MERGERS AND ACQUISITIONS WITHOUT JUDICIAL INTERVENTION: TIME FOR INDIA TO EMBRACE THE CHANGE

Anmol Kaur Nayar[*]

Anuradha Jha[**]

ABSTRACT

For corporate entities, Mergers and Acquisitions (hereinafter referred to as 'M&A') are a crucial tool for economic growth. Additionally, it is a mode of interaction among companies located in varied geographical regions. The Indian corporate sector is brimming with M&A activities. In the backdrop of attempts by governments to enhance the ease of doing business in India, the M&A procedure remains unnecessarily long and cumbersome, tainted with a lot of scope for delays. This paper analyses the M&A procedure in India from the perspective of the role of National Company Law Tribunal (hereinafter referred to as "NCLT"). For this purpose, the author has conducted three case studies. The objective of case studies is to assess whether the domestic M&A process can be made faster by eliminating the role of NCLT. The paper also proposes that the Fast Track Merger process be adopted as the general procedure and not restricted to only special cases.

Keywords: *Mergers & Acquisitions, Economic growth, Fast Track Merger, Companies Act, 2013, Regulatory framework, Stakeholder analysis, Case studies*

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I. Introduction

THE INTRODUCTION of the new Companies Act, 2013 gave a major impetus to the Mergers and Acquisitions (*hereinafter* referred as 'M&A') activity in India. The latest reports indicate that Indian M&A activity in the year 2021 was at an all-time high, with more than eighty deals

[*] Senior Research Fellow, University School of Law and Legal Studies, GGSIPU, New Delhi.
[**] Associate Professor, University School of Law and Legal Studies, GGSIPU, New Delhi.

of seventy-five million USD each.[1] Of late, the government has been doing a great deal of work towards improving the ease of doing business in India so as to attract more foreign business. Hence, the growth through the M&A route will continue to be an attractive option for foreign companies entering India. According to the World Bank's doing business ranking, India has climbed by thirty positions to become the top 130th country in the year 2017. This jump can be attributed to the various initiatives undertaken by the government, such as the establishment of the debt recovery tribunals for reducing non-performing loans, strengthening investor's rights, establishment of clear stakeholder feedback mechanisms to close the gaps between policy formulation and implementation etc.[2]

The Indian M&A market saw an unprecedented surge in the year 2018. With deal value touching heights that were never seen before, the volume of deals reflected the trust of investors in the market. As per statistics, the total amount of transactions in both M&A and private equity areas crossed the USD 100 billion mark in 2018.[3] Therefore, substantial importance can be attributed to the role of M&A in the ease of doing business in India.

The year 2018 saw record breaking M&A activity in India. The deal value of M&A activity was 1.6 times compared to that of the year 2017.[4] The aggregate deal value was between USD 100.01 to 129.4 billion across 416 deals.[5] The M&A activity in India witnessed a record of 129.4 billion worth of deals in 2018, smashing the previous annual record of USD 67.4 billion in 2007.[6] India is ranked sixty three among 190 economies in terms of ease of doing business, according to the latest World Bank annual ratings. The rank of India improved to sixty three in 2019 from seventy-seventy in 2018. As a result, India improved its ease of doing business ranking to sixty-three in the year 2019 from seventy-seventy in the year 2018 and 130th in the

[1] Harish Pais, Clarence Anthony, "M&A Report 2022: India", *IFLR* (2022), *available at*: https://www.iflr.com/article/b1x94kzzwp5lvs/mampa-report-2022-india (last visited on May 12, 2022).
[2] The World Bank Group, 14th Flagship Report on Comparing Business Regulation for Domestic Firms in 190 Economies (2017).
[3] Anuj Trivedi, Sanya Haider, "Link Legal India Law Services" in Lorenzo Corte, Scott C. Hopkins *at.al.* (eds.), *Global Legal Insights Mergers and Acquisitions* 45 Global Legal Group (2020).
[4] Grant Thorton, 14th Annual Deal Tracker on M&A and Private Equity deal insights (2018), *available at*: https://www.grantthornton.in/globalassets/1.-member-firms/india/assets/pdfs/grant_thornton_annual_dealtracker_2019.pdf (last visited on May 12, 2022).
[5] Harish Pais, Clarence Anthony, "2019 M&A Report: India", *IFLR* (2019), *available at*: https://www.iflr.com/article/2a638gbamvcuf497ind34/2019-m-a-report-india (last visited on May 12, 2022).
[6] Swaraj Singh Dhanjal, "Indian companies log record $129 billion in M&A deals in 2018", *Livemint*, Jan. 10, 2021.

year 2017.[7] Therefore, substantial importance can be attributed to the role of M&A in the ease of doing business in India.

II. Mergers and Acquisitions – A Preliminary Understanding

Mergers

When two or more companies combine to form a third new company, it is called a merger. It is characterised by absorption by a corporation of one or more others[8]. In case of a merger, the legal personality of the combining entities is lost, and a new legal personality of the resultant company is created. Broadly speaking, there are five kinds of mergers, namely[9]:

- Conglomerate Merger: A merger between firms that are engaged in diverse business exercises. This kind of merger is motivated by product market expansion.
- Horizontal Merger: A merger happening between companies in a similar industry is a horizontal merger. This kind of merger involves entities which are operating in the similar industry at the same level of supply chain. The idea behind it is to reduce rival firms by augmenting with them so as to reduce competition.
- Vertical Merger: This is a merger of two corporations delivering component products necessary for one final item. It is marked by merging of companies operating at various levels in a product supply chain.
- Market Extension Merger: This happens between two companies that provide similar and more often than not, same items however in different markets. Increasing market access is the principle motivation behind it.
- Product Extension Merger: When companies, which are dealing in related goods, merge with each other, it is called a Product Extension Merger. Upon successful merger, the resulting company gets access to a wider spectrum of consumers.

