

# Mergers and Acquisitions in India: A Primer

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By Ashish S. Joshi

India is one of the fastest growing economies in the world. With the recent acquisitions of Land Rover and Jaguar brands by India's Tata Group from the Ford Motor Company, the message is clear—India sees herself as a global player in the race for economic power and supremacy. While Indian companies are scouring the horizons globally for strategic acquisitions, India also offers exciting deals in its domestic corporate sector. In the past decade, Michigan's automotive giants and other Michigan companies have steadily cultivated business and supply-chain relationships with Indian companies. India's dynamic business and regulatory environment, intellectual property rights protection and enforcement, and 300 million-plus middle class population with a rapidly increasing purchasing power makes investing or acquiring a business in India a strategic business decision for Michigan corporations.

This article attempts to provide a bird's-eye view of various requirements under India's prevailing company law, tax law, and accounting standards, focusing on mergers and amalgamations. India had more than 40 years of protected economy along with numerous dysfunctional and unproductive state-owned corporations. However, since the 1990s there have been landmark developments in India's corporate sector. First, the corporate sector was freed from the red-tape of the earlier "license raj." Second, there were attempts to privatize the state-owned industries. Third, the rules concerning foreign direct investment in several industries were relaxed, and cross-border cash flow was eased. All of these factors propelled India's mergers and acquisitions (M&A) activity into a frenzy.<sup>1</sup> In the past three years, India's M&A activity has truly been phenomenal. Even though the volume of M&A activity is small when compared to the global volume of M&A, Indian companies' appetite for global assets is growing, which has been demonstrated by a spate of audacious overseas acquisitions made by Indian companies and conglomerates such as the Tata Group<sup>2</sup>, Ranbaxy, Videocon, Satyam, Mahindra & Mahindra, etc.<sup>3</sup>

Although this article focuses on mergers and acquisitions in India, it would be remiss to ignore Indian companies' buying spree on a global scale. India's opening of its doors to foreign investment and competition, low interest rates, pressures of globalization, and the advent of private-equity funds have spurred India's cash rich companies to go on a global buying spree<sup>4</sup>:

Period	Company	Acquirer	Deal Worth US\$
2/2007	Novelis	Hindalco	6 billion
1/2007	Corus Group	Tata Steel	12.1 billion
1/2007	Ritz-Carlton	Boston Indian Hotels	170 million
9/2006	Jeco Holding AG	M&M	180 million
7/2006	Arcelor	Mittal Steel	30 billion
6/2006	Eight O'Clock Coffee	Tata Tea	220 million
6/2006	Sabah Forest	BILT	261 million
3/2006	Hansen	Suzlon Energy	565 million
3/2006	Terapia	Ranbaxy	324 million
2/2006	Betapharm	Dr. Reddy's	570 million
7/2005	Teleglobe	VSNL	239 million

Before we focus on India's legal framework for mergers and acquisitions, let us take a look at the definitions of the key terms in this area:

## Key Definitions

Under Indian law: "Acquisition" is the purchase of a company or a part of it so that the acquired company is completely absorbed by the acquiring company and thereby no longer exists. "Amalgamation" means two or more companies are fused into one by merger (or) by taking over by another so that a third company is absorbed into one or blended with another, with the amalgamating company losing its identity. Merger, in which all participating companies go out of existence to form a new company, is referred to as amalgamation. "Merger" is essentially a fusion or

absorption of one company by another, with the latter retaining its own name and identity and acquiring all assets and liabilities of the former. The absorbed company ceases to exist as a separate company.<sup>5</sup>

### Legal Framework

Sections 391 to 394 of India's Companies Act, 1956 ("the Act") deal with the right of companies to enter into a compromise or arrangement either (a) between itself and its creditors or any class of them or (b) between itself and its members or any class of them. The term "arrangement" is a term of wide import and contemplates not merely reorganization of share capital but also a modification of the rights of the shareholders. It includes reorganization of share capital by the consolidation of different classes of shares or division of shares into shares of different classes or by both methods.<sup>6</sup> Essentially, these provisions cover restructuring, merger, demerger, and hiving off of a unit by a company.<sup>7</sup>

Some of the nuances of section 391 should be noted:

