



FAST TRACK MERGER: REVOLUTIONIZING BUSINESS IN INDIA



FAST TRACK MERGER

Legal Insights

Exploring provisions under Indian Companies Act, 2013 and other related Provisions of other Regulations.

Objectives Unveiled

Rationale for Introducing Fast Track Mergers and Legislative Intent.

Procedure & Compliance

Exploring the Procedure & regulatory compliance of Fast-Track Transactions

Timeline Overview

Comparative Merger Timelines: Normal vs. Fast-Track Route.

Illustrations & Case Studies

Some landmark fast track cases.

Points of Discussion

Delving into the Hurdles of Fast Track Mergers.

AGENDA



The **Chapter X of the J.J. Irani Committee Report of 2005** recognized the importance of Mergers and Acquisitions (M&A) as drivers of growth and business strategy and the committee recommended streamlining the process by adopting international M&A models.

Fast Track merger was introduced to promote ease of doing business by permitting fast track mergers for certain classes of companies, including holding companies and their wholly-owned subsidiaries, small companies & Start-up Companies.

Fast track Merger in India aims to streamline the certain merger processes, tackling challenges and procedural delays.



OBJECTIVES UNVIELED

The Ministry of Corporate Affairs introduced Section 233 of the Act along with Rule 25 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 enabling Fast Track Mergers (FTMs) without requiring intervention or approval from NCLT.



COMPANIES
ACT, 2013

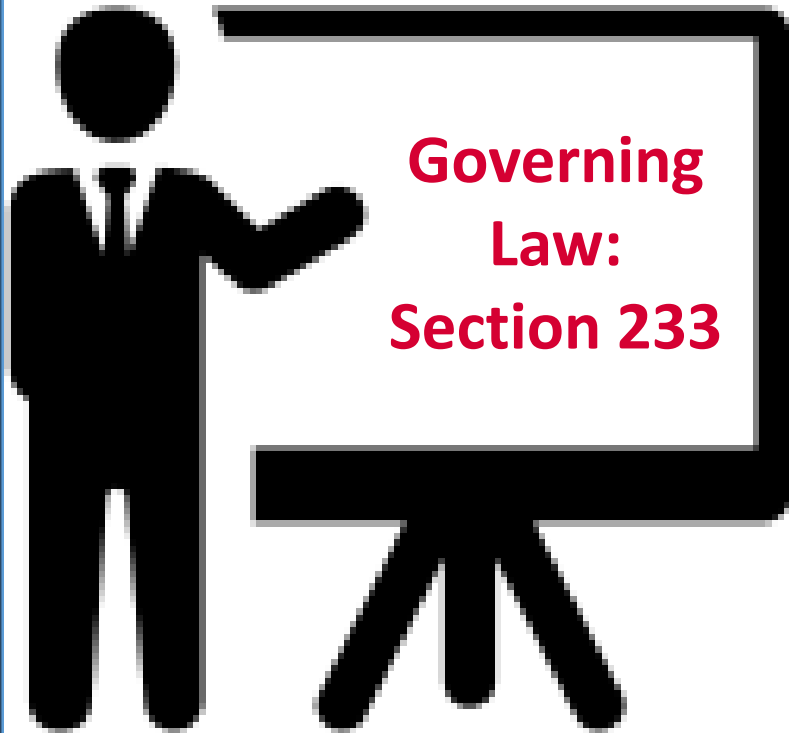
INCOME
TAX ACT,
1961

SEBI (LODR)
Regulations,
2015

STAMP
DUTY



LEGAL INSIGHTS

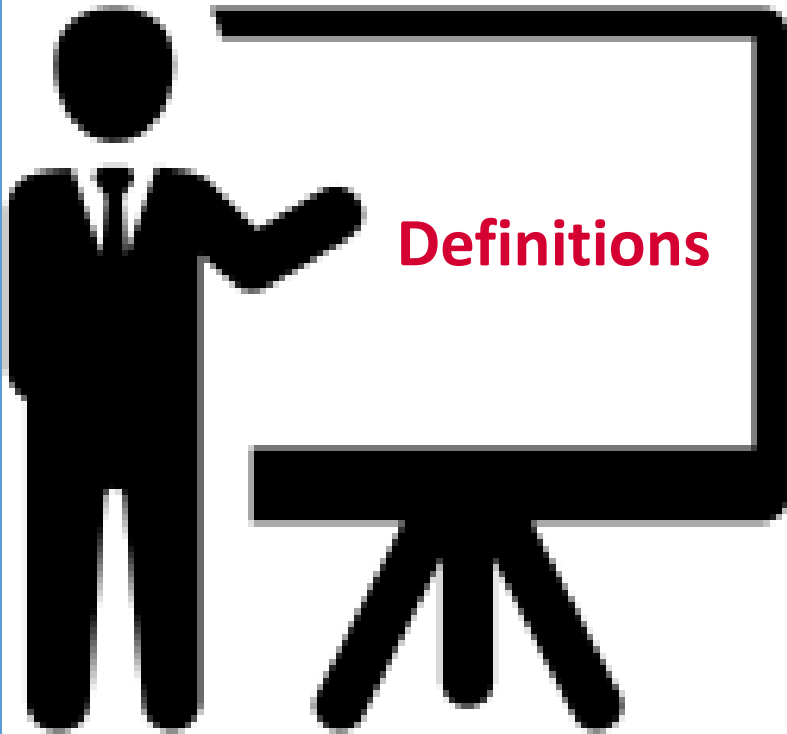


PRE-REQUISITES FOR A FAST TRACK MERGER

- ✎ The amalgamation shall be between -
 - 2 or more small companies;
 - 2 or more start-up companies;
 - 1 or more start up with 1 or more small company;
 - a holding company and its wholly-owned subsidiary company.

- ✎ Declaration solvency, i.e., the companies planning for fast-track merger shall declare their solvency to ROC and should not be insolvent.

COMPANIES ACT, 2013



Section
2 (85)

Small Company

Section
2 (87)

Subsidiary Company

Section
2 (46)

Holding Company

DPIIT

Start-up Company


"SMALL COMPANY"

Criteria:

- Paid-up share capital of which does not exceed 50 lakh rupees or such higher amount as may be prescribed.
- Turnover of which does not exceed 2 crore rupees or a higher amount as may be prescribed as per last profit and loss account.
- Recently, the MCA vide Companies (Specification of Definition details) Amendment Rules 2022 enhanced the threshold limits as follows:
 - Paid-up share capital to Rs. 4 Crore;
 - Turnover to Rs. 40 Crore;



"SMALL COMPANY"

-  **Exclusions:**
- - Holding or subsidiary companies.
 - - Companies registered under section 8.
 - - Companies governed by special acts.
 - - Public companies





"START-UP COMPANY"

"START-UP COMPANY" must be recognized by Department of Promotion of Industry and Internal Trade (DPIIT)

#startupindia

Criteria:

- Incorporated as a private limited company, partnership firm, or LLP;
- **Operational for less than 10 years** from incorporation or registration.
- **Turnover** not exceeding INR 100 crore for any financial year since incorporation.
- Engaged in innovation, deployment, development, or commercialization of new processes, products, or services driven by technology or intellectual property.

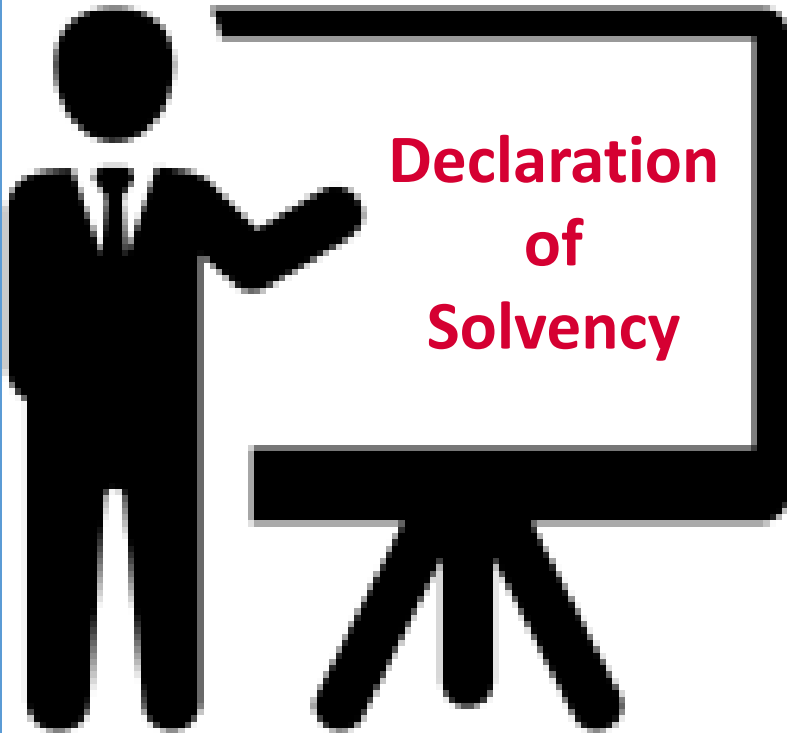
"SUBSIDIARY COMPANY"

- 📌 *In relation to a Holding Company, means a Company in which the Holding Company*
- controls the composition of the Board of Directors, OR
 - exercises or controls over one-half of the voting power, alone or with its subsidiaries.