Acquisitions

When one company buys another company while retaining its own legal personality (through share transfer or business undertaking transfer), the former company is said to have acquired

[7] The World Bank Group, 16th Flagship Report on Training for Reform (2019).
[8] Definition of the word Merger, *available at:* https://www.merriam-webster.com/dictionary/merger (last visited on May 14, 2022).
[9] 5 Types of Company Mergers, Minority Business Development Agency, *available at:* https://archive.mbda.gov/news/blog/2012/04/5-types-company-mergers.html (last visited on May 11, 2021).

the latter company. Buying the entire stock of the target entity is not a sine qua non for a merger. It is sufficient if the acquiring company has an controlling interest in the acquired company. In an acquisition, the identity of the acquired company may (in the case of a partial takeover) or may not (in case of complete takeover) remain in existence, but the legal personality of the acquiring company remains intact.

III. The Process of Merger and Acquisition in India

The Indian M&A landscape has not emerged in an overnight process. It has rather developed through various phases of rules and regulations. The bone of contention against promoting M&A was its nature of posing as a challenge to competition and strengthening monopolistic market behaviour. On the other side, there has been huge support for M&A activities since it provides an impetus to economic growth by enhancing economies of scale, social benefits, technological innovation, and the competitiveness of the Indian corporate sector. The dynamic rules and regulations, coupled with the cut-through competition and competitiveness of Indian corporate entities, have brought about a significant change in synergy formulations.

In India, the process of M&A is governed by Indian Companies Act, 2013 read with the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016[10] (hereinafter referred to as "CAA rules"). Under the Companies Act, 2013, sections 230-240[11] contain the provisions for compromises, arrangements, and amalgamations. Under the Act, mergers and acquisitions are treated as included in the meaning of compromise and arrangement.[12]

Following are the stages of the process:

Step 1: Approval of the Board of Directors on the draft scheme of arrangement in a general meeting by a special resolution

Step 2: Obtaining a No Objection certificate from Stock Exchanges

After being approved by the board, the scheme is filed with the relevant stock exchange to obtain a no-objection certificate. The company is not supposed to file the scheme of

[10] Government of India, "Notification on Companies (Compromises, Arrangements and Amalgamations) Rules, 2016" (Ministry of Corporate Affairs, 2016).

[11] Brought into force by a notification issued by Central Government dated November 7, 2016 for bringing into force sections 230-233, 235-240, 270-288 of The Companies Act, 2013. The sections came into force from December 15, 2016.

[12] The Companies Act, 2013 (Act 18 of 2013), s. 232.

arrangement unless it has obtained an observation letter or no-objection letter from the appropriate stock exchange(s).[13]

Step 3: Filing an Application for merger and amalgamation[14]

The copy of draft scheme along with the NOC so obtained[15] has to be filed before the Tribunal along with the joint petition filed by the merging entities for approval of the scheme of arrangement.[16] The petition to the tribunal has to be accompanied with documents like a notice of admission, affidavits etc.[17]

The scheme of arrangement shall disclose all material information related to financial position of the company including the latest auditor's report, the pendency of any investigation to proceeding against the company and so on[18]:

In the case of a pre-existing debt that either or both of the merging entities have, such debt must be restructured through a scheme approved by at least 3/4th of the secured creditors in value. Scheme of corporate debt restructuring means a scheme that restructures or varies the debt obligations of a company towards its creditors.[19]

Upon hearing the application the tribunal may either allow or disallow the meetings of creditors or class of creditors, or of the members or class of members.[20] The tribunal shall also define the class of creditors for the purpose of such meeting.

Step 4: Notice of meetings to Creditors and/or Shareholders

In cases where the tribunal directs convening of meetings of creditors (secured and/or unsecured) and/or shareholders, the notice of the meeting, along with a copy of the Scheme[21] shall be sent to the creditors and/ or shareholders.[22] The notice of meeting is to be accompanied by a copy of the Scheme of Arrangement.

The notice of meeting, along with the draft scheme of arrangement accompanied by all the documents, is also to be sent to the central government through the Regional Director, Department of Income Tax, Reserve Bank of India (hereinafter referred to as "RBI"), Securities and Exchange Board of India (hereinafter referred to as "SEBI"), Registrar of Companies

[13] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, r. 37(2).
[14] *Supra* note 12, s. 230, 232.
[15] *Supra* note 13, r. 94.
[16] *Id.*, r. 13.
[17] The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 3(1).
[18] *Supra* note 12, s. 230 (2).
[19] *Supra* note 17, r. 4, Explanation.
[20] *Supra* note 12, s.230 (1).
[21] *Supra* note 17, r. 7.
[22] *Supra* note 12., s.230 (3).

