

STUDY MATERIAL

PROFESSIONAL PROGRAMME

**CORPORATE
RESTRUCTURING,
VALUATION
& INSOLVENCY**

**GROUP 2
PAPER 6**



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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Timing of Headquarters :

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Laser Typesetting by :

Druck Media Private Limited, Greater Noida, Uttar Pradesh

PROFESSIONAL PROGRAMME

CORPORATE RESTRUCTURING, VALUATION & INSOLVENCY

Restructuring is an established economic, social and political process. It occurs at different rates, at different times and in different places, taking some forward on the wave and leaving others behind in the wake. Globalisation, fast-moving technological change, and the driving role played by financial markets have all contributed to making today's economy one which accelerates change. Corporate restructuring is a permanent feature of this change and can take different forms such as amalgamation, merger or acquisition and takeover,

In terms of restructuring at company level, although there may be sector and/or company-specific driving forces behind and reasons for restructuring, companies always restructure to improve their performance and profitability. However, restructuring operations in private and public companies not only have an impact on economic and financial performance but also on the quantity and quality of employment, as well as on the environment.

There are a number of situations in which a business or a share or any other property may be required to be valued. Valuation is essential for strategic partnerships, mergers or acquisitions of shares of a company and/or acquisition of a business. The main objective in carrying out a valuation is to conclude a transaction in a reasonable manner without any room for any doubt or controversy about the value obtained by any party to the transaction.

The failure of some business plans is integral to the process of the market economy. When business failure takes place, the best outcome for society is to have a rapid renegotiation between the financiers, to finance the going concern using a new arrangement of liabilities and with a new management team. If this cannot be done, the best outcome for society is a rapid liquidation. When such arrangements can be put into place, the market process of creative destruction will work smoothly, with greater competitive vigor and greater competition. In this backdrop, Parliament enacted Insolvency and Bankruptcy Code, 2016.

In the light of above, this study material has been prepared to provide an understanding of Corporate Restructuring, Valuation and Insolvency which have direct bearing on the functioning of companies. The study material has been divided into three parts consisting of twenty-six study lessons. Part I dealing with Corporate Restructuring consists of Study Lessons I to XI and Part II dealing with Valuation consists of Study Lesson XII to XIII and whereas Part III dealing with Insolvency, Liquidation & Winding Up consists of Study Lesson XIV to XVI.

This study material has been published to aid the students in preparing for the Corporate Restructuring, Valuation and Insolvency paper of the CS Professional Programme. It has been prepared to provide basic understanding of the Corporate Restructuring, Valuation, Insolvency, Liquidation and winding Up which have a bearing on the conduct of corporate affairs. It is part of the educational kit and takes the students step by step through each phase of preparation stressing key concepts, principle, pointers and procedures.

The legislative changes made upto May 31, 2025 have been incorporated in the study material. In addition to Study Material students are advised to refer to the updations at the Regulator's website, supplements relevant for the subject issued by ICSI and ICSI Journal Chartered Secretary and other publications. Specifically, students are advised to read "Student Company Secretary" e-Journal which covers regulatory and other relevant developments relating to the subject, which is available at academic portal <https://www.icsi.edu/student-n/academic-portal/>. In the event of any doubt, students may contact the Directorate of Academics at academics@icsi.edu.

The amendments to law made upto 31st May of the Calendar Year for December Examinations and upto 30th November of the previous Calendar Year for June Examinations shall be applicable

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PROFESSIONAL PROGRAMME

Group 2

Paper 6

CORPORATE RESTRUCTURING, VALUATION & INSOLVENCY

SYLLABUS

OBJECTIVE

To provide legal procedural and practical aspects of Corporate Restructuring Valuation Insolvency, Liquidation & Winding-up.

Level of Knowledge: Expert Knowledge

Detailed Contents

PART I : CORPORATE RESTRUCTURING (40 MARKS)

- 1. Types of Corporate Restructuring:** • Key definitions, Compromises, Arrangements, Mergers & Amalgamations • Demergers & Slump Sale Business Sale • Joint Venture, Strategic Alliance, Reverse Merger • Disinvestment Financial Restructuring (Buy-back, Alteration & Reduction)
- 2. Acquisition of Company/ Business:** • Acquisition of Company • Takeover of Listed Companies: Legal Framework, Process & Compliances
- 3. Planning & Strategy:** • Case Studies pertaining to Merger, Amalgamation, restructuring • Studies of Judicial • Planning relating to acquisitions & takeovers • Protection of minority interestl Succession Planning • Managing Family Holdings through Trust
- 4. Process of M&A transactions:** • Key Concepts of MBA • Law & Procedure M&A Due Diligence • MBA Valuation • M&A Structure finalization • Post transaction integration
- 5. Documentation-Merger & Amalgamation:** • Drafting of Scheme • Drafting of Notice and Explanatory Statement • Drafting of Application Petition
- 6. Accounting in Corporate Restructuring: Concept and Accounting Treatment:** • Methods of Accounting for Amalgamations AS-14/ IndAS 103 • Treatment of Reserves, Goodwill • Pre-Acquisition & Post-Acquisition Profit • Accounting in Books of Transferor and transferee • Merger and De-merger • Acquisition of Business and internal Reconstruction
- 7. Taxation & Stamp Duty aspects of Corporate Restructuring:** • Capital Gain • Set-off and carry forward under Income Tax Act • Deemed Dividend • Payment of Stamp Duty on scheme, payment of stamp duty on movable and immovable properties
- 8. Regulation of Combinations:** • Regulation of combinations under the Competition Act • Kinds of combinations • Exempted combinations • Concept of relevant market and its importance • Determination of combinations and any appreciable adverse effect • Role of CCI
- 9. Regulatory Approvals of Scheme:** • From CCI, Income Tax, Stock Exchange, SEBI, RBI, RD, ROC, OL, Sector Regulators such as IRDA, TRAI, etc.

10. **Fast Track Mergers:** • Small companies • Holding and wholly owned companies

11. **Cross Border Mergers**

PART II : VALUATION (20 MARKS)

12. **Overview of Business Valuation:** • Genesis of Valuation • Need for Valuation • Hindrances/ Bottlenecks in Valuation • Business Valuation Approaches • Principles of Valuation (Cost, Price and Value)

13. **Valuation of Business and Assets for Corporate Restructuring:** • Type of Valuations • Valuation Principles & Techniques for Merger • Amalgamation, Slump Sale, Demerger • Principles & Techniques of Reporting • Relative Valuation and Swap Ratio

PART III : INSOLVENCY, LIQUIDATION & WINDING UP (40 MARKS)

14. **Insolvency:** • Historical Background • Pillars of IBC, 2016 [IBBI, IPA, IP, AA, IU] • Key Definitions and Concepts • Insolvency Initiation/Resolution under sections 7, 8 and 10

15. **Application for Corporate Insolvency Resolution Process:** • Legal Provisions • Procedure, Documentation • Appearance, Approval

16. **Role, Functions and Duties of IP/ IRP/ RP:** • Public announcement • Management of affairs and operations of company as a going concern • Raising of Interim Finance • Preparation of Information Memorandum

17. **Resolution Strategies:** • Restructuring of Equity & Debt • Compromise & Arrangement • Acquisition, Takeover & Change of Management • Sale of Assets

18. **Convening and Conduct of Meetings of Committee of Creditors:** • Constitution of Committee of Creditors • Procedural aspects for meeting of creditors

19. **Preparation & Approval of Resolution Plan:** • Contents of resolution plan • Submission of resolution plan • Approval of resolution plan

20. **Pre-Packaged Insolvency Resolution Process:** • Governing Framework • Eligibility for PPIRP • Approval of Resolution Plan • Closure of PPIRP

21. **Cross Border Insolvency:** • International Perspective and Global Developments • UNCITRAL Legislative Guide on Insolvency Laws • US Bankruptcy Code, Chapter 11 reorganization • Enabling provisions for cross border transactions under IBC

22. **Liquidation on or after failing of Resolution Plan:** • Initiation of Liquidation • Distribution of assets • Dissolution of corporate debtor

23. **Voluntary Liquidation:** • Procedure for Voluntary Liquidation • Powers and duties of the Liquidator • Completion of Liquidation

24. **Debt Recovery & SARFAESI:** • Non-Performing Assets, Asset Reconstruction Company (Security Interest (Enforcement) Rules, 2002 • Evaluation of various options available to bank-viz. SARFAESI, DRT, Insolvency Proceedings • Application to the Tribunal/Appellate Tribunal

25. **Winding-up by Tribunal under the Companies Act, 2013:** • Procedure of Winding-up by Tribunal • Powers and Duties of the Company Liquidator • Fraudulent preferences

26. **Strike Off and Restoration of Name of the Company and LLP:** • Ways of striking off of companies • Strike off by ROC Suo-Motu • Strike off by way of Filing an Application by the Company • Procedure of striking off of the name of the company by way of an application to ROC • Restoration of the company • Appeal to NCLT for restoration of the name of the company • Restoration of the LLP

ARRANGEMENT OF STUDY LESSONS
CORPORATE RESTRUCTURING, VALUATION
& INSOLVENCY
GROUP 2 • PAPER 6

PART I : CORPORATE RESTRUCTURING

Sl. No.	Lesson Title
1.	Types of Corporate Restructuring
2.	Acquisition of Company/Business
3.	Planning & Strategy
4.	Process of M&A transactions
5.	Documentation-Merger & Amalgamation
6.	Accounting in Corporate Restructuring: Concept and Accounting Treatment
7.	Taxation & Stamp Duty aspects of Corporate Restructuring
8.	Regulation of Combinations
9.	Regulatory Approvals of Scheme
10.	Fast Track Mergers
11.	Cross Border Mergers

PART II : VALUATION

12.	Overview of Business Valuation
13.	Valuation of Business and Assets for Corporate Restructuring

PART III : INSOLVENCY, LIQUIDATION & WINDING UP

14.	Insolvency
15.	Application for Corporate Insolvency Resolution Process
16.	Role, Functions and Duties of IP/IRP/RP
17.	Resolution Strategies
18.	Convening and Conduct of Meetings of Committee of Creditors
19.	Preparation & Approval of Resolution Plan
20.	Pre-Packaged Insolvency Resolution Process
21.	Cross Border Insolvency
22.	Liquidation on or after failing of Resolution Plan
23.	Voluntary Liquidation
24.	Debt Recovery & SARFAESI
25.	Winding-up by Tribunal under the Companies Act, 2013
26.	Strike Off and Restoration of Name of the Company and LLP

LESSON WISE SUMMARY

CORPORATE RESTRUCTURING, VALUATION & INSOLVENCY

PART I : CORPORATE RESTRUCTURING (40 MARKS)

Lesson 1: Types of Corporate Restructuring

Corporate Restructuring is an expression that connotes a restructuring process undertaken by business enterprise. It is the process of redesigning one or more aspects of a company. Hence, Corporate Restructuring is a comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving its short-term and long-term corporate objectives. A business may grow over time as the utility of its products and services is recognized, but it is a long drawn process. It may also grow through an inorganic process, symbolized by an instantaneous expansion in work force, customers, infrastructure resources and thereby an overall increase in the revenues and profits of the entity. 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. Corporate restructuring is an inorganic growth strategy. Often, restructuring plans are necessary simply to meet the constantly changing demands of technology that competitors are embracing, survive a currently adverse economic weather, or poise the corporation to move in an entirely new trend. Some of common ways to carry our Restructuring process are mergers/amalgamations, acquisitions/takeovers, divestitures/demergers, slump sale, business sale; joint venture, strategic alliance, financial restructuring (buy-back, alteration & reduction). This lesson covers the concept of corporate restructuring, its importance, historical background, available tools and emerging trends in restructuring strategies, etc.

Lesson 2: Acquisition of Company/ Business

Takeovers and acquisitions are common occurrences in the business world. In some cases, the terms takeover and acquisition are used interchangeably, but each has a slightly different connotation. A takeover is a special form of acquisition that occurs when a company takes control of another company without the acquired firm's agreement. Takeovers that occur without permission are commonly called hostile takeovers. Acquisitions, also referred to as friendly takeovers, occur when the acquiring company has the permission of the target company's Board of directors to purchase and takeover the company. Acquisition refers to the process of acquiring a company at a price called the acquisition price or acquisition premium. The price is paid in terms of cash or acquiring company's shares or both. This lesson covers the meaning, concept, objectives of takeover, procedural requirements as to takeover of listed/ unlisted companies, takeover defenses etc.

Lesson 3: Planning & Strategy

Strategies play an integral role when it comes to merger and acquisition. A sound strategic decision and procedure is very important to ensure success and fulfilling of expected desires. Every company has different culture and follows different strategies to define their merger. There are various strategic reasons for companies to consider making an acquisition and a successful takeover can help companies achieve their strategic objectives as well as increase cost effectiveness within the business. The process of merging with another company or acquiring a company is complex. In addition to the legal ramifications, companies must be aware of the potential tax implications as well as ensuring that the terms of the deal benefit both parties. Often companies rely on lawyers and professionals to negotiate on their behalf in order to obtain the best possible deal within the framework of the applicable laws. In order to make a merger work, it is pertinent to have a sound strategic planning so that maximum benefit is taken out from the merger. The company doing the acquisition must evaluate the

performance, market position, cash flows, future opportunities, technology, regulatory issues of the target company to fix the right price for the deal. It is important to identify synergy between the two companies. This lesson covers the planning and strategy, purchase and protection of minority interests, succession planning and the funding process for mergers and acquisitions.

Lesson 4: Process of M&A transactions

Process of Merger & Acquisition involves corporate control, strategy, corporate finance and management. It involves consolidation of companies i.e. business combination, division and demerger of two or more companies. The merger and amalgamation requires various regulatory approvals and procedures as enunciated in the Companies Act, 2013. Merger being a strategy, it has to be object oriented and it dwells upon the concept of synergy, which means value of two companies together will be more than of an individual company. Merger & Acquisition could be by way of business purchase/share purchase agreement or by way of sanction of Scheme of Arrangement through the court route. In a sense, in the case of merger through a court route, once the scheme is sanctioned by the court/tribunal after due process of law and the scheme is filed with the Registrar of Companies, it is irreversible; it carries the stamp of final approval by a judicial authority and is acceptable to the public, shareholders, stakeholders, registering authority.

This lesson covers the regulatory framework, interpretations of provisions in the Companies Act relating to merger/amalgamation, different approvals, steps involved, integration not only of the financials, accounting and software but also of the human and cultural integration and judicial pronouncements, etc

Lesson 5: Documentation – Merger & Amalgamation

Documentation is an important aspect in fulfilment of legal requirements and obligations in merger and amalgamation for an effective and successful venture. The quantum of such obligations will depend upon the size of company, debt structure and profile of its creditors, compliances under the corporate laws, controlling regulations, etc. In all or in some of these cases legal documentation would be involved. If foreign collaborators are involved, their existing agreements would need a mandatory documentation to protect their interests if their terms and conditions so require. Secured debenture holders and unsecured creditors would also seek legal protection to their rights with new or changed management of the amalgamating company. Regulatory bodies like the RBI, Stock Exchanges, the SEBI, etc. would also ensure adherence to their respective guidelines, regulations or directives. In this way, while drafting the scheme of merger and amalgamation the transferor and transferee would have to ensure that they meet legal obligations in all related and requisite areas. Company Secretary being an expert in drafting has an edge over others, to grab the ample opportunities available in this area of work. The study lesson covers the documentation involved, points to be factored while drafting such documents and general provisions under the Companies Act, 2013 and NCLT Rules with respect to mergers and amalgamations.

Lesson 6: Accounting in Corporate Restructuring – Concept and Accounting Treatment

Accounting for corporate restructuring is dealt with accounting standards. Accounting standard (AS-14) prescribes for accounting and disclosure requirements of merger and acquisition. According to AS14 amalgamation may be either in the nature of merger or in the nature of purchase. IND-AS 103 deals with meaning of business, business combination. According to IND-AS 103, business combination is accounted applying acquisition method. This lesson covers various developments happening in M&A accounting, concepts of demerger and internal reconstruction and also difference between IND-AS 103 and AS-14.

Lesson 7: Taxation & Stamp Duty aspects of Corporate Restructuring

Tax planning in cases of amalgamation of companies is perhaps the most vital aspect of decision-making involved in framing of the scheme of amalgamation. A company planning a merger or a takeover, need to do intensive tax planning before finalising the deal to get the maximum tax concession and benefits in the deal. In India, law provides for ample benefits in the form of various provisions to companies going in for amalgamation. Since a merger or demerger inevitably entails some transfer of property, movable or immovable, it attracts

the imposition of stamp duty which is essentially a form of revenue for the government arising out of taxation of various transactions governed under the Indian Stamp Act, 1899. The exposition of stamp duty is a vital aspect because it could substantially increase the costs of a merger deal. In corporate restructuring through amalgamation and merger, stamp duty planning assumes a significant role and all out efforts are made to pay as less a duty on such amalgamations as possible and yet proceed with the acquisitions through mergers and amalgamations. The incidence of stamp duty is an important consideration in the planning of any merger. This lesson covers the regulatory aspects and court decisions as to the stamp duty aspects of mergers, tax advantage on mergers, etc.

Lesson 8: Regulation of Combinations

According to Section 5 of the Competition Act, 2002, combination as (i) acquisition of control, shares, voting rights or assets; or (ii) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service; or (iii) merger or amalgamation. A combination beyond the prescribed thresholds is regulated under the Act. Section 6 declares a combination as void if it causes or is likely to cause an adverse effect on competition within the relevant market in India.

This lesson covers Regulation of combinations under the competition Act, Kinds of combinations, Exempted combinations, Concept of relevant market and its importance, determination of combinations and any appreciable adverse effect, Role of CCI. It is of utmost importance for Company Secretaries to have thorough knowledge of the precedents, orders and decisions made by the overseas contemporary authorities as well as the leading decisions of the Commission.

Lesson 9: Regulatory Approvals of Scheme

Merger or amalgamation of companies involves various issues including the regulatory approvals. These regulatory approvals are to be obtained not only from the sector in which the company is operating (for example in case of merger of two banks, RBI's approval is needed) but from other departments like Income Tax, SEBI, CCI, RD, ROC, OL and Sector Regulators such as IRDA, TRAI, etc. The merger and takeover involve various issues and compliance depending upon the nature of business of the company and sector under which it is operating. From this point of view, it becomes necessary for a student of professional programme to know various procedural aspects, regulatory approvals required to complete these events. It is to be noted in corporate world such professionals having an expertise in these procedural aspects are in great demand. This lesson covers the various approval required in case of merger/ amalgamation, acquisition/ takeovers, etc.

Lesson 10: Fast Track Mergers

Fast track mergers have been introduced in order to encourage small companies to grow and expand. Small companies should not be dissuaded from entering into mergers just because the process is long, tedious and complicated. Introduction, applicability and procedure for Fast track mergers Covers under Section 233 of the Companies Act, 2013, Rule 25 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Company Secretary plays an important role in the restructuring process and often advises his/her clients as to the procedure to be adopted, forms to be filed, etc. Hence, it is important for them to learn the basic concepts of what is a fast track merger, to whom does it apply, how can it be invoked, what are the requisite steps and which forms are required to be filed. This lesson covers about concept of fast track merger, procedure involved in fast track merger, etc.

Lesson 11: Cross Border Mergers

A company in one country can be acquired by an entity (another company) from other countries. The local company can be private, public, or state-owned company. In the event of the merger or acquisition by foreign investors referred to as cross-border merger and acquisitions will result in the transfer of control and authority in operating the merged or acquired company. Assets and liabilities of the two companies from two different countries are combined into a new legal entity in terms of the merger, while in terms of acquisition, there

is a transformation process of assets and liabilities of local company to foreign company (foreign investor), and automatically, the local company will be affiliated. Since the cross-border M&As involve two countries, according to the applicable legal terminology, the state where the origin of the companies that acquire (the acquiring company) in other countries refer to as the Home Country, while countries where the target company is situated refers to as the Host Country. Section 234 of the Companies Act, 2013 and Rule 25A of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 which provide for the basic legal framework involved in cross border mergers is discussed. This lesson covers concept of cross border mergers, legal framework surrounding cross border mergers, concepts of inbound and outbound mergers, risks and benefits associated with a cross border merger, etc.

PART II : VALUATION (20 MARKS)

Lesson 12: Overview of Business Valuation

Valuation is a process of appraisal or determination of the value of certain assets, i.e., tangible or intangible, securities, liabilities and a specific business as a going concern or any company listed or unlisted or company undergoing liquidation or other forms of organization, partnership or proprietorship. 'Value' is a term signifying the material or monetary worth of a thing, which can be estimated in terms of medium of exchange. In other words, it is an assessment resulting in an expression of opinion rather than arithmetical exactness. Business valuation requires a working knowledge of a variety of factors, and professional judgment and experience. This includes recognizing the purpose of the valuation, the value drivers impacting the subject company, and an understanding of industry, competitive and economic factors, as well as the selection and application of the appropriate valuation approach (es) and method(s). This lesson covers genesis, Principles and need of Valuation, Process of valuation and Business Valuation Approaches.