"WHOLLY-OWNED SUBSIDIARY"

- 📌 In case of a “**Wholly-owned Subsidiary**”, 100% Equity shares are owned by another company (Holding Company).

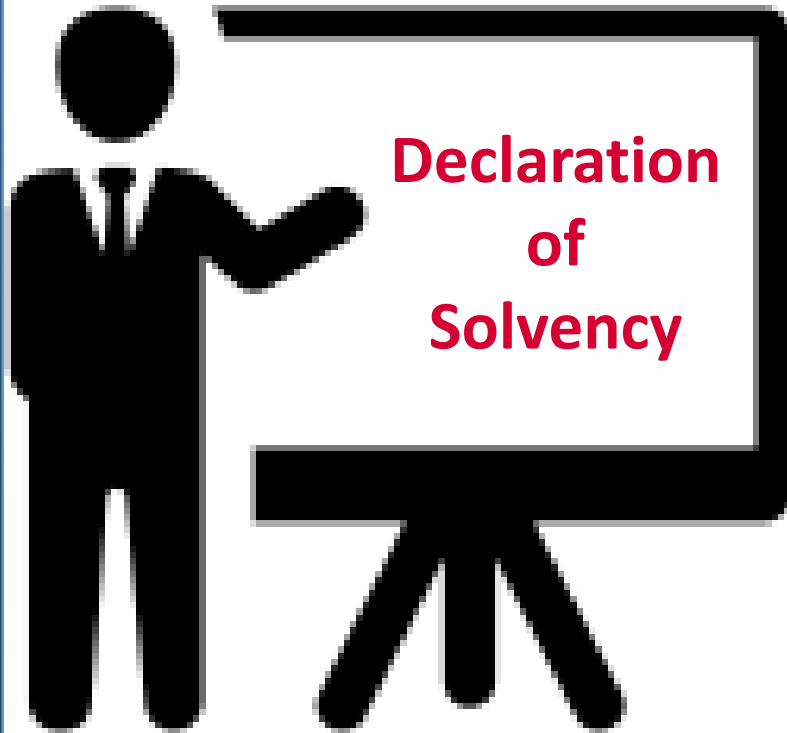




📌 To be filed in Form CAA. 10 by each of the Company with the Registrar;

📌 Test of Solvency:

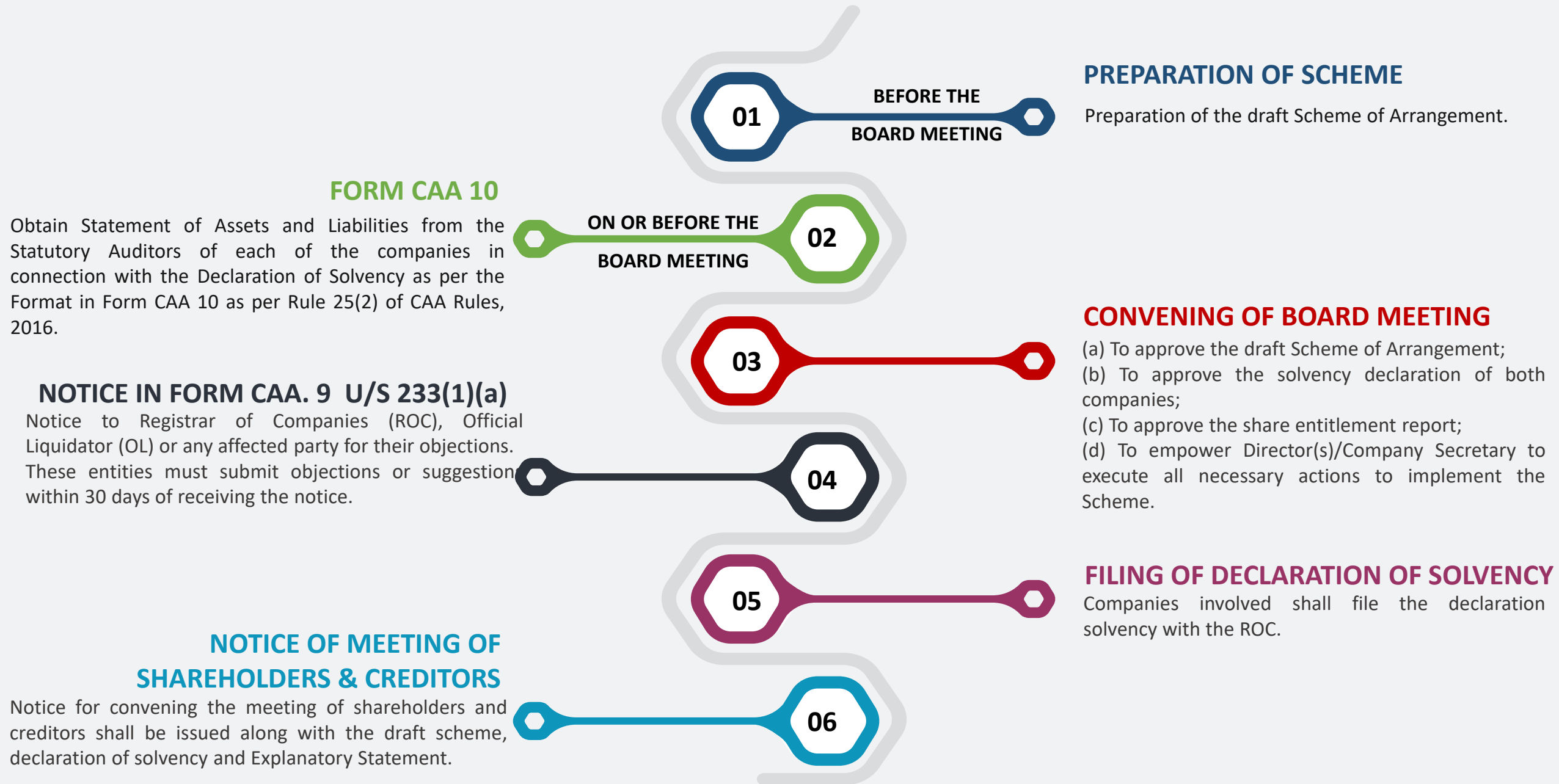
- the company is capable of meeting its liabilities as and when they fall due;
- the company will not be rendered insolvent within a period of one year from the date of making this declaration;



- ✎ The Statement of Assets and Liabilities must also contain their “Realisable Value” in addition to the “Book Value”;
- ✎ The Statement of Assets and Liabilities should be as on the latest date of making this declaration. Generally, a period of not more than six months is advisable.



PROCEDURE





PROCEDURE

FORM CAA 11- SUBMISSION OF SCHEME TO CENTRAL GOVERNMENT

The Transferee Company must, within 7 days after the conclusion of meetings of the Members and Creditors, submit a copy of the Scheme along with the meeting outcomes in Form CAA 11 of the Rules to the Central Government.

CONFIRMATION ORDER ISSUANCE BY REGIONAL DIRECTOR

The Regional Director (RD) will review objections and suggestions from relevant authorities. If the RD deems the Scheme to be in the public interest and beneficial to creditors, a confirmation order will be issued.

07

OBTAINING APPROVAL

Obtain approval of 90% by way of written approval of 90% of the value of shareholders and each class of the creditors.