- This section has to be read with the Companies (Court) Rules, 1959, which forms a complete procedural code for implementing mergers.
- Section 391 is a complete code by itself. Once a scheme of compromise and arrangement falls squarely within the four corners of the section, it can be sanctioned, even if it involves doing acts for which the procedure is specified in other sections of the Act. To illustrate, once a scheme satisfying the requirement of section 391 is sanctioned, there is no need to comply with other provisions of the Act, such as section 293 for sale, lease, etc. of the company's property.<sup>8</sup>
- The scope of this section is very wide. It also applies to a company that is in the winding up proceedings. An arrangement under this section can, therefore, also take the merging company out of winding up proceedings.<sup>9</sup>
- An amalgamation or merger cannot be used to bypass other statutes.<sup>10</sup>
- Schemes of compromise and arrangement can only transfer such rights, powers, duties, and property as are capable of being lawfully transferred by a party to the scheme, if no sections of the Companies Act existed. If any part of the scheme includes anything to which the parties

cannot bind themselves, then that part of the scheme will be treated as a nullity.<sup>11</sup>

- Subsection 6 of section 391 enables a court to stay suits and proceedings against the company pending in the same court or elsewhere till such time as the proceeding for the sanction of the court, under section 391, is disposed. High courts in India are split over whether this sub-section allows courts to order a stay of any criminal proceedings against the company.<sup>12</sup>

The usual steps involved are<sup>13</sup>:

1. Inspection of the objects clause - The memorandum of association of both companies—the transferor company and the transferee company—should contain an enabling provision for the amalgamation to take place. If such clauses do not exist, necessary alteration of the object clause of the memorandum of association must be put through at the outset.<sup>14</sup>

2. Approval of the scheme by the board of directors - The board of directors of the transferor and the transferee companies have to approve the scheme of amalgamation, including the exchange ratio. To enable the board to make a decision, a draft of the scheme of amalgamation has to be prepared by the legal advisors, the valuation report is prepared by the financial advisors, and a merchant banker generally provides a fairness opinion certificate on the valuation report.

3. Notification of the stock exchange - Since the decision of the board on a proposed merger of the company is price-sensitive information, in cases of public companies, both the companies are, among other things, required under clause 36 of the listing agreements with the stock exchanges to communicate the price-sensitive information to the stock exchanges. This is done immediately after the board meeting deciding on the merger and/or according to approval of the merger scheme.

4. Application to the court for directions - The next step is to make an application under section 391(1) to the high court having jurisdiction over the company. Whether jointly

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or individually, both companies, the transferor, and the transferee have to seek the court's sanction under sections 391-394.<sup>15</sup> The high court generally is the high court of the state in which an incorporated company has its registered office. The application should seek the court's permission for convening a meeting of creditors and/or members and is generally made through a judge's summons in Form 33 (supported by an affidavit in form 34 of rule 67 of the Companies (Court) Rules, 1959 ("the Court Rules")). A copy of the proposed scheme of amalgamation needs to be annexed to the affidavit. Documents accompanying the summons should be a true copy of the company's updated memorandum and articles of association. However, depending on the high court, it would be prudent to also submit a certified copy of the company's latest audited balance sheet and certified copy of the board resolution that authorizes making the application to the court.<sup>16</sup>

5. Forwarding a copy of the application made to the court to the concerned regional director of the department of company affairs.<sup>17</sup>

6. Obtaining the high court's directions for convening a shareholders' meeting - The hearing on the summons is usually attended by the representatives of the merging companies as well as their respective advocates (attorneys). Following this hearing, the high court gives directions under rule 69 of the Court Rules determining, among other things, (a) the class or classes of creditors and/or of members whose meeting or meetings have to be held for considering the proposed merger, (b) fixing the date, time, and place of the meeting, (c) appointing the chairman who will preside over the meeting, (d) fixing the quorum and the procedure to be followed at the meeting(s) including voting by proxy, (d) the notice of the meeting and the advertisement thereof, and (e) the time within which the chairman of

the meeting is to report to the court the result of the meeting. In case a request has been made in the application for dispensing with holding of the creditors' meeting, the court may, after considering the grounds for dispensation, direct that separate requirements of the creditors' meeting be dispensed with.

7. Dispatching notice to shareholders and creditors - In order to convene the meeting of the shareholders and creditors, a notice of the mergers/acquisitions and an explanatory statement of the meeting, as approved by the court, should be dispatched by the transferor and the transferee companies under Section 393 of the Act to their respective shareholders and creditors together with the scheme of amalgamation at least twenty-one days prior to the date of the meeting. The notice is to be drawn up in form 36 of the Court Rules and a proxy form in form 37 to the Court Rules also needs to be sent. The documents are required to be mailed under certificate of posting.