Lesson 13: Valuation of Business and Assets for Corporate Restructuring

Valuation models are used to determine the true value of a business mostly by financial market participants. Business valuation can be for the entire company or a part of the operations of a company. There are tools and methods used for valuation. Usually the valuation is done by analysing the financial statements, the cash flows and other market factors. Valuation involves financial modelling. This financial model can be different for different entities, as because one financial model for an industry may not be suitable for another industry and the choice of model to use for the industry is subjective. An important aspect in the merger/amalgamation/takeover activity is the valuation aspect. The method of valuation of business, however, depends to a great extent on the acquisition motives. The acquisition activity is usually guided by strategic behavioural motives. This lesson covers Business Valuation and its types, Circumstances when valuation becomes essential, Method of Valuation, Valuation for Slump Sale and Principles and techniques of Reporting.

PART III: INSOLVENCY, LIQUIDATION & WINDING-UP

Lesson 14: Insolvency

The Insolvency and bankruptcy Code, 2016 is one of the biggest economic reforms which provides a uniform and comprehensive insolvency legislation covering corporates, partnerships and individuals (other than financial firms). The Code gives both the creditors and debtors the power to initiate proceeding. It has helped India achieve a historic jump in the ease of doing business rankings by consolidating the law and providing for resolution of insolvencies in a time-bound manner. The objective of the Insolvency and Bankruptcy Code is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. An effective legal framework for timely resolution of insolvency and bankruptcy will not only encourage entrepreneurship but will also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development. This study lesson has made an endeavour to focus on key aspects of insolvency, like, Pillars of IBC, 2016; Key Definitions

and Concepts; Insolvency Initiation / Resolution; Regulatory framework governing Insolvency in various foreign countries etc.

Lesson 15: Application for Corporate Insolvency Resolution Process

The Insolvency and Bankruptcy Code, 2016 provides a simple test to initiate corporate insolvency resolution process. The Code adopts a default-based test for initiating the corporate insolvency resolution process. A default based test for initiating the insolvency resolution process permits early intervention when the corporate debtor shows early signs of financial distress. Early recognition of financial distress is very important for timely resolution of insolvency. In corporate insolvency resolution process, the financial creditors assess the viability of debtor's business and the options for its revival and rehabilitation. If the corporate insolvency resolution process fails or the financial creditors decide that the business of the debtor cannot be carried on in a profitable manner and it should be wound up, the debtor's business undergoes the liquidation process. Since Corporate Insolvency Resolution Process holds paramount significance, this study lesson throws ample light on the following key areas- Persons who may initiate Corporate Insolvency Resolution Process; Financial and Operational Creditor; Operational debt etc.

Lesson 16: Role, Functions and Duties of IP / IRP / RP

The Insolvency and Bankruptcy Code, 2016 (Code) provides a market process, popularly known as called corporate insolvency resolution process (CIRP), for time bound revival of viable corporate debtors (CD) and closure of unviable ones. An insolvency professional (IP) is a key driver of CIRP - he acts as interim resolution professional (IRP) in the initial days of CIRP and then as resolution professional (RP) till its completion. He runs the operations of the CD as going concern and assists the stakeholders to find out the best resolution plan, while protecting and preserving the value of assets of the CD and ensuring compliance with all the applicable laws to the business of the CD and the CIRP. The law facilitates and empowers the IP to discharge his responsibilities effectively. Insolvency professionals play a vital role in the insolvency and bankruptcy resolution process as envisaged under IBC. In view of the above, this study lesson has made an attempt to explore the critical facets, like, Definitions in the Insolvency and Bankruptcy Code, 2016; Enrolment and Registration of Insolvency Professionals; Functions and Obligations of Insolvency Professionals etc

Lesson 17: Resolution Strategies

The legislative framework in India for insolvency and bankruptcy proceedings provides for a wide range of resolution measures, viz. re-organisation by way of a merger or amalgamation, acquisition of control and change of management, demerger, slump sale and reconstruction or financial, capital and business/ operational restructuring and as such a resolution strategy may consist of one or more of such measures and/or any measure other than the said measures. Failure to reach an understanding/ resolution with the creditors under the Code could lead to liquidation of the corporate debtor. The procedure for restructuring encompasses schemes of mergers, amalgamations, demergers, transfer/ sale of assets, restructuring of capital by way of cancellation/ delisting or any other modification in share capital, and restructuring of debts by ways of satisfaction or modification of security charge/ interest as suggested in Regulation 37 of the CIRP Regulations by way of which the liabilities of the distressed companies can be restructured and the state of insolvency can be resolved. In the event of initiation of a Corporate Insolvency Resolution Process against the Corporate Debtor under IBC 2016, the Resolution Professional shall invite resolution plans from the prospective resolution applicants, subject to the compliance of the conditions as laid down under the IBC, 2016 read with CIRP regulations. This study lesson focuses on key topics like, Organisational Restructuring, Financial Restructuring, Debt restructuring, Formal Restructuring and Insolvency Proceedings etc.

Lesson 18: Convening and Conduct of Meetings of Committee of Creditors

Committee of Creditors is a committee typically consisting of the financial creditors of the Corporate Debtor. It is the supreme decision-making body in a Corporate Insolvency Resolution Process (CIRP). Decisions regarding the administration of the corporate debtor are taken at the meetings of the Committee, based on a requisite vote

of the members. It is responsible for giving approval to the IRP/ RP to carry out actions that might affect the CIRP. Section 21 and 24 of the Insolvency and Bankruptcy Code, 2016 make provisions relating to the committee of creditors. Section 21 deals with the constitution of committee of creditors while section 24 prescribes the modalities for the meeting of the committee of creditors. Section 28 of the Code lists out certain actions that may be taken by the resolution professional only with the prior approval of the committee of creditors by a vote of 66 per cent of the voting shares. Thus, in light of the soaring importance of the Committee of Creditors, this study lesson has laid emphasis on various elements of the Committee of Creditors; Exclusion of Related Party; Authorized Representative etc.

Lesson 19: Preparation & Approval of Resolution Plan

The Insolvency and Bankruptcy Code, 2016 (Code) aims at resolving the woes of insolvent companies through the corporate insolvency resolution process (CIRP), wherein the assets or business of the corporate debtor are transferred as a going concern to the most eligible party approved by the Committee of Creditors. Such an eligible party is willing to take up the management of the Corporate Debtor as well as to service its debts. The parties that are willing to take over the corporate debtor are called resolution applicants and they participate in the CIRP by submitting a document called a resolution plan. It is a comprehensive document which covers, inter alia, overview of the eligible party, how does the party plan to take over the corporate debtor, debt repayment schedule etc. This study lesson encompasses the vital components of the Insolvency and Bankruptcy Code (Amendment) Act, 2018, such as, an undischarged insolvent; wilful defaulter; related party etc.

Lesson 20: Pre-Packaged Insolvency Resolution Process

Section 54A to 54P of the Insolvency and Bankruptcy Code, 2016 ('Code') read with the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 lays down the provisions of a pre-packaged insolvency resolution process with respect to its initiation, manner of carrying out the process, appointment of resolution professional, termination etc. It consolidates the benefit of both formal and informal proceedings of resolution, thus broadening the options for stakeholders and enables faster resolution as the corporate debtor can prepare a settlement plan or resolution plan with the creditors before going to NCLT. Pre-packaged Insolvency Resolution Process reduced burden on NCLT due to out of court settlements and provide relief to promoters and corporate debtors. It allows the corporate debtor retain control till a settlement is reached with the creditors. This study lesson throws light on governing framework and approval resolution plan etc.

Lesson 21: Cross Border Insolvency

Cross-border insolvency (sometimes called international insolvency) regulates the treatment of financially distressed debtors where such debtors have assets or creditors in more than one country. In recent times, the number of cross-border insolvency cases has increased significantly. The increasing frequency of cross-border insolvencies reflects the continuing expansion of global trade and investment. In its current form, the Insolvency and Bankruptcy Code contains only two provisions that may possibly enable and assist the liquidator with respect to a company having assets in a foreign jurisdiction. Section 234 of the Code allows the union government to enter into reciprocal agreements with other countries to enforce the provisions of the Code. Section 235 envisages a 'letter of request' by the liquidator for action on the assets of the company situated in another country. However, there must exist a reciprocal arrangement with such country. It is important to appreciate that the Code does not envisage the adoption of the UNCITRAL Model law or any cross-border insolvency regime. This study lesson covers enabling provisions of cross border insolvency under the Code.

Lesson 22: Liquidation on or after failing of Resolution Plan

Sections 33 to 54 in Chapter III of Part II of the Insolvency and Bankruptcy Code, 2016 lays down the law relating to liquidation process for corporate persons. An attempt is first made to resolve the insolvency of corporate debtor through corporate insolvency resolution process laid down in Chapter II of Part II of the Code. The provisions relating to liquidation in Chapter III of Part II of the Code comes into effect if the attempts to resolve

corporate insolvency under Chapter II of the Code fail. A corporate debtor may witness liquidation under the following scenarios such as where the Adjudicating Authority does not receive a resolution plan, where the Adjudicating Authority rejects the resolution plan, where, at any time before confirmation of resolution plan, the committee of creditors resolve to liquidate corporate debtor and where the corporate debtor violates the terms of the resolution plan. This study lesson covers initiation of liquidation, distribution of assets, dissolution of corporate debtor etc.

Lesson 23: Voluntary Liquidation

A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Chapter V of Part II of the Insolvency and Bankruptcy Code, 2016. The Insolvency and Bankruptcy Board of India has made the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 to regulate the voluntary liquidation of corporate persons. This study lesson made an endeavour to explore various important angles, like, Procedural requirements; Conditions for voluntary liquidation proceedings of corporate person registered as company; Requirement of notification etc.

Lesson 24: Debt Recovery & SARFAESI

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 enacted with a view to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The Act enables the banks and financial institutions to realise long-term assets, manage problems of liquidity, asset liability mismatch and improve recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction. The said Act further provides for setting up of asset reconstruction companies which are empowered to take possession of secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured assets and take over the management of the business of the borrower. This study lesson covers non-performing assets, Asset Reconstruction Companies, Enforcement of security interest by creditors, Debt Recovery, Debt Recovery Tribunals (DRT) etc.

Lesson 25: Winding-up by Tribunal under the Companies Act, 2013

Winding up is a means by which the dissolution of a company is brought about. The main purpose of winding up of a company is to realize the assets and pay the company's debts expeditiously and fairly in accordance with the law. If any surplus is left, it is distributed among the members in accordance with their rights. The entire procedure for bringing about a lawful end to the life of a company is divided into two stages i.e., 'winding up' and 'dissolution'. Winding up is the first stage in the process whereby assets are realised, liabilities are paid off and the surplus, if any, distributed among its members. Dissolution is the final stage whereby the existence of the company is withdrawn by the law. Dissolution brings about an end to the legal entity of the company. This study lesson covers procedure of winding up by Tribunal under the Companies Act, 2013.

Lesson 26: Strike Off and Restoration of Name of the Company and LLP

A company can be struck off by Suo moto by the ROC under Section 248(1) of the Act; or an application by the company for removal of name/ strike off of company under Section 248(2) of the Companies Act. A company which is undergoing the process of 'Striking Off' either voluntarily or by an action of the ROC is given the status as 'Striking Off'. The provisions of Sections 248 to 252 of the Companies Act, 2013 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 deal with the removal of names of companies from the Register of Companies. This study lesson covers circumstances under which name of the company Struck off from the Register, circumstances under which name of the LLP is Struck off from the Register, Procedure for Striking off the Name and Restoration of the Name.

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PART I

**CORPORATE
RESTRUCTURING**





Types of Corporate Restructuring

Lesson 1

KEY CONCEPTS

- Corporate Restructuring ■ Amalgamation ■ Merger ■ Takeover

Learning Objectives

To understand:

- Types of Restructuring
- The Concept of Corporate Restructuring
- Types of Mergers
- The Concept of Merger and Acquisition in India
- Legal Framework of Corporate Restructuring
- Reduction of Capital and Scheme of Compromise and Arrangement
- Buy-Back Procedure for Listed Securities

Lesson Outline

- Meaning of Corporate Restructuring
- Historical Background
- Need & Scope of Corporate Restructuring
- Various Modes of Restructuring
- Commonly applied tools of Corporate Restructuring
- Planning, formulation and execution of various Restructuring Strategies
- Financial Restructuring
- Reduction of capital
- Buy-back
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings

REGULATORY FRAMEWORK

- Companies Act, 2013
- The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- The National Company Law Tribunal Rules, 2016
- Foreign Exchange Management Act, 1999
- Competition Act, 2002

INTRODUCTION

There are primarily two ways of growth of business organization, i.e. organic and inorganic growth.

Organic growth is through internal strategies, which may relate to business or financial restructuring within the organization that results in enhanced customer base, higher sales, increased revenue, without resulting in change of corporate entity.

Inorganic growth provides an organization with an avenue for attaining accelerated growth enabling it to skip few steps on the growth ladder. Restructuring through mergers, amalgamations etc., constitute one of the most important methods for securing inorganic growth.

Growth can be organic or inorganic

A company is said to be growing organically when the growth is through the internal sources without change in the corporate entity. Organic growth can be through capital restructuring or business restructuring.

Inorganic growth is the rate of growth of business by increasing output and business reach by acquiring new businesses by way of mergers, acquisitions and take-overs and other corporate restructuring strategies that may create a change in the corporate entity.

Mergers and Acquisitions (M&A) offers an alternative to organic growth for buyers seeking to achieve their strategic goals, while offering sellers the option to cash in or share the risks and rewards of a newly formed business. A company may grow either by internal expansion or by external expansion. For internal expansion, a company grows gradually over time in the normal course of business. Acquisitions are part of corporate restructuring, or inorganic growth, so companies are looking for opportunities to grow outside rather than keep profits in-house. Indian companies have often outperformed their foreign counterparts in corporate restructuring both within and outside their borders.

The business environment is rapidly changing with respect to technology, competition, products, people, geographical area, markets, customers. It is not enough if companies keep pace with these changes but are expected to beat competition and innovate in order to continuously maximize shareholder value. Inorganic growth strategies like mergers, acquisitions, takeovers and spinoffs are regarded as important engines that help companies to enter new markets, expand customer base, cut competition, consolidate and grow in size quickly, employ new technology with respect to products, people and processes. Thus, the inorganic growth strategies are regarded as fast track corporate restructuring strategies for growth

Corporate Restructuring is an expression that connotes a restructuring process undertaken by business enterprise. It is the process of redesigning one or more aspects of a company. Hence, Corporate Restructuring is a comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving its short-term and long-term corporate objectives. A business may grow over time as the utility of its products and services is recognized, but it is a long drawn process. It may also grow through an inorganic process, symbolized by an instantaneous expansion in work force, customers, infrastructure resources and thereby an overall increase in the revenues and profits of the entity.

Restructuring as per Oxford dictionary means reorganization of a company with a view to achieve greater efficiency and profit, or to adapt to a changing market. According to Peter F Drucker, the management guru, the greatest change in corporate culture and the way business is being conducted, is the strategic intervention and relationship based not on ownership, but on partnership. Corporate restructuring play a major role in enabling enterprises to achieve economies of scale, global competitiveness, right size, reduction of operational costs and administrative costs. The process of reorganizing one or more aspects of the business of a company or financial structure for increasing its efficiency and profitability is known as corporate restructuring. It is a strategic tool used by the corporate houses to boost value to the organization as well as to the investors. The need for reorganizing a company may be felt due to a number of different factors such as to make the company more competitive, to overcome a currently adverse economic climate, or for moving towards an entirely new direction. The process of corporate restructuring essentially involves significant reorganization of assets and liabilities of the organization so as to conduct the business operations in an efficient, effective and competitive manner with the underlying objective of improving the quality and quantity of the future cash flow streams and thereby increasing the organization's market share, brand power, and synergies. In a nutshell, corporate restructuring is a comprehensive process by which a company can consolidate its business operations and strengthen its financial position for achieving its short-term and long-term corporate objectives.

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. Corporate restructuring is an inorganic growth strategy.

On the other hand, "Amalgamation" as the merger of one or more companies with another company, or the merger of two or more companies to form one company. In the case of *Religare Finvest Limited (Appellant(S)) vs. State of NCT of Delhi & Anr. (respondent(s)), Criminal Appeal No(s). 2242 of 2023 with Criminal Appeal No(s). 2243 of 2023, judgement dated September 11, 2023*, Hon'ble Supreme Court reliance placed in the case of *M/s. General Radio & Appliances Co. Ltd. vs. M.A. Khader (dead) by LR's (1986 (2) SCR 607)*, where in Supreme Court held that after the amalgamation of two companies, the transferor company ceases to have any entity, and the amalgamated company acquires a new status, and it is not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets.

Further the Apex Court observed that according to Stroud's Judicial Dictionary of Words and Phrases (9th edition), "amalgamation" is "welding or blending of two or more concerns into one." It also states that "where there the companies concerned retain separate entities, there is no amalgamation". Black's Law Dictionary, Eleventh Edition defines amalgamation as the "act of combining or uniting; consolidation < amalgamation of two small companies to form a new corporation >..." The Companies Act, 2013 does not contain any express definition of amalgamation; it rather outlines and regulates the procedure for amalgamation and spells out its legal effect, which results in extinguishment of the corporate identity of the transferor company [read, in this case, LVB]. In *Walker's Settlement 1935 (1) Ch. D. 567.*, the term 'amalgamation' is defined as:

"The word 'amalgamation' has no definite legal meaning. It contemplates a state of things under which 2 companies are so joined as to form a third entity or one company is absorbed into and blended with another company."

In the Case of *Principal Commissioner of Income Tax (Central) – 2 vs. M/S. Mahagun Realtors (P) Ltd (Arising out of special leave petition (c) no. 4063 of 2020) Judgement dated April 05, 2022*, Hon'ble Supreme Court inter alia observed that amalgamation, thus, is unlike the winding up of a corporate entity. In the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Yet, in every other sense of the term, the corporate venture continues – enfolded within the new or the existing transferee entity. In other words, *the business and the adventure lives on but within a new corporate residence, i.e., the transferee company*. It is, therefore, essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. There are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not *per se* cease – depending of course, upon the structure and objective of enactment. Broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

HISTORICAL BACKGROUND

The concept of merger and acquisition in India was not popular until the year 1988. During that period a very small percentage of businesses in the country used to come together, mostly into a friendly acquisition with a negotiated deal. The key factor contributing to fewer companies involved in the merger was the regulatory and prohibitory provisions of MRTP Act, 1969. According to this Act, a company or a firm has to follow a burdensome procedure to get approval for merger and acquisitions.

The year 1988 witnessed one of the oldest business acquisitions or company mergers attempt in India. It is the well-known ineffective unfriendly takeover bid by Swaraj Paul to overpower DCM Ltd. and Escorts Ltd. Further to that many other non-resident Indians had put in their efforts to take control over various companies through their stock exchange portfolio.

Before 1991 Indian economy was closed economy. Various licenses and registration under various enactments were required to set-up an industry. Due to restrictive government policies and rigid regulatory framework there existed very limited scope for restructuring. However, after 1991, the main thrust of Industrial Policy, 1991 was on relaxations in industrial licensing, foreign investments, and transfer of foreign technology, etc. With the economic liberalization, globalization and opening-up of economies, the Indian corporate sector started restructuring businesses to meet the opportunities and challenges.

In the era of hyper competitive capitalism and technological change, industrialists realized that restructuring perhaps is the best route to reach a size comparable to global companies so as to effectively compete.

NEED AND SCOPE

Corporate Restructuring is concerned with arranging the business activities of the Corporate as a whole so as to achieve certain pre-determined objectives at corporate level. Objectives may include the following:

- To enhance shareholders value
- Deploying surplus cash from one business to finance profitable growth in another
- Exploiting inter-dependence among present or prospective businesses
- Risk reduction
- Development of core-competencies
- To obtain tax advantages by merging a loss-making company with a profit-making company
- Revolution in information technology has made it necessary for companies to adopt new changes for improving corporate performances.
- To become globally competitive
- To increase the market share
- Convertibility of rupee has attracted medium-sized companies to operate in the global markets.
- Competitive business necessitated to have sharp focus on core business activities, to gain synergy benefits, to minimize the operating costs, to maximize efficiency in operation and to tap the managerial skill to the best advantage of the firm.
- By diversification of business activities, the minimization of business risk is possible and it enables the firm to achieve at least the minimum targeted rate of return
- With the integration of sick unit into the successful unit, the adjustment of unabsorbed depreciation and write off of accumulated loss is possible and thereby the successful unit can have strategic tax planning.

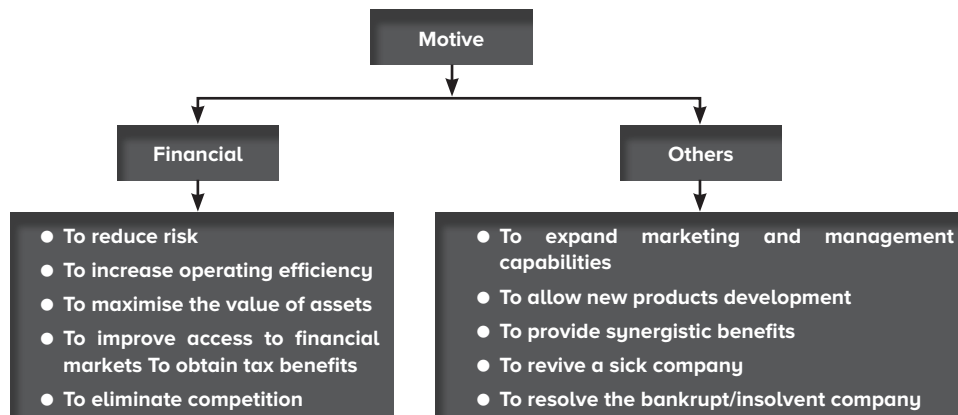
Restructuring aims at improving the competitive position of an individual business and maximizing its contribution to corporate objectives. It also aims at exploiting the strategic assets accumulated by a business i.e., monopolies, goodwill, exclusivity through licensing, etc. to enhance the competitiveness advantages. Thus, restructuring helps in bringing an edge over competitors.