(hereinafter referred to as "ROC"), the respective stock exchanges, the official liquidator, the competition commission of India and if necessary, to such other sectoral regulators or authorities that are likely to be affected by the compromise or arrangement. The aforesaid authorities can file their representations, if any, within a period of thirty days from the date of receipt of such notice. If the authorities do not make any representation during the period, they will be presumed to have approved the proposals.[23]

Step 5: Conducting Tribunal Convened meetings of creditors or class of creditors and/or shareholders. At the meetings, the creditors (or a class thereof) or shareholders (or a class thereof) shall approve the scheme by a 3/4th majority.[24] Voting may be done in person, or through postal ballot[25] or by proxy.[26] The chairperson of each meeting has to file the report containing the result of the meetings with the tribunal within the time fixed by the tribunal, or where no time has been fixed, within three days after the meeting is concluded.[27]

Step 6: Filing the scheme of arrangement before the National Company Law Tribunal for final approval. After being approved by the relevant stakeholders, the second petition is moved within seven days for final approval of the tribunal. In case objections have been filed by Central government, RBI, SEBI, Income Tax Department, ROC, Competition Commission of India (hereinafter referred to as "CCI") or any other authority, the tribunal might hear such objections and the replies filed by the petitioner company in response to such objections. The final petition has to be moved within seven days from the date on which compromise or arrangement is agreed to by the members or creditors.[28]

Step 7: Filing of approved scheme with Registrar

The order of the tribunal granting final approval to the scheme, is to be filed with the ROC within a period of thirty days of the receipt of the order.

IV. Case Studies

Bharti Airtel Limited and Tata Teleservices Limited

Tata Teleservices Limited (hereinafter referred to as "TTSL") & Tata Teleservices (Maharashtra) Limited (hereinafter referred to as "TTML"). TTL were a telecommunications

[23] *Id.*, s.230 (5).
[24] *Id.*, s.230 (6).
[25] *Supra* note 17, r. 9.
[26] *Id.*, r. 10.
[27] *Id.*, r. 14.
[28] *Id.*, r. 15 and 17.

and broadband service company headquartered in Mumbai, India. It was incorporated as a Wholly Owned Subsidiary (hereinafter referred to as "WOS") of Tata Group, a conglomerate company of Indian origin. It was in the business of operating fixed line services under the brand name Tata Telecom Broadband in various telecom circles of India. TTL initially witnessed remarkable growth and became the pioneer of the market in providing end to end voice, data and managed solutions to large and small and medium enterprises. TTL achieved successful rendering of a wide array of services through its wider network footprint and a very systematic operational structure. TTL had a team of more 1,800 people with businesses in more than sixty Indian cities.[29]

In August 2017, Tata Teleservices announced that it was planning to exit the mobile network sector since it had been facing losses. Additionally, the rising debts of TTSL were also a major reason which motivated the decision to exit the mobile network sector.[30] Therefore, TTSL sold its business to Bharti Airtel Limited (hereinafter referred to as "BAL") a telecommunications company that was enjoying a global presence at the time with operations in seventeen countries across the Asian and African continents. The telecommunications giant is based in New Delhi, India. From the perspective of its customer base, BAL is one of the three largest mobile service providers of the world. In the Indian market, the company provides many services to address every kind of need. By the end of September 2017, BAL had more than 383 million consumers across all the areas of its operations.[31]

On October 12, 2017, BAL announced a debt-free, cash-free merger deal with Tata's Consumer Mobile Businesses (hereinafter referred to as "CMB").[32] As per the deal, Airtel was only to pay partly for Tata Teleservices's spectrum payment that was left unpaid by TTSL that was owed to the Department of Telecommunications.[33] From, July 1, 2019 onwards, the businesses of Tata Docomo, TTSL and TTML were merged into Bharti Airtel.[34]

[29] Bharti Airtel Limited, "Tata Teleservices mobile customers to start transitioning to the Airtel network", *available at:* https://www.airtel.in/press-release/11-2017/tata-teleservices-mobile-customers-start-transitioning-to-airtel-network (last visited on January 16, 2021).
[30] Rashmi Pratap, "How Tata Tele lost the telecom war" *The Hindu Business Line*, Jan. 8, 2018.
[31] *Ibid.*
[32] Editorial, *"*Bharti Airtel gets Tata Teleservices mobile unit for nothing: All you need to know about the deal*". Firstpost*, Oct. 13, 2017.
[33] Pankaj Doval, Reeba Zachariah, "Tata Teleservices merges with Airtel to manage debt of 40,000 crore" *The Times of India*, Oct. 13, 2017.
[34] Editorial, *"*Airtel Completes Merger of Tata*" Livemint,* Oct. 13, 2017.

Table 1

Timeline of Important dates in proceedings before NCLT, Mumbai Bench

S. NO.	EVENT	DATE
1.	Bharti Airtel announces the merger	October 12, 2017
2.	CCI order granting unconditional approval to the Scheme	November 16, 2017
3.	NCLT order directing meeting of secured and unsecured Creditors and Equity shareholders	May 11, 2018 and modified on July 13, 2018
4.	Representation filed by Department of Telecommunications before the Tribunal	June 18, 2018
5.	Representation filed by Income Tax (IT) Department before the Tribunal	August 29, 2018
6.	Affidavit containing reply to Representation of Department of Telecommunications, filed on behalf of TTSL before the National Company Law Tribunal	October 30, 2018
7.	Affidavit containing reply to Representation of Income Tax Department filed on behalf of TTSL before the National Company Law Tribunal	October 31, 2018
8.	Counter Affidavit filed on behalf of Income tax Department	November 28, 2018
9.	NCLT conducted meeting of the Secured and Unsecured creditors and Equity Shareholders Including Public Shareholders	August 30, 2018
10.	Scrutinizer reports for meeting of secured and unsecured Creditors and Equity shareholder meetings filed before the NCLT, Mumbai Bench	September 12, 2018

