, which involve mergers.

CASE 3:

Revival of the corporate debtor pursuant to the scheme of arrangement submitted through a liquidator post liquidation order passed by the NCLT.





Case 1: Resolution Plans submitted during CIRP under which mergers were proposed:

NCLT has in various cases approved proposals of restructuring of the corporate debtor pursuant to the resolution plan which involve mergers and amalgamations.

The resolution plan approved by NCLT in the case of Synergy Dooray Automotive Ltd. ("SDAL") contemplated, inter alia, merger of SDAL with Synergy Castings Limited ("SCL"). While upholding the order of the adjudicating authority approving the resolution plan, the National Company Law Appellate Tribunal held that the argument that merger or amalgamation of the companies cannot be proposed in the resolution plan cannot be held tenable.

Now the question is whether a resolution plan proposing restructuring of a corporate debtor would need to comply with the provisions of the Companies Act after such resolution plan has been approved by the AA in terms of the provisions of the Code.

APPROVALS REQUIRED FOR MERGER APPROVED BY NCLT AS PART OF RESOLUTION PLAN:

- A resolution plan requires approval of the committee of creditors ("CoC") and the AA. The resolution plan becomes binding on the corporate debtor as well as its members and creditors (secured as well as unsecured) once it is approved by the AA;
- Further, in terms of explanation to Section 30(2) of the Code, if any approval of shareholders is required under the Companies Act or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of the Companies Act or law;
- The Hon'ble Supreme Court, in, *Innoventive Industries Ltd. Vs ICICI Bank & Anr*, stated that it is settled law that a consolidating and amending Act like the Central enactment forms a code complete in itself and is exhaustive of the matters dealt with therein. This principle could also be relied upon to support the view that there should not be any requirement to follow the provisions of the Companies Act for implementation of the restructuring proposal which has been approved by the NCLT as a part of the resolution plan.

EXEMPTIONS FROM SEBI REGULATIONS:

- **Exemption from preferential allotment rules**

The provisions of the Chapter V of the ICDR Regulations (except lock-in provisions) are not applicable where the preferential issue of specified securities is made in terms of a resolution plan approved by NCLT under the IBC.

- **Exemption from SEBI SAST Regulations**

Regulation 10(1)(da) of the SAST Regulations exempts acquisitions made pursuant to a resolution plan approved under section 31 of the IBC, from the obligation to make an open offer under regulations 3 and 4 of the SAST Regulations.

Further, the SAST Regulations have been amended to state that an acquisition of shares by an acquirer, pursuant to a resolution plan approved under section 31 of the IBC would be exempted from the obligation prohibiting an acquirer from acquiring or entering into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding above the maximum permissible non-public shareholding i.e. 75%.

EXEMPTIONS FROM SEBI REGULATIONS:

- **Exemption from Delisting Regulations**

The Delisting Regulations shall not apply to any delisting of equity shares of a listed entity that is made pursuant to a resolution plan approved under section 31 of the IBC. However, for the aforesaid exemption to apply, the resolution plan should provide for the following:

- Specific procedure to complete the delisting of such shares; or
- An exit option to the existing public shareholders at a price specified in the resolution plan.

Further, it has been stipulated that the exit to the shareholders should be at a price that is not less than the liquidation value determined in accordance with the provisions of the IBC. Also an application for listing of delisted equity shares may be made in respect of a company which has undergone CIRP under the IBC prior to timeline as laid down in the Delisting Regulations.

EXEMPTIONS FROM SEBI REGULATIONS:

- **Exemption from SEBI LODR Regulations**

Various matters which earlier required approval of the shareholders would no longer require such approval from the shareholders, if the same is in respect of a resolution plan approved by the NCLT under the provisions of the IBC. For instance, the LODR provides that if the reclassification of the existing promoter is as per a resolution plan approved by the NCLT then the approval of shareholders would not be required. Certain other relaxations have been provided in relation to reclassification of existing promoters.

Further, schemes of arrangement that are pursuant to a resolution plan that has been approved by the NCLT and that have been disclosed to the recognized stock exchanges within 1 day of the resolution plan being approved, have been exempt from the application of the procedures and requirements laid down for the same in LODR Regulation, for instance filing of scheme with the stock exchange prior to filing with the NCLT etc.

CASE 2 AND CASE 3: RESTRUCTURING POST LIQUIDATION ORDER AFTER ADMISSION

- In terms of Section 230 of the CA, 2013, lays down that a scheme of arrangement can be proposed by a liquidator of a company, undergoing liquidation by filing an application before the National Company Law Tribunal (“NCLT”), to seek sanction for a scheme of arrangement.
- Such a process converts to liquidation proceedings only if the resolution plan has not been approved or upon approval has been contravened by the company;
- The IBC provides that such schemes should be completed within the initial 90 (ninety) days from the date of the liquidation order. However, NCLT has the powers to extend the time limit of 90 (ninety) days on reasonable grounds.
- Pursuant to Section 230 of the CA, 2013, a scheme of arrangement can be proposed by a creditor or member or a liquidator including one who has been appointed under the IBC.
- The scheme shall have to be approved in compliance with the provisions of the Companies Act, 2013 and the IBC.