In highly competitive world, cost cutting and value addition are very important to get highlighted.

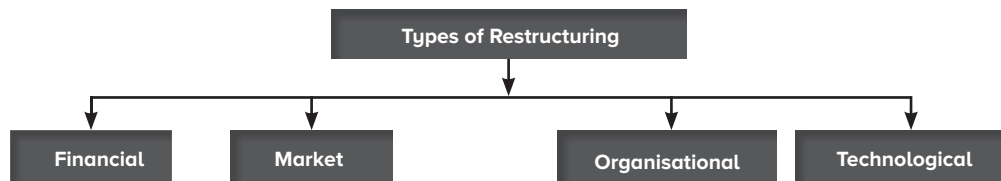
Corporate Restructuring : An Example

ABC Limited has surplus funds but it is not able to consider any viable projects. Whereas XYZ Limited has identified viable projects but has no money to fund the cost of the project. The merger of ABC Limited and XYZ Limited is a mutually beneficial option and would result in positive synergies for both the Companies.

Motives behind Corporate Restructuring



TYPES OF RESTRUCTURING



I. Financial Restructuring

Financial restructuring deals with restructuring of capital base and raising finance for new projects. Financial restructuring helps a firm to revive from the situation of financial distress without going into liquidation.

Financial restructuring is done for various business reasons:

- Poor financial performance
- External competition
- Erosion or loss of market share
- Emerging market opportunities

It involves Equity Restructuring like buy-back, Alteration/Reduction of capital and Debt Restructuring like restructuring of the secured long-term borrowing, long-term unsecured borrowings, Short term borrowing which are explained in detail in further later.

II. Market and Technological Restructuring

Market Restructuring involves decisions with respect to the product market segments where the company plans to operate on its core competencies and technological restructuring occurs when a new technology is developed that changes the way an industry operates. This type of restructuring usually affects employees, and tends to lead to new training initiatives, along with some layoffs as the company improves efficiency. This type of restructuring also involves alliances with third parties that have technical knowledge or resources.

Indian technology major Tata Consultancy Services Limited has embarked upon the process of restructuring and focusing on three core areas Cloud, agile and automation. The restructuring plan of the company focuses on the manufacturing capacity and on product, technical and technological, financial, employment, organizational, purchasing and management restructuring activities.

Disney's global technology group, parks-and-resorts division is undergoing a reorganization which results in some employees losing their jobs. It is eliminating some positions and replacing them with others that help the company reach more long-term technology goals.

Joint Venture, Strategic Alliances, Franchising are some of the examples of market and technological restructuring.

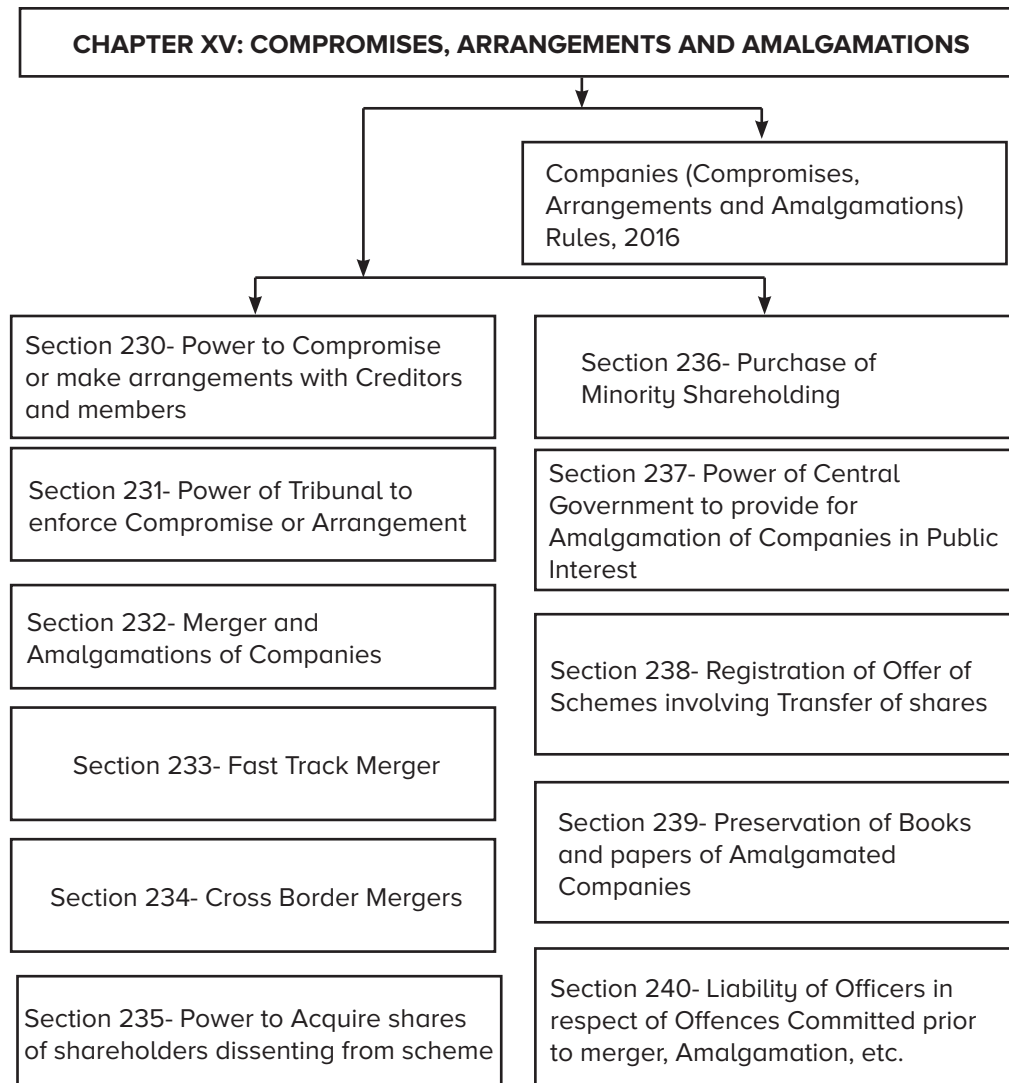
III. Organisational Restructuring

Organizational Restructuring involves establishing internal structures and procedures for improving the capability of the personnel in the organization to respond to changes. These changes need to have the cooperation of all levels of employees. Some companies shift organizational structure to expand and create new departments to serve growing markets. Other companies reorganize corporate structure to downsize or eliminate departments to conserve overheads.

LEGAL FRAMEWORK OF CORPORATE RESTRUCTURING

Corporate Restructuring in India is governed by the following Acts, Rules, etc.:

- Chapter XV of The Companies Act, 2013 (the Act) The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
- Chapter IV of the Companies Act, 2013 the Companies (Share Capital and Debentures) Rules, 2014 - Buy Back of shares/ purchase of own securities
- The National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 -Reduction of share capital
- The Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016
- Income Tax Act, 1961
- Accounting Standards
- Foreign Exchange Management Act, 1999
- Competition Act, 2002
- Indian Stamp Act, 1899
- State Stamp Acts
- Insolvency and Bankruptcy Code, 2016 and Rules & Regulations thereon
- Intellectual Property Rights.



MOST COMMONLY APPLIED TOOLS OF CORPORATE RESTRUCTURING

Mergers/Acquisitions and Amalgamation

Mergers and Acquisitions (M&A) are transactions in which the ownership of companies, other business organizations or operating units are transferred or combined. As an aspect of strategic management, M&A allow enterprises to grow, shrink, and change the nature of the business or competitive position. It refers to the consolidation of two companies.

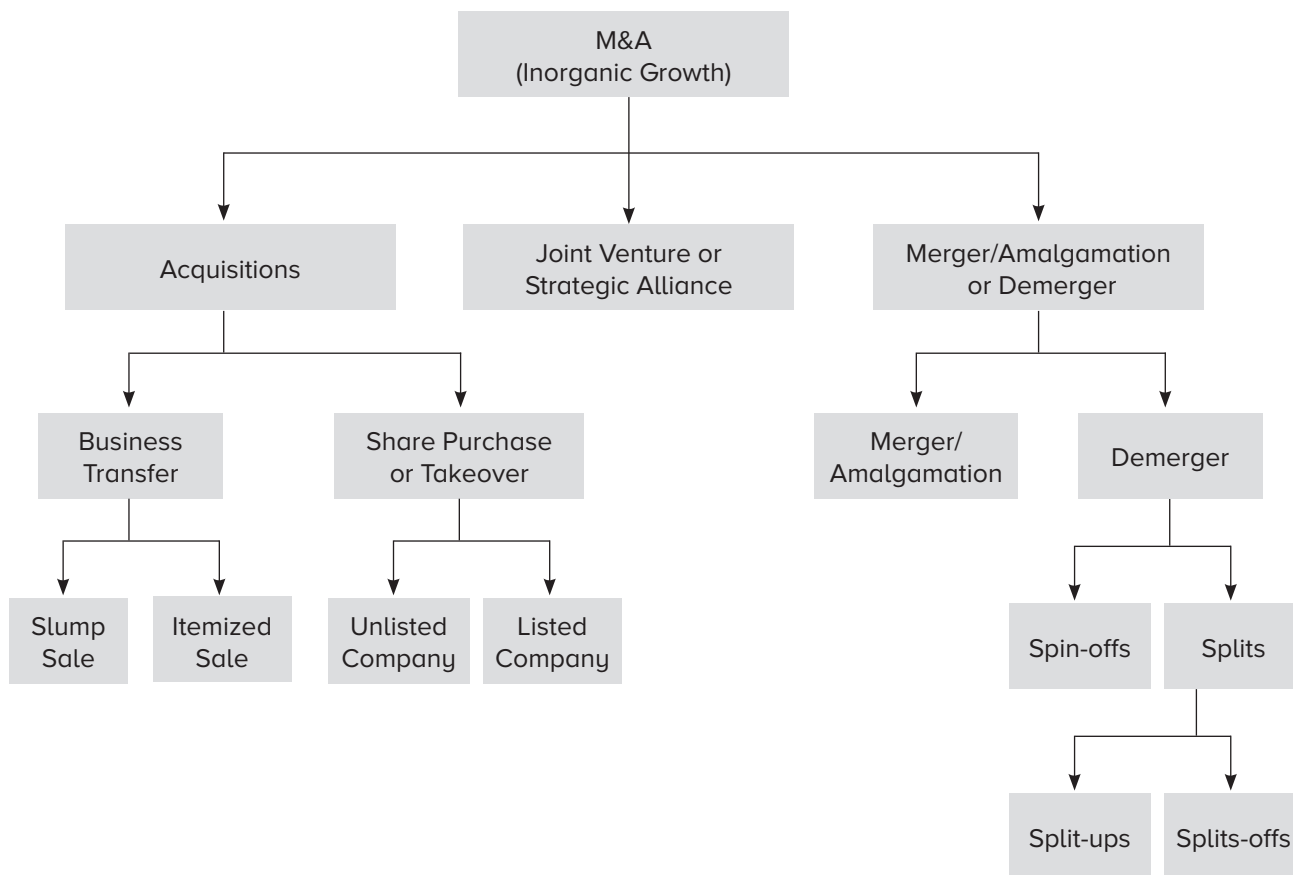
The reasoning behind M&A is that two separate companies together create more value compared to being on an individual stand. With the objective of wealth maximization, companies keep evaluating different opportunities through the route of merger or acquisition.

Mergers and Acquisitions (M&A) is a critical strategy for growth in the new economy. M&A are transactions in which the ownership of companies, other business organizations or operating units are transferred or combined. As an aspect of strategic management, M&A allow enterprises to grow, shrink and change the nature of the business or competitive position. It refers to the consolidation of two companies. The reasoning behind M&A is that two separate companies together create more value compared to being on an individual stand. With

the objective of wealth maximization, companies keep evaluating different opportunities through the route of merger or acquisition.

M& A help the aspiring entities to expand geographically and assists them to reach the greater height and become market leaders. Also, M & As would increase the entity’s ability to distribute goods or services on a wider scale which allows the entity to reach a wider market of consumers. This also helps to expand brand recognition and increase sales. The consumer also gets competitive products with improved technology.

The terms M & As is a term for company consolidation when two or more companies merge into one entity is called a merger. When we refer the term acquisition, it means to the purchase of one entity by another and in this case, instead of starting a new company, one company becomes part of another company. Mergers and acquisitions are an important part of strategic management that is included in corporate finance. we could also say that it is a type of restructuring of the company with the aim of growing rapidly thereby increasing the profitability and also gaining more market share.



Reasons for Mergers & Acquisitions

Regardless of their category or structure, all mergers and acquisitions have one common goal: they are all meant to create synergy that makes the value of the combined companies greater than the sum of the two parts.

The success of a merger or acquisition depends on whether this synergy is achieved. Synergy takes the form of revenue enhancement and cost savings. By merging, the companies hope to benefit from the following:

- **Becoming bigger:** Many companies use M&A to grow in size and leapfrog their rivals. While it can take years or decades to double the size of a company through organic growth, this can be achieved much more rapidly through mergers or acquisitions.

- **Pre-empted competition:** This is a very powerful motivation for mergers and acquisitions, and is the primary reason why M&A activity occurs in distinct cycles.
- **Domination:** Companies also engage in M&A to dominate their sector. However, since a combination of two behemoths would result in a potential monopoly, such a transaction would have to face regulatory authorities.
- **Tax benefits:** Companies also use M&A for tax purposes, although this may be an implicit rather than an explicit motive.
- **Economies of scale:** Mergers also translate into improved economies of scale which refers to reduced costs per unit that arise from increased total output of a product.
- **Acquiring new technology:** To stay competitive, companies need to stay on top of technological developments and their business applications. By buying a smaller company with unique technologies, a large company can maintain or develop a competitive edge.
- **Improved market reach and industry visibility:** Companies buy other companies to reach new markets and grow revenues and earnings. A merger may expand two companies' marketing and distribution, giving them new sales opportunities. A merger can also improve a company's standing in the investment community: bigger firms often have an easier time raising capital than smaller ones.

M&A take place:

- by purchasing assets
- by purchasing common shares
- by exchange of shares for assets
- by exchanging shares for shares

M&A include a number of different transactions such as:

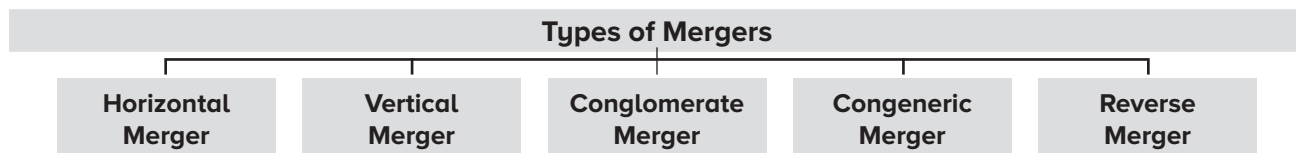
1. Mergers
2. Acquisitions
3. Amalgamation
4. Consolidations
5. Tender offers
6. Purchase of assets
7. Management buy-out

1. MERGERS

The term merger and amalgamation has not been defined under the Act. M&A is often known to be a single terminology. However, there is a thin difference between the two. 'Merger' is the fusion of two or more companies, whereby the identity of one or more is lost resulting in a single company whereas 'Amalgamation' signifies the blending of two or more undertaking into one undertaking, blending enterprises loses their identity forming themselves into a separate legal identity.

There may be amalgamation by the transfer of two or more undertakings to a new or existing company. 'Transferor company' means the company which is merging also known as amalgamating company in case of amalgamation and 'transferee company' is the company which is formed after merger or amalgamation also known as amalgamated company in case of amalgamation.

A merger is a legal consolidation of two entities into one entity which can be merged together either by way of amalgamation or absorption or by formation of a new company. The Board of Directors of two companies approve the combination and seek shareholders' approval. After the merger, the acquired company ceases to exist and becomes part of the acquiring company. Some recent examples are acquisition of eBay India by Flipkart, Vodafone-Idea merger and Axis Bank's acquisition of free charge, State Bank of India merger with all its subsidiary banks etc.

**(a) Horizontal Merger**

Horizontal Merger is a merger between companies selling similar products in the same market and in direct competition and share the same product lines and markets. It decreases competition in the market. The main objectives of horizontal merger are to benefit from economies of scale, reduce competition, achieving monopoly status and control of the market.

Example:

Facebook's acquisition of Instagram for a reported \$1 billion. Both Facebook and Instagram operated in the same industry and were in similar production stages in regard to their photo-sharing services. Facebook, looking to strengthen its position in the social media and social sharing space, saw the acquisition of Instagram as an opportunity to grow its market share, increase its product line, reduce competition and access potential new markets.

Disney bought Lucas firm and both companies were involved in production of film and running the TV shows.

(b) Vertical Merger

Vertical Merger is a merger between companies in the same industry, but at different stages of production process. In another words, it occurs between companies where one buys or sells something from or to the other.

To illustrate, suppose XYZ Ltd. produces shoes and ABC Ltd. produces leather. ABC has been XYZ's leather supplier for many years, and they realize that by entering into a merger together, they could cut costs and increase profits. They merge vertically because the leather produced by ABC is used in XYZ's shoes.

Microsoft bought Nokia to support its software and provide hardware necessary for the smartphone.

(c) Conglomerate Merger

Conglomerate merger is a merger between two companies that have no common business areas. It refers to the combination of two firms operating in industries unrelated to each other. The business of the target company is entirely different from the acquiring company. The main objective of a conglomerate merger is to achieve big size e.g., a watch manufacturer acquiring a cement manufacturer, a steel manufacturer acquiring a software company, etc.

Example:

Berkshire Hathway acquired Lubrizol: Berkshire Hathaway and its subsidiaries engage in diverse business activities including property and casualty insurance and reinsurance, utilities and energy, freight rail transportation, finance, manufacturing, retailing and services. Berkshire's common stock is listed on the New York Stock Exchange.

The Lubrizol Corporation is an innovative specialty chemical company that produces and supplies technologies to customers in the global transportation, industrial and consumer markets. These technologies include lubricant additives for engine oils, other transportation-related fluids and industrial lubricants, as well as fuel additives for gasoline and diesel fuel.

(d) Congeneric Merger

Congeneric merger is a merger between two or more businesses which are related to each other in terms of customer groups, functions or technology e.g., combination of a computer system manufacturer with a UPS manufacturer.

PVR/INOX Merger

India's two leading cinema franchises, PVR and INOX, merged in 2022 to create the largest multiplex chain in the country with over 1500 screens. The PVR and INOX merger will result in synergies in the form of advertising revenues, reduced rental costs, and convenience fees for the merged entity, which will be called PVR-INOX.

HDFC LTD/HDFC BANK Merger

India's largest housing finance company, HDFC Ltd and the largest private sector bank, HDFC Bank, merged in 2022 in one of the biggest financial deals in India. The \$40 billion deal will result in a single entity, but the services of HDFC Ltd and HDFC Bank will continue to be provided separately.

An example of a congeneric merger is when banking giant Citicorp merged with financial services company Travelers Group in 1998. In a deal valued at \$70 billion, the two companies joined forces to create Citigroup Inc. While both companies were in the financial services industry, they had different product lines.

(e) Reverse Merger

A **reverse merger** is a **merger** in which a private company becomes a public company by acquiring it. It saves a private company from the complicated process and expensive compliance of becoming a public company. Instead, it acquires a public company as an investment and converts itself into a public company.

Example of a reverse merger was when ICICI merged with ICICI Bank in 2002. The parent company's balance sheet was more than three times the size of its subsidiary at the time.

2. ACQUISITION

Acquisition occurs when one entity takes ownership of another entity's stock, equity interests or assets. It is the purchase by one company of controlling interest in the share capital of another existing company. Even after the takeover, although there is a change in the management of both the firms, companies retain their separate legal identity. The companies remain independent and separate; there is only a change in control of the companies. When an acquisition is 'forced' or 'unwilling', it is called a takeover.

Examples:

- Snapdeal and Freecharge (\$400 million)
- Flipkart and Myntra (\$300 to 330 million)
- Ola and Taxi ForSure (\$200 million)

Difference between a Merger and an Acquisition:

Merger	Acquisition
A merger occurs when two separate entities, usually of comparable size, combine forces to create a new, joint organization in which both are equal partners	An acquisition refers to the purchase of one entity by another (usually, a smaller firm by a larger one)
Old company cease to exist and a new company emerges	A new company does not emerge

It requires two companies to consolidate into a new entity with a new ownership and management structure	It occurs when one company takes over all of the operational management decisions of another
If the takeover is friendly, it is called merger	If the takeover is hostile, it is called as an acquisition

From a commercial and economic point of view, both types of transactions generally result in the consolidation of assets and liabilities under one entity, and the distinction between a “merger” and an “acquisition” is less clear. A transaction legally structured as an acquisition may have the effect of placing one party’s business under the indirect ownership of the other party’s shareholders, while a transaction legally structured as a merger may give each party’s shareholders partial ownership and control of the combined enterprise.