11.	National Company Law Tribunal, Mumbai Bench gave the final approval to Scheme of Merger	December 4, 2018
12.	NCLT, Delhi bench gives final approval to merger between TTSL and BAL	January 21, 2019
13.	Department of Telecommunications gave conditional approval to the scheme of amalgamation	April 10, 2019
14.	Order of Telecom Disputes Settlement Appellate Tribunal granting relief to TTSL and BAL in their challenge to conditions in approval of TDSAT	April 22, 2019 modified by order dated May 2, 2019
15.	Resolution passed by Board of Directors of TTSL to fix July 1, 2019 as the appointed date.	May 23, 2019
16.	NCLT order for extending the time allowed to the company for filing order of NCLT with ROC till June 25, 2019	May 30, 2019
17.	Order of NCLT Mumbai appointing July 1, 2019 as appointed date	July 13, 2019
18.	Date of coming of merger into effect after completing all necessary formalities	July 1, 2019

Analysis

1. The process of merger commenced from October 12, 2017 and ended on July 1, 2019.
2. The total time taken for the merger to complete was twenty months and eighteen days which is approximately quarter to two years.
3. The proceedings before the court commenced around May 11, 2018 and concluded on July 1, 2019.
4. Out of the said duration of quarter to two years, the proceedings before the court lasted for almost thirteen months and nineteen days.

5. The meeting of secured and unsecured creditors and equity shareholders was ordered to be conducted on May 11, 2018 and the same was conducted on August 30, 2018 *i.e.* after a period of two months and nineteen days.
6. It is noteworthy that there is nothing on record to show that the NCLT questioned the Petitioner company (TTSL) about the reason for so much time lag between the two dates.
7. On June 30, 2018, a representation was filed by Department of Telecommunications before the Tribunal and the reply to it was filed by TTSL on October 30, 2018 i.e. upon expiry of almost four months.
8. There is nothing on record to show that the NCLT gave certain time limit to TTSL to file the reply to affidavit of Department of Telecommunications or sought any kind of aforesaid delay in filing the reply.
9. Similarly, the representation by IT department on August 29, 2018 while TTLS's response to it was filed on October 31, 2019 *i.e.* upon expiry of almost two months.
10. There is nothing on record to show that the NCLT gave certain time limit to TTSL to file the reply to affidavit of IT Department or sought any kind of aforesaid delay in filing the reply.
11. Most importantly, the registered office of the Transferee Company i.e., BAL was in the State of National Capital Territory of Delhi. In view thereof the Transferee Company had filed its Company Application with the NCLT, New Delhi Bench seeking sanction to the Scheme.

Table 2

Timeline of important dates in proceedings before NCLT, Delhi Bench

S. NO.	EVENT	DATED
1.	Bharti Airtel announces the merger	October 12, 2017
2.	Board of Directors of BAL approves the Scheme of Amalgamation	December 19, 2017
3.	NCLT order directing meeting of unsecured Creditors and Equity shareholders	May 23, 2018

4.	Representation filed by Department of Telecommunications before the Tribunal	June 18, 2018
5.	Date of meeting of unsecured Creditors and Equity shareholders	August 10, 2018
6.	Scrutinizer reports for meeting of unsecured Creditors and Equity shareholder meetings filed before the NCLT	August 16, 2018
7.	NCLT order taking report of appointed chairman of meetings on record and directing BAL to serve notice of next hearing in two local newspapers, Ministry of Corporate Affairs through Regional Director, Registrar of Companies and IT Department. The next date of hearing was fixed at November 27, 2018.	September 05, 2018
8.	Representation filed by shareholder of BAL objecting to scheme of amalgamation	October 18, 2018
9.	Affidavit containing reply on behalf of BAL, to Representation filed by shareholder	November 06, 2018
10.	Undertaking filed by BAL in response to objections raised by Department of Telecommunications dated June 18, 2018	November 27, 2018
11.	NCLT order extending the date of hearing by three days in order to list the current matter with another connected matter	November 27, 2018
12.	NCLT order extending the date of hearing by eleven days due to paucity of time	November 30, 2018
13.	NCLT order confirming completion of arguments and reserving the order	December 11, 2018

14.	NCLT Delhi gave final approval merger between Tata and Airtel. The NCLT gave 30 days' time to BAL to file a copy of this order before the ROC.	January 21, 2019
15.	NCLT order for extending the time allowed to the company for filing order of NCLT with ROC by 60 days.	May 05, 2019
16.	NCLT order for extending the time allowed to the company for filing order of NCLT with ROC till June 25, 2019	May 30, 2019
17.	Date of coming of merger into effect after completing all necessary formalities	July 1, 2019

Analysis:

1. It is noteworthy that the timeline of the proceedings before the NCLT, Delhi Bench is similar to the timeline of proceedings before the Mumbai Bench. It is also worthy to mention that the purpose of running a parallel proceeding was simply that BAL had its registered office in Delhi while TTSL had its registered office in Mumbai. That being said, the merger of TTML and TTSL into BAL is technically a single process. It cannot be denied that a merger does require that concerns of the stakeholders of all the companies involved in the arrangement must be taken into consideration. This does not essentially mean the same has to be done before two separate forums. Since, the proceedings pertaining to a single transaction are being carried out before two different forums, it doubles the cost of proceedings, the time and most importantly the effort in the proceedings.
2. Additionally, just like the proceedings before the Mumbai bench, there have been delays of the part of the petitioner and the bench on various occasions which has further extended the total time that was required to complete the proceedings. For example, after the final order was passed on January 21, 2019, it took almost six months for the merger to come into effect since the order had not been filed before the ROC. Between the date of final order i.e. January 21, 2019 and the date of coming of merger into effect i.e. July 1, 2019, the time limit for filing the order before the ROC has been extended

thrice by a total of almost 150 days. Out of this delay, the month of April can be attributed to the proceedings before the TDSAT in a joint appeal filed by BAL and TTSL against the conditional approval given by DoT to the merger. However, the order of TDSAT was out on April 22, 2019. Thereafter, it took 30 days for the Directors of TTSL to fix July 1, 2019 as the appointed date. Furthermore, from the day the appointed date was fixed, another extension was sought to file the order of Tribunal with the ROC and finally after passage of 38 days, from the date of fixing of appointed date, the merger became effective.

IndusInd Bank and Bharat financial Limited

IndusInd Bank Limited is one of the earliest new generation banks of Indian origin. Headquartered in Pune, it was established in 1994. In addition to India, the Bank operates through representative offices in London, Dubai and Abu Dhabi.[35] Bharat Financial Inclusion Limited (*hereinafter* referred to as 'BFIL'), founded in 1997, was initially started as a non-profit organisation. The company aimed to contribute to national economic development by eliminating poverty by way of providing financial services to the less fortunate. By 2013, the company had established operations across seventeen states of India.[36]

IndusInd Bank's prime motivation for acquiring Bharat Financial Inclusion Limited was that its operations were in line with the Rural Banking and Microfinance theme of IndusInd's Strategic Planning. It was believed that the acquisition will allow IndusInd the access to BFIL's immensely liked micro-lending functions and amazing expertise in financing at the micro level without having to start at the grass root level. At the time of acquisition BFIL had 1,708 branches across 347 districts. This network had the potential to complement IndusInd Bank's branch network of 1,710 bank branches and 932 Vehicle Finance outlets. It was calculated that Post–merger, IndusInd will have more than 4000 branches and outlets.[37] IndusInd Bank's

[35] Editorial, "Annual Report 2018-19" *IndusInd Bank* (2019), available at : https://www.indusind.com/content/dam/indusind-corporate/investor-resource/latest-annual-report/AnnualReport201819.pdf (last visited on March 15, 2023).

[36] Prashant Chintala ,"SKS Microfinance Concludes Two Securitisation Transactions", *Business Standard,* Apr. 01, 2013.

[37] Editorial, "Investor Presentation Q4-2018-19", *IndusInd Bank*, May 22, 2019, *available at:* https://www.indusind.com/content/dam/indusind-corporate/investors/investor-presentation/FY2018-2019/InvestorPresentation-Q4-FY18-19.pdf (last visited on March 15, 2023).

enormous consumer structure of 10 million will get intensified after contribution of BFIL's 6.8 million customers.[38]

Under merger, IndusInd Bank Ltd. agreed to enter into an all-share deal to buy micro-lender BFIL. The deal value was approximately 155 billion rupees.[39] The assets and liabilities of BFIL moved to IndusInd's book and it became a subsidiary of the bank. BFIL had already been acting as a business correspondent for the bank.

Table 3

Timeline of important dates in proceedings before NCLT

S. NO.	EVENT	DATED
1.	The BOD of IBL and BFIL approved the scheme of arrangement at their respective meetings	October 14, 2017
2.	Application to RBI for approval of Scheme of Arrangement	November 06, 2017
3.	Application to the CCI for Approval to Scheme of Arrangement	November 15, 2017
4.	CCI gives approval to the Scheme of Arrangement	December 17, 2017
5.	RBI gives "No Objection" certificate to the Scheme of Arrangement	March 13, 2018
6.	Date of application to the RBI for establishing a Wholly Owned Subsidiary (WOS) named IndusInd Financial Inclusion Limited (IFIL)	March 15, 2018
7.	Date of application to Securities and Exchange Board of India (SEBI) for their comments and "No Objection" Certificate	March 28, 2018
8.	Date of RBI approval for setting up WOS	June 8, 2018

[38] Editorial, "IndusInd Bank and Bharat Financial Inclusion Announce Merger", *IndusInd Bank iBlogs,* Oct. 24, 2017

[39] Tommy Wilkes, Devidutta Tripathy, "IndusInd Bank seals $2.4 billion deal to buy Bharat Financial" *Reuters,* Oct. 15, 2017.