08

FORM GNL-1

The Transferee Company is required to submit a copy of the Scheme along with the meeting outcomes in Form CAA 11 of the Rules to the Registrar of Companies using Form GNL-1, as well as to the Official Liquidator and Income Tax department.

09

10

INC 28- MAKING THE SCHEME EFFECTIVE

To enact the Scheme, file a copy of the order with the Registrar of Companies using e-Form INC 28.

11

Note: In case of Public Company, after step 3, file a copy of board resolution to ROC in Form MGT-14 within 30 days of board meeting.



AS-14

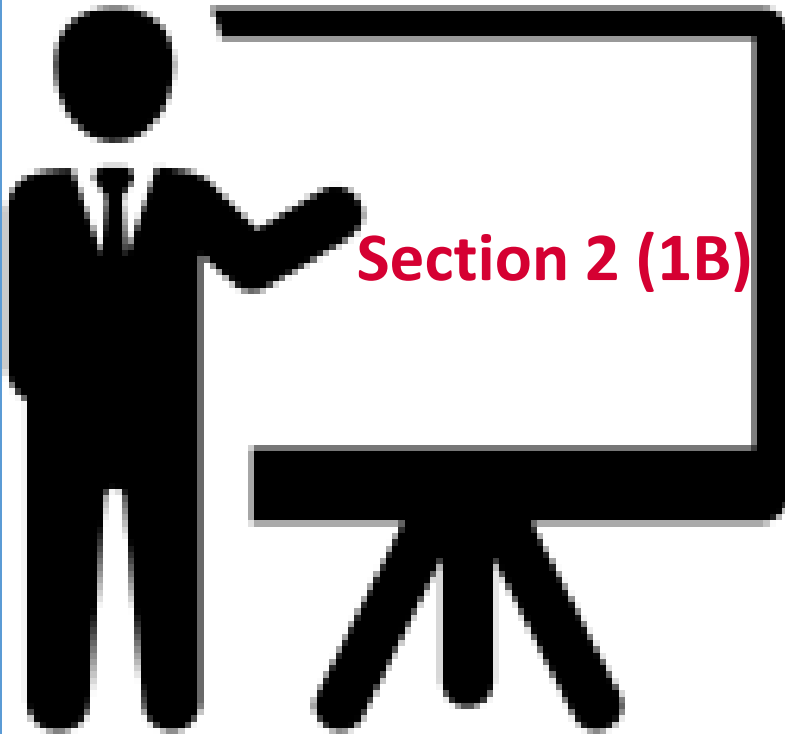
IND AS 103



Methods

**Pooling of
Interest Method**

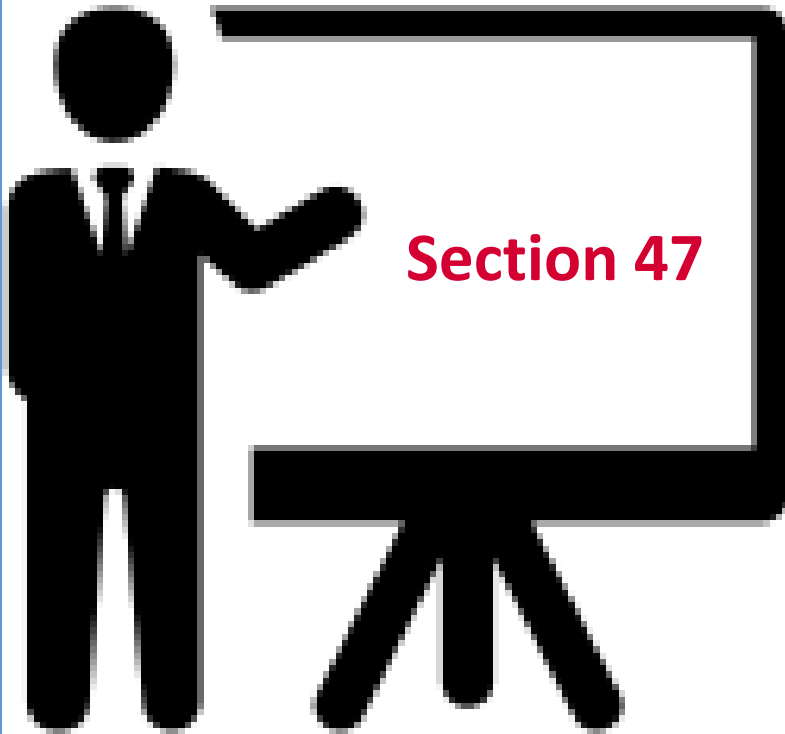
**Purchase
Method**



"Amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company in such a manner that:

- all the property and liabilities of the amalgamating company or companies immediately before the amalgamation becomes the property and the liabilities of the amalgamated company by virtue of the amalgamation;
- shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies ***(other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary)*** become shareholders of the amalgamated company by virtue of the amalgamation,

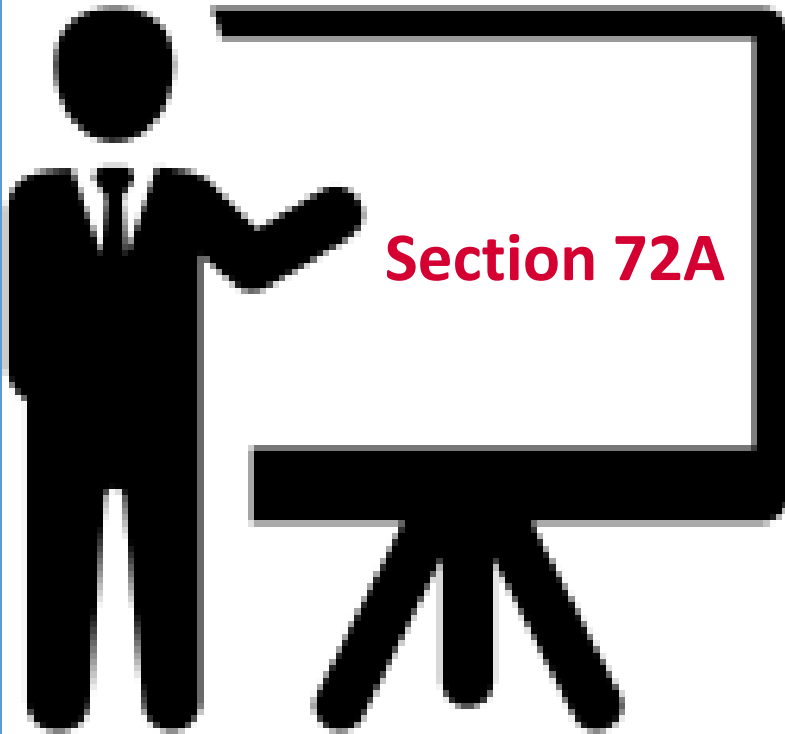
otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company;



The transactions executed in the proposed amalgamation are not regarded as “Transfer” for the purpose of Capital gain implications as per Section 47 of the Income Tax Act, 1961. The relevant provisions of Section 47 are read as :

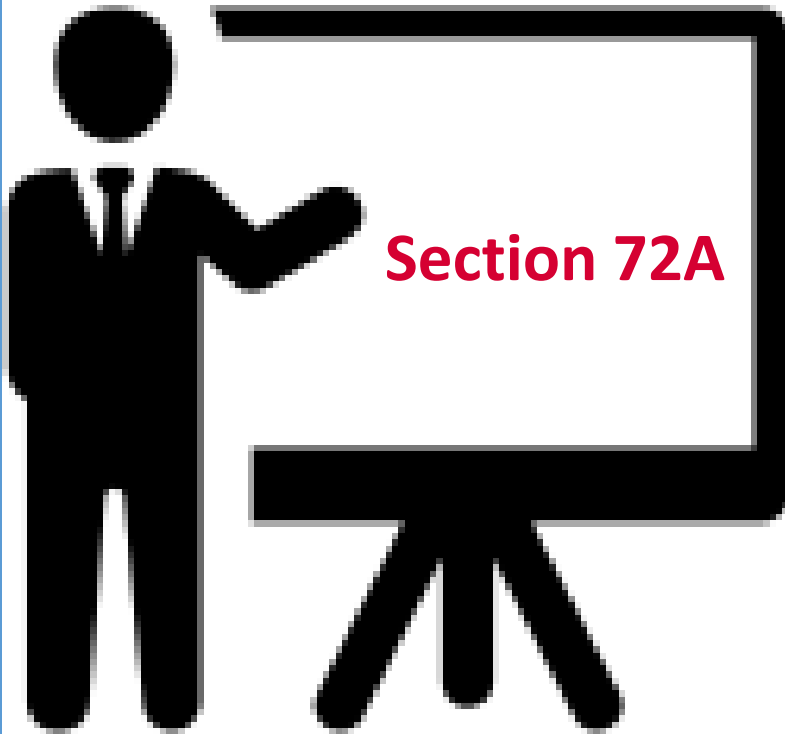
“Nothing contained in section 45 (Capital gain) shall apply to the following transfers:

- (vi) any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;*
- (vii) any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if—*
 - (a) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder itself is the amalgamated company, and*
 - (b) the amalgamated company is an Indian company;”*



In case of Amalgamation, pursuant to the compliance of below mentioned conditions, the accumulated losses and the unabsorbed depreciation of the Amalgamating Company shall be deemed to be the loss or as the case may be, allowance for unabsorbed depreciation of the Amalgamated Company for the previous year in which the amalgamation was effected.