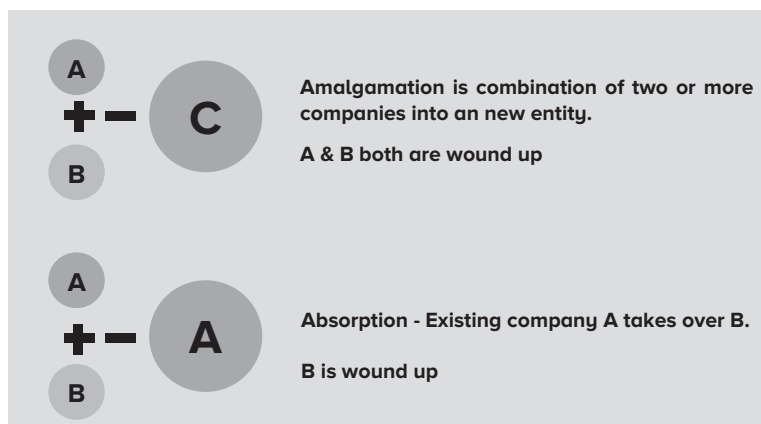
Contemporary corporate restructurings are usually referred to as merger and acquisition (M&A) transactions rather than simply a merger or acquisition. The practical differences between the two terms are slowly being eroded by the new definition of M&A deals. In other words, the real difference lies in how the purchase is communicated to and received by the target company’s board of directors, employees and shareholders.

A stock swap occurs when shareholders’ ownership of the target company’s shares are exchanged for shares of the acquiring company as part of a merger or acquisition. During a stock swap, each company’s shares must be accurately valued in order to determine a fair swap ratio.

3. AMALGAMATION

Amalgamation is defined as the combination of one or more companies into a new entity. It includes:

- (i) Two or more companies join to form a new company.
- (ii) Absorption or blending of one by the other.



Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or amalgamated company. In other words, property, assets, liabilities of one or more companies is taken over by another or are absorbed by and transferred to an existing company or a new company.

Therefore, the essence of amalgamation is to make an arrangement thereby uniting the undertakings of two or more companies so that they become vested in, or under the control of one company which may or may not be the original of the two or more of such uniting companies.

The word “amalgamation” is not defined under the Companies Act 2013 whereas section 2(1B) of Income Tax Act, 1961 defines Amalgamation as:

“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 (the company or companies which so merge

being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that –

- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;
- (iii) 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.

Amalgamation includes absorption. The Institute of Chartered Accountants of India has issued Accounting Standard (AS) 14 on Accounting for Amalgamations.

Illustration

Process	Result
Existing companies A and B are wound-up and a new company C is formed to takeover the businesses of A and B	Amalgamation
Existing company A takes over the business of another existing company B which is wound-up	Absorption
A new Company X is formed to take over the business of an existing company Y which is wound-up.	External reconstruction

Reasons for Amalgamation :

- (a) To acquire cash resources
- (b) To eliminate competition
- (c) Tax savings/advantages
- (d) Economies of large scale operations
- (e) To Increase shareholders value
- (f) To reduce the degree of risk by diversification
- (g) Managerial effectiveness
- (h) To achieve growth and financial gain
- (i) Revival of weak or sick or insolvent/bankrupt company
- (j) Survival
- (k) Sustaining growth.

4. CONSOLIDATION

A consolidation creates a new company. Stockholders of both companies approve the consolidation, and subsequent to the approval, receive common equity shares in the new firm.

Example: In 1998 Citicorp and Traveler's Insurance Group announced a consolidation, which resulted in Citigroup. Facebook's acquisition of Instagram & Disney's acquisition of Fox.

5. TENDER OFFER

One company offers to purchase the outstanding stock of the other firm at a specific price. The acquiring company communicates the offer directly to the other company's shareholders.

Example: ABC Ltd is a publicly listed company whose share price is trading at \$15 per share. Michael is a venture capitalist who wants to take over the company and offers \$18 per share provided his firm secures at least 51% of ABC Ltd.

6. ACQUISITION OF ASSETS

In a purchase of assets, one company acquires the assets of another company. The company whose assets are being acquired, obtain approval from its shareholders. The purchase of assets is typical during bankruptcy proceedings, where other companies bid for various assets of the bankrupt company, which is liquidated upon the final transfer of assets to the acquiring firm(s).

7. MANAGEMENT BUYOUT

A management buyout (MBO) is a transaction where a company's management team purchases the assets and operations of the business they manage. MBO is appealing to professional managers because of the greater potential rewards from being owners of the business rather than employees.

According to global consultancy giant Grant Thornton, the overall deal activity - including both mergers and acquisitions and PE (private equity) - was about \$59 billion in the January-November period of 2017, a 9 per cent rise from the previous year 2016.

When looking to exit, a business owner has a number of options. One of these is to sell the company to the existing management team.

A sale to management may be preferred to a trade sale for a variety of reasons, for example, the number of potential trade buyers may be limited, the vendors may be nervous about approaching competitors and disclosing sensitive information or they may feel strongly that the company and its staff carry on independently in what they believe to be "safe hands".

In its simplest form, a management buyout (MBO) involves the management team of a company combining resources to acquire all or part of the company they manage. Most of the time, the management team takes full control and ownership, using their expertise to grow the company and drive it forward.

Factors that makes a succesful MBO:

- A company with a good track record of profitability;
- Good future prospects for the company without high risk factors;
- A strong committed management team with a mixture of skills;
- A vendor who is willing to explore a sale to the management team and who will accept a realistic price;
- A deal structure that can be funded, and supported by the future cashflows of the company.

8. PURCHASE OF COMPANY AS RESOLUTION APPLICANT UNDER IBC LAW

The basic objective behind the Insolvency and Bankruptcy Code 2016 is to revive the insolvent company by approving the effective resolution plan and maximization of assets of the corporate debtor. As per the Code, the company under insolvency can be purchased by the resolution applicant by participating in the bid process by submitting the most effective resolution plan. This way the insolvent company can be revived by some other company/group/individuals.,

Example: Tata Steel has taken over the bankrupt Bhushan Steel for ₹ 35,200 crore,

EXAMPLE-MERGERS AND ACQUISITIONS IN INDIA

Tata Group/Air India

Tata Group, India's largest conglomerate, acquired the nationalised airline Air India in 2022. Tata also announced the merger of Air India with Vistara, a joint venture between Tata Sons and Singapore Airlines. Air India had been struggling for years, and the travel restriction during the COVID-19 pandemic only added to its woes. However, Tata is doing everything possible to restore Air India to its former glory.

Adani Group/Ambuja Cement

Gautam Adani is fast-rising in the world. In a span of a few years, he has claimed a spot as one of the richest people in the world. Along with the acquisition of NDTV, the Adani Group also acquired a majority stake in Ambuja Cements and its subsidiary, ACC Ltd. Adani is now the second largest cement manufacturer in the country after Aditya Birla Group's UltraTech.

Zomato – Blinkit Merger

Zomato and Blinkit have reached an agreement for a merger. The all-stock deal values Blinkit between \$700 million and \$750 million. Blinkit, formerly known as Grofers, has revamped itself to focus on an instant grocery delivery portal.

Zomato Acquisition of Uber Eats

Zomato acquired Uber Eats for an all-stock acquisition deal during the year 2020. The acquisition deal provided great discounts to customers and it was the most beneficial to the customer during the Covid pandemic time. The stock deal was done by the companies operating in the same line of business. Which resulted Zomato becoming number one in food marketing and food supply. In other words, Zomato became the megastar of the food business and in turn Uber Eats could invest their money in other growing business.

Vodafone India and Idea Cellular

Vodafone India and Idea Cellular decided to merge and form country's largest telecom operator 'Vodafone India Ltd.' worth of more than \$23 billion with a 35 per cent market share and it is the top M&A deal of 2017-18.

Vodafone and the Aditya Birla Group will have a joint control of this combined company. Combining the Vodafone and idea customers, the merged entity is the biggest telecom company in India.

The merged entity have over 408 million customers, nearly 42% customer market share (CMS) and nearly 33% revenue market share (RMS), leaving it stronger placed to take on competitive pressures triggered by Jio, with 160 million subscribers and over 16% CMS and 15.3% RMS. Airtel has a CMS of 29.5% and an RMS of 31.5%.

The Idea-Vodafone merger has been cleared by the stock exchanges, Securities and Exchange Board of India, Competition Commission of India, foreign direct investment clearance from the department of industrial policy and promotion, approval given by DoT as licensor and the merger after approval of NCLT is complete in August 2018.

Flipkart and eBay

Indian e-commerce major Flipkart acquired the Indian wing of eBay. The transaction was announced in April 2017 and completed in August 2017. eBay and Flipkart have also entered into an agreement for cross-border sale. In exchange of equity stake in Flipkart, eBay had made cash investment of \$500 million and sold its eBay, in business to Flipkart.

As a result, Flipkart customers get expanded product choices with the wide array of global inventory available on eBay while eBay customers will have access to a more unique Indian inventory from Flipkart sellers.

DEMERGER

It is a business strategy in which a single business is broken into components, either to operate on their own, to be sold or to be dissolved. A demerger allows a large company, such as a conglomerate, to split off its various

brands to invite or prevent an acquisition, to raise capital by selling off components that are no longer part of the business's core product line, or to create separate legal entities to handle different operations.

Demerger is an arrangement whereby some part / undertaking of one company is transferred to another company which operates completely separate from the original company. Shareholders of the original company are usually given an equivalent stake of ownership in the new company.

The contracts relating to the demerged undertaking would get automatically transferred to the resulting company, unless the underlying contract has stipulated specific restrictions. A demerged company is said to be one whose undertakings are transferred to the other company, and the company to which the undertakings are transferred is called the resulting company. It is a process of reorganizing a corporate structure whereby a capital stock of a division or subsidiary of corporation or of a newly affiliated company is transferred to the stakeholders of existing company.

Demerger under Section 2(19AA) of the Income tax Act, 1961 means the transfer, pursuant to a scheme of arrangement under section 230 to 232 of the Act, by a demerged company of its one or more undertakings to the resulting company in such a manner that:-

- (i) All the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of demerger;
- (ii) All the liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;
- (iii) The property and the liabilities of the undertaking or undertakings, being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;
- (iv) The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company;
- (v) The shareholders holding not less than three-fourth in value of shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger; otherwise than as a result of the acquisition of the property or assets of the demerged or any undertaking thereof by the resulting company;
- (vi) the transfer of the undertaking is on a going concern basis;
- (vii) Demerger in accordance with the conditions notified under Section 72A(5) of Income Tax Act, 1961.

“Undertaking” includes 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.

“Liabilities” referred to in sub-clause (ii), shall include:

- (a) the liabilities which arise out of the activities or operations of the undertaking;
- (b) the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and
- (c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

As per provisions of Section 72A(4) of Income Tax Act, 1961, 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 relating 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.

Examples:

- In April 2023, Competition Commission of India approves the proposed combination involving **demerger** of FMCG business of Haldiram Snacks and Haldiram Foods into Haldiram Snacks Food and acquisition of 56% and 44% shareholding in Haldiram Snacks Food by existing shareholders of Haldiram Snacks and Haldiram Foods.

Haldiram Snacks Private Limited (HSPL/Haldiram Snacks) is engaged in the manufacture and distribution of packaged food products in India such as snacks, namkeen, sweets, ready to eat / premix food, frozen food, biscuits, non-carbonated ready to drink beverages, pasta etc. Headquartered in Delhi, HSPL's operations are primarily run by Mr. Manohar Agarwal and Mr. Madhu Sudan Agarwal (Delhi Family).

Haldiram Foods International Private Limited (HFIPL/ Haldiram Foods) is similarly engaged in the manufacture and distribution of packaged foods products such as snacks, namkeen, sweets, ready to eat / pre-mix food, biscuits, cookies, non-carbonated ready to drink beverages, pasta etc. Headquartered in Nagpur, HFIPL's operations are primarily run by Mr. Kamalkumar Shivkisan Agrawal (Nagpur Family).

Haldiram Snacks Food Private Limited (HSFPL/ Haldiram Snacks Food) is a newly incorporated entity that currently does not undertake any business operations. Post the Proposed Transaction, HSFPL would undertake the FMCG Business that is currently undertaken by HFIPL and HSPL, respectively

The FMCG business (i.e., the packaged foods business) would comprise collectively of the FMCG business currently undertaken by HSPL and HFIPL and their respective subsidiaries / affiliates.

The proposed combination involves the following steps:

- A demerger** of the respective FMCG businesses of HSPL and HFIPL (currently housed under HSPL and HFIPL and their various associates / subsidiaries), through NCLT approved Scheme of Arrangement (Scheme);
 - Pursuant to the Scheme, the acquisition of 56% and 44% shareholding in HSFPL by the shareholders of HSPL and HFIPL (collectively, Proposed Combination).
- Reliance Industries demerged to Reliance Industries and Reliance Communications Ventures Ltd, Reliance Energy Ventures Ltd, Reliance Capital Ventures Ltd, Reliance Natural Resources Ltd.
 - In April 2018, Whitbread plc. announced to de-merge Costa Coffee from their stable of businesses.
 - Pfizer sold their infant nutrition business to Nestle.

Types of Demerger

1. Divestiture

Divestiture means selling or disposal of assets of the company or any of its business undertakings/ divisions, usually for cash (or for a combination of cash and debt).

2. Spin-offs

The shares of the new entity are distributed to the shareholders of the parent company on a pro-rata basis. The parent company also retains ownership in the spun-off entity. There are two approaches in which Spin offs may be conducted. In the first approach, the company distributes all the shares

of the new entity to its existing shareholders on a pro rata basis. This leads to the creation of two different companies holding the same proportions of equity as compared to the single company existing previously. The second approach is the floatation of a new entity with its equity being held by the parent company. The parent company later sells the assets of the spun off company to another company.

A spinoff may occur for various reasons. A company may conduct a spinoff so it can focus its resources and better manage the division that has more long-term potential. Businesses wishing to streamline their operations often sell less productive or unrelated subsidiary businesses as spinoffs. For example, a company might spin off one of its mature business units that are experiencing little or no growth so it can focus on a product or service with higher growth prospects.

Alternatively, if a portion of the business is headed in a different direction and has different strategic priorities from the parent company, it may be spun off so it can unlock value as an independent operation.

A company may also separate a business unit into its own entity if it has been looking for a buyer to acquire it but failed to find one. For example, the offers to purchase the unit may be unattractive, and the parent company might realize that it can provide more value to its shareholders by spinning off that unit.

A corporation creates a spinoff by distributing 100% of its ownership interest in that business unit as a stock dividend to existing shareholders. It can also offer its existing shareholders a discount to exchange their shares in the parent company for shares of the spinoff. For example, an investor could exchange \$100 of the parent's stock for \$110 of the spinoff's stock. Spinoffs tend to increase returns for shareholders because the newly independent companies can better focus on their specific products or services.

The downside of spinoffs is that their share price can be more volatile and can tend to under perform in weak markets and outperform in strong markets. Spinoffs can also experience high selling activity; shareholders of the parent may not want the shares of the spinoff they received because it may not fit their investment criteria. The share price may dip in the short term because of this selling activity, even if the spinoff's long-term prospects are positive.

Key Takeaways

- A spinoff is the creation of an independent company through the sale or distribution of new shares of an existing business or division of a parent company.
- The spun-off companies are expected to be worth more as independent entities than as parts of a larger business.
- When a corporation spins off a business unit that has its own management structure, it sets it up as an independent company under a renamed business entity.

3. Splits/divisions

Splits involve dividing the company into two or more parts with an aim to maximize profitability by removing stagnant units from the mainstream business. Splits can be of two types, Split-ups and Split-offs.

Split-ups: It is a process of reorganizing a corporate structure whereby all the capital stock and assets are exchanged for those of two or more newly established companies resulting in the liquidation of the parent corporation.

Split-offs: It is a process of reorganizing a corporate structure whereby the capital stock of a division or subsidiary of corporation or of a newly affiliated company is transferred to the stakeholders of the parent corporation in exchange for part of the stock of the latter. Some of the shareholders in the parent company are given shares in a division of the parent company which is split off in exchange for their shares in the parent company.

Key Takeaways

- Split-offs are a method that can be used for a corporate divestiture.
- Split-offs do not mandate a proportioned pro rata share distribution but rather offer shareholders the option to exchange shares.

- Split-offs are motivated by the desire to create greater value for shareholders through the shedding of assets and offering of a new, separate company.

Comparison Between Spin-off and Split-off

Basis for comparison	Spin-Off	Split-Off
Meaning	Spin-off implies a business action, wherein a company disjoins a division and creates new business entity, which is separately listed in the stock exchange and has independent board of directors.	Split-off refers to a corporate divestiture process in which a company's subsidiary turnout as a separate entity, with independent listing of its capital stocks.
Shares	Shares of the subsidiary company are distributed to all the shareholders.	Holding company's shareholders are required to exchange their shares, to get shares in the subsidiary.
Reason	To create a separate identity of the new firm.	To create a distinction between the core business and the new one.

4. Equity Carve-Outs

Equity carve-outs are referred to a percentage of shares of the subsidiary company being issued to the public. This method leads to a separation of the assets of the parent company and the subsidiary entity. Equity carve outs result in publicly trading the shares of the subsidiary entity.

Examples:

1. Indiabulls carved out commercial office business into a separate firm under the name of Indiabulls Commercial Assets Limited.
2. India's largest engineering and construction company Larsen and Toubro Ltd (L&T) adopted "asset-light strategy" by separating business units into independent subsidiaries by selling a stake in businesses. The company, which is considered a corporate proxy for the broader economy, divested its assets as a way to generate capital for investing in fresh projects.
3. In January 2017, the Government of India divested 10 per cent stake in Coal India Limited through the offer-for-sale (OFS) route at Rs. 358 per share and brought its holding down to 79.65 per cent.

SLUMP SALE

The transfer of the undertaking concerned as going concern is called "Slump sale". Slump sale is one of the methods that are widely used in India for corporate restructuring where the company sells its undertaking. The main reasons of slump sale are generally undertaken in India due to following reasons:

- It helps the business to improve its poor performance.
- It helps to strengthen financial position of the company.
- It eliminates the negative synergy and facilitates strategic investment.
- It helps to seek tax and regulatory advantage associated with it.

Section 2 (42C) of the Income Tax Act, 1961, recognizes 'Slump-sale' as a transfer of an 'undertaking' i.e. a part or a unit or a division of a company, which constitutes a business activity when taken as a whole. It is a transfer of one or more undertakings as a result of sale for a lump sum consideration, without values being assigned to the individual assets and liabilities in such sale. Sale includes transfer of an asset from one person to another for some consideration, where consideration can be in kind or cash.

'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.

The term 'sale' is not defined in the Income Tax Act, 1961. The term "Sale" is defined in the Section 4 of the Sales of Goods Act, 1930. Sale is a contract whereby the seller transfers the property in goods to a buyer for a price.

In *CIT v R.R. Ramkrishna Pillai (66 ITR 725)*, the Supreme Court made the clear distinction between sale and exchange. In this case, the assessee was carrying on the business and had transferred the assets of the business to a company in consideration for the allotment of the shares of that company. The issue was whether it was exchange or sale because on that basis the transaction will be identified as slump sale. The Supreme Court held that where the assets are transferred for money consideration and the liability of consideration so determined is discharged by any mode whether money or other assets then the said transaction is sale.

In that case, there are in truth two transactions, one transaction of sale and the other of contract under which the shares are allotted in satisfaction of the liability to pay the price. However where the assets are transferred for a consideration of another asset other than money the said transaction is exchange. On the basis of this distinction the Supreme Court held that transfer of assets in consideration for the allotment of shares of that company is 'exchange' and not sale.

The Act does not define a slump sale but has included in its ambit slump sale by way of section 180(1) and provides for the procedure and approval required for selling, leasing or disposing of the whole or substantially whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any such undertakings.

"Undertaking" means an undertaking in which the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year.

"Substantially the whole of the undertaking" in any financial year shall mean twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year.

BUSINESS SALE/DIVESTITURE

Divestiture means selling or disposal of assets of the company or any of its business undertakings/ divisions, usually for cash (or for a combination of cash and debt) and not against equity shares to achieve a desired objective, such as greater liquidity or reduced debt burden. Divestiture is normally used to mobilize resources for core business or businesses of the company by realizing value of non-core business assets.

For example: XYZ Ltd. is the parent of a food company, a car company, and a clothing company. If XYZ Ltd. wishes to go out of the car business, it may divest the business by selling it to another company, exchanging it for another asset, or closing down the car company.

Reasons for Divestitures

- Huge divisional losses
- Continuous negative cash flows from a particular division
- Difficulty in integrating the business within the company
- Unable to meet the competition
- Better alternatives of investment
- Lack of technological upgradations due to non-affordability
- Lack of integration between the divisions
- Legal pressures.

E.g. Nestle is selling its US chocolate business, which includes brands such as Baby Ruth, Butterfinger, and Crunch to Ferrero for \$2.8 billion. The deal is part of Nestle's strategy to sell under performing brands and refocus on healthier products and fast-growing markets.