9.	Incorporation of IFIL as WOS	August 06, 2018
10.	Date of filing of the Scheme with the NCLT	August 24, 2018
11.	NCLT order directing meeting of Equity shareholders and secured Creditors of BFIL and IndusInd Bank	October 31, 2018
12.	Date of NCLT ordered meeting of the equity shareholders and secured creditors of BFIL and scrutinizer's report	December 11, 2018
13.	NCLT order giving final approval merger between IndusInd Bank and BFIL. The NCLT gave 30 days' time to the petitioners to file a copy of this order before the ROC	June 10, 2019
14.	The appointed date i.e. the date of coming of merger into effect	July 04, 2019

Analysis

1. The merger was announced on October 14, 2017 and it came into effect from July 04, 2019. The total time period between these two dates is approximately 21 months, being just three months less than two years.
2. The scheme was filed before the NCLT on August 24, 2018 and it was given final approval by NCLT on June 10, 2019 i.e. after more than nine months. While it came into force on July 04, 2019 i.e. after more than ten months.
3. The NCLT conducted meeting of shareholders was ordered on October 31, 2018 i.e. after more than three months from the date on which the scheme was filed before the NCLT for approval.
4. There is nothing on record to justify the aforesaid delay of three months by NCLT in ordering the meetings to be conducted.
5. Additionally, the meeting was conducted on December 11, 2018 and the scheme received NCLT's approval on June 10, 2019. There is a time difference of six months between these two dates. However, there is nothing on record to explain this time lag. Neither the website of NCLT has orders pertaining to this period, nor is there any data on the website of IndusInd Bank to offer a reasonable explanation for this gap.

Ultratech Cement and Century Textiles

Ultratech, a part of Indian origin Aditya Birla Group, is the biggest producer of dim concrete, Ready Mix Concrete and white concrete, with more than 100 Ready Mix Concrete plants in thirty-five urban areas. Not only within India, it is also a major contributor to cement production across the world. UltraTech Cement has nineteen coordinated plants, one clinker plant, twenty-five granulating units and seven mass terminals.

Apart from India, its activities range across the United Arab Emirates, and Sri Lanka. UltraTech has more than 1600 Building Solutions stores pan country which are one-stop looks for all essential development needs of individual manufacturers.[40] Century Spinning and Manufacturing Company, established in 1897, was a Public Limited Company. Initially, the company would run only one mill for producing cotton textile till 1951. Thereafter, the scope of its activities was widened after diversifying the same. At the time of merger, the company had four divisions i.e. cement, textiles, pulp and paper and real estate.

The deal brought for UltraTech the three cement units of Century Textiles located in Madhya Pradesh, Chhattisgarh and Maharashtra. The net annual production capacity of these plants was estimated to be approximately eleven and a half million tonnes of cement. Additionally, Ultratech also took over Century's two MTPA grinding unit situated in West Bengal.[41] UltraTech also picked up century's cement division's debt liability of Rs. 3000 crore. The acquisition was motivated out of the fact that it would allow UltraTech to become the number one cement company in the eastern region of the country, and fortify its lead in the west and central regions.[42] Additionally, the deal is aimed at significantly reducing logistic cost since it is one of the most significant factors in concrete industry. Century's plants are situated in a similar bunch as that of the UltraTech's which can spare noteworthy calculated expense.

Table 4

Timeline of important dates in proceedings before NCLT, Mumbai Bench

S. NO.	EVENT	DATE

[40] *Ibid.*
[41] Nickey Mirchandani, "What Century Textiles Deal Means For UltraTech Cement" *Bloomberg Quint*, May. 21 2018.
[42] *Ibid*.

1.	Aditya Birla Group announced that they shall merge their cement business under UltraTech with Century's Cement Business	May 2018
2.	NCLT order directing convening of meeting of equity shareholders of Century Textiles	September 12, 2018
3.	NCLT order directing Meeting of Equity Shareholders of UltraTech Cement and Cut-off date for deciding the Equity Shareholders entitled to vote through postal ballot and remote e-voting and voting conducted through electronic voting system at the venue	September 14, 2018
1.	Notices were sent to Secured Creditors, Unsecured Creditors and debenture Holders of Century Textiles	September 19, 2018
2.	Notices were sent to Secured Creditors, Unsecured Creditors and debenture Holders of UltraTech Cement	September 19, 2018
3.	Date of publishing notice of meetings in newspapers	September 20, 2018
4.	Period of voting by equity shareholders of UltraTech and Century Textiles through postal ballot and remote e-voting	September 24, 2018 to October 23, 2018
5.	Date of meeting of Equity Shareholders of UltraTech Cement	October 24, 2018
6.	Scrutinizer Reports were filed before NSE and BSE for the aforesaid meetings	October 25, 2018
7.	NCLT order granting adjournment of 25 days due to paucity of time	January 18, 2019

8.	NCLT order granting adjournment of 20 days due to paucity of time	February 14, 2019
9.	NCLT order granting adjournment of 8 upon request of counsel for petitioner	March 04 , 2019
10.	NCLT order admitting the application for approval to scheme of amalgamation and granting further date of 50 days for next hearing	March 12, 2019
11.	NCLT order granting adjournment of 40 days without ascribing any reason for the same	May 03, 2019
12.	Report filed by Regional Director	May 02, 2019
13.	Affidavit containing response filed on behalf of Petitioner companies to Report of Regional Director	May 03, 2019
14.	Appointed date of merger as fixed by NCLT	May 20, 2019
15.	Supplementary Report filed by Regional Director in response to the affidavit of petitioner Companies	May 30, 2019
16.	NCLT order granting adjournment of 06 days without ascribing any reason for the same	June 07, 2019
17.	Date of receiving approval of Secured Creditors of Century Textiles	June 07, 2019 to June 11, 2019
18.	Date of receiving approval of Secured Creditors of UltraTech Cement	June 07, 2019 to June 11, 2019
19.	NCLT order recording completion arguments and reserving the matter for orders	June 13, 2019