- Where there has been an amalgamation of:
 - A company owning an industrial undertaking or a ship or a hotel with another company; or
 - A banking company referred to in clause (c) of Section 5 of the Banking Regulation Act, 1949 with a specified bank; or
 - One or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business.

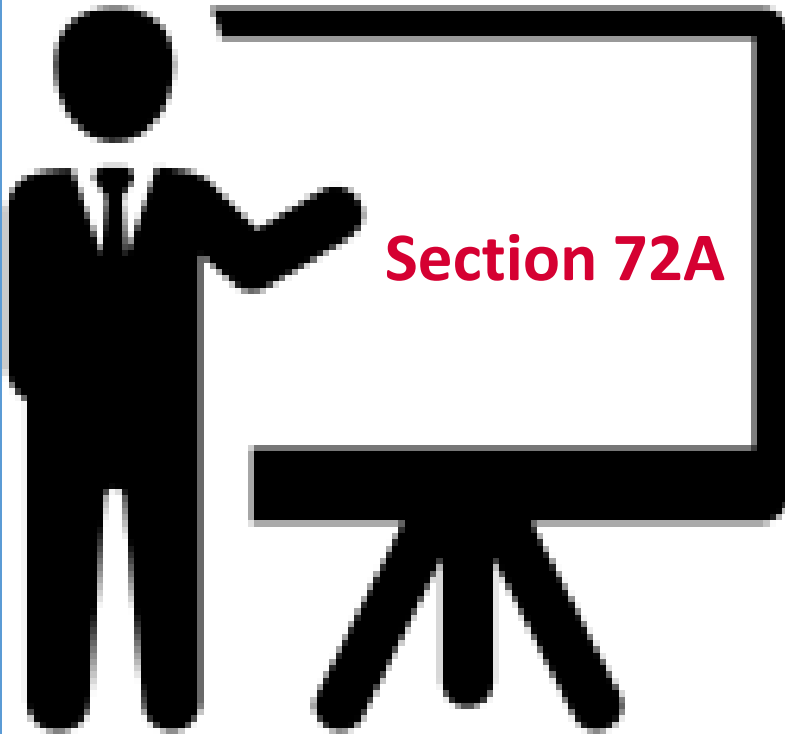


- an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within five years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends;

Further, the companies have to fulfill the following mentioned conditions also:

The Amalgamating Company:

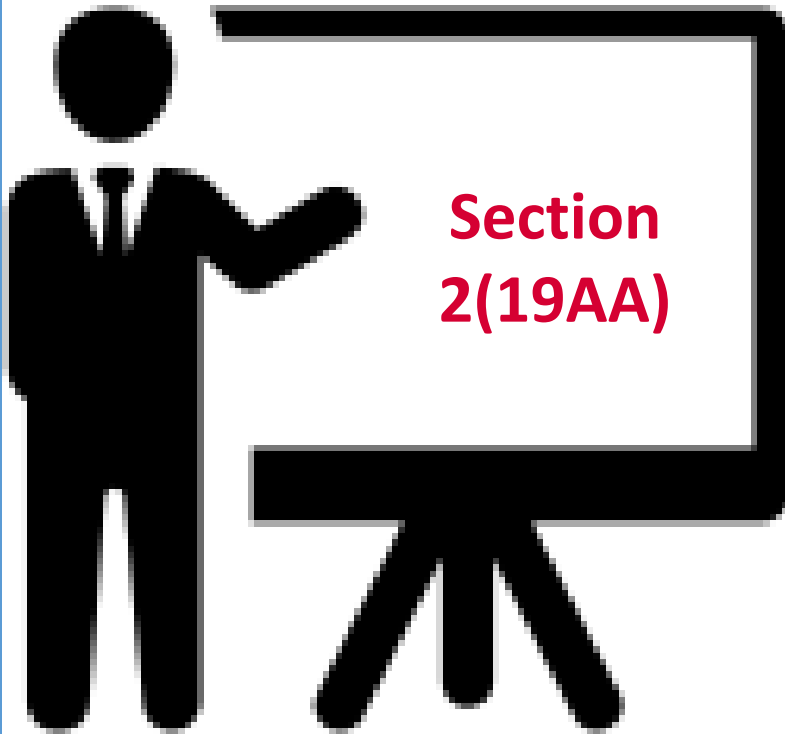
- i) Has been engaged in the business, in which the accumulated loss occurred, or depreciation remains unabsorbed, for three or more years;
- i) Has held continuously as on the date of the amalgamation at least $\frac{3}{4}^{\text{th}}$ of the book value of fixed assets held by it two years prior to the date of amalgamation.



The Amalgamated Company:

- i) Holds continuously for a minimum period of five years from the date of amalgamation at least $\frac{3}{4}$ th of the book value of fixed assets of the Amalgamating Company acquired in a Scheme;
- ii) Continues the business of the Amalgamating Company for a minimum period of five years from the date of amalgamation;
- iii) Fulfils such other conditions as may be prescribed.

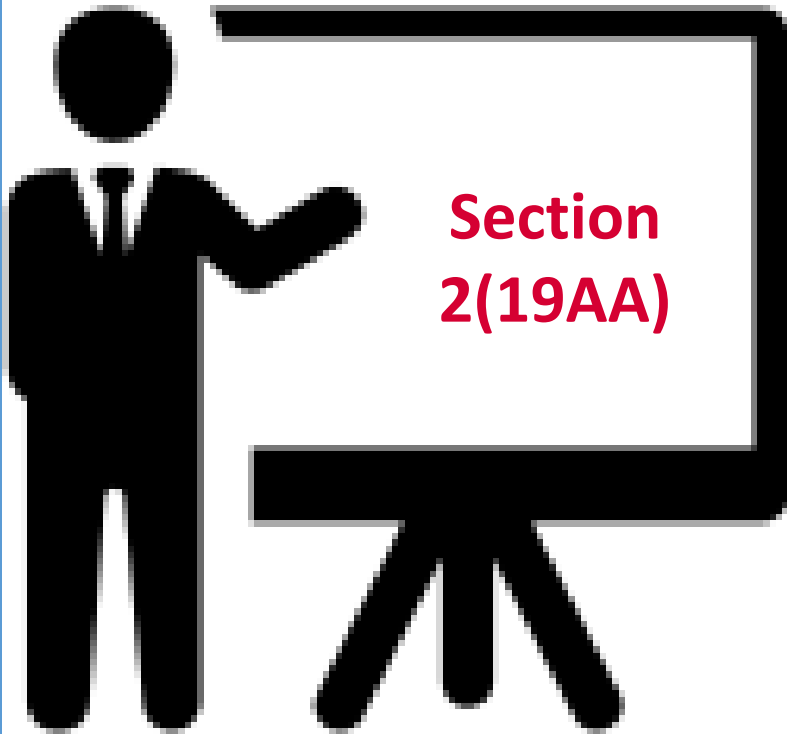
In a case where any of the above mentioned conditions are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax.