JOINT VENTURE

A joint venture (JV) is a business or contractual arrangement between two or more parties which agree to pool resources for the purpose of accomplishing a specific task may be a new project or any other business activity. In a joint venture (JV), each of the participants is responsible for profits, losses and costs associated with it. Company enters into a joint venture when it lacks required knowledge, human capital, technology or access to a specific market that is necessary to be successful in pursuing the project on its own.

For example: A Ltd. may own technology, manufacturing and production facilities that B Ltd. needs to create and ultimately distribute a new product. A joint venture between the two companies gives B Ltd. access to the equipment without purchasing or leasing it, while A Ltd. is able to participate in production of a product without incurring costs to develop. Each company benefits when the joint venture is successful, and neither is left to complete the project alone.

Types of Joint Ventures

- (a) **Equity-based joint ventures** is a type of joint venture in which two or more parties set-up a separate legal company to act as the vehicle for carrying out the project. This new company would usually be located in the same country as one of the two partner companies, with the purpose of mutually establishing an activity with its own objectives: marketing and distribution, research, manufacturing, etc. It benefits foreign and/or local private interests, or members of the general public through capital.
- (b) **Non-equity joint ventures** also known as cooperative agreements, seek technical service arrangements, franchise, brand use agreements, management contracts, rental agreements, or one-time contracts, e.g., for construction projects, non-equity arrangements in which some companies are in need of technical services or technological expertise than capital. It may be modernizing operations or starting new production operations.

Example:

- Vistara airlines is an Indian Joint Venture with a foreign company. Vistara is the brand name of Tata SIA Airlines Ltd, a JV between India's corporate giant Tata Sons and Singapore Airlines (SIA).
- Tata Starbucks Pvt. Ltd is a joint venture of Tata with Starbucks Corporation, USA which runs a chain of Starbucks brand coffee shops across India.

STRATEGIC ALLIANCE

Nike, the world's largest producer of athletic foot-wear, does not produce a single shoe. Boeing, the giant aircraft company, makes little more than cockpits and wing bits. These organizations, like a number of other businesses nowadays, have created strategic alliances with their suppliers to do much of their actual production for them.

A strategic alliance is an arrangement between two companies that have decided to share resources to undertake a specific, mutually beneficial project. It is an excellent vehicle for two companies to work together profitably. It can help companies develop and exploit the unique strengths. Organizations get an opportunity to widen customer base or utilize the surplus capacity.

E.g. Etihad Airways, based in Abu Dhabi, has completed an investment in India's Jet Airways. This alliance will provide considerable benefits for both carriers, as it opens Etihad to 23 cities in India, and offers Jet Airways passengers connection possibilities to the US, Europe, Middle East and Africa that were previously unavailable.

ICICI Bank and Vodafone India entered into a strategic alliance to launch a unique mobile money transfer and payment service called 'm-pesa'.

REVERSE MERGER

A reverse merger is a merger in which a private company becomes a public company by acquiring it. It saves a private company from the complicated process and expensive compliance of becoming a public company. Instead, it acquires a public company as an investment and converts itself into a public company.

However, there is another angle to the concept of a reverse merger. When a weaker or smaller company acquires a bigger company, it is a reverse merger. In addition, when a parent company merges into its subsidiary or a loss-making company acquires a profit-making company, it is also termed as a reverse merger.

The reason for reverse merger are:

- To carry forward tax losses of the smaller firm, this allows the combined entity to pay lower taxes. Tax savings under Income Tax Act, 1961
- Economies of scale of production
- Marketing network
- To protect the trademark rights, licence agreements, assets of small/loss making company.

Examples:

1. In 2023, the reverse merger of HDFC with its subsidiary HDFC Bank, resulting in a combined business worth over 41 lakh crore.
2. Merging of Oil exploration company Cairn India with parent Vedanta India.
3. In 2002 Merging of ICICI with its arm ICICI Bank. The parent company's balance sheet was more than three times the size of its subsidiary at the time. The rationale for the reverse merger was to create a universal bank that would lend to both industry and retail borrowers.
4. Merging of Godrej Soaps, profitable and with a turnover of ₹437 crore with loss-making Gujarat Godrej Innovative Chemicals with a turnover of ₹ 60 crore, the resulting firm was named Godrej Soaps.

FINANCIAL RESTRUCTURING

Corporate financial restructuring is any substantial change in a company's financial structure, or ownership or control, or business portfolio, designed to increase the value of the firm, i.e., debt and equity restructuring. Internal reconstruction of a company is the simplest form of financial restructuring. Under this, various liabilities are reduced after negotiating with various stakeholders such as banks, financial institutions, creditors, debenture holders and shareholders. It deals with the restructuring of capital base and raising finance for new projects.

Debt Restructuring

It involves a reduction of debt and an extension of payment terms or change in terms and conditions, which is less expensive. It is nothing but negotiating with bankers, creditors, vendors. It is the process of reorganizing the whole debt capital of the company. It involves the reshuffling of the balance sheet items as it contains the debt obligation of the company. Debt capital of the company includes secured long term borrowing, unsecured long-term borrowing, and short term borrowings.

- Restructuring of the secured long-term borrowing for improving liquidity and increasing the cash flows for a sick company and reducing the cost of capital for healthy companies. Restructuring of the unsecured long-term borrowings.
- Restructuring of the long-term unsecured borrowings can be in form of public deposits and/or private loans (unsecured) and privately placed, unsecured bonds or debentures.
- Restructuring of other short-term borrowings: the borrowings that are very short in nature are generally not restructured these can indeed be renegotiated with new terms. These types of short-term borrowings include inter-corporate deposits clean bills & clean overdraft.

- Best method for corporate debt restructuring is Debt-equity swap. In the case of an debt-equity swap, specified shareholders have right to exchange stock for a predetermined amount of debt (i.e. bonds) in the same company. In debt-equity swap debt /bonds are exchanged with shares/stock of the company.

CASE STUDY

Gammon India Ltd. invoked the Strategic Debt Restructuring (SDR) mechanism in the 2015-2016. A total of 16 banks, led by ICICI Bank, decided to convert a part of their loan into 63.07 per cent equity. The SDR Scheme, an improved version of the erstwhile Corporate Debt Restructuring, or CDR, mechanism, wherein lenders have sweeping powers to throw out managements of companies whose assets have turned bad. However, the bankers could not find a buyer for the entire Gammon India and instead decided to restructure it into three parts - Power Transmission & Distribution (T&D), Engineering, Procurement & Construction (EPC), and the residual business. The Thailand-based GP Group has acquired the EPC assets while Ajanma Holdings bought stake in the T&D business.

Gammon India is one among two dozen companies where bankers have invoked the SDR Scheme, to make the process of debt recovery faster and smoother. The list includes Alok Industries, Usher Agro, Diamond Power, Monnet Ispat, Jaiprakash Power and IVRCL.

Equity Restructuring

It is a process of reorganizing the equity capital. It includes a reshuffling of the shareholders capital and the reserves that are appearing on the balance sheet. Restructuring equity means changing how the firm's residual cash flows are divided and distributed among the firms shareholders, with the goal of increasing the overall market value of the firms common stock. Restructuring of equity and preference capital becomes complex process involving a process of law and is a highly regulated area.

The following comes under equity restructuring:

- Alteration of share capital
- Reduction of share capital
- Buy-back of shares.

ALTERATION OF SHARE CAPITAL

The capital of a company is separated into units of a fixed denomination and such unit is a share. A share means a share in the share capital of a company and includes stock as defined under Section 2(84) of Companies Act, 2013. Alteration of share capital means, increase or decrease in or rearrangement of share capital as permitted in Articles of Association. An increase or decrease in the share capital of a company may be carried out as and when the company requires thus leading to an alteration in the company's share capital.

According to section 61 of the Companies Act, 2013 a limited company having a share capital derives its power to alter its share capital through its articles of association. As per the section the company may, if so authorised by its articles, alter its memorandum in its general meeting to –

1. increase its authorised share capital by such amount as it thinks expedient;
2. consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

The proviso to Section 61(1)(b) clarifies that No consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

3. convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

4. sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
5. cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled;
6. The cancellation of shares shall not be deemed to be a reduction of share capital.

If a company increases its capital beyond the amount of authorised capital, it shall increase its authorised capital by the amount of new shares. Section 2(8) of the Companies Act 2013, defines that “Authorised capital” or “nominal capital” means such capital which is authorized by the memorandum of a company to be the maximum amount of share capital of the company.

If consolidation and division, results in changes in the voting percentage of shareholders, it shall be approved by the Tribunal.

Legal Provisions

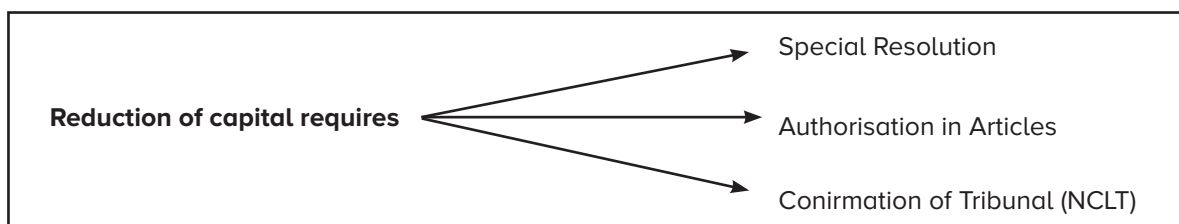
- Section 61 to 64 read with Section 13 and 14 of the Companies Act, 2013
- The Companies (Share Capital and Debentures) Rules, 2014
- National Company Law Tribunal Rules, 2016.

REDUCTION OF SHARE CAPITAL

Capital Reduction is the process of decreasing a company’s shareholder’s equity through share cancellations and share repurchases. The reduction of share capital means reduction of issued, subscribed and paid up share capital of the company. In simple words it can be regarded as ‘Cancellation of Uncalled Capital’ i.e. part of subscribed share capital. The act of capital reduction is enacted by reducing the amount of issued share capital in a response to a permanent reduction in a company’s operations or a revenue loss that cannot be recovered from a company’s future earnings.

The need of reducing share capital arise in following situations:

- Returning of surplus to shareholders;
- Eliminating losses, which may be preventing the payment of dividends;
- As part of scheme of compromise or arrangements.



Legal Provisions

- Section 66 of the Companies Act, 2013; Reduction by way of cancellation of shares
- Rule 2 to 6 of the National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016
- SEBI (LODR) Regulations, 2015.

Example:

- The shares of face value of INR 125 each of which INR 100 paid, the company may reduce them to INR 100 fully paid-up shares and thus relieve the shareholders from liability on the uncalled capital of INR 25 per share.
- The shares of face value of INR 100 each fully paid-up is represented by INR 75 worth of assets. In such a case, reduction of share capital may be effected by cancelling INR 25 per share and writing off similar amount of shares.
- The shares of face value of INR 100 each fully paid-up reduced to face value of INR 75 each by paying back INR 25 per share.

Modes of Reduction of Capital

A company limited by shares or a company limited by guarantee and having a share capital may, if authorised by its articles, by special resolution, and subject to its confirmation by the Tribunal on petition, reduce its share capital in any way and in particular:

- (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
- (b) either with or without extinguishing or reducing liability on any of its shares;
- (c) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
- (d) pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

Reduction of capital without sanction of the Tribunal

The following are cases which amount to reduction of share capital but where no confirmation by the Tribunal is necessary:

- (a) Surrender of shares – “Surrender of shares” means the surrender of shares already issued, to the company, by the registered holder of shares. Where shares are surrendered to the company, whether by way of settlement of a dispute or for any other reason, it will have the same effect as a transfer in favour of the company and amount to a reduction of capital. But if, under any arrangement, such shares, instead of being surrendered to the company, are transferred to a nominee of the company then there will be no reduction of capital [*Collector of Moradabad v. Equity Insurance Co. Ltd., (1948) 18 Com Cases 309: AIR 1948 Oudh 197*]. Surrender may be accepted by the company under the same circumstances where forfeiture is justified. It has the effect of releasing the shareholder whose surrender is accepted for further liability on shares.

The Companies Act contains no provision for surrender of shares. Thus surrender of shares is valid only when Articles of Association provide for the same and:

- (i) where forfeiture of such shares is justified; or
- (ii) when shares are surrendered in exchange for new shares of same nominal value.

Both forfeiture and surrender lead to termination of membership. However, in the case of forfeiture, it is at the initiative of company and in the case of surrender it is at the initiative of member or shareholder.

- (b) Forfeiture of shares – A company may if authorised by its articles, forfeit shares for non-payment of calls and the same will not require confirmation of the Tribunal.

- (c) Diminution of capital – Where the company cancels shares which have not been taken or agreed to be taken by any person.
- (d) Redemption of redeemable preference shares.
- (e) Buy-back of its own shares within the specified percentage of capital permitted by the Act.

Creditors' right to object to reduction

After passing the special resolution for the reduction of capital, the company is required to apply to the Tribunal by way of petition for the confirmation of the resolution under Section 66 of the Companies Act, 2013. Where the proposed reduction of share capital involves either (i) diminution of liability in respect of unpaid share capital, or (ii) the payment to any shareholder of any paid-up share capital, or (iii) in any other case, if the Tribunal so directs, the following provisions shall have effect:

The creditors having a debt or claim admissible in winding-up are entitled to object. To enable them to do so, the Tribunal will settle a list of creditors entitled to object. If any creditor objects, then either his consent to the proposed reduction should be obtained or he should be paid off or his payment be secured. The Tribunal, in deciding whether or not to confirm the reduction will take into consideration the minority shareholders and creditors.

The Tribunal shall give notice of every application made to it under sub-section (1) of section 66 to the Central Government, Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

Provided that where no representation has been received from the Central Government, Registrar, the Securities and Exchange Board or the creditors within the said period, it shall be presumed that they have no objection to the reduction.

There is no limitation on the power of the Court to confirm the reduction except that it must first be satisfied that all the creditors entitled to object to the reduction have either consented or been paid or secured [*British and American Trustee and Finance Corpn. v. Couper*, (1894) AC 399, 403: (1991-4) All ER Rep 667].

When exercising its discretion, the Tribunal must ensure that the reduction is fair and equitable. In short, the Court shall consider the following, while sanctioning the reduction:

- (i) The interests of creditors are safeguarded;
- (ii) The interests of shareholders are considered; and
- (iii) Lastly, the public interest is taken care of.

Confirmation and Registration

Section 66(3) of the Companies Act, 2013 states that if the Tribunal is satisfied that either the creditors entitled to object have consented to the reduction, or that their debts have been determined, discharged, paid or secured, it may confirm the reduction of share capital on such terms and conditions as it deems fit.

Provided that no application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

Section 66(4) of the Companies Act, 2013 states that the order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.

Section 66(5) of the Companies Act, 2013 states that the Company shall deliver a certified copy of Tribunal order confirming the reduction together with the minutes giving the details of the company's

- (a) amount of share capital;
- (b) number of shares into which it is to be divided;
- (c) amount of each share; and
- (d) amount, if any, at the date of registration deemed to be paid-up on each share,

to the Registrar within 30 days of receipt of the order of Tribunal who will register them. The reduction takes effect only on registration of the order and minutes, and not before. The Registrar will then issue a certificate of registration which will be a conclusive evidence that the requirements of the Act have been complied with and that the share capital is now as set out in the minutes. The Memorandum has to be altered accordingly.

Conclusiveness of certificate for reduction of capital

Where the Registrar had issued his certificate confirming the reduction, the same was held to be conclusive although it was discovered later that the company had no authority under its articles to reduce capital [*Re Walkar & Smith Ltd.*, (1903) 88 LT 792 (Ch D)]. Similarly, in a case where the special resolution for reduction was an invalid one, but the company had gone through with the reduction, the reduction was not allowed to be upset [*Ladies's Dress Assn. v. Pulbrook*, (1900) 2 QB 376].

Liability of members in respect of reduced share capital

On the reduction of share capital, a member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

In the case of Reckitt Benckiser (*India*) Ltd. (2005) the reduction was objected to by a group of shareholders on the grounds that there was no necessity to reduce capital and the reduction was discriminatory as it would extinguish the class of public shareholders. Ultimately, Reckitt Benckiser (*India*) Ltd. offered to let the objectors remain as shareholders and consequently, the Delhi High Court approved the capital reduction.

If, however the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim –

- (a) every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding-up on the day immediately before the said date; and
- (b) if the company is wound up, the Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit, settle a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

Penalties

If any officer of the company

- (a) Knowingly conceals the name of any creditor entitled to object to the reduction;
- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) abets or is privy to any such concealment or misrepresentation as aforesaid,

he shall be liable under section 447.

Reduction of capital and Scheme of Compromise and Arrangement

Arrangement includes 'a reorganisation of share capital of the company' and reorganisation can involve reduction of share capital. However, as part of the scheme of compromise or arrangement, distinct formalities as prescribed under section 100 do not have to be observed [*Maneckchowk and Ahmedabad Mfg. Co. Ltd., Re (1970) 2 Comp LJ 300 (Guj)*; also *Vasant Investment Corporation Ltd. v. Official Liquidator (1981) 51 Comp Cas 20 (Bom)*; *Mcleod & Co.Ltd. v. S.K. Ganguly (1975) 45 Comp Cas 563 (Cal)*]. It may however be noted that, in all such cases involving reduction of share capital in the scheme of compromise or arrangement, the petition seeking confirmation of the Tribunal with respect to the scheme must also expressly mention that the company is also seeking, at the same time, the confirmation of the Tribunal with respect to the reduction of share capital, and that, while seeking the consent of the members to the scheme, the consent of the members with respect to the reduction of share capital had also been obtained.

The power of Tribunal to give to creditors an opportunity of raising objections to the reduction of capital is discretionary. In an appropriate case, for example, where the interests of creditors are duly and fully protected, the Tribunal may exercise its discretion against calling upon the creditors to raise objections.

BUY-BACK

According to Section 68(1) of the Companies Act, 2013, a company whether public or private, may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of any shares or other specified securities.

However, no buy-back of any kind of shares or other specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities. Thus, the company must have at the time of buy-back, sufficient balance in any one or more of these accounts to accommodate the total value of the buy-back.

The term Buy-back has two meanings. Firstly, when a person sells shares or any specified securities and then buys again according to a fixed agreement, the buying back by a company of its shares/securities from an invest or who put venture capital up for the formation of the company.

Secondly, buying of its own stock from open market in order to reduce the number of outstanding shares. It is one of the prominent modes of capital restructuring. It is a corporate action in which a company buys back its shares from the existing shareholders usually at a price higher than market price. When it buys back, the number of shares outstanding in the market reduces. By reducing the number of shares outstanding in the market, buy-backs increase the proportion of shares a company owns.

Modes of Buy-Back

1. Tender Offer

In tender offer, the company makes an offer to buy a certain number of shares/securities at a specific price directly from security holders on proportionate basis. Share buyback ensures all shareholders are treated equally, however small they are.

2. Open Market Purchase

In open market purchase, the company acquires a certain number of shares. Fixes a price cap and buy for any price up to the upper limit. Most companies prefer the open market route. The biggest difference between the two - tender offer and open market purchase- is that the price in the tender route is fixed.

Buy-back from open market can be made through:

- Book Building Process
- Stock exchange.

Advantages of buy-back

- It is an alternative mode of reduction in capital without requiring approval of the National Company Law Tribunal
- To improve the earnings per share
- To improve return on capital, return on net worth and to enhance the long-term shareholders value
- To provide an additional exit route to shareholders when shares are undervalued or thinly traded
- To enhance consolidation of stake in the company
- To prevent unwelcome takeover bids
- To return surplus cash to shareholders
- To achieve optimum capital structure
- To support share price during periods of sluggish market condition
- To serve the equity more efficiently.

Legal Framework for Buy-back

- Companies Act, 2013.
- The Companies (Share Capital and Debentures) Rules, 2014.
- Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018.

Examples

In June 2023, WIPRO Limited came out with a public announcement of buy back of its equity shares through tender offer upto 26,96,62,921 fully paid up equity shares.

In the year 2017, Infosys decided to utilize cash reserves of USD 6 billion either through share buy-back or generous dividend. Cognizant and TCS announced mega buy-back offers worth USD 3.4 billion and ₹ 16,000 crore, respectively, to return surplus cash to shareholders. HCL Technologies also approved a buy-back of up to 3.50 crore shares worth ₹ 3,500 crore.

Authorisation

The primary requirement is that the articles of association of the company should authorise buy-back. In case, such a provision is not available, it would be necessary to alter the articles of association to authorise buy-back. Buy-back can be made with the approval of the Board of directors at a meeting and/or by a special resolution passed by shareholders in a general meeting, depending on the quantum of buy-back. In case of a listed company, approval of shareholders shall be obtained only by postal ballot.

Quantum of Buy-back

- (a) Board of directors can approve buy-back up to 10% of the total paid-up equity capital and free reserves of the company and such buyback has to be authorized by the board by means of a resolution passed at the meeting.
- (b) Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company. In respect of any financial year, the shareholders can approve by special resolution up to 25% of total equity capital in that year.

Post buy-back debt-equity ratio

The ratio of the aggregate of secured and unsecured debts owed by the company after buy-back should not be more than twice the paid-up capital and its free reserves i.e. the ratio shall not exceed 2:1. However, the Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies;

All the shares or other specified securities for buy-back are to be fully paid-up.

