

## **The Regulatory Framework of Corporate Restructuring in India: Implications and Emerging Issues.**

**INTRODUCTION:** Corporate Restructuring dealt with arranging the various activities of business so that to achieve the predetermined and desired objectives of the corporates.

Corporate restructuring is the process of significantly changing a company's business model, management team or financial structure to address challenges and increase shareholder value. The word Restructuring as per Oxford dictionary means "to give a new structure, to rebuild or rearrange <sup>1</sup>". Corporate Restructuring helps in improving the profitability at the same time it also helps to reduce the cost. Today, the growth and survival of companies depends on planning, formulation and implementation of various restructuring strategies.

The Companies Act, 2013 opens various simple avenues for restructuring operations in India.

The Act facilitates the domestic and cross border mergers and acquisitions and the act also provides National Company Law Tribunal (NCLT) as the sole authority to look after the matters of corporate restructuring in India.

This paper helps to understand the various regulatory framework, interpretations, various steps involved and filing of forms in the process of corporate restructuring in India, its implications and emerging issues in this area.

### **METHODOLOGY:**

**Target Population:** The population of this study will comprise of various companies which are facing adverse conditions and adopted corporate restructuring as a strategy to overcome from the existing situation.

**Sample Size:** The sample size comprises of various companies which went through process of corporate restructuring.

**Data Collection:** The data were collected from various secondary sources like company websites, publications, Journals, Reports, News Papers, Articles, etc.

**Objective:** The objective of the study is to understand the various regulatory framework, steps and process involved in corporate restructuring of companies in India.

### **PLANNING, FORMULATION AND EXECUTION OF VARIOUS RESTRUCUTING STRATEGIES:**

The corporate restructuring process requires various points to be kept in mind before, during and after the restructuring process.

Some of them are as follows:

1. Legal aspects.
2. Taxation and Stamp duty.
3. Valuation and Funding.
4. Accounting aspects.
5. Human and Cultural Synergies.
6. Competition aspects etc.

Keeping in mind the above aspects, the right type of corporate strategy is selected.

The below mentioned are some of the major restructuring strategies:

1. Merger.
2. Demerger.
3. Reverse Merger.
4. Disinvestment.
5. Takeovers.
6. Joint Venture.
7. Strategic alliance.
8. Slump Sale.
9. Franchising.

**1. Merger:** When two combines together to form one company, it is termed as merger of companies either by way of amalgamation or absorption<sup>2</sup>.

Mergers may be:

**Horizontal Merger:** When two or more companies which competes in the same industry, it is a horizontal merger.

**Vertical Merger:** When there is a combination of two or more companies in the same business but they are operating at different stage of production.

**Co-generic Merger:** When two companies merge who are in the related or same business but do not offer same products.

**Conglomerate Merger:** It is merger of two companies or firms of unrelated products and type of activities.

**2. Demerger:** A demerger is a form of corporate restructuring in which the entity's business operations are segregated into one or more components. It is the converse of a merger or acquisition<sup>3</sup>.

**3. Reverse Merger:** It is one of the method to become public listed company, in this method private companies with its own name acquire majority of public company shares.

**4. Disinvestment:** Disinvestment is selling or liquidating subsidiary or asset of a government or an organization. It is also called as "divestiture".

**5. Takeover:** Takeover also known as acquisition. In takeover the acquirer takes over the overall control over the target company. Takeover is of two types: i.e. friendly takeover and hostile takeover.

**6. Joint Venture:** Joint Venture is an entity formed by two or more companies with a common objective, with a functional or project based activity.

**7. Strategic alliance:** Strategic alliance is an activity formed by the firms with a common objective being working independently.

**8. Slump Sale:** In Slump Sale the company uses to sell off all its assets and undertakings in a lump sum value, it normally happens when the company wants to dispose off its substantial owned or fully owned units.

**9. Franchising:** It is a strategy in which an agreement has been made by two parties, franchiser and franchisee, to use the name, trademark or business system or process of the other party.

