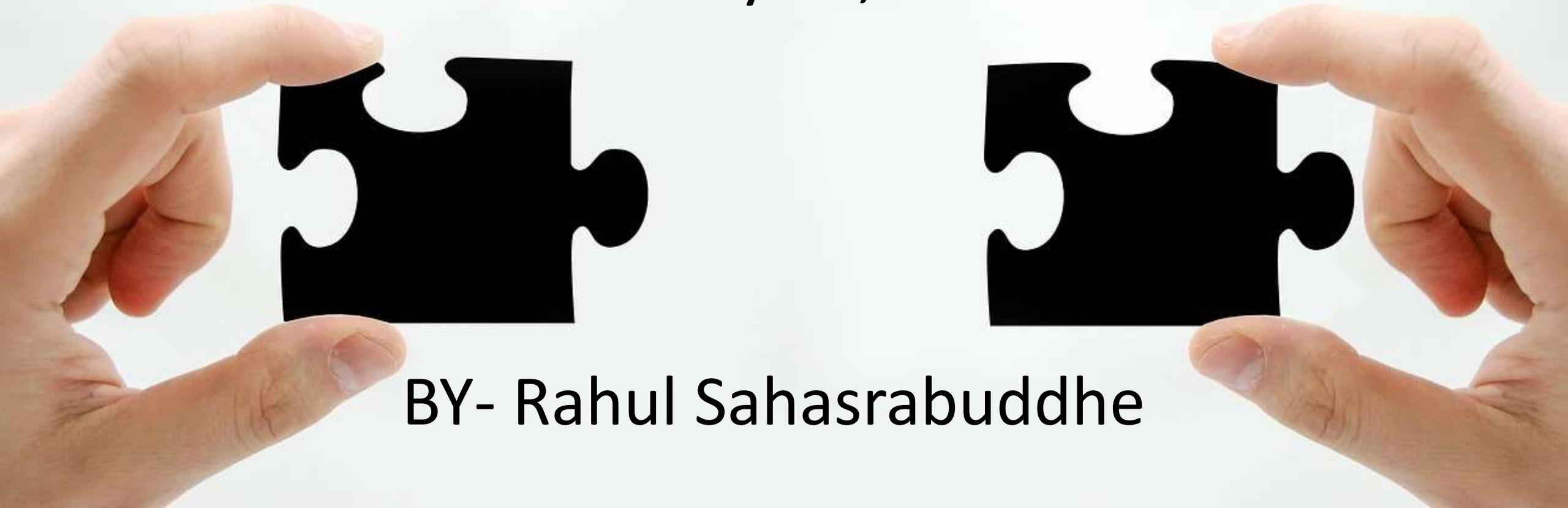


PRACTICAL ASPECTS OF MERGERS AND AMALGAMATIONS

WIRC OF ICSI

February 20, 2017



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VIEWS EXPRESSED IN THIS PRESENTATION ARE STRICTLY MY PERSONAL VIEWS AND NEED NOT NECESSARILY BE VIEWS OF ANY OF MY PAST OR PRESENT ORGANISATIONS, I HAVE WORKED/ AM WORKING WITH.

DEFINITIONS

- Mergers
 - By Absorption
 - By formation of a New Company

Amalgamation



- i. Not defined under CoA
- ii. AS 14 – Pursuant to CoA or such other statutes

Amalgamation

Sec 2 (1B) IT Act-

- i. Vesting of all the properties
- ii. Absorbing of all the Liabilities
- iii. Over 75% SH common

Ways of Amalgamation

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graph TD; A[Ways of Amalgamation] --- B[Transfer of U]; A --- C[Purchase of shares by another Co.]; A --- D[By CG in National Interest]
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Transfer of U

Purchase of
shares by
another Co.