CASE STUDY 1: TATA STEEL'S ACQUISITION OF BHUSHAN STEEL

- CIRP process was initiated against Bhushan Steel in July, 2017, under the provisions of the IBC Code. Pursuant to the initiation of the CIRP, Tata Steel submitted its resolution plan for the resolution of Bhushan Steel and was selected by the committee of creditors constituted under the IBC Code
- Tata Steel Limited (TSL) acquired Bhushan Steel (BSL) through its wholly-owned subsidiary Bamnipal Steel Ltd (BNL) through a resolution plan under the IBC.
- BNL was formed as an SPV (wholly owned subsidiary of TSL), in order to facilitate the acquisition of BSL by way of CIRP;
- Pursuant to the Resolution Plan, BNL subscribed to 72.65% of the equity share capital of Bhushan Steel. The remaining 27.35% of share capital will be held by BSL's existing shareholders and the financial creditors who received shares in exchange for the debt owed to them;
- Thereafter, BNL a wholly-owned subsidiary of TSL was merged with TSL and being the WOS no consideration was payable pursuant to the amalgamation.
- Bhushan Steel was thereafter merged with TSL and shares were issued to the shareholders of BSL.

Tata Steel acquired Bhushan steel last year through IBC route and later merged it with itself. This merger is consolidation of same line business and this acquisition added capacity of 5.6 MTPA to the current TSL steel production and also gave access to high-quality assets of BSL such as widest old rolling mill in India and complementary product portfolio with value-added products and presence in western India.



CASE STUDY 2: PIRAMAL'S REVERSE MEGER INTO DHFL

- In November 2019, RBI had referred DHFL for resolution under the IBC. It was the first finance company to be referred to NCLT by the RBI using special powers under Section 227 of the IBC.
- In Jan, 2021, the debt resolution proposal submitted by Piramal received 94 per cent of the lenders' votes and was approved by the CoC of DHFCL.
- The creditors of DHFL recovered an aggregate amount of around ₹34,250 crore from the resolution process of DHFL which constitutes around 46% of the debts.
- The total consideration paid by the Piramal Group at the completion of the acquisition includes a combination of cash and issuance of debt instruments.
- As part of the process, Piramal Capital & Housing Finance Limited (PCHFL), the unlisted arm of Piramal Enterprises Limited (PEL) was set to merge with DHFL. Consequent to the reverse merger, DHFL shall issue such number of equity shares to the shareholders of PCHF, i.e. PEL, such that DHFL will become a wholly-owned subsidiary of PEL.
- The acquisition marked the first successful resolution under the IBC route in the financial services sector.
- Through this reverse merger, PEL is set to gain significantly in terms of increased customer base, branch network, and diversification in its loan books.



CASE STUDY 3: DALMIA CEMENT'S COMPOSITE SCHEME FOR ACQUISITION OF MURALI INDUSTRIES

- Section 7 application filed by one of the financial creditor Edelweiss Asset Reconstruction Company Limited (EARC) was admitted by NCLT and Corporate Insolvency Resolution Process was started against. Murli Industries;
- Resolution plan as submitted by Dalmia Cement was approved by Committee of Creditors (CoC) with 100% voting shares and creditors;
- KEY FEATURES AND SUGGESTIONS BY NCLT:
 - Approval of shareholders of Resolution Applicant, which is akin to transferee company to be obtained;
 - Approval of shareholders of the Financial Creditors was suggested by NCLT to be obtained;
 - Exemption from compliance /approval of various applicable laws for taking over the company was not granted by NCLT;
 - As part of the scheme, the Paper and Solvent Extraction Undertakings of Murli Industries Limited were hived off to the step down subsidiaries of Dalmia and thereafter merger of Murli Industries (with cement business) with Dalmia Bharat.
 - This acquisition by Dalmia will have synergies in terms of geographical presence and huge cost advantage.



CASE STUDY 4: MONNET ISPAT -JSW

- Monnet Ispat was one of the dozen large loan defaulters identified by the Reserve Bank of India on its first bankruptcy-resolution list under the Insolvency and Bankruptcy Code;
- AION Investments and JSW Steel formed a consortium and submitted a Rs 3,500 crore joint plan for Monnet Ispat in December 2017;
- AION Capital Partners is a joint private equity fund sponsored and run by US-based Apollo Global Management and homegrown PE firm ICICI Venture. AION Investments held 70% stake in the consortium while JSW Steel owned the remaining;
- The plan was approved by the CoC of Monnet and later NCLT also approved the plan;
- The Plan involved acquisition of stake by the consortium in Monnet of about 88 per cent for ₹2,875 crore through an insolvency driven process which settled ₹11,000 crore defaulted by Monnet Ispat.
- Merger of the consortium into Monnet Ispat.
- Monnet Ispat and Energy Ltd, renamed as JSW Ispat Special Products Limited after its takeover by JSW Steel and AION through CIRP.



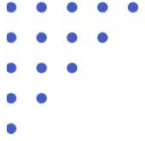
CASE 5: MERGER OF SWADISHT OILS PRIVATE LIMITED

- CIRP proceedings were initiated against Swadisht Oils Private Limited (“SOPL”), by one of its operational creditors;
- The petition was admitted and thereafter EOI was invited for submission of resolution plan;
- The resolution plan submitted by Rajasthan Liquors Limited (“RLL”) was approved by the CoC;
- The resolution applicant filed an application for approval of the Tribunal for the plan submitted by RLL;
- The plan involved merger of SOPL with RLL and RLL shall take over all the assets and liabilities of SOPL as per the scheme of amalgamation.



CASE 6: SCHEME IN LIQUIDATION FOR REVIVAL

In this case, Corporate Insolvency Resolution Process was initiated against 'M/s. Servalakshmi Papers Ltd ("SPL") and in absence of approved 'Resolution Plan' and 270 days having completed, the National Company Law Tribunal, Division Bench, Chennai, passed order of liquidation. Post that proposals were received by the liquidator from financial creditors to revive the Company. It was observed by NCLAT, that the liquidator is required to take steps under Section 230 of the Companies Act. If the members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority.



THANK YOU