Demerger:

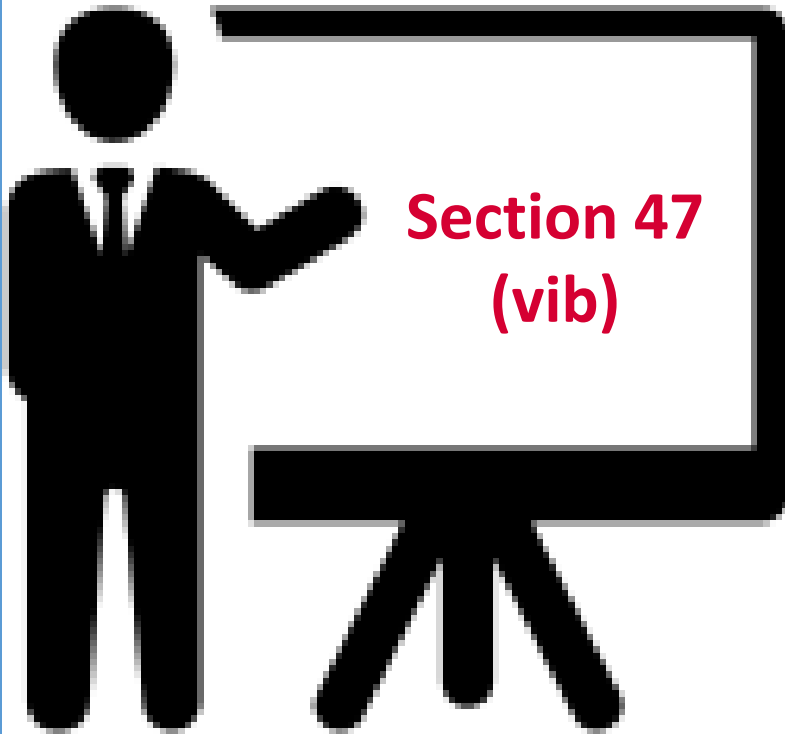
A demerger to be tax neutral in the hands of Demerged Company must fulfill the definition of demerger as given in Section 2(19AA) of ITA.

- all the property and liabilities of the undertaking being transferred by Demerged Company immediately before the demerger would become the property and liabilities of the Resulting Company;
- all the properties and liabilities of the undertaking would be recorded by the Resulting Company at their respective book values (ignoring revaluations);
- shareholders holding not less than $\frac{3}{4}$ th in value of the shares in Demerged Company would become the shareholders of the Resulting Company;
- the Resulting Company shall issue shares in consideration of the demerger on a proportionate basis;
- transfer of the undertaking would be on going concern basis.



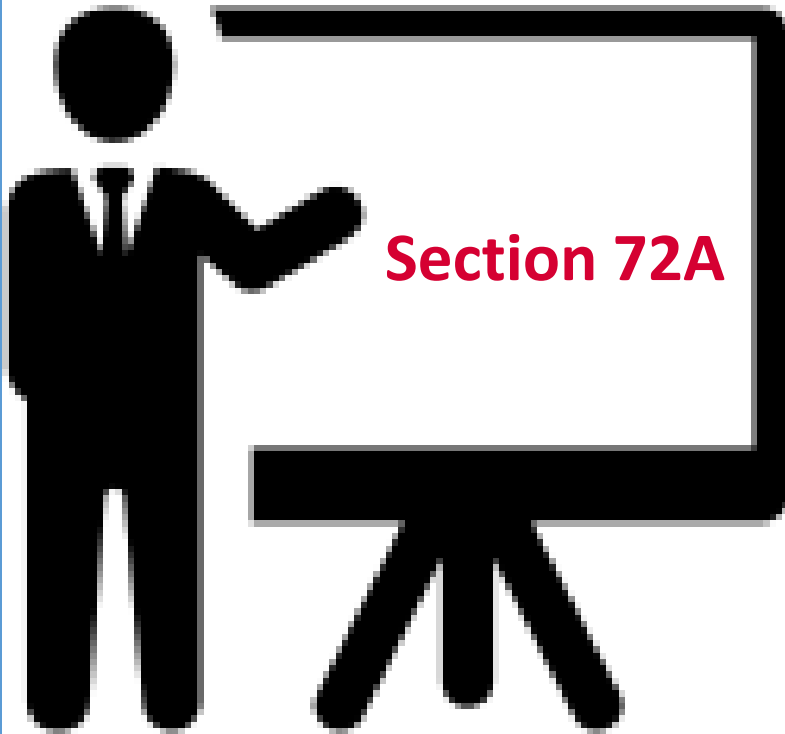
Demerger:

- As per the explanation to section 2(19AA) of IT Act, 'Undertaking' shall include any part of an undertaking, or a unit or division of an undertaking or a 'business activity' taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a 'business activity'.



Transactions not regarded as transfer:

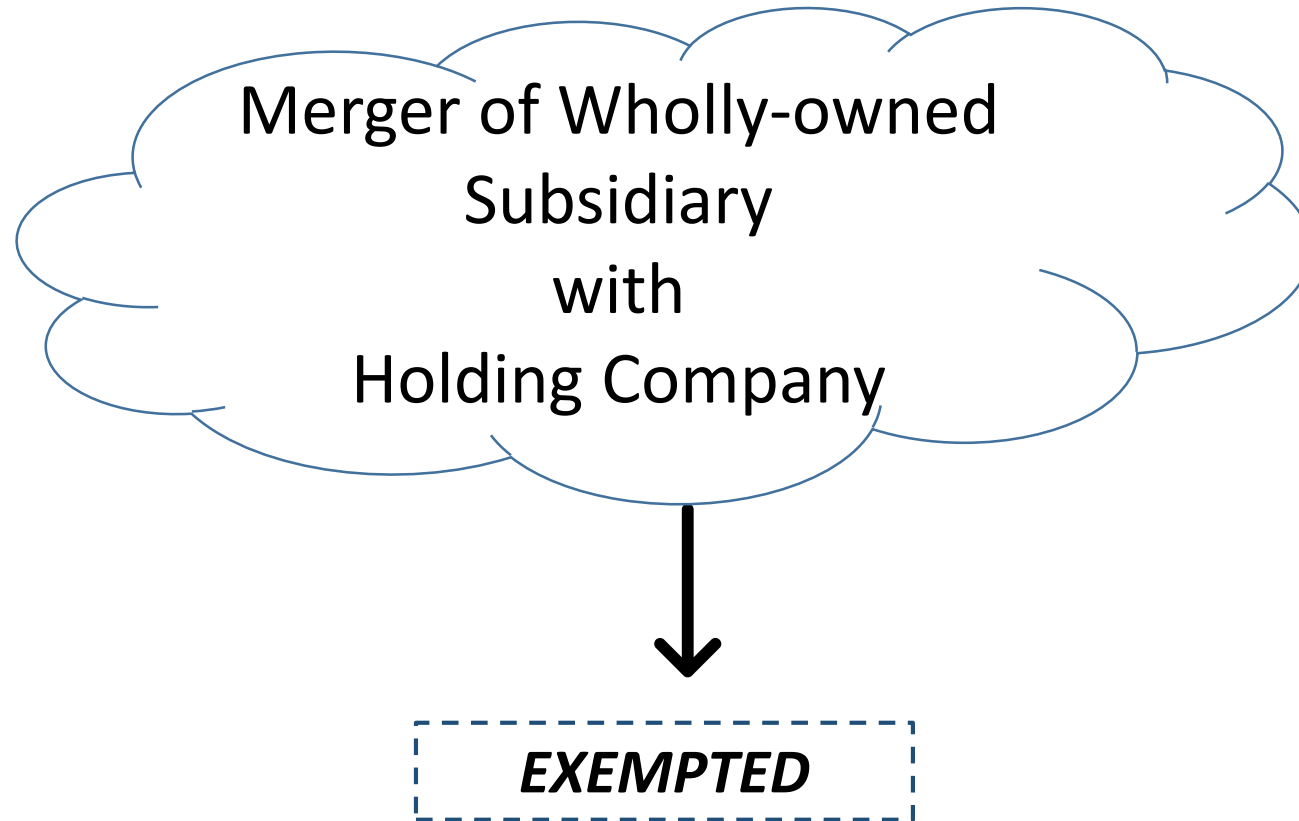
Any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company, then such a transaction shall not be regarded as a 'Transfer'. Accordingly, no income tax under the head 'Capital Gains' shall arise.