Buy-back by listed/unlisted companies

The buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf; and

The buy-back in respect of shares or other specified securities other than listed securities is in accordance with such rules made under Chapter IV of the Companies Act, 2013.

Time gap

No offer of buy-back under this sub-section shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.

Explanatory statement [Section 68(3) & Rule 17(1)]

The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating—

- (a) a full and complete disclosure of all material facts;
- (b) the necessity for the buy-back;
- (c) the class of shares or securities intended to be purchased under the buy-back;
- (d) the amount to be invested under the buy-back; and
- (e) the time-limit for completion of buy-back.
- (f) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company;
- (g) the objective of the buy-back;
- (h) the number of securities that the company proposes to buy-back;
- (i) the method to be adopted for the buy-back;
- (j) the price at which the buy-back of shares or other securities shall be made;
- (k) the basis of arriving at the buy-back price;
- (l) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed;
- (m)
 - (i) the aggregate shareholding of the promoters and of the directors of the promoter, where the promoter is a company and of the directors and key managerial personnel as on the date of the notice convening the general meeting;
 - (ii) the aggregate number of equity shares purchased or sold by persons mentioned in sub-clause (i) during a period of twelve months preceding the date of the board meeting at which the buy-back was approved and from that date till the date of notice convening the general meeting;
 - (iii) the maximum and minimum price at which purchases and sales referred to in sub-clause (ii) were made along with the relevant date.

- (n) if the persons mentioned in point (l) & (m) intend to tender their shares for buy-back –
 - (i) the quantum of shares proposed to be tendered;
 - (ii) the details of their transactions and their holdings for the last twelve months prior to the date of the board meeting at which the buy-back was approved including information of number of shares acquired, the price and the date of acquisition.
- (o) a confirmation that there are no defaults subsisting in repayment of deposits, interest payment thereon, redemption of debentures or payment of interest thereon or redemption of preference shares or payment of dividend due to any shareholder, or repayment of any term loans or interest payable thereon to any financial institution or banking company;
- (p) a confirmation that the Board of directors have made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
 - (i) that immediately following the date on which the general meeting is convened there shall be no grounds on which the company could be found unable to pay its debts;
 - (ii) as regards its prospects for the year immediately following that date, that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company shall be able to meet its liabilities as and when they fall due and shall not be rendered insolvent within a period of one year from that date; and
 - (iii) the directors have taken into account the liabilities(including prospective and contingent liabilities), as if the company were being wound up under the provisions of the Companies Act, 2013.
- (q) a report addressed to the Board of directors by the company's auditors stating that-
 - (i) they have inquired into the company's state of affairs;
 - (ii) the amount of the permissible capital payment for the securities in question is in their view properly determined;
 - (iii) that the audited accounts on the basis of which calculation with reference to buy back is done is not more than six months old from the date of offer document; and

Provided that where the audited accounts are more than six months old, the calculations with reference to buy back shall be on the basis of un-audited accounts not older than six months from the date of offer document which are subjected to limited review by the auditors of the company.
 - (iv) the Board of directors have formed the opinion as specified in clause (m) on reasonable grounds and that the company, having regard to its state of affairs, shall not be rendered insolvent within a period of one year from that date.

Buy-back Procedure for Private & Unlisted Public Companies

Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014

According to Rule 17(2) the company which has been authorized by a special resolution shall, before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No. SH-8, along with the fee as prescribed. Such letter of offer shall be dated and signed on behalf of the Board of directors of the company by not less than two directors of the company, one of whom shall be the managing director, where there is one.

Filing Declaration of Solvency with SEBI/ROC [Rule 17(3)]

When a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution or board resolution as the case may be, it shall, before making such buy-back, file with the Registrar and the Securities and Exchange Board (in case of listed companies), a declaration of solvency in Form No.SH-9 signed by atleast two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit as specified in said form.

Dispatch of letter of Offer [Rule 17(4)]

The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 21 days from its filing with the Registrar of Companies.

The letter of offer shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such document; [Rule17(10)(a)]

Validity [Rule 17(5)]

The offer for buy-back shall remain open for a period of not less than 15 days and not exceeding 30 days from the date of dispatch of the letter of offer.

Provided that where all members of a company agree, the offer for buy-back may remain open for a period less than fifteen days.

Acceptance on proportional basis [Rule 17(6)]

In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

Time limit for verification [Rule 17(7)]

The company shall complete the verifications of the offers received within 15 days from the date of closure of the offer and the shares or other securities lodged shall be deemed to be accepted unless a communication of rejection is made within 21 days from the date of closure of the offer.

Payment of consideration/returning of share certificates

The company shall within seven days of the time limit of verification:

- (a) make payment of consideration in cash to those shareholders or security holders whose securities have been accepted, or
- (b) return the share certificates to the shareholders or security holders whose securities have not been accepted at all or the balance of securities in case of part acceptance.

Separate Account [Rule 17(8)]

The company shall immediately after the date of closure of the offer, open a separate bank account and deposit there in, such sum, as would make-up the entire sum due and payable as consideration for the shares tendered for buy-back.

The company shall confirm in its offer the opening of a separate bank account adequately funded for this purpose and to pay the consideration only by way of cash. [Rule 17(10)(c)]

Other conditions [Rule 17(10)]

The rules further provide that the company shall ensure that—

- (a) the company shall not issue any new shares including by way of bonus shares from the date of passing of special resolution authorizing the buy-back till the date of the closure of the offer under these rules, except those arising out of any outstanding convertible instruments;

- (b) the company shall not withdraw the offer once it has announced the offer to the shareholders;
- (c) the company shall not utilize any money borrowed from banks or financial institutions for the purpose of buying back its shares; and the company shall not utilize the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities for the buy-back.

Time limit for completion of buy-back [Section 68(4)]

Every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board.

Methods of buy-back [Section 68(5)]

The buy-back may be —

- (a) from the existing shareholders or security holders on a proportionate basis;
- (b) from the open market;
- (c) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

Extinguishment of securities bought back [Section 68(7)]

When a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.

Prohibition of further issue of shares or securities [Section 68(8)]

When a company completes a buy-back of its shares or other specified securities it shall not make a further issue of the same kind of shares or other securities including allotment of new shares under clause (a) of sub-section (1) of section 62 or other specified securities within a period of six months except by way of a bonus issue or in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Register of buy-back [Section 68(9)]

When a company buys back its shares or other specified securities, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.

According to the rules the register of shares or securities bought back shall be maintained in Form SH-10, at the registered office of the company and shall be kept in the custody of the secretary of the company or any other person authorized by the board in this behalf. Entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose. [Rule 17(12)].

Return of buy back [Section 68 (10)]

A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board (in case of listed companies) a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed.

The company shall file with the Registrar, and in case of a listed company with the Registrar and the SEBI, a return in the Form No. SH-11 along with the 'fee'. There shall be annexed to the return filed with the Registrar in Form No. SH-11, a certificate in Form No. SH-15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and rules made thereunder. [Rule 17(13) and Rule 17(14)]

Penal Provisions [Section 68 (11)]

If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, in case of listed companies, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Transfer to and application of Capital Redemption Reserve Account (Section 69)

When a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet. The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Circumstances prohibiting buy back (Section 70)

No company shall directly or indirectly purchase its own shares or other specified securities—

- (i) through any subsidiary company including its own subsidiary companies;
- (ii) through any investment company or group of investment companies; or
- (iii) if a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company;

However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92 (Annual Return), 123 (Declaration of Dividend), 127 (punishment for failure to distribute dividend) and section 129 (Financial Statement) of the Companies Act, 2013.

Income Tax Aspects

Section 46A of the Income-tax Act, 1961 provides that any consideration received by a security holder from any company on buy back shall be chargeable to tax on the difference between the cost of acquisition and the value of consideration received by the security holder as capital gains.

The computation of capital gains shall be in accordance with the provisions of Section 48 of the Income-tax Act, 1961.

In respect of Foreign Institutional Investors (FIIs), as per the provisions of Section 196D (2) of the Income Tax Act, 1961 no deduction of tax at source shall be made before remitting the consideration for equity shares tendered under the offer by FIIs as defined under Section 115AD of the Income Tax Act, 1961. NRIs, OCBs and other non-resident shareholders (excluding FIIs) will be required to submit a No Objection Certificate (NOC) or tax clearance certificate obtained from the Income Tax authorities under the Income Tax Act. In case the aforesaid NOC or tax clearance certificate is not submitted, the company should deduct tax at the maximum marginal rate as may be applicable to the category of shareholders on the entire consideration amount payable to such share holders.

BUY-BACK FOR LISTED SECURITIES

A listed company proposing to undertake a buy-back is required to primarily comply with the provisions of the Companies Act, 2013 (the “Companies Act”) and the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018 (the “SEBI Regulations”). However, a listed company is also required to ensure compliance with the requirements of the Securities and Exchange Board of India (Substantial Acquisition of

Shares and Takeovers) Regulations, 2011 (the “SEBI Takeover Regulations”), the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Foreign Exchange Management Act, 1999, the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and other applicable securities laws including in other jurisdictions.

In exercise of powers, SEBI notified Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 w.e.f. September 11, 2018. Notification No. SEBI/LAD-NRO/GN/2018/32. All the listed companies are required to comply with SEBI (Buy Back of Securities) Regulations, 2018, in addition to the provisions of the Companies Act, 2013. These regulations broadly cover the following aspects:

1. Special resolution and its additional disclosure requirements.
2. Methods of buy back including buy back through reverse book building, from existing shareholders through tender offer, etc.
3. Filing of offer documents, public announcement requirements.
4. Offer procedure/opening of escrow account, etc.
5. General obligations of company, merchant banker, etc.

Special Resolution and its additional disclosure requirements (Regulation 5)

Sub-regulation (iv) of Regulation 5 of the Regulations, lays down that for the purposes of passing a special resolution the explanatory statement to be annexed to the notice for the general meeting shall contain disclosures as specified in Schedule I to the Regulations.

Sub-regulation (v) provides that a copy of the above resolution passed at the general meeting shall be filed with SEBI and the stock exchanges where the shares or other specified securities of the company are listed, within seven days from the date of passing of the resolution.

In case of Board approval

Regulation 5(vii) of the Regulations, provides that a company, authorized by a resolution passed by the Board of Directors at its meeting to buy back its shares or other specified securities, shall file a copy of the resolution, with the SEBI and the stock exchanges, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution.

Disclosures under Schedule I (Contents of Explanatory Statement)

An explanatory statement containing full and complete disclosure of all the material facts and the following disclosures prescribed in Schedule I of the Regulations should be annexed to the notice where the buy-back is pursuant to shareholders’ approval:

- (i) Date of the Board meeting at which the proposal for buy back was approved by the Board of Directors of the company;
- (ii) Necessity for the buy back;
- (iii) Maximum amount required under the buy back and its percentage of the total paid up capital and free reserves;
- (iv) Maximum price at which the shares or other specified securities are proposed be bought back and the basis of arriving at the buy back price;
- (v) Maximum number of securities that the company proposes to buy back;
- (vi) Method to be adopted for buy back as referred in sub-regulation (iv) of regulation 4;
- (vii) (a) the aggregate shareholding of the promoter and of the directors of the promoters, where the promoter is a company and of persons who are in control of the company as on the date of the notice convening the General Meeting or the Meeting of the Board of Directors;
- (b) aggregate number of shares or other specified securities purchased or sold by persons including persons mentioned in (a) above from a period of six months preceding the date of

- the Board Meeting at which the buy back was approved till the date of notice convening the general meeting;
- (c) the maximum and minimum price at which purchases and sales referred to in (b) above were made along with the relevant dates.
- (viii) Intention of the promoters and persons in control of the company to tender shares or other specified securities for buy-back indicating the number of shares or other specified securities, details of acquisition with dates and price;
 - (ix) A confirmation that there are no defaults subsisting in repayment of deposits, redemption of debentures or preference shares or repayment of term loans to any financial institutions or banks;
 - (x) A confirmation that the Board of Directors has made a full enquiry into the affairs and prospects of the company and that they have formed the opinion-
 - (a) that immediately following the date on which the General Meeting or the meeting of the Board of Directors is convened there will be no grounds on which the company could be found unable to pay its debts;
 - (b) as regards its prospects for the year immediately following that date that, having regard to their intentions with respect to the management of the company's business during that year and to the amount and character of the financial resources which will in their view be available to the company during that year, the company will be able to meet its liabilities as and when they fall due and will not be rendered insolvent within a period of one year from that date; and
 - (c) in forming their opinion for the above purposes, the directors shall take into account the liabilities as if the company were being wound up under the provisions of the Companies Act, 1956 or Companies Act or the Insolvency and Bankruptcy Code, 2016 (including prospective and contingent liabilities).
 - (xi) A report addressed to the Board of Directors by the company's auditors stating that-
 - (a) they have inquired into the company's state of affairs;
 - (b) the amount of the permissible capital payment for the securities in question is in their view properly determined; and
 - (c) the Board of Directors have formed the opinion as specified in clause(x) on reasonable grounds and that the company will not, having regard to its state of affairs, will not be rendered insolvent within a period of one year from that date.
 - (xii) Prior approval obtained from the unders of the company in case of a breach of any covenant with such unders.

Methods of Buy-Back (Regulation 4)

According to Regulation 4 of the Regulations, a company may buy back its own shares or other specified securities by any one of the following methods:

- (a) from the existing shareholders or other specified securities holders on a proportionate basis through the tender offer;
- (b) from the open market through:
 - (i) book-building process
 - (ii) stock exchange.

It may be noted that no offer of buy back for 15% or more of paid up capital and free reserves, shall be made from the open market.

In terms of Regulation 4(vii), a company shall not make any offer of buy-back within a period of one year reckoned from the date of expiry of buy-back period of the preceding offer of buy-back, if any.

Regulation 4(vi) does not permit buy-back through negotiated deals (of and on stock exchange), private arrangement, spot transactions.

Regulation 4(v) prohibits a company to buy-back its shares or other specified securities so as to delist its shares or other specified securities from the stock exchange.

Provided that the buy-back from the open market through stock exchanges, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, shall be less than:

- (i) fifteen per cent of the paid up capital and free reserves of the company till March 31, 2023;
- (ii) ten per cent of the paid up capital and free reserves of the company till March 31, 2024;
- (iii) five per cent of the paid up capital and free reserves of the company till March 31, 2025:

Provided further that buy-back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025.

Buy-back from existing security-holders through tender offer (Regulation 6)

According to Regulation 6 of the Regulations, a company may buy-back its securities from its existing security-holders on a proportionate basis in accordance with the provisions of the Regulations. It may be noted that fifteen per cent of the number of securities which the company proposes to buy back or number of securities entitled as per their shareholding, whichever is higher, shall be reserved for small shareholders.

Additional Disclosures (Regulation 5(iv)(c))

In addition to disclosure required under Schedule I, where the buy-back is through tender offer from existing securities holders, following additional disclosures are required to be made to the explanatory statement:

- (a) the maximum price at which the buy-back of shares or other specified securities shall be made and whether the Board of Directors of the company is being authorized at the general meeting to determine subsequently the specific price at which the buy-back may be made at the appropriate time;
- (b) if the promoter intends to offer their shares or others pacified securities, the quantum of shares or other specified securities proposed to be tendered, and the details of their transactions and their holdings for the last six months prior to the passing of the special resolution for buy-back including information of number of shares or other specified securities acquired, the price and the date of acquisition.

Public Announcement and Filing of Offer Documents (Regulation 7 & 8)

The company which has been authorized by a special resolution or a resolution passed by the Board of Directors at its meeting shall make a public announcement within two working days from the date of declaration of results of the postal ballot for special resolution/board of directors resolution in at least one English National Daily, one Hindi National Daily and a Regional language daily all with wide circulation at the place where the Registered office of the company is situated and shall contain all the material information as specified in Schedule II.

A copy of the public announcement in electronic mode file with the Board and stock exchanges on which its shares/securities are listed.

The company shall within two working days of the public announcement file with the Board a letter of offer, containing disclosures as specified in Schedule III through a merchant banker who is not associated with the

company, a declaration of solvency in the prescribed form and in a manner provided in section 68(6) of the Companies Act, 2013.

Offer Procedure (Regulation 9)

1. A company making a buyback offer shall announce a record date in the public announcement for the purpose of determining the entitlement and the names of the security holders, who are eligible to participate in the proposed buy-back offer.
2. The letter of offer along with the tender form shall be dispatched to the security holders who are eligible to participate in the buy-back offer.

Even if an eligible public shareholder does not receive the tender offer/offer form, he may participate in the buy-back offer and tender shares in the manner as provided by the Board.

An unregistered shareholder may also tender his shares for buy-back by submitting the duly executed transfer deed for transfer of shares in his name, along with the offer form and other relevant documents as required for transfer, if any.

3. The date of the opening of the offer shall be not later than four working days from the date of dispatch of letter of offer.
4. The offer for buy back shall remain open for a period of five working days.
5. The company shall accept shares or other specified securities from the security holders on the basis of their entitlement as on record date.
6. The shares proposed to be bought back shall be divided in to two categories; (a) reserved category for small shareholders and (b) the general category for other shareholders, and the entitlement of a shareholder in each category shall be calculated accordingly.

Explanation: Holdings of multiple demat accounts would be clubbed together for identification of small shareholder if sequence of Permanent Account Number for all holders is matching. Similarly, in case of physical shareholders, if the sequence of names of joint holders is matching, holding under such folios should be clubbed together for identification of small shareholder.

7. After accepting the shares or other specified securities tendered on the basis of entitlement, shares or other specified securities left to be bought back, if any in one category shall first be accepted, in proportion to the shares or other specified securities tendered over and above their entitlement in the offer by security holders in that category and thereafter from security holders who have tendered over and above their entitlement in other category.

Payment to the Security holders (Regulation 10)

Regulation lays down that—

1. The company shall immediately after the date of closure of the offer, open a special account with a SEBI registered banker to an issue and deposit therein, such sum as would, together with ninety percent of the amount lying in the escrow account make up the entire sum due and payable as consideration for the buy-back and for this purpose, may transfer the funds from the escrow account.
2. The company shall complete the verifications of offers received and make payment of consideration to those security holders whose offer has been accepted and return the remaining shares or other specified securities to the security holders within five working days of the closure of the offer.

Extinguishing of bought-back securities (Regulation 11)

The company shall extinguish and physically destroy the security certificates so bought back in the presence of a Registrar to issue or the Merchant Banker and the Secretarial Auditor within fifteen days of the date of

acceptance of the shares or other specified securities. The company shall also ensure that all the securities bought-back are extinguished within seven working days of expiry of buy-back period. The aforesaid period of fifteen days shall in no case extend beyond seven days of expiry of buy-back period.

The shares or other specified securities offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.

The company shall, furnish a certificate to the Board certifying compliance as specified above and duly certified and verified by-

- (i) the registrar and whenever there is no registrar by the merchant banker;
- (ii) two directors of the company one of whom shall be a managing director where there is one;
- (iii) the Secretarial auditor of the company.

The certificate shall be furnished to the Board within seven days of extinguishment and destruction of certificates.

The company shall furnish, the particulars of the security certificates extinguished and destroyed, to the stock exchanges where the shares of the company are listed within seven days in which the securities certificates are extinguished and destroyed. The company shall also maintain a record of security certificates which have been cancelled and destroyed as prescribed in Section 68(9) of the Companies Act.

Opening of the offer on stock exchange (Regulation 17)

- (i) The identity of the company as a purchaser shall appear on the electronic screen when the order is placed;
- (ii) The buy-back offer shall open not later than four working days from the date of public announcement and shall close:-
 - a) within six months, if the buy-back offer is opened on or before March 31, 2023;
 - b) within 66 working days, if the buy-back offer is opened on or after April 1, 2023 and till March 31, 2024; and
 - c) within 22 working days, if the buy-back offer is opened on or after April 1, 2024 and till March 31, 2025:

Provided that with effect from April 1, 2025, the option of open market buy-back through the stock exchange shall not be available to any company except in cases where the buyback offer has opened on or before March 31, 2025.

Subsequent compliances for open market buy-back through stock exchange (Regulation 19)

A company may buy-back its shares or other specified securities in physical form in the open market through stock exchange by following the procedure as provided hereunder:

- (i) A separate window shall be created by the stock exchange, which shall remain open during the period of buy-back, for buy-back of shares or other specified securities in physical form.
- (ii) The company shall buy-back shares or other specified securities from eligible shareholders holding physical shares through the separate window specified in sub-regulation (i), only after verification of the identity proof and address proof by the broker.
- (iii) The price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back, other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker: Provided that the price of shares or other specified securities tendered during the first calendar week of the buy-back shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week.

Provided further that the effect on the price of the equity shares of the company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 for determination of the volume weighted average market price.

Explanation: In case no shares or other specified securities were bought back in the normal market during calendar week, the preceding week when the company has last bought back the shares or other specified securities may be considered.

Offer procedure (Regulation 22B)

- (i) The company making the buy-back offer shall disclose the maximum buy-back price, being the upper end of the price range, as approved by the Board of Directors of the company or its shareholders, as the case may be and the book value of the shares or other specified securities of the company.
- (ii) The company shall publish the offer opening announcement on the date of commencement of the buy-back.
- (iii) In case of frequently traded securities, the lower end of the price range shall not be less than the higher of:
 - a) the closing price of the securities of the company on the date of the Notice as specified in Schedule- VI; and
 - b) the volume weighted average market price of the shares or other specified securities of the company in the fifteen trading days prior to the date of the intimation of the meeting of the Board of Directors approving the buy-back.
- (iv) In case of infrequently traded securities, the lower end of the price range shall not be less than the price of the securities of the company determined on the basis of the report of a registered valuer.
- (v) The buy-back price shall depend upon the price discovered through the bids received from the shareholders within the price range.
- (vi) The effect on the price of the equity shares of the company due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 for calculation of the lower end of the price range under this regulation.