Now let us know about the various regulatory framework for mergers/amalgamations;

1. **The Companies Act 2013.**
2. **Income Tax Act, 1961.**
3. **Listing Agreement.**
4. **The Indian Stamp Act, 1899.**
5. **Competition Act 2002.**

1. **The Companies Act, 2013:** Chapter XV (Section 230-240) of the Companies Act, 2013 contains provisions on 'Compromises, Arrangements and Amalgamations', that covers mergers, amalgamations and arrangements, Demergers, fast track mergers for small companies, cross border mergers, takeovers, corporate debt restructuring etc.

The procedural aspect, such as forms and notices need to be made are also covered under Chapter XV of the Act.

The following below mentioned is the scheme of Chapter XV.

- a. Section 230-231 deals with compromise or arrangements.
- b. Section 232 deals with mergers and amalgamations including demergers.
- c. Section 233 deals with amalgamation of small companies (also called fast track mergers).
- d. Section 234 deals with amalgamation of foreign companies (also called as cross border mergers).
- e. Section 235 deals with acquisition and dissenting of shareholders.
- f. Section 236 deals with purchase of minority shareholding.
- g. Section 237 deals with power of central government to provide for amalgamation of companies in public interest.
- h. Section 238 deals with registration of offer of schemes involving transfer of shares.
- i. Section 239 deals with preservation of books and papers of amalgamated companies.
- j. Section 240 deals with the liability of officers in respect of offences committed prior to merger, amalgamation etc.<sup>4</sup>

2. **Income Tax Act 1961:** Income Tax Act deals with the concept of amalgamating/amalgamated companies, carry forward of losses, exemptions from capital gains tax etc.

- a. If capital gains arise on transfer of any capital asset in the scheme of amalgamation, by an amalgamating company to the amalgamated company, such capital gains shall be exempt from tax provided the amalgamated company is an Indian company.
- b. If capital gains arise on transfer of shares held in Indian company by amalgamating foreign company to amalgamated foreign company, such capital gains shall be exempt from tax but there is a proviso to this exemption.

- c. Capital gains arising from the transfer of shares in the scheme of amalgamation on the fulfilment of a few conditions which are given in the act are exempt from tax.
- d. In case the shares received from the amalgamated company are later sold or transferred, the cost of shares of the amalgamating company shall be the cost of shares of the amalgamated company and also for determining whether the shares in the amalgamated are long term capital assets or not, the period of the holding shall be computed from the date of acquisition of shares in the amalgamating company.
- e. Depreciation charge on assets are waived and are not strictly observed in case of amalgamation or demerger of companies where an asset is transferred to an Indian amalgamated or resulting company under the scheme or amalgamating or demerger.
- f. The chargeability of section 45(1) under the Income Tax Act to attract capital gains tax liability of capital assets is not to be applied in a scheme of amalgamation or demerger of companies on the presupposition that transfer of assets is not to be constructed as transfer. In terms of section 43C of the Act, while computing the profit or loss on sale of assets as stock in trade which has become the property of the amalgamated company under a scheme of amalgamation, the cost of acquisition of such asset to the amalgamating company plus an increase in cost due to any improvement made thereto and expenditure incurred wholly and exclusively in connection with such transfer.

There are several other provisions also but the above mentioned are some of the main provisions which are very effectively promoting the restructuring of companies and these provisions have really relaxed the taxation policy for the purpose of restructuring.<sup>5</sup>

- 3. **Listing Agreement:** Under Clause 24(f) of the Listing Agreement, the scheme of merger or demerger of a listed company is required to send a copy of the scheme to the stock exchanges where the shares of the company are listed i.e. BSE or NSE. Stock Exchanges raised several queries on Takeover Code and SEBI Regulations and on being satisfied the scheme is approved.<sup>6</sup>
- 4. **Indian Stamp Act:** The provisions of the Indian Stamp Act and Section 5 and 6 of the Competition Act, 2002 are required to be complied with.