In the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall—

- (a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;
- (b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

Requirement of “No-objection letter” from stock exchanges



STAMP DUTY



One of the major issues in M&A transactions is related to the implication of stamp duty;



It has been settled by various judicial pronouncements that the order passed by the Courts sanctioning a Scheme of Arrangement is an instrument and accordingly stamp duty is to be levied on this instrument;



Under a Scheme of Arrangement, property is transferred from one person to another person, and accordingly falls within the ambit of the term “Conveyance” as defined under the Act;

STAMP DUTY



The rate of Stamp Duty on merger and amalgamations differs from state to state.



While certain States have amended to the definition of conveyance by including within its ambit the transactions of mergers and amalgamation and have provided specific entry regarding rate of stamp duty in respect of the order of the courts.



On the other hand, in the absence of a specific rate of stamp duty, stamp duty is generally levied under the Article “Conveyance”. For instance, in the NCT of Delhi, stamp duty is levied at the rate of 3% on the consideration amount set forth in the instrument i.e. the Court Order;

STAMP DUTY



STATE	RATE OF STAMP DUTY
ANDHRA PRADESH	INR 2/- for every INR 100/- or part thereof of the market value (MV) of the property.
CHHATTISGARH	7.5% of the MV of the immovable property transferred located within Chhattisgarh Or 0.7% of aggregate of MV of shares issued or allotted and consideration paid, whichever is higher.
MADHYA PRADESH	5% of the MV of the immovable property transferred located within Madhya Or 0.5% of aggregate MV of shares issued or allotted and consideration paid whichever is higher.

STAMP DUTY



STATE	RATE OF STAMP DUTY
GUJARAT	1% of the aggregate of MV of share issued or allotted OR face value of such shares, whichever is higher AND the consideration paid for such amalgamation, or 1% of MV of immovable property situated in Gujarat of the transferor Company. whichever is higher. (Maximum duty INR 25 Crore)
KERALA	2% of the MV of the immovable property of the transferor company Or 0.6% of aggregate MV of shares or marketable securities, issued or allotted and amount of consideration paid whichever is higher.

STAMP DUTY



STATE	RATE OF STAMP DUTY
MAHARAHTRA	<p>10% of the market value (MV) of the shares issued or allotted and consideration paid for such amalgamation-</p> <p>Provided amount of duty shall not exceed-</p> <ul style="list-style-type: none">(i) 5% of the MV of the immovable property located within Maharashtra of the Transferor Company; or(ii) 5% of the MV of shares issued or allotted and consideration paid, whichever is higher: <p>Provided that in case of reconstruction or demerger the duty shall not exceed-</p> <ul style="list-style-type: none">(i) 5% of the MV of the immovable property located within Maharashtra transferred by Demerging Company to the Resulting Company, or(ii) 0.7% of the MV of shares issued or allotted to the Resulting Company and the amount of the consideration paid, whichever is higher

STAMP DUTY

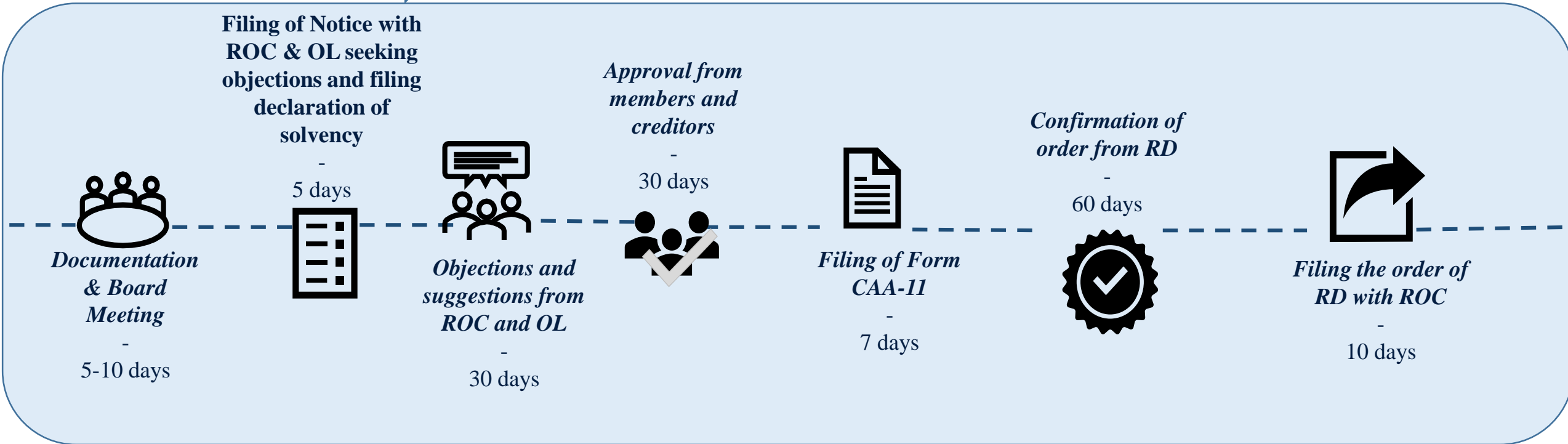


STATE	RATE OF STAMP DUTY
WEST BENGAL	<p>The same duty as a Conveyance on the aggregate of MV of the shares issued or allotted, and consideration paid –</p> <p>(a) by the transferee company, for such amalgamation or merger: Provided that the amount of such duty chargeable shall not exceed–</p> <p>(i) 2% of the MV of the immovable property located within West Bengal of the transferor company, or</p> <p>(ii) 0.5% of the aggregate of MV of the shares issued or allotted and consideration paid, whichever is higher.</p> <p>(a) by the resulting company, for such reconstruction or demerger: Provided that the amount of such duty chargeable shall not exceed–</p> <p>(i) 2% of the MV of the immovable property located within West Bengal of the transferor company, or</p> <p>(ii) 0.5 of the aggregate MV of the shares issued or allotted, to the resulting company and the amount of consideration paid, whichever is higher.</p>



COMPARATIVE TIMELINE OVERVIEW

FAST TRACK MERGER

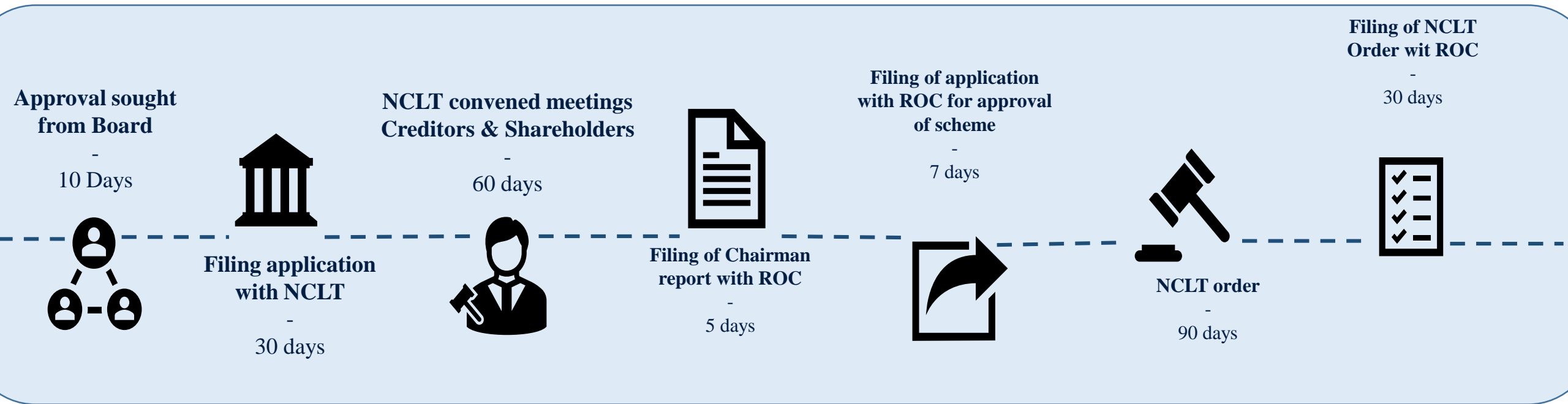


COMPLETION OF MERGER

130-140 days (Approx.)



NCLT MERGER



COMPLETION OF MERGER

240-250 days (Approx.)