20.	Order of NCLT, Mumbai giving final approval to the scheme	July 03, 2019

Analysis:

1. The process of merger commenced in May 2018 and was completed on July 03, 2019. The total time taken for the merger to complete is about 14 months. This period, compared to the preceding case studies, is much lesser.
2. Out of the said period of fourteen months, the period of proceedings before the NCLT is about 10 months. However, it is noteworthy that there is nothing on record to explain the gap between October 25, 2018 and May 02, 2019.
3. The proceedings before the NCLT were marked with unexplained delays on various occasions.
4. There were delays and adjournments were granted on multiple occasions between January 18, 2019 and June 13, 2019. This period is almost 6 months long. It is without doubt that not all the adjournments were without any reason and the companies were engaged in other proceedings during this period such as responding to Regional Director. However, the said proceeding has only taken about 18-20 days. Additionally, the delay has been explained by the fact that various secured creditors of both companies were granting approval to scheme between June 7, 2019 to June 11, 2019. Again, only five days have been attributed to this activity. Apart from aforementioned reasons, there is nothing on record to explain the delay of about 5 months. This means that these delays have added 5 months to the whole M&A process between UltraTech and Century Textiles.

V. Fast Track Mergers

The discussion in the preceding sections reveals that enhancement of the creation of value, expansion of market share and reduction in operation costs of businesses are the driving forces for companies to enter into mergers and acquisitions. Generally, Mergers and Acquisitions have been known to have manifold advantages and have proven its usefulness in numerous complicated situations in the past. To have the provisions of M&A in writing, the Companies Act, 2013 of India contains separate procedure for them under sections 230-232 which we have discussed in the preceding sections. However, these provisions were found to be tedious to deal

with since it required approval from many regulatory bodies such as CCI, RBI as well Judicial authority i.e., NCLT. Consequently, there were serious requests for years to both simplify as well as expedite the procedure of M&A.

In India, the concept of FTM was first introduced by The Expert Committee on Company Law under the chairmanship of Dr. J.J. Irani. The Committee was constituted by the Government of India on December 2, 2004 to provide expert feedback on proposals contained in the Concept Paper[43] and suggestions received thereon from a large number of organizations, professional bodies and individuals.[44] The Committee was of the view that legally binding mergers might be given legal acknowledgment in the Company Law in India just like the training in numerous different nations. Such mergers and acquisitions through agreement structure (for example without court intercession), could be made dependent upon resulting endorsement of investors by standard majority.[45] This would eliminate obstructions to mergers and acquisitions and ability to rectify would be available. In addition, Fast Track Merger is a special idea as it doesn't require endorsement from NCLT for the merger. Consequently, endorsement by jurisdictional Regional Directors dependent on the reports by the ROC and Official Liquidator is adequate.

Even historically speaking, prior to the notification which brought into force Section 233 of the 2013 Act, the Courts followed a methodology which was slanted towards encouraging brisk mergers between certain extraordinary meetings of companies. For instance, corresponding to plans including amalgamation of WOS with their parent organizations, different High Courts have, previously, permitted the holding organization from getting rid of the necessity of starting separate procedures under the watchful eye of its jurisdictional High Court, since no trade off or course of action is proposed between the holding organization and its investors and creditors.

[43] Press note on "Concept Paper on Company Law" from Ministry of Corporate Affairs, Government of India, Aug. 4, 2004, *available at: https://www.mca.gov.in/Ministry/press/press/Press_012004.html* (last visited on Feb. 1, 2023)

[44] The Government of India, around 2004, decided to overhaul the company law regime in the country with a view to align it with the changing global economic landscape by taking legislative steps to meet the requirements of India's growing economy in the years to come. For this purpose, it took up fresh exercise for a comprehensive revision of the Companies Act, 1956 through a broad-based consultative exercise. Consequently, a concept paper on Company Law was issued in public to enable them to view it on the electronic media so that all effected parties may express their opinions and suggestions on the concepts involving various aspects of Company Law. This exercise was welcomed by the industry and enormous amount of response was received. Comments and suggestions from a large number of organizations, professional bodies and individuals have been received.

[45] Expert Committee Report on Company Law, Mergers and Acquisition (2005), *available at*: http://www.mca.gov.in/MinistryV2/background.html (last visited on Feb. 1, 2023).

Law on Fast Track Mergers in India

In India, the concept of Fast Track Merger (hereinafter referred to as "FTM") has been laid down under Section 233 of the Companies Act, 2013.[46] This provision introduced the concept of FTM along with the procedure for mergers and amalgamations of certain special classes of companies. Section 233 of the Companies Act, 2013 read with Rule 25 of The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 provides the concept of simplified merger. The special classes of companies include small companies and mergers between parent companies and their WOS. The FTM procedure requires the approval from Shareholders, Creditors, Registrar of Companies, Official Liquidator and Regional Director.