By CG in
National
Interest

Compromise & Arrangement

- Compromise signifies Dispute
- Arrangement is of wider import and includes reorganization
 - Reorganization of Share Capital by way of Consolidation is an Arrangement – (SC) Hindustan Commr Bank Ltd. V General Electrical Corp.
 - Only one party-Change of SH/ Creditors Rights – is Arrangement – (SC) Saraswati Industrial Syndicate Ltd. V CIT

Amalgamation

- Foreign Company with Indian Co
- Indian Co with foreign Co?

Types of Restructuring

- Se 230-231 Compromise or Arrangement
- Se 232 Amalgamation incl Demerger
- Se 233 Amalgamation of Small Companies
- Se 234 Amalgamations of Foreign Companies

Companies (Compromises, Arrangements and Amalgamations)
Rules 2016

Analysis of Se 230-231

1. Scheme for C or A
2. Apply to Tribunal to hold Stakeholder's meeting
3. Tribunal may order such meeting
4. Holding of such meeting

Analysis of Se 230-231

5. Approval of C or A Scheme by $\frac{3}{4}$ in value of Creditors, Class or Creditors, members, etc.
6. Another application to sanction the Scheme
7. Such approved scheme binding on stakeholders

Usage of Abbreviations

- Compromise - C
- Arrangement - A
- Amalgamation - Am
- Merger - M

C ,A, Am, M

- Between a Co and its Creditors or class of them
- Between a Co and its members and class of them

Who can apply -

- The Company
- Creditor
- Any member
- Liquidator (*Bankrupt? – National Steel & Gen Mills V. Official Liquidator)

Amalgamation of 2 or more companies, how many petitions to be filed?

- Mohan Export India Ltd V. Tarun Overseas Pvt Ltd.
- Karnataka HC in Electro Carbodium Pvt Ltd. V Electric Materials Co Pvt Ltd.
- L & T in Re..

Amalgamation or Merger of a Holding Co. with two of its Subsidiary Cos

- How many schemes to be filed?
 - Rule 3 (2)
 - Sanathanalaxmi Investments Private Ltd. In Re.,
 - Andhra Bank Hsg Fin Ltd In Re.,
 - Reliance Jamanagar Infrastructure Ltd.. In Re

Co is not empowered for C, A, Am and M by way of its Objects Clause.....

- EITA India Limited in Re – proposes enabling Object Clause afterwards
- Sir Mathuradas Vissanji Foundation

Valuation Report....

- Requirement ? – Advance Plastics Pvt Ltd. In re..
- Valuation is a specialized subject and courts would not interfere – HLL In re, Brooke Bond Lipton India Ltd.
- Book Value method of valuation is permissible

Appointed Date?

- Se 230 (6)
- Appointed Date is a must in every scheme

Procedure

Meeting of the BoD of T'or and T'ee Co

- Consideration of Proposal
- Valuation Report
- Drafting of Scheme
- Authorization

Scheme – Basic Contents

- Parties
- Appointed Date and Effective Date
- Capital Structure of the T'ee and T'or Co
- Considerations
- Valuation Report
- Details of Capital/ Debt Restructuring
- Rationale
- Benefits

Scheme – Basic Contents

- Arrangement with Creditors
- Transfer of U from and Liabilities of T'or co to T'ee from AD
- Effect on Amalgamation on Employees, Contracts, Stakeholders
- Legal Cases
- Dissolutions
- Main objects
- Conditions

C ,A, Am, M - Application for Order of Meeting

Se 230 (1)

- Form NCLT – 1
- Notice of Admission in NCLT – 2
- Affidavit in NCLT – 6
- A Copy of the Scheme (Discl as per Se 230 (2))
- Fees of Rs. 5000

C ,A, Am, M - Application for Order of Meeting

Tribunal to consider

- Company not an applicant
- Scheme is fair and not illegal – Krishna Kumar Mills Co. Ltd.
- Meeting of Shareholders not an empty formality. In re.. NePlus Technologies Private Limited
- Rights of T'ee Co Shareholders not affected – no need to hold their meeting – Punjab Chemicals and Crop Protection Ltd. & J K Cement Ltd. In Re..
- Se 230 (9)
- [Contrary View in JVA Trading Pvt. Ltd. and C&S Electric Limited](#) – NCLT denied that it has power to dispense with holding of meeting of members