NOTE: In case of a listed Company , an estimated additional time of 3-4 months may be considered for regulatory approvals.



ILLUSTRATIONS AND CASE STUDIES



Illustrations



- ✎ The merger of MPS Telecom Private Limited (**Unlisted Co.**), and Oneworld Teleservices Private Limited (**Unlisted Co.**) with Optimus Infracom Limited (**Listed Co.**).
- ✎ Scheme of Amalgamation between Qess Corp Limited (**Listed Co.**) and its wholly-owned subsidiaries being (i) Greenpiece Land-scapes India Private Limited (**Unlisted Co.**) ; (ii) Golden Star Facilities and Services Private Limited (**Unlisted Co.**); (iii) MFX Infotech Private Limited (**Unlisted Co.**); and (iv) Trimax Smart Infraprojects Private Limited (**Unlisted Co.**) .





**CRITERIA
FOR
SHAREHOLDER'S
APPROVAL**

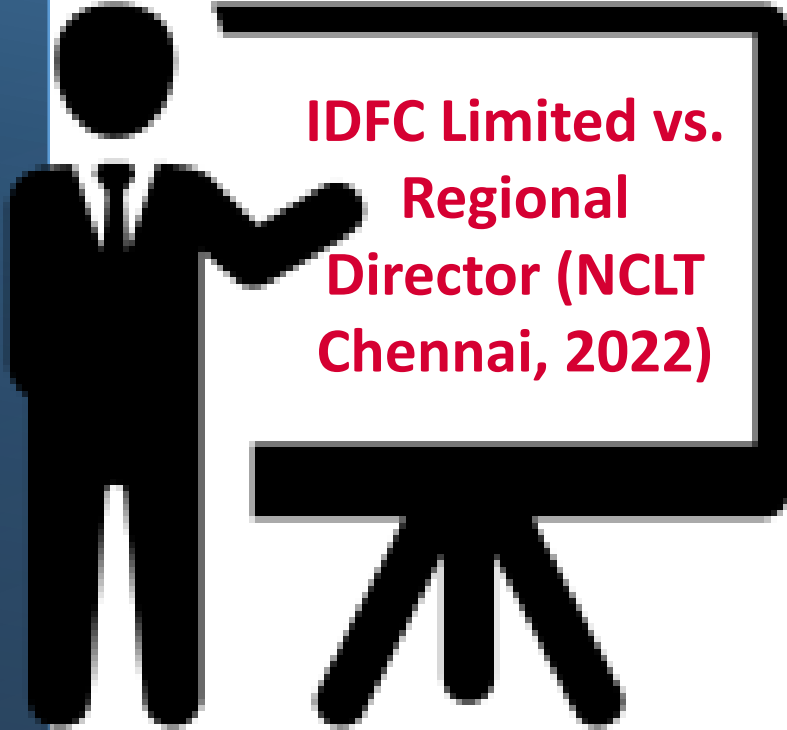
- ✎ **RD CHENNAI - Western Hospitals Corporation Private Limited, Apollo Health Care India Limited with Apollo Hospitals Enterprise Limited** approved the scheme on 28.06.2021, where the members at the general meeting held **less than 90% of the value of shares.**
- ✎ **RD KOLKATA - Fort Groster Electric Limited with M/s Jay Shree Chemical Private Limited** approved the scheme vide order dated 25.10.2018, where members holding **only 43%** of the value were present and voting.

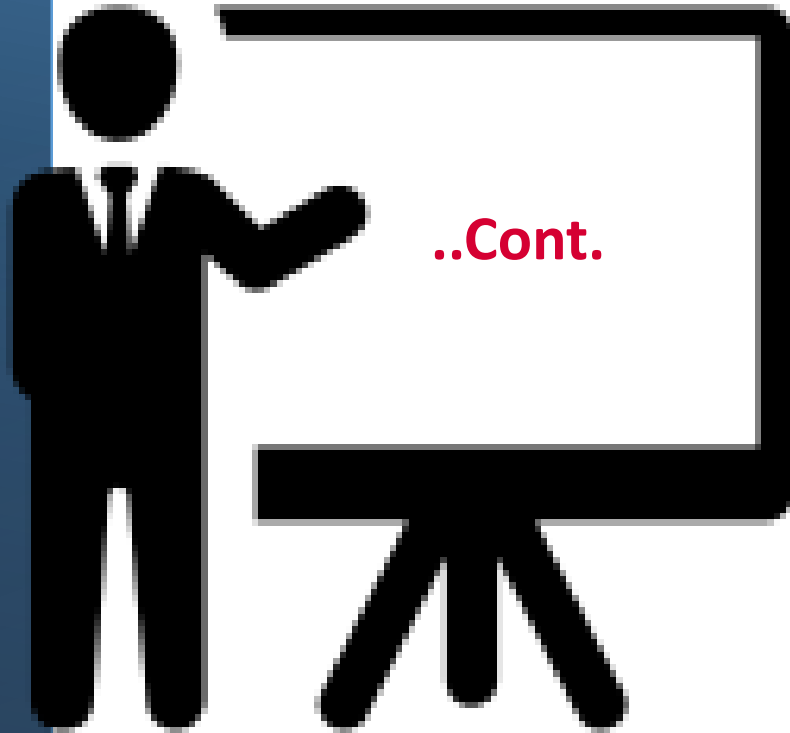
CASE STUDIES



FACTS:

1. Scheme of Amalgamation under Section 233 between IDFC Alternatives Limited, IDFC Trustee Company, IDFC Projects Limited with IDFC Limited.
2. The Applicant sought approval for a fast track merger under Section 233 of the Companies Act, 2013.
3. The Transferee Company, a listed entity, failed to obtain the required 90% shareholder approval, securing only 52.09%.
4. Despite obtaining 99.9971% approval through e-voting, representing 52.08% of the capital, the Respondent rejected the Scheme.



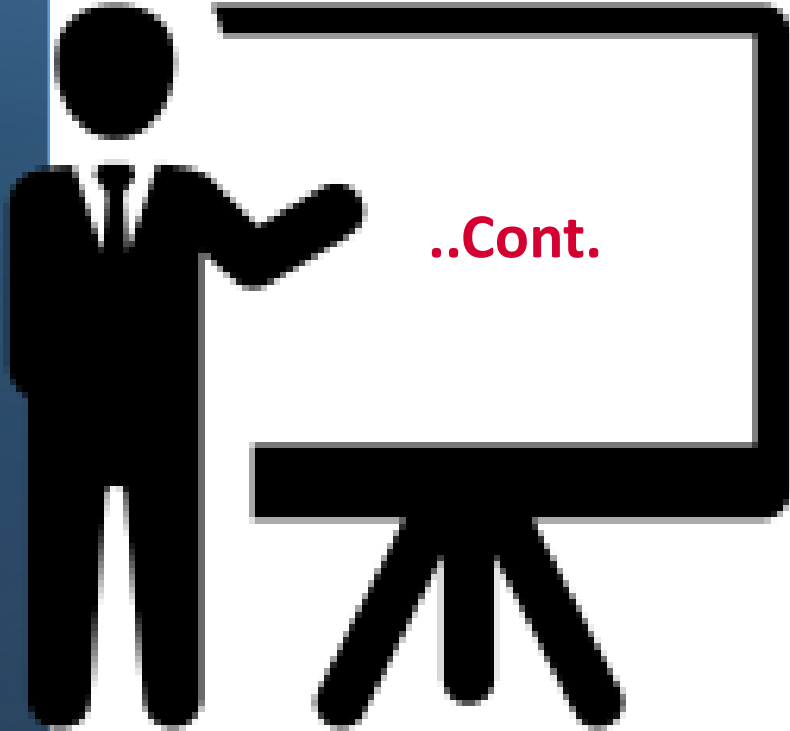


ISSUES:

1. **Compliance with Section 233:** Whether the 52.09% approval meets the Act's requirement of 90% shareholder consent.
2. **Validity of e-voting:** Whether e-voting constitutes legitimate shareholder approval.
3. **Objections under Section 233(3):** Whether objections raised by the Respondent under this section are valid.