Obligations of the company for all buy-back procedure (Regulation 24)

- (i) The company shall ensure that,-
 - a) the letter of offer, the public announcement of the offer or any other advertisement, circular, brochure, publicity material shall contain true, factual and material information and shall not contain any misleading information and must state that the directors of the company accept the responsibility for the information contained in such documents;
 - b) the company shall not issue any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer made under these regulations, except in discharge of subsisting obligations through conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares:

Provided that the relevant details and the potential impact of such subsisting obligations, if any, shall be disclosed in the public announcement.

- c) the company shall pay the consideration only by way of cash;

- d) the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the Board or public announcement of the offer to buy-back is made;
- e) the promoter(s) or his/their associates shall not deal in the shares or other specified securities of the company in the stock exchange or off-market, including inter-se transfer of shares among the promoters during the period from the date of passing the resolution of the board of directors or the special resolution, as the case may be, till the closing of the offer.
- f) the company shall not raise further capital for a period of one year.

CASE STUDY

Merger of HDFC & HDFC Bank

India's largest housing finance company, HDFC Ltd and the largest private sector bank, HDFC Bank, merged in 2022 in one of the biggest financial deals in India. The \$40 billion deal will result in a single entity. Let us discuss details about HDFC LTD/HDFC BANK Merger.

Brief about the Companies

HDFC Investments Limited (Transferor Company No.1) is a Systemically Important Non-Deposit Taking Non-Banking Financial Company registered with the Reserve Bank of India (RBI) and is primarily engaged in the business of making investments in equity shares, preference shares, venture funds, mutual funds and other securities.

HDFC Holdings Limited (Transferor Company No.2) is also a Systemically Important Non-Deposit Taking Non-Banking Financial Company registered with the RBI and is primarily engaged in the business of making investments in equity shares, preference shares, venture funds, mutual funds and other securities.

Housing Development Finance Corporation Limited (Transferee Company/ Amalgamating Company) is principally engaged in the business of providing finance to individuals, corporates and developers for the purchase, construction, development and repair of houses, apartment and commercial properties in India through its branches in India and overseas offices supported by network of agents for sourcing loans as well as deposits.

HDFC Bank Limited (Amalgamated Company) is registered with RBI as a banking company under the provisions of the Banking Regulation Act, 1949.

Transferor Companies are wholly-owned subsidiaries of the Transferee Company/ Amalgamating Company and that the entire paid-up share capital of the respective Transferor Companies are held by the Transferee Company/ Amalgamating Company. Transferor Companies and Transferee Company/ Amalgamating Company are promoter companies of the Amalgamated Company.

Transferee Company/ Amalgamating Company and the Amalgamated Company are both listed on BSE Limited ("BSE") and National Stock Exchange Limited ("NSE")

Composite Scheme of Amalgamation

Sanction of Composite Scheme of Amalgamation among Transferor Companies, Transferee Company and Amalgamated Company sought before the Hon'ble NCLT under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and in compliance with the provisions of the Income Tax Act, 196

The Scheme, inter alia, provides for the:

- (a) Amalgamation of the Transferor Company No. 1 and the Transferor Company No. 2 (together referred to as the "Transferor Companies") with and into the Transferee Company/Amalgamating Company, with effect from the Appointed Date and the consequent dissolution of the Transferor Companies without being wound up; and

- (b) Amalgamation of the Transferee Company/Amalgamating Company with and into the Amalgamated Company, with effect from the Appointed Date and the consequent dissolution of the Transferee Company/Amalgamating Company without being wound up, and the issuance of the New Equity Shares (as defined in the Scheme) to the equity shareholders of the Transferee Company/Amalgamating Company as on the Record Date (as defined in the Scheme) in accordance with the Share Exchange Ratio.

Rationale and Benefits of the Scheme

- the Amalgamation, through the Scheme, shall enable the Amalgamated Company to build its housing loan portfolio and enhance its existing customer base;
- the Amalgamation is based on leveraging the significant complementarities that exist amongst the parties to the Scheme. The Amalgamation would create meaningful value for various stakeholders including respective shareholders, customers, employees, as the combined business would benefit from increased scale, comprehensive product offering, balance sheet resiliency and the ability to drive synergies across revenue opportunities, operating efficiencies and underwriting efficiencies, amongst others;
- the Amalgamated Company is a private sector bank and has a large base of over 6.8 Crore customers. The bank platform will provide a well-diversified low cost funding base for growing the long tenor loan book acquired by the Amalgamated Company pursuant to the Amalgamation;
- the Amalgamated Company is a banking company with a large distribution network that offers product offerings in the retail and wholesale segments. The Amalgamating Company is a premier housing finance company in India and provides housing loans to individuals as well as loans to corporates, undertakes lease rental discounting and construction finance apart from being a financial conglomerate. A combination of the Amalgamating Company and the Amalgamated Company is entirely complementary to, and enhances the value proposition of, the Amalgamated Company;
- the Amalgamated Company would benefit from a larger balance sheet and networth which would allow underwriting of larger ticket loans and also enable a greater flow of credit into the Indian economy;
- the Amalgamating Company has invested capital and developed skills and has set up approximately 464 (Four Hundred and Sixty Four) offices across the country. These offices can be used to sell the entire product suite of both the Amalgamating Company and the Amalgamated Company;
- the loan book of the Amalgamating Company is diversified having cumulatively financed over 90 lakh dwelling units. With the Amalgamating Company's leadership in the home loan arena, developed over the past 45 years, the Amalgamated Company would be able to provide to customers flexible mortgage offerings in a cost-effective and efficient manner;
- the Amalgamated Company has access to funds at lower costs due to its high level of current and savings accounts deposits (CASA). With the amalgamation of the Amalgamating Company with the Amalgamated Company, the Amalgamated Company will be able to offer more competitive housing products;
- the Amalgamating Company's rural housing network and affordable housing lending is likely to qualify for Amalgamated Company as priority sector lending and will also enable a higher flow of credit into priority sector lending, including agriculture;
- the Amalgamation will result in reducing the Amalgamated Company's proportion of exposure to unsecured loans;

- the Amalgamating Company has built technological capabilities to evaluate the credit worthiness of customers using analytical models and has developed unique skills in financing various customer segments. The models have been tested and refined over the years at scale and the Amalgamated Company will benefit from such expertise in underwriting and financing of mortgage offerings;
- the Amalgamated Company can leverage on the loan management system, comprising rule engines, IT tools and rules, agents connected through a central system;
- the Amalgamation is expected to result in bolstering the capital base and bringing in resiliency in the balance sheet of the Amalgamated Company;
- the Transferor Companies are Systemically Important Non - Deposit Taking Non - Banking Financial Companies and are also wholly owned subsidiaries of the Amalgamating Company. The Amalgamation shall result in a simplified corporate structure.
- the Amalgamation would therefore be in the best interest of the shareholders of the respective parties to the Scheme and shall not in any manner be prejudicial to the interests of the concerned shareholders or the creditors or general public at large.

Chronological Events & Regulatory Approvals of Merger

- Board of Directors of the Transferor Company No. 1, the Transferor Company No. 2, the Transferee Company/Amalgamating Company and the Amalgamated Company in their respective meetings held on April 3, 2022, April 3, 2022, April 4, 2022 and April 4, 2022 have approved the proposed Scheme.
- The Transferee Company/Amalgamating Company and the Amalgamated Company had entered into an Implementation Agreement dated April 4, 2022, setting out the manner of effecting the Scheme and the rights and obligations of the respective parties in relation to the Scheme. The principal objectives of the Implementation Agreement are to
 - ◆ set out the agreement between the parties in relation to the Scheme;
 - ◆ provide the detailed mechanism for giving effect to the Scheme and the related matters upon the Scheme coming into effect or being terminated/withdrawn; and
 - ◆ provide appropriate representations and warranties by the parties.
- BSE Limited (“BSE”) and National Stock Exchange Limited (“NSE”) by their separate letters all dated July 2, 2022 have respectively given their “no adverse observation/ no-objection” to the Transferee Company/ Amalgamating Company and the Amalgamated Company to file the Scheme with this Tribunal.
- Transferee Company/ Amalgamating Company and the Amalgamated Company had jointly filed the necessary notification form with the Competition Commission of India on June 20, 2022. The Competition Commission of India vide its letter dated August 12, 2022 has provided its approval to the Scheme.
- Pursuant to the application made by the Amalgamated Company to the RBI, RBI by its letter dated July 4, 2022 has granted its ‘no-objection’ to the Scheme.
- Hon’ble National Company Law Tribunal, Mumbai Bench, Mumbai on October 14, 2022 in its Order has directed convening of a meeting of the Equity Shareholders of HDFC Bank Limited (“Amalgamated Company”) for the purpose of considering, and if thought fit, approving the arrangement embodied in the Composite Scheme of Amalgamation among HDFC Investments Limited and HDFC Holdings Limited and Housing Development Finance Corporation Limited and the Amalgamated Company and their respective shareholders and creditors (hereinafter referred to as the “Scheme”) pursuant to the provisions of Sections 230-232 of the Companies Act, 2013 and the other applicable provisions thereof and applicable rules thereunder.

- Meeting of the equity shareholders of the Amalgamated Company held on Friday, November 25, 2022.
- Pursuant to the application made by the Transferee Company/Amalgamating Company under Regulation 59 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “SEBI Listing Regulations”), BSE and NSE, by their separate letters both dated December 13, 2022, have granted their in-principle approval under Regulation 59 of SEBI Listing Regulations for transfer of non-convertible debentures issued by Transferee Company/Amalgamating Company to Amalgamated Company.
- The Company Scheme Petition is filed before the Hon’ble NCLT in consonance with Sections 230 to 232 of the Act along with the Order dated October 14, 2022 passed in CA(CAA) No.200/MB/2022 read with Order dated December 16, 2022 passed in CP(CAA) No.243 of 2022 of NCLT.
- The Regional Director, Ministry of Corporate Affairs has filed his Report dated December 21, 2022 setting out his observations on the Scheme. In response to the observations made by the Regional Director, the Transferor Companies, Transferee Company & Amalgamated Company have given necessary clarifications and undertakings by way of a Joint Affidavit dated January 9, 2023.
- Regional Director satisfied with the undertakings given by the Petitioners and states that the Scheme is otherwise not prejudicial to the interests of the shareholders/creditors and the public. The said undertakings are accepted.
- The Official Liquidator had sought for certain clarifications by its letter dated January 4, 2023. The same was replied to by the Transferor Companies/Transferee Company by their letter dated January 9, 2023. The Official Liquidator has duly recorded/ referred to the said reply in its report dated January 12, 2023. Based on the reply given by the Transferor Companies/Transferee Company, amongst others, it has been observed/noticed by the Official Liquidator in its report that the affairs of the Transferor Companies have been conducted in a proper manner.
- Transferor Companies, Transferee Company & Amalgamated Company have complied with all the requirements as per the directions of NCLT and have filed the necessary affidavits all dated January 7, 2023 before the NCLT showing compliance.

Approval of Scheme by NCLT

Hon’ble NCLT Mumbai Bench, (Court-II) in the Company Scheme Petition No.243 of 2022 connected with Company Scheme Application No.200 of 2022 vide its Order delivered on 17.03.2023 inter alia order that *the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.*

The Petitioners are directed to lodge a copy of this Order and Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable on the same, if any, within 60 (sixty) days from the date of the Scheme becoming effective in terms of Clause 5.1 (o) of Part B of the Scheme.

Petitioner Companies are directed to file a copy of this Order alongwith a copy of the Scheme with the concerned Registrar of Companies electronically in addition to physical copies within 30 days from the receipt of the certified copy of the order along with additional fees, if any.

Parties are at liberty to apply to this Tribunal for any directions that may be necessary, including for an extension of the above period.

All concerned regulatory authorities to act on a copy of this Order alongwith the Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench.

HDFC Ltd & HDFC Bank Merge Effective from July 1, 2023

HDFC Bank in its news release dated June 30, 2023 inter alia stated that HDFC Bank, India’s leading private sector bank announced the successful completion of merger of HDFC Ltd., India’s premier housing finance

company with and into HDFC Bank, following the receipt of all requisite shareholder and regulatory approvals. HDFC Bank and HDFC Ltd. had announced a decision to merge on April 4, 2022, subject to obtaining the requisite consent and approvals and had indicated a time frame of 15 to 18 months for the process to be concluded. The Boards of both the companies at their respective meetings held and noted that the merger would be effective from July 1, 2023.

The merged entity inter-alia brings together significant complementarities that exist between both the entities and is poised to create meaningful value for various stakeholders, including respective customers, employees, and shareholders of both the entities from increased scale, comprehensive product offering, balance sheet resiliency and ability to drive synergies across revenue opportunities, operating efficiencies and underwriting efficiencies.....

The merger of India's largest Housing Finance Company, HDFC Ltd. with the largest private sector bank in India combines the strengths of a trusted home loan brand with an institution that enjoys a lower cost of funds. The larger net-worth would allow greater flow of credit into the economy. It will also enable underwriting of larger ticket loans, including infrastructure loans and contribute further to nation building and employment generation.

Source:

1. <https://www.hdfcbank.com/>
2. <https://www.hdfcbank.com/content/bbp/repositories/723fb80a-2dde-42a3-9793-7ae1be57c87f/?path=/Footer/About%20Us/Corporate%20Governance/Composite%20Scheme%20of%20Amalgamation/NCLT-ORDER.pdf>
3. https://www.hdfcbank.com/content/bbp/repositories/723fb80a-2dde-42a3-9793-7ae1be57c87f/?path=/Footer/About%20Us/News%20Room/Press%20Release/Content/2023/pdf/Press_Release_HDFC_Ltd_to_merge_into_HDFC_Bank_effective_July_1_2023.pdf

Demerger of Reliance Industries Limited 's Financial Arm

Brief of the Demerger Scheme

Reliance Industries Ltd. announced the demerger of its financial services arm Reliance Strategic Investments, which would be renamed later on **as Jio Financial Services Ltd. (JFSL)**.

The Hon'ble National Company Law Tribunal, Mumbai Bench, vide its order dated June 28, 2023, sanctioned the Scheme of Arrangement between Reliance Industries Limited ("RIL" or "Company") and its shareholders and creditors & Reliance Strategic Investments Limited ("RSIL") and its shareholders and creditors ("Scheme") providing, inter alia, for demerger, transfer and vesting of the Financial Services Business (Demerged Undertaking as defined in the Scheme) from the Company into RSIL on a going concern basis and issue of equity shares by RSIL to the shareholders of the Company, in consideration thereof, in accordance with the provisions of Section 2(19AA) of the Income Tax Act, 1961.

In accordance with provisions of the Scheme, RSIL shall issue and allot 1 (One) fully paid-up equity share of RSIL having face value of Rs 10 (Rupees Ten) each for every 1 (One) fully paid-up equity share of Rs 10 (Rupees Ten) each of the Company to the shareholders of the Company whose names are recorded in the register of members and / or records of the depository as on the Record Date (i.e., Thursday, July 20, 2023).

Brief about the Companies

Reliance Industries Limited (RIL) (Demerged Company), was incorporated on May 8, 1973, under the provisions of the Companies Act, 1956 under the name 'Mynylon Limited'. This name of 'Mynylon Limited' was subsequently changed to 'Reliance Textile Industries Limited' on March 11, 1977. A certificate of incorporation consequent upon change of name has been issued by the Registrar of Companies, Karnataka, Bangalore. The registered office of the RIL was changed from the State of Karnataka to the State of Maharashtra, and certificates of registration

of the order of the Company law Board confirming such transfer of registered office had been issued by the Registrar of Companies, Maharashtra, Bombay on August 4, 1977, and by the Registrar of Companies, Karnataka, Bangalore on August 5, 1977. The name 'Reliance Textiles Industries Limited' was subsequently changed to the present name, 'Reliance Industries Limited' on June 27, 1985. A certificate of incorporation consequent upon change of name had been issued by the Registrar of Companies, Maharashtra, Mumbai.

The RIL, *inter alia*, has multiple undertakings viz., digital services, retail, financial services, advanced materials and composites, renewables (solar and hydrogen), exploration & production and oil to chemicals. The equity shares and non-convertible debentures of the RIL are listed on BSE Limited and National Stock Exchange of India Limited. The global depository receipts of the RIL are listed on Luxembourg Stock Exchange and are traded on the International Order Book (IOB) (London Stock Exchange) and amongst qualified institutional investors on the over-the-counter (OTC) market in the United States of America. The foreign currency bonds of the RIL are listed on the Singapore Exchange Limited, Luxembourg Stock Exchange and India International Exchange (IFSC) Limited.

Reliance Strategic Investments Limited (RSIL) (Resulting Company), a company incorporated under the provisions of the Companies Act, 1956 and is a wholly-owned subsidiary of RIL. The resulting company is a registered Non-Banking Financial Company (NBFC) (systemically important non-deposit taking non-banking financial company). The name of the Company stands changed from Reliance Strategic Investments Limited to "Jio Financial Services Limited" effective July 25, 2023.

Scheme of Arrangement

Reliance announced the demerger of its financial services arm Reliance Strategic Investments Limited as part of its group restructuring. The Scheme of Arrangement provides for:

- (a) demerger, transfer and vesting of the Demerged Undertaking from the Reliance Industries Limited (RIL) into the Reliance Strategic Investments Limited (RSIL) on a *going concern* basis, and issue of 1 (One) fully paid-up equity share of the Reliance Strategic Investments Limited (RSIL) having face value of Rs 10 (Rupees Ten) each for every 1 (One) fully paid-up equity share of Rs 10 (Rupees Ten) each of the Reliance Industries Limited (RIL), in consideration thereof, in accordance with the provisions of Section 2(19AA) of the Income Tax Act; and
- (b) reduction and cancellation of the entire pre-Scheme share capital of the Reliance Strategic Investments Limited (RSIL).

The Scheme also provides for various other matters consequent and incidental thereto.

Rationality of Demerged Scheme

- (i) The Demerged Company is India's biggest conglomerate with interests in multiple businesses. One amongst the multiple businesses carried on by the Demerged Company is the Financial Services Business which is carried on by the Demerged Company directly and through its subsidiaries and joint ventures.
- (ii) Further growth and expansion of the Financial Services Business would require differentiated strategy aligned to its industry specific risks, market dynamics and growth trajectory.
- (iii) The nature and competition involved in the financial services business is distinct from the other businesses and it is capable of attracting a different set of investors, strategic partners, lenders and other stakeholders.

Apportionment of Cost of Acquisition of Equity Shares of Reliance Industries Limited and Reliance Strategic Investments Limited

As per the Reliance Industries Ltd.'s stock exchange filings, the company informed the shareholders to apportion pre demerger cost of acquisition of equity shares in the Company in the following manner:

Sr No.	Name of Company	% of Cost of Acquisition of Equity Shares of the Company
	Reliance Industries Limited	95.32%
	Reliance Strategic Investments Limited	4.68%

For example, suppose a person purchased a share of Reliance Industries Ltd. on February 10, 2021, at Rs 2,000. Then, post-demerge, the cost of acquisition for the share of Reliance Industries Ltd. will be Rs 1,906.4 (95.32 per cent of Rs 2,000), and cost of acquisition for allotted share of Reliance Strategic Investments Limited will be Rs 93.6 (4.68 per cent of Rs 2,000).

Chronological Events & Regulatory Approvals of Merger

1. In October, 2022, Reliance Industries Limited (RIL) has announced that it would demerge and list its financial services business - Reliance Strategic Investments Limited (RSIL) - which will be renamed Jio Financial Services (JFS). Reliance shareholders would get one share of Jio Financial Services for holding one share of Reliance.
2. The sanction of Hon'ble Tribunal has been sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the Scheme of Arrangement between RIL and its shareholders and creditors of RSIL and its shareholders and creditors ("Scheme").
3. Observation letters dated February 27, 2023 issued by BSE Limited and dated February 28, 2023 issued by National Stock Exchange of India Limited received by RIL respectively.
4. Application Order passed by Hon'ble Tribunal on March 27, 2023.
5. As per the Scheme "Appointed Date" is closing business hours of March 31, 2023 or such other date as may be approved by the Boards of the Demerged Company and the Resulting Company.
6. As directed by this Hon'ble Tribunal *vide* the Application Order, the meetings of the secured creditors, the unsecured creditors and the equity shareholders of the RIL were duly convened and held on May 2, 2023.
7. A meeting of the equity shareholders, secured creditors & unsecured creditors of the RIL convened on 2nd May, 2023 respectively for approving the Scheme of Arrangement.
8. Meeting of equity shareholders (7), preference shareholder (1), secured creditors (Nil) & unsecured creditor (1) of RSIL was dispensed with due to a smaller number of shareholder and creditors and received consents from all the equity shareholders secured creditors & unsecured creditors in the form of affidavits approving the Scheme.
9. The Chairperson appointed for the said meetings of the secured creditors, the unsecured creditors and the equity shareholders of the RIL has filed his report dated May 4, 2023 showing the conduct and results of the said meetings.
10. Hon'ble Tribunal admitted the Company Scheme Petition on May 12, 2023 and fixed June 22, 2023 as the date for hearing and final disposal of the Company Scheme Petition.
11. The Central Government through the Regional Director has filed its report dated May 30, 2023 and has presented certain information derived from the records of the case and has prayed for kind consideration and disposal of the case as the Hon'ble Tribunal may deem fit and proper.
12. The RIL & RSIL were directed to publish the notice of hearing of the Company Scheme Petition in newspapers on June 2, 2023.
13. RIL & RSIL have also served notice of hearing and final disposal of Company Scheme Petition upon: (i) the Central Government through the Regional Director (ii) the Registrar of Companies (iii) the Income Tax Authorities (iv) Goods & Services Tax Authority.
14. RIL & RSIL have filed an Affidavit dated June 8, 2023 confirming, *inter alia*, the publication of newspaper advertisements and service of notice upon the abovementioned regulatory authorities.
15. Since all the requisite statutory compliances have been fulfilled by the Demerged and Resultant Company & Company Scheme Petition appears to be fair and reasonable and is not violative of any

provisions of law and is not contrary to public policy, Hon'ble NCLT has sanctioned the Demerger Scheme vide its Order dated June 28, 2023.