8. Advertising the notice of the meeting - Rule 74 of the Court Rules stipulates that the notice of the meeting should be advertised in a format specified in form 38. The advertisement is to be issued by both the companies in an English-language daily together with a translation thereof published in the regional language of the place where the registered office of the company is situated. Under rule 76 of the Court Rules, the chairman appointed for the meeting shall file with the court - not less than seven days prior to the date of the meeting - an affidavit confirming that the notice has been dispatched to the shareholders/creditors and that the same has been published in the newspapers as required.

9. Holding the shareholders' and creditors' meeting - The shareholders'/creditors' meeting should be held on the appointed date.<sup>18</sup> The amalgamation scheme should be approved by the members/creditors by a majority in number present

in person or by proxy. This majority must represent at least three-fourth in value of the shareholders/creditors present and voting.<sup>19</sup> The requisite majority must be computed on the basis of a poll.<sup>20</sup> Mere presence is not enough. Any member who, though present at the meeting, does not vote for or against, but remains neutral, is not to be taken into consideration.<sup>21</sup> Further, only those creditors whose names are shown on the company's books of account are entitled to vote.<sup>22</sup>

10. Submitting the chairman's report on the conduct of the meeting to the court - Pursuant to rule 78 of the Court Rules, the chairman of the shareholders'/creditors' meeting is required to submit to the court within the time fixed by the judge or, where no time has been fixed, within seven days after the date of the conclusion of the meeting, a report in form 39 of the Court Rules that, among other things, sets out the number of persons who attended and voted at the meeting personally or by proxy, their individual values, and the percentage of members who voted in favor of or against the scheme.

11. Filing of the resolution with the registrar of companies - Within thirty days from the date of passing the resolution, a copy of the resolution passed by the shareholders/creditors approving the scheme of amalgamation is required to be filed with the registrar of companies in form 23 appended to the Companies (Central Government's) General Rules and Forms, 1956.

12. Submitting of the petition to the court for sanction of the scheme - Under rule 79 of the Court Rules, within seven days from the date on which the chairman submits his or her report on the result of the meeting to the court, the transferor and the transferee companies are required to make a petition to the high court for confirmation of the scheme of amalgamation. The petition has to be drawn up in Form 40 of the Court Rules. Rule 80 of the Court Rules states that, based on

the petition, the court will fix the date of hearing of the petition and direct that the notice of the hearing must be advertised in the same newspapers in which the notice of the meeting has been announced or in such other newspapers as the court may direct. This advertisement must be issued not less than ten days before the date fixed for the hearing. The notice affirms that should any member or creditor of the transferor company raise written objections to the proposed amalgamation, no objection may be raised to the member or creditor being heard on its objections by the court.

13. Issuing a notice to regional director, company law board, registrar of companies, and the official liquidator - On receipt of the petition, the court issues a notice of the petition to the concerned regional director of the company law board having jurisdiction over the transferor and the transferee companies, the respective registrar of companies, and also to the official liquidator of the company that is to be dissolved upon the merger.

14. Conducting hearings and issuing an order confirming the scheme - Proceedings begin with the court hearing the objections, if any, on the amalgamation scheme filed—in response to the advertisement mentioned above—with the concerned regional director of the company law board, the concerned registrar of companies and/or the court by any member, creditor, or any other person wishing to oppose the petition. Thereafter, the court may pass an order sanctioning the amalgamation scheme in form 41 of the Companies (Court) Rules. The court may also issue an order in form 42 directing that all properties, rights, and powers of the transferor company, to be specified in the schedule attached to the order, be transferred without any further act or deed to the transferee company, and all liabilities and duties of the transferor company be similarly transferred to the

transferee without any further act or deed.

15. Transferring the assets and liabilities to the transferee company - Passing of the order is pursuant to the scheme of amalgamation, which provides that from the appointed date and upon the scheme becoming effective, all assets and liabilities, including intellectual property rights,<sup>23</sup> licenses, etc. in relation to the transferor company, or to which the transferor company is a party, are transferred and are in full force and effect on, against, or in favor of the transferee company and may be enforced as fully and effectually as if, instead of the transferor company, the transferee company has been a party or beneficiary thereto without any further act or deed by the transferee company.