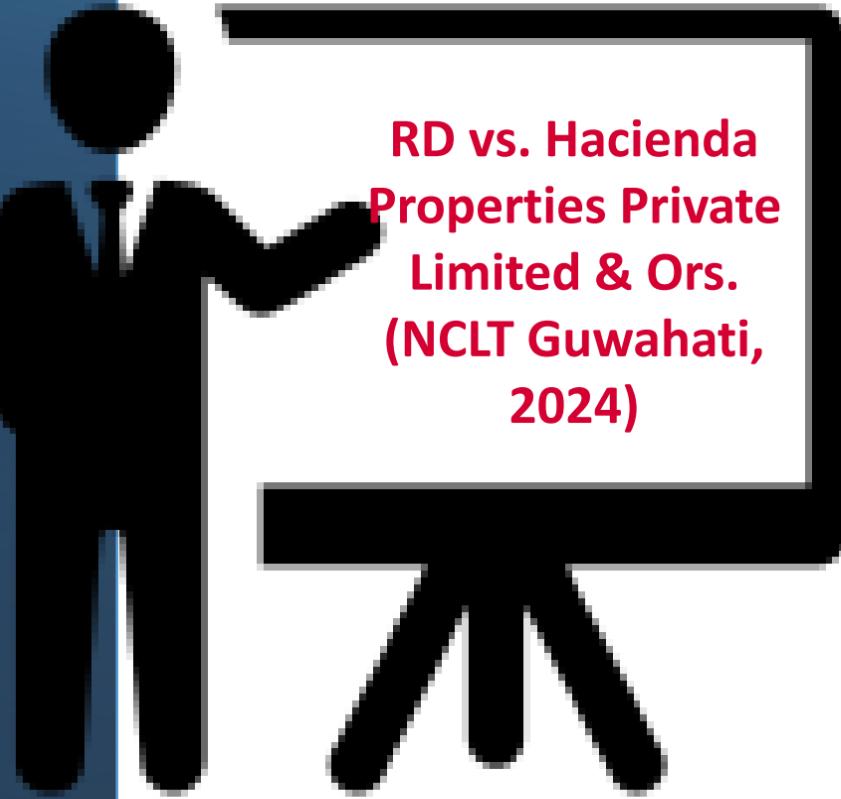
HELD:

1. The Tribunal found the scheme prima facie **non-detrimental to shareholders' interests**.
2. All statutory compliances fulfilled.
3. The Tribunal, under Section 233(6) of the Companies Act, 2013, sanctioned the Scheme of Arrangement.



FACTS:

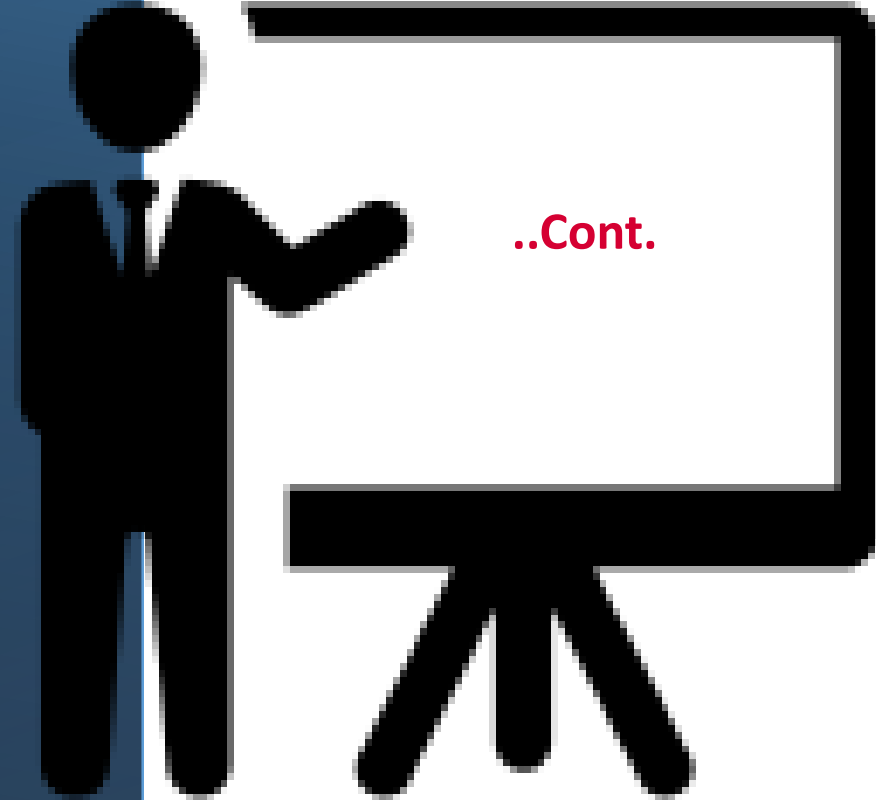
1. The case involves a fast-track merger application filed by respondent companies under Section 233(5) of the Companies Act, 2013.
2. Concerns were raised by the applicant (RD NER) about public interest and creditor interest related to the merger. Concerns included- including shareholder trust, charge verification, and valuation.



**RD vs. Hacienda
Properties Private
Limited & Ors.
(NCLT Guwahati,
2024)**

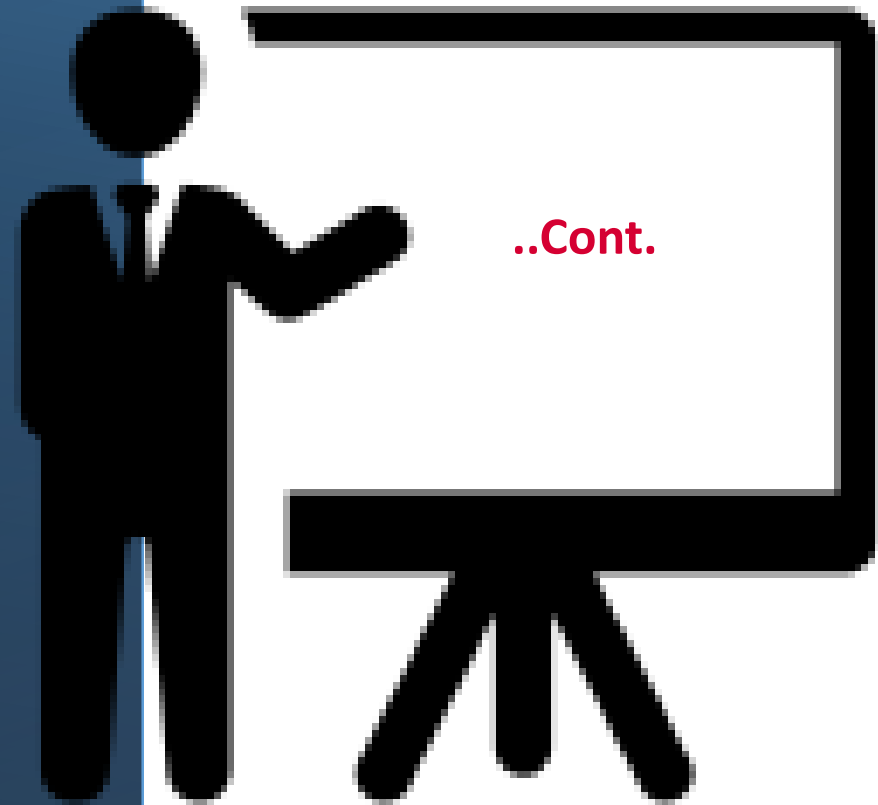
ISSUES:

1. Whether the concerns for clarification fall within the **ambit of "public interest" or "interest of creditors"** as per Section 233(5) of the Companies Act, 2013.
2. Is valuation a necessary requirement for mergers under section 233 of Companies Act?



HELD: PUBLIC INTEREST

1. In the given case, the Regional Director raised concerns about whether the proposed merger scheme was in alignment with the concept of "public interest" as mentioned in the Companies Act, 2013. "Public interest" is a broad term that signifies actions or decisions that benefit society as a whole rather than specific individuals or entities.
2. In the context of corporate mergers, ensuring public interest means assessing whether the merger will have positive or negative impacts on stakeholders beyond the companies involved.
3. The Court, applying the pari passu doctrine, asserted that the Applicant's concerns for clarification fall within the realm of public interest.



HELD: VALUATION

Seeking valuation of shares of Transferor/transferee company is not a condition precedent for Fast Track Mergers and hence, there is no mandate for the same for filing an application before the RD.



Thank you!



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