#### **STEPS INVOLVED IN MERGER:**

- 1. Check memorandum whether it authorises merger. If no amend the clause of memorandum.
- 2. Convene a preliminary board meeting.
- 3. Prepare valuation report and swap ratio.
- 4. Preparation of scheme of amalgamation.
- 5. Convene Board meeting to approve the scheme, valuation report, swap ratio and inform stock exchanges before meeting and outcome of the meeting.

6. Application under clause 24 of Listing Agreement filing the proposed scheme of amalgamation.
7. Application to the Tribunal seeking direction to call general meeting/ creditors meeting.
8. Convene general meeting and inform stock exchange as and when required.
9. Reporting results of meeting to the concerned tribunal.
10. Obtaining tribunal order sanctioning scheme.
11. Filing copy of tribunal order with ROC.
12. Transfer of assets and liabilities.
13. Allotment of shares to shareholders of transferor company.
14. Listing of shares at Stock Exchange.
15. Post-merger integration.<sup>7</sup>

#### **FILING OF FORMS:**

The below mentioned are the various forms, reports and returns required to be filed with the Registrar of Companies, Stock Exchanges and SEBI at the various stages of merger/amalgamation.

- a. A special resolution is needed to be passed to alter the object clause of the memorandum of association of the transferee company.
- b. A special resolution for increasing the authorised capital of the transferor company is required to be passed.
- c. A special resolution is also required to be passed to authorise board of directors to issue shares to the shareholders of the transferor company.
- d. A special resolution need to be passed in the board meeting that the transferee company will commence the business of the transferor company as the merger or amalgamation becomes effective.
- e. As per the compliances of the listing Agreement, the transferee company is required to give prior notice to the stock exchange where it is listed and to SEBI (Securities and Board Exchange of India) to discuss the merger/amalgamation and approving the same.
- f. As per Section 230 of the companies Act 2013, it is required by the transferee company to file with the Registrar of Companies, form INC 28 and holding meeting of shareholders and debenture holders and creditors.
- g. As per the listing agreement the transferee company is required to provide with all the details and minutes of general meeting in which the scheme of merger/amalgamation is approved.
- h. The following below mentioned are the documents which are required to be annexed along with the e-form within 30 days from the passing of special resolution.
  - (i) A certified true copy of the special resolution approving scheme of merger/amalgamation.
  - (ii) An explanatory statement is required to be annexed along with the notice of general meeting at which the resolution is passed.
  - (iii) The e-form is required to be digitally approved by the Company Secretary/Chartered Accountant/Cost Accountant of the company and digitally signed by the Director/Managing Director/Manager of the company who is duly authorised to do so.

## **PROCESS OF MAKING AN APPLICATION TO NCLT (National Company Law Tribunal):**

An application for compromise, merger, arrangements and amalgamations are required to be made before the Tribunal in Form NCLT-1 as provided under the NCLT Rules 2016 and the same shall be accompanied with the Form No. NCLT-2 which is a notice of admission.

- a. An affidavit in Form No. NCLT-6.
- b. A copy of scheme of merger/amalgamation.
- c. Payment of fees as may be prescribed.
- d. The Tribunal shall notify to the parties the date and place of hearing of the petition.
- e. The petitioner may at any stage prior to the hearing of petition or application may withdraw his petition or application.
- f. Every party may appear before the Tribunal in person or through an authorised representative who is authorised on his behalf.
- g. The authorised representative may make an appearance through filing of vakalatnama or Memorandum of Appearance in Form No. NCLT.12
- h. The Central Government, the Regional Director or the Registrar of Companies may authorise an advocate to represent the proceedings before the tribunal.
- i. The order of NCLT need to be filed with Registrar of Companies within 30 days of receipt of the order<sup>8</sup>.

## **CONCLUSION:**

Corporate Restructuring leads to significant changes in various aspects of the organisation. So, it is important to be aware of the various acts, rules, methods and process of corporate restructuring to understand the entire restructuring process. The study reveals the various regulatory frameworks and effective implementation of the strategy both during the time of prosperity and recession.

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