16. Filing the court's order with the registrar of companies by both companies - Under section 394(3) of the Act and Rule 81 of the Court Rules, the transferor and the transferee companies are required to file the court's order sanctioning the scheme of amalgamation with the registrar of companies under their respective jurisdictions. The filing is made in Form 21 appended to the Companies (Central Government's) General Rules and Forms, 1956. Under section 394(3) the time limit given for the filing is thirty days.<sup>24</sup> The amalgamation takes effect from the date on which the court's order is filed with the registrar of companies. Therefore, in the interest of synchronization with the effective date of the merger, it is advisable for both the transferor and the transferee companies to file the order with their concerned registrar of companies on the same date.

17. Issuing the shares to the shareholders of the transferor company - Pursuant to the sanctioned scheme of amalgamation, the shareholders of the transferor company are issued shares in the transferee company as per the exchange ratio or the swap ratio approved under the scheme. This is made by way of

an allotment, following which the return of allotment in form 2 must be submitted to the registrar of companies by the transferee company within thirty days from the allotment date in accordance with section 75 of the Companies Act, 1956. Necessary entries in the register/index of members must also be made in compliance with sections 150 and 151 of the Companies Act, 1956.

18. Listing the new shares - After making the allotment, the transferee company, if applicable, must apply to the stock exchange where its securities are listed for listing the new shares allotted to the shareholders of the transferor company.

19. Attaching the court's order to the memorandum of association - Section 391(4) of the Act stipulates that a certified copy of the court's order sanctioning the scheme of amalgamation must be annexed to every copy of the memorandum of association issued by the transferee company, failing which penal clauses become applicable.

20. Preserving the books and papers of the transferor company - Under section 396A of the Companies Act, 1956, the books and papers of the amalgamated company are to be preserved and not to be disposed of without prior permission of the central government.

Although in a number of other countries an additional approval under applicable anti-trust laws may be required at this stage, this is still not necessary under the Indian law. Nevertheless, the stage has been set for a change with the introduction of the Competition Act, 2002. Once this act becomes fully operational, acquisitions and mergers will require the approval of the Competition Commission of India if the combined assets of the acquirer and the acquired enterprise in India cross the various thresholds envisioned under that law.

*Effective date of scheme* - A compromise or arrangement takes effect from the date when it is arrived at subject to the sanction of the court. If the court grants sanction, it takes effect, not from the date of the sanction, but from the date when it was arrived at. Sanction of the court to a compromise has "re-

lation back,” and a scheme or arrangement agreed to by the creditors of a company becomes operative from the date of the meeting in which it is agreed to and not from the date on which the court’s sanction is given.<sup>25</sup>

### Tax Issues

Under the Indian Income-Tax Act of 1961, the transferor company is described as the amalgamating company, while the transferee company is called the amalgamated company. Section 72A of the Income-Tax Act of 1961 stipulates that the accumulated loss and the unabsorbed depreciation of the amalgamating company are deemed to be the loss or depreciation allowance of the amalgamated company for the previous year in which the amalgamation is effected and can be setoff or carried forward as per other provisions of the said Act. However, the right of setoff is subject to the following conditions:

- (a) There has been an amalgamation of a company owning an “industrial undertaking,” a ship or hotel with another company, or there has been an amalgamation of a banking company within the meaning of section 5 of the Banking Regulation Act, 1949 with a “specified bank” as defined therein;
- (b) The amalgamating company has been in business—from which loss has occurred or depreciation has remained unabsorbed—for a minimum period of three years;
- (c) The amalgamating company has held, continuously for a period of two years preceding the date of amalgamation, at least three-fourth’s of the book value of its fixed assets;
- (d) The amalgamated company holds, continuously for a minimum period of five years from the date of amalgamation, at least three-fourth’s of the book value of the fixed assets acquired under the amalgamation scheme; and
- (e) The amalgamated company continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation and fulfills such other conditions as may be prescribed to ensure that the amalgamation is for a genuine business purpose.