C ,A, Am, M – Filing of Affidavit Se 230 (2)

- Material Facts, Latest Audited Fin Position, Auditors' Report, Pending investigation or proceedings
- Subsequent reduction of Capital, if any,
- CDR Scheme
 - Creditors' Responsibility Statement in CAA -1
 - Safeguards to protect secured and unsecured creditors
 - Report by auditor – conforming liquidity
 - Valuation Report

C ,A, Am, M – Directions by Tribunals - R 5

- Determine class or classes to hold meeting
- Fix time and date
- Appoint chairperson and scrutiniser
- Fix quorum and procedure to be followed
- Determine values of creditors
- Notice and advertisement of meeting
- Notice to regulators, sectoral regulators
- Such other matters

C ,A, Am, M – Notice to members and Creditors- R 6

- Form CAA – 2
- Details of C, A
- Copy of Valuation Report
- Effect on creditors, KMP, Promoters, etc.
- Material interest of Directors

Chairperson to send the notice

Place the notice on Website of the Company

Affidavit of service of notice to NCLT by the Chairperson

C ,A, Am, M – Compulsory voting by Postal Ballot

- Godrej Industries Ltd. In Re – Compulsory voting by Postal Ballot and by electronic voting to the exclusion of actual meeting is not applicable to court convened meeting

Objections to Compromise or Arrangement

- Only by eligible stakeholders
- Scheme is not coercion tool at the hands of creditors – Mayfair Ltd. In Ree
- Microscopic classification based on terms of each and every creditor – Muralidhar Ratanlal Exports Ltd. V. Gujarat Road & Infrastructure Co. Ltd.
- Objector must have a locus standi – Indian Metal and Ferro Alloys Ltd.

Chairperson's Report

- As ordered
- Within 7 days

Petition

- Conforming C or A
- Date and Notice of hearing
- Order of the Tribunal Se 230 (7) and R 17
 - Conversion of PS into Equity, Arrears of Dividend
 - Protection of any class
 - Variation of rights
 - Proceedings before BIFR shall abate
 - Exit to dissentient shareholders

Order for Directions

- File with RoC within 30 days – Se 232 (5)
- Transfer of property and liabilities to T'ee company
- Once the scheme is approved, no further approval from SH is required – Mekaster Valves and Engineering Service Pvt Ltd.

Filing of Statement with RoC

- Compliance of the Scheme
- Form CAA – 8 within 30 days of End of FY
- Practicing CA/ CMA certificate

Penalty

- Rs. 1 Lac to Rs. 25 Lacs
- 1 yr Imprisonment or fine upto Rs. 1 lac to 3 Lac.

Merger and Amalgamation of Small Companies

- Se 233
- Small Companies and Holding and Subsidiary are covered

Merger and Amalgamation of Small Companies

Conditions

- Notice of the proposed scheme inviting objections is issued to CG (CAA-11), OL,
- Objections considered in General Meeting
- Proposal approved by 90% of the SH
- Each co to file declaration of solvency
- Approved by 9/10th Creditors
- CG to issue approval in form CAA-12
- CG through RD may refer the scheme to NCLT

Few critical aspects

Change of name

- Sherno Investment & Finance Ltd V RoC

Listed Companies

- CI 37 of LODR

Is NCLT approved Scheme is Instrument u/Indian Stamp Act

- Bombay HC in Li Taka Pharmaceuticals V State of Maharashtra
- Order has trappings of sale – HLL Vs. State of Maharashtra (SC)
- AS 14 was also scrutinized. Transferee company to pay additional stamp duty on increased capital – Areva T and D India Limited

RESOURCE MATERIALS



- Judgments
- Books
- Websites
- Legal Journals
- Articles

Contact Co-ordinates

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THANK YOU