16. The name of the Company stands changed from Reliance Strategic Investments Limited to "Jio Financial Services Limited" effective July 25, 2023 and the certificate of incorporation issued by the Registrar of Companies, Mumbai dated July 25, 2023.

The demerger of Reliance Industries Ltd. of its financial services arm Reliance Strategic Investments, which is now **Jio Financial Services Ltd.**, will accrue the benefits such as creation of an independent company focusing exclusively on financial services and exploring opportunities in the said sector; the independent company can attract different sets of investors, strategic partners, lenders and other stakeholders having a specific interest in the financial services business; a financial services company can have a higher leverage (as compared to the Demerged Company) for its growth; and unlocking the value of the Demerged Undertaking for the shareholders of the Demerged Company. The Scheme is in the interests of all stakeholders of the Demerged Company and the Resulting Company.

References:

1. https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138055732023/04/Order-Challenge/04_order-Challenge_004_1688546775119737062364a52dd7e2cf5.pdf
2. https://nclt.gov.in/gen_pdf.php?filepath=/Efile_Document/ncltdoc/casedoc/2709138079292023/04/Order-Challenge/04_order-Challenge_004_1691733978209715247064d5cfda82c19.pdf

Demerger of ITC 's Hotel Business

Case study is based on Scheme of Arrangement amongst ITC Limited ('Demerged Company') and ITC Hotels Limited ('Resulting Company') and their respective shareholders and creditors under Sections 230 to 232 read with other applicable provisions of the Companies Act, 2013 ('Scheme').

ITC is one of India's foremost private sector companies and a diversified conglomerate with businesses spanning Fast Moving Consumer Goods, Paperboards and Packaging, Agri Business and Information Technology. The Company is acknowledged as one of India's most valuable business corporations with a Gross Revenue of ₹69,446 crores and Net Profit of ₹20,422 crores (as on 31.03.2024). ITC was ranked as India's most admired company, according to a survey conducted by Fortune India, in association with Hay Group.

ITC is the country's leading FMCG marketer, the clear market leader in the Indian Paperboard and Packaging industry, a globally acknowledged pioneer in farmer empowerment through its wide-reaching Agri Business, a pre-eminent hotel chain in India that is a trailblazer in 'Responsible Luxury'. ITC's wholly-owned subsidiary, ITC Infotech, is a specialized global digital solutions provider.

Over the last decade, ITC's new Consumer Goods Businesses have established a vibrant portfolio of 25+ world-class Indian brands that create and retain value in India. ITC's world class FMCG brands including Aashirvaad, Sunfeast, Yippee!, Bingo!, B Natural, ITC Master Chef, Fabelle, Sunbean, Fiamma, Engage, Vivel, Savlon, Classmate, Paperkraft, Mangaldeep, Aim and others have garnered encouraging consumer franchise within a short span of time. While several of these brands are market leaders in their segments, others are making appreciable progress.

Established in 1975, *ITC Hotels* has grown to encompass over 140 hotels across 90+ destinations, solidifying its presence in the Indian subcontinent. ITC Hotels seamlessly blends India's rich tradition of hospitality with globally benchmarked services, offering a collection of hotels and resorts that reflect the unique culture and ethos of each destination. The group operates under six vibrant brands: ITC Hotels and Mementos in the luxury segment, Storii in the boutique premium segment, Welcomhotel in the upper upscale category, Fortune in the midscale segment, and WelcomHeritage in the heritage leisure space.

A pioneer in Green Hoteliering, all owned ITC Hotels and Welcomhotels are LEED (Leadership in Energy and Environmental Design) Platinum certified. Notably, ITC Hotels is the first in India to be awarded the 2024 US Green

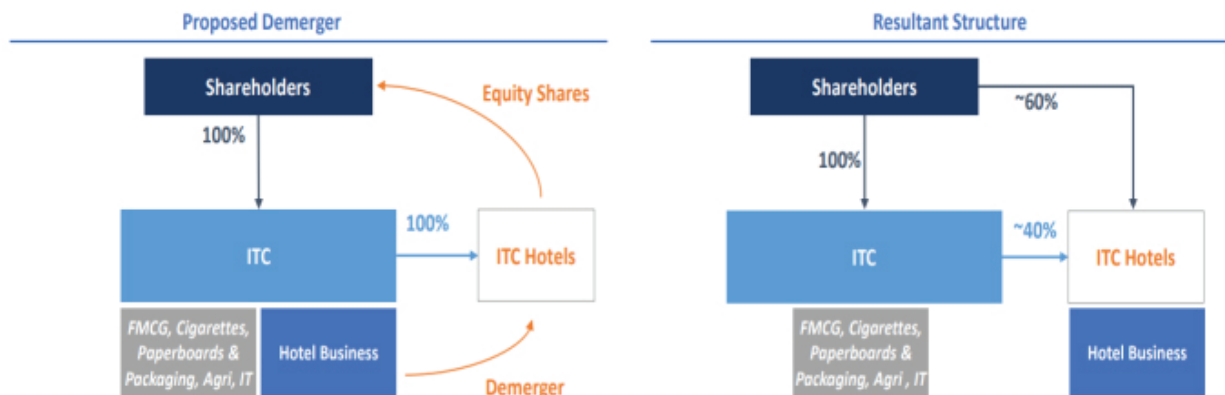
Building Council Leadership Award for Organisational Excellence. ITC Hotels also boasts a globally recognized portfolio of culinary brands, including Bukhara, Dum Pukht, Avartana, and Ottimo, which elevate the dining experience with their distinctive flavors, aromas, and artistry.

Dedicated to advancing hospitality education, ITC Hotels established the ITC Hospitality Management Institute and the Welcomgroup Graduate School of Hotel Administration (WGSHA). These institutions have nurtured several renowned hospitality professionals who have made their mark across the globe.

Demerger

The Scheme of Arrangement involves the demerger of the Demerged Undertaking comprising the Hotels Business of the Demerged Company into the Resulting Company on a going concern basis and in consideration, the consequent issuance of equity shares by the Resulting Company to all the shareholders of the Demerged Company in accordance with the Share Entitlement Ratio i.e. *“for every 10 (Ten) Ordinary Shares of face and paid-up value of Re. 1 each held in the Demerged Company, 1 (One) equity share of face and paid-up value of Re. 1 in the Resulting Company”*.

Shareholding Structure:



Source: ITC Ltd

In a strategic move aimed at enhancing operational efficiency and unlocking shareholder value, ITC Limited, one of India's leading conglomerates, has demerged its hotels division into a separate entity named ITC Hotels Limited. This significant restructuring allows both ITC Limited and ITC Hotels to pursue focused growth trajectories within their respective core competencies.

Background and Rationale for the Demerger

The Hotels Business of the Demerged Company had matured over the years and was well poised to chart its own growth path and operate as a separate listed entity in the fast-growing hospitality industry whilst continuing to leverage the Demerged Company's institutional strengths, strong brand equity and goodwill. Thus, the Hotels Business was segregated from the remaining business. The merger unlocked value of the Hotels Business for existing shareholders of the Demerged Company through independent market driven valuation of their shares in the Resulting Company which will be listed pursuant to the Scheme, along with the option and flexibility to remain invested in a pure play hospitality focused listed entity

By spinning off the hotels division, ITC aims to concentrate on its core areas, thereby potentially enhancing return on capital employed and return on invested capital.

Details of the Demerger

Shareholders of ITC Limited approved the demerger in June 2024, with an overwhelming 99.6% voting in favor. The Kolkata Bench of the National Company Law Tribunal (NCLT) sanctioned the demerger scheme in October 2024. Subsequently, ITC Limited announced that the demerger would take effect on January 1, 2025. Under the terms of the demerger, ITC Limited retains a 40% stake in ITC Hotels Limited, while the remaining 60% is distributed among existing ITC shareholders. Shareholders receive one share of ITC Hotels for every ten shares held in ITC Limited, with January 6, 2025, set as the record date for determining eligibility.

Timelines & Key Approvals

24 July 2023	The Board of Directors of ITC Limited accorded its in-principal approval to the demerger of the Hotels Business under a scheme of arrangement; with the Company holding a stake of about 40% in the new entity and the balance shareholding of about 60% to be held directly by the Company's shareholders proportionate to their shareholding in the Company.
14 August 2023	Final Board Approval of demerger Scheme
August 2023	NOC from Creditors
September, 2023	Filing of scheme with Stock Exchanges under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with the SEBI Circular dated 13th July, 2023
December 2023	Receipt of Stock Exchanges approval and filing with NCLT
December 2023	Filing of Scheme with NCLT
22nd April, 2024	Receipt of NCLT order
29th May 2024	Approval from CCI
6th June, 2024	Meeting of Ordinary Shareholders
04 October.	Approval of Scheme of arrangement by Hon'ble, NCLT , Kolkata
1st January, 2025	the Appointed Date and the Effective Date of the Scheme
6th January, 2025	Record Date
11th January, 2025	Allotment of Shares

The proposed Scheme would be in the best interests of the Companies and their respective shareholders, employees, creditors and other stakeholders for the following reasons:

- The confluence of favourable factors such as rising societal aspirations, strong macro-economic fundamentals of the country, Government of India's thrust on the Travel & Tourism industry and infrastructure creation along with rapid digitalization present immense opportunities for the Hotels Business going forward, though distinct from the other businesses of the Demerged Company.
- In light of the distinctive profile of the hospitality industry, housing the Hotels Business in a separate listed entity would enable crafting of the next horizon of growth and sustained value creation for shareholders through sharper focus on the business anchored on a differentiated strategy aligned with industry specific market dynamics.

- The Resulting Company is a newly incorporated entity which will have the ability to raise capital from equity and debt markets towards funding its growth requirements.
- The Resulting Company as a focused entity would attract the right sets of investors, strategic partners and collaborations, whose investment strategies and risk profiles are aligned more sharply with the hospitality industry.
- The Scheme would unlock value of the Hotels Business for existing shareholders of the Demerged Company through independent market driven valuation of their shares in the Resulting Company which will be listed pursuant to the Scheme, along with the option and flexibility to remain invested in a pure play hospitality focused listed entity.
- The Scheme will ensure long term stability and strategic support to the Resulting Company and also enable the leveraging of cross synergies between the two Companies.

Amalgamation of IDFC Ltd with IDFC FIRST Bank

The Board of Directors of IDFC FIRST Bank Limited and IDFC Limited, at their respective meetings held on July 03, 2023, have approved the Scheme of Amalgamation of IDFC limited with IDFC FIRST Bank.

The Scheme is subject to the receipt of requisite approvals from the Reserve Bank of India (“RBI”), Securities and Exchange Board of India (“SEBI”), the Competition Commission of India, the National Company Law Tribunal, BSE Limited and the National Stock Exchange of India Limited (collectively, the “Stock Exchanges”) and other statutory and regulatory authorities, and the respective shareholders, under applicable law. The following are the details of the proposed scheme:

1. The Share Exchange Ratio for the amalgamation of IDFC Limited with IDFC FIRST Bank shall be 155 equity shares of face value of ₹ 10/- each fully paid-up of IDFC FIRST Bank for every 100 equity shares of face value of ₹ 10/- each fully paid-up of IDFC Limited.
2. According to the amalgamation scheme, 264.64 crore shares of IDFC FIRST Bank held by IDFC Ltd will get extinguished, and based on the share exchange ratio mentioned above, 248 crore new shares of IDFC FIRST Bank would be issued to the shareholders of IDFC Ltd based on their respective holdings.
3. Consequent to the merger, the standalone book value per share of the Bank would increase by 4.9%, as calculated on audited financials as of March 31, 2023.
4. The key benefits of this amalgamation scheme are as follows:
 - a. The merger will result in value unlocking to IDFC Limited shareholders as, after the merger, they will directly hold shares in IDFC FIRST Bank.
 - b. The merger will lead to simplification of the corporate structure of IDFC FHCL, IDFC Limited and IDFC FIRST Bank by consolidating them into a single entity and will help streamline accounting and regulatory compliances of the aforesaid entities.
 - c. The merger will help create an institution with diversified public and institutional shareholders, like other large successful Indian private sector banks.
 - d. Raising equity capital from time to time will become easier in an institution with diversified set of shareholders.

Background:

IDFC Limited, a premier, successful infrastructure Financing Domestic Financial Institution (DFI) since 1997, was granted “in-principle” approval by the RBI to set up a Bank in April 2014, leading to the creation of IDFC Bank Limited. The Bank started its operation in October 2015. The loan assets and liabilities of IDFC Limited, which were mostly infrastructure and corporate loans, were transferred to IDFC Bank. Capital First Limited was a successful consumer and MSME financing institution since 2012 with a strong track record of growth, profits,

and asset quality. On December 18, 2018, the IDFC Bank and Capital First merged, and subsequently renamed IDFC FIRST Bank. As of June 30, 2023, IDFC Limited through its non-financial holding company has 39.93% shareholding of IDFC FIRST Bank.

IDFC FIRST Bank is operating as a full-service universal bank with pan-India presence. The Bank has transformed from infrastructure financing to a universal banking franchise in the last four years. The Bank has built a strong deposit franchise, which has grown at a 4-year CAGR of 36% since the merger to reach Rs. 136,812 crore, by March 31, 2023. The Bank has increased CASA ratio from 8.6% at the time of merger with Capital First in December 2018, to 49.77% (March 31, 2023) and has set up 809 branches and 925 ATMs as of March 31, 2023.

In terms of assets, the Bank has a well-diversified loan book of Rs. 1,60,599 crore with a balance sheet size of Rs. 239,942 crore as on March 31, 2023. The Bank recorded a PAT of Rs. 2,437 crore in FY23, with strong Capital Adequacy of 16.82% as of March 31, 2023.

The Bank maintains high asset quality with Gross NPA of retail loans at 1.65% and Net NPA at 0.55% as of March 31, 2023. At the overall Bank level, GNPA 2.51% and NNPA is 0.86%. Infrastructure financing has higher NPA with GNPA of 25.11% and NNPA of 15.73%, but the infrastructure book is in wind down mode. If we exclude infrastructure financing, at the overall bank level, the GNPA is 1.84%, and NNPA is 0.46%. The PCR, including technical write-off, is 80.29% as of March 31, 2023.

The Bank's long term credit rating was upgraded last month by two rating agencies, CRISIL and India ratings, to AA+.

In summary, with strong foundations of good deposit franchise, customer friendly products, strong capital buffer, profitability, and high corporate governance, we look ahead, beyond the merger, to grow our bank in a safe and steady manner.

We are happy to welcome all shareholders of IDFC Limited to become direct shareholders of IDFC FIRST Bank. We will seek approval from the RBI and all other stakeholders and look forward to completing the exercise within 6 to 9 months.

The Reserve Bank of India approved the reverse merger of IDFC Ltd and its banking unit, IDFC First Bank. In July, the board of IDFC First Bank and IDFC authorized the reverse merger.

Source: <https://www.idfcfirstbank.com/merger-of-idfc-ltd-and-idfc-first-bank>

Amalgamation of Fincare Small Finance Bank Ltd. – AU Small Finance Bank Ltd

The Reserve Bank of India has sanctioned the Scheme of Amalgamation of Fincare Small Finance Bank Ltd. (Transferor Bank) with AU Small Finance Bank Ltd. (Transferee Bank). The Scheme has been sanctioned in exercise of the powers contained in sub-section (4) of Section 44A of the Banking Regulation Act, 1949. The effective date of the amalgamation shall be April 01, 2024. All the branches of Fincare Small Finance Bank Ltd. will function as branches of AU Small Finance Bank Ltd. with effect from April 01, 2024.

Source: https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=57445

LESSON ROUND-UP

- Corporate restructuring is a change in the business strategy of an organization resulting in diversification, closing parts of the business, etc. to increase its long-term profitability.
- It can be driven by external factors requiring change in the organizational structure or business model of a company, or it can be driven by the necessity to make financial adjustments to its assets and liabilities.
- Corporate Restructuring is an inorganic business strategy that results in faster pace of growth, effective utilization of resources, fulfillment of increasing expectations of stakeholders, managing competition, etc.

- Restructuring may be financial restructuring, technological, market and organizational restructuring.
- Corporate Restructuring process in India is governed by the Companies Act, 2013, Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and various other laws.
- The most commonly applied tools of corporate restructuring are amalgamation, merger, demerger, acquisition, joint venture, disinvestments, etc.
- Corporate financial restructuring is any substantial change in a company's financial structure, or ownership or control, or business portfolio, designed to increase the value of the firm, i.e., debt and equity restructuring.
- Debt restructuring involves a reduction of debt and an extension of payment terms or change in terms and conditions, which is less expensive.
- Capital Reduction is the process of decreasing a company's shareholder's equity through share cancellations and share repurchases.
- According to section 61 of the Companies Act 2013 a company limited by shares or a company limited by guarantee and having a share capital may, if authorised by its articles, by special resolution, and subject to its confirmation by the Tribunal on petition, reduce its share capital.
- "Surrender of shares" means the surrender of shares already issued to the company by the registered holder of shares. Where shares are surrendered to the company, whether by way of settlement of a dispute or for any other reason, it will have the same effect as a transfer in favour of the company and amount to a reduction of capital.
- According to Section 68(1) of the Companies Act, 2013 a company whether public or private, may purchase its own shares or other specified securities out of: (i) its free reserves; or (ii) the securities premium account; or (iii) the proceeds of any shares or other specified securities.
- When a company buys back its shares or other specified securities, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed.
- Section 46A of the Income Tax Act, 1961 provides that any consideration received by a security holder from any company on buy back shall be chargeable to tax on the difference between the cost of acquisition and the value of consideration received by the security holder as capital gains.
- All the listed companies are required to comply with SEBI (Buy Back of Securities) Regulations, 2018, in addition to the provisions of the Companies Act, 2013.

GLOSSARY

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. Corporate restructuring is an inorganic growth strategy.

Merger : is the fusion of two or more companies, whereby the identity of one or more is lost resulting in a single company.

Amalgamation : is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or amalgamated company.

Acquisition : occurs when one entity takes ownership of another entity's stock, equity interests or assets. It is the purchase by one company of controlling interest in the share capital of another existing company. Even after the takeover, although there is a change in the management of both the firms, companies retain their separate legal identity.

Demerger : is an arrangement whereby some part / undertaking of one company is transferred to another company which operates completely separate from the original company.

Slump Sale : is a transfer of one or more undertakings as a result of sale for a lump sum consideration, without values being assigned to the individual assets and liabilities in such sale.

Joint Venture (JV) : is a business or contractual arrangement between two or more parties which agree to pool resources for the purpose of accomplishing a specific task may be a new project or any other business activity.

Reverse Merger : is a merger in which a private company becomes a public company by acquiring it. It saves a private company from the complicated process and expensive compliance of becoming a public company.

Financial Restructuring : is any substantial change in a company's financial structure, or ownership or control, or business portfolio, designed to increase the value of the firm, i.e., debt and equity restructuring.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not required to be submitted for evaluation.)

1. Define Corporate Restructuring.
2. Briefly discuss the scope and modes of Corporate Restructuring.
3. Describe about legal provisions of Corporate Restructuring in India.
4. Explain in detail the types of Merger.
5. Explain the acquisition of Flipcart and ebay.
6. What do you mean by Business Sale? Explain
7. What do you mean by 'buy-back' of shares or specified securities under the Companies Act, 2013?
8. Explain the relevant provisions of the Act.
9. What are the different alternatives available to a public company for 'buy-back'?
10. Enumerate the provisions relating to Escrow account and offer procedure under SEBI (Buy- back of Securities) Regulations, 2018.
11. Discuss the obligations of Merchant Banker under SEBI (Buy-back of Securities) Regulations, 2018.

LIST OF FURTHER READINGS

- Guide to Companies Act by A Ramaiya, Lexis Nexis Butter worths
- The Companies Act, 2013 with Rules and Ready Referencer by S K Kataria, Bloomsbury Publication
- Guide to Takeovers and Mergers by Sridharan and Pradhan, Wadhwa & Co.
- Mergers, Acquisitions and Corporate Restructuring by C Krishna murthi, SAGE Publications