On fulfillment of the conditions above, the unabsorbed business losses and the un-

absorbed depreciation of the amalgamating company are deemed to be the loss or depreciation of the amalgamated company for the year of amalgamation. This leads to the possibility for a fresh term of eight years for setoffs or carry forwards.<sup>26</sup>

Further, upon the amalgamation taking effect, a few other deductions are available to the amalgamated company under the Income-Tax Act, 1961 to the extent these are available to and remain unabsorbed in the hands of the amalgamating company. Such as the following:

1. Capital/revenue expenditure on in-house scientific research and contributions to approved scientific research associations/approved national laboratory [Section 35]
2. Amortization of preliminary expenses [Section 35D]
3. Expenditure on an in-house research and development facility [Section 35(2AB)]
4. Amortization of expenses incurred exclusively for the amalgamation [Section 35DD]
5. Amortization of expenses on prospecting for certain minerals [Section 35E]
6. Amortization of telecom license fees incurred for acquiring the right to operate telecom services [Section 35ABB]
7. Expenditure on acquisition of patent right, copyright, and know-how. [Section 35AB]

### Accounting Issues

Accounting Standard 14 (AS-14)<sup>27</sup> of the Institute of Chartered Accountants of India relates to accounting for amalgamations. The standard stipulates that amalgamation means an amalgamation pursuant to the provisions of the Companies Act, 1956 or any other statute as may be applicable to companies. The Accounting Standard distinguishes between two types of amalgamation,

- A. An amalgamation in the nature of merger
- B. An amalgamation in the nature of purchase/acquisition

An amalgamation would come within the fold of type A if all the following conditions are fulfilled:

- (a) All the assets and liabilities of the transferor company become the assets and liabilities of the transferee

company upon the amalgamation.

- (b) Shareholders holding not less than 90 percent of the face value of equity shares of the transferor company become equity shareholders of the transferee company on the amalgamation.
- (c) The consideration for the amalgamation is discharged by the transferee company wholly by issue of equity shares in the transferee company except that cash may be paid only in respect of any fractional shares.
- (d) The business of the transferor company, after amalgamation, is intended to be carried on by the transferee company.
- (e) No adjustment is intended to be made to the book values of the assets and liabilities of the transferor company when they are incorporated in the financial statements of the transferee company except to ensure uniformity of accounting policies.

If any of the above conditions is not fulfilled, the amalgamation would be in the nature of purchase and hence be covered under type B, that is to say, purchase or acquisition.

The accounting treatment of the amalgamation depends on the nature of the amalgamation. In the case of a merger, the "pooling of interests method" is to be applied, and for an acquisition the "purchase method" is to be adopted. Under the pooling of interests method, the assets and liabilities of the merging companies are aggregated and recorded by the transferee company at their existing carrying amounts except to the extent necessary to ensure uniformity of accounting policy. Similarly, the reserves appearing in the balance sheet of the transferor company are carried into the balance sheet of the transferee company. The difference between the amount recorded as share capital issued consequent to the swap ratio and the amount of the share capital of the transferor company is adjusted in the reserves. Under the purchase method, the assets and liabilities of the transferor company are incorporated into the books of the transferee company either at their existing carrying amounts or at their fair values on the date of amalgamation. The excess of purchase consideration (whether consisting of shares, cash, or other assets) over the net book value of assets (i.e., minus

liabilities) is treated as goodwill that has to be amortized on a systematic basis over a period not exceeding five years, unless a longer period can be justified as its useful life. In case of a shortfall, however, the difference is adjusted as a capital reserve.<sup>28</sup>

## Conclusion

This article has presented an overall picture of the legal paradigm of India's M&A activity. This is an oversimplified and generalized view of India's laws and regulations concerning mergers and acquisitions. India has a labyrinth of laws and regulations that need to be carefully navigated as M&A activities are directly linked to international equity markets. The Indian government and its regulatory bodies are making attempts to simplify the laws and make the working of its regulatory agencies transparent. In the recent Companies Bill, it has been proposed to provide a single forum for approval of scheme of mergers and acquisitions in a time bound manner. This concept of "deemed approval" is a welcome move. In the Competition Act 2002, the commission must take a view within ninety working days, failing which the merger is deemed to have been approved based on the market place, i.e. the relevant geographic and product markets.

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## NOTES

1. See generally Bhatnagar, N., Mergers and Acquisitions – Will It Be Effective In Indian Context? *Chartered Secretary*, April 2007
2. See Tata and Ford Reach Deal For Land Rover, Jaguar, *The Wall Street Journal*, March 27, 2008 at B3.
3. See Bhatnagar, *supra*.
4. See generally Kumar, N., Corporate Strategy in Emerging Scenario – Mergers & Acquisitions, *Chartered Secretary*, April 2007.
5. *Id.*
6. *Hindustan Commercial Bank v. Hindustan General Electric Corporation*, 30 Comp Cases 367 (1960)
7. See Ramaiya, A. *Guide to the Companies Act* (16<sup>th</sup> edition, 2006), Volume 2, Commentary to Section 391, page 3205.
8. *Re HCL Infosystems Ltd.*, 46 SCL 365 (2003); 121 Com Case 861 (2004). However, it should be noted that a scheme under this section cannot be regarded as an alternative mode of liquidation. It is only an alternative to liquidation. The incidents of a scheme under section 391 are different both in principle and in consequences from those of winding up. *Himalaya Bank Ltd. V. J. Roshan Lal*, 31 Com Cases 333 (1961); AIR Punj 350 (1961).
9. *Re Vasant Investment Corporation Ltd.*, 52 Com Cases 139 (1982).
10. See for instance *General Radio & Appliances Co. Ltd. v. Khader*, 60 Com Cases 1013 (1986); AIR 1986 SC 1218. The transferor company in an amalgamation was the tenant of premises under an agreement which speci-

cally prohibited subletting without the consent in writing of the landlord. Under the scheme of amalgamation, all the assets of the transferor company including the tenancy passed to the transferee company. The written consent of the landlord was not taken. The transaction was held to be a transfer of the tenancy without the sanction of the landlord and the transferee company was held to be liable to evicted from the premises.

11. *Re Skinner*, 29 Com Cases 247 (1959); 3 All ER 273 (1959)

12. *Re Uma Investment Private Ltd.*, 47 Com Cases 242 (1977); *Harish Raskapoor v. Jaferbhai Mohamedbhai Chhatpar*, 65 Com Cases 163 (1989)

13. See Ghosh, A., *The Mechanics of Mergers and Acquisitions*, *Chartered Secretary*, April 2007; Ramiya, *supra*, at page 3267 (“Secretarial Action Points”)

14. Section 391 does not permit sanction to arrangements which are ultra vires the company. See *Ramiya*, *supra*, at page 3230.

15. Courts have refused its sanction where only one of the companies – the transferor or the transferee – had applied for it. See *Re Kirloskar Electric Co. Ltd.*, 40 SCL 745 (2002)

16. Although the Companies (Second Amendment) Act, 2002 has substituted the term “Tribunal” for the term “Court” in Section 391/other Sections under Chapter V of the Act, the change will only become operational from a date which is yet to be notified.

17. Section 394A of the Act.

18. Creditors meeting is not necessary where scheme is only between members and the creditors are not likely to be adversely affected. See *Re ICICI Ltd.*, 36 SCL 682 (2002); 119 Com Case 941 (scheme of merger between a parent and its subsidiary).

19. The Court has the power to go into all the incidental and ancillary questions in an effort to satisfy itself whether the scheme has the approval of the requisite majority. See *Miheer Mafatlal v. Mafatlal Industries Ltd.*, 4 Comp LJ 585 (1996). However, the Court will not substitute its judgment as to whether there is a scope for a better scheme. *Re Blue Star Ltd.*, 104 Com Cases 371 (2001).

20. *Dinesh Lakhani v. Parke Davis (India) Ltd.*, 47 SCL 80 (2003)

21. *Re Kirloskar Electric Co. Ltd.*, 116 Com Cases 413 (2003).

22. *Re Mahalaxmi Cotton Mills Ltd.*, 20 Com Cases 164 (1950).

23. The court in a proceeding under section 391 may not hold an inquiry into questions to entitlement to brand names, trade marks, etc. Such matters can be taken up either in a civil court or before any other appropriate forum. The sanctioning of a scheme would not in any way fetter the powers of the court or other forum to adjudicate upon the same. *Re Kirloskar Electric Co. Ltd.*, 43 SCL 186 (2003); 116 Com Cases 413 (2003).

24. This 30-day period was substituted for 14 days with effect from October 15, 1965. However, since the time-frame under Rule 81 still shows 14 days, many legal advisors in India believe that it would be advisable to complete the filing within 14 days.

25. See *Ramiya*, *supra* at page 3259.

26. An earlier condition that shareholders holding not less than 90% in value of the shares in the amalgamating company should become shareholders of the amalgamated company on the amalgamation is no longer a criterion for availing tax benefit under the current tax provision.

27. As formalized or amended by the Notification dated 7th December, 2006 of the Ministry of Company Affairs of the Government of India.

28. See generally, Notification dated 7th December, 2006 of the Ministry of Company Affairs of the Government of India – laying down Accounting Standards 1-29

pursuant to the provisions of Section 642 of the Act; also see Ghosh, *supra* note 11.



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