Important Features of Fast-track Merger Process in India

Since, FTM is a new concept, it is important to understand some highlights of the same. The scheme of arrangement may be entered between special classes of companies listed below:

a. Between two or more than two small companies

   The term small company denotes a company, which is not a public company, whose paid-up share capital is equal to or more than INR 50 lakh buy less than INR ten Cr.[47]

b. Between a holding company and its fully owned subsidiary company

   A WOS and can combine with its parent company without resorting to conventional merger and can follow the process of fast track merger. The WOS can be a public, private or a charitable company established u/s 8 of Companies Act, 2013. In cases where The Parent has to file a separate application for every WOS that is wishes to merge with.

c. Other prescribed classes of companies

No other classes have been prescribed under the Act till date.

Benefits of Fast Track Merger

1. The requirement of obtaining mandatory approval of NCLT has been waived off
2. The mandatory requirement of Issuing Public Advertisement under normal merger process has been waived off.
3. Unlike usual merger, there is no need to conduct Court Convened Meeting.

[46] Government of India, "Notification G.S.R. 1134 (E)" (Ministry of Corporate Affairs, 2016).
[47] *Supra* note 12, s. 2(85).

4. The FTM procedure comes with lesser administrative burden compared to normal merger process.
5. A major advantage of FTM is that series of hearings can be avoided since it is not mandatory to obtain the approval of NCLT.
6. Once the scheme of arrangement is registered, it is deemed to have effect of dissolution of transferor companies without the process of winding up less cost.

Procedure of Fast Track Merger

Step 1: At the outset, a pre-condition for a company to enter into any kind of business restructuring is that the company should be authorised in its articles of association to enter into any kind of business restructuring. If the articles of association so not contain an express authorization for the company to enter into a business restructuring agreement, then the Articles of Association need to be amended. It is worthy to note that the merger can be permissible only as per the object clause of MOA of both the Companies.

Step 2: Obtaining nod to the scheme of arrangement from the Board of directors. Conducting Board Meeting for approval of Scheme. Firstly, the companies are mandated to make a rough scheme. At the same time, it is necessary that they have the exchange ratio evaluated by at least two professionals. This is followed by the board meetings of transferor and transferee company. The purpose of this meeting is to obtain approval of the Board members to the draft scheme. In addition, any resolutions can be passed in these meeting to give power to any member of the board in respect of any on the matters connected with the merger.

Step 3: Filing of Notice inviting Objections or Suggestions[48]

The transferor and transferee companies shall file the scheme approved in the previous step with the following entities:

a. ROC where the registered office of respective companies are situated and
b. The Official Liquidator
c. Or persons affected by the scheme

The notice is issued to invite objections/suggestions from aforesaid entities within thirty (30) days. The aforesaid notice has to be filed in the form CAA-9. Additionally, each company is obligated to file their respective solvency declaration[49] statement in the Form CAA-10 with the

[48] *Id.*, s. 233 (1)(a). read with rule 25(3) of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
[49] *Id.*, s. 233 (1)(c).

ROC.[50] The Objections and Suggestions are to be sent to the Regional Director and to companies involved in merger within thirty days from the date of serving of notice.

Step 4: Convening General Meeting of Members or Class of Members

All the companies involved in the arrangement shall obtain approval of shareholders who are holding at least ninety percent of shares. The suggestion received by registrar and liquidator will be considered by the companies in their respective general meeting.[51]

Step 5: Meeting of Creditors or Class of Creditors[52]

The companies which are parties to the arrangement shall obtain the approval of their creditors in any of the following manner:

a. Through Meeting: 9/10th of shareholders by value should accept the scheme in this meeting.
b. Without Meeting: If the approval is sought without the meeting, the majority representing 9/10th value of creditors shall give their written approval to the merger.

Here it is worthy to mention that the shareholders or creditors are to be notified about the aforesaid meetings at least 21 clear days in advance. Following documents have to be sent to the Shareholders and creditors along with the notice.

a. A copy of proposed scheme
b. Explanatory statement[53]
c. Copy of Declaration of Solvency[54]

The special resolution thus passed by the members and creditors of both the Transferor and Transferee Companies shall be filed in E Form MGT-14 with the Registrar of Companies in whose jurisdiction the offices of the transferor and transferee companies are located.

Step 6: Filing of Copy of Scheme and Results of Meeting with Regional Director[55] and Registrar of Companies

The transferee company has to file following documents with the RD within seven days of completion of meeting of shareholders or class thereof or creditors or class of creditors:

a. A copy of scheme approved by members and creditors and
b. Result of each of the meetings

[50] *Supra* note 17, r. 25(2).
[51] *Supra* note 12, s. 233 (1)(b).
[52] *Id.*, s. 233 (1)(d), s. 233 (1)(b).
[53] *Supra* note 17, r. 6(3).
[54] The Companies Act, 2013 (Act 18 of 2013), s. 233 (1)(c) read with rule 25(2) of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
[55] *Supra* note 17, r. 25(4).

The transferee company shall also file a copy of aforesaid documents with:[56]

a. The ROC
b. The Official Liquidator
c. The Central Government

After receiving the scheme, if the ROC or the Official Liquidator convey that they do not wish to object to or recommend changes to it, the Central Government shall take it on register and issue a confirmation about the registration to the petitioner companies.[57] However, if the ROC or Official Liquidator have any objections or recommendations, they may send them to the Central Government in writing within a period of not more than thirty days.[58] In cases where no objections are sent, it is presumed that the scheme has been allowed. In that case, the Regional Director has to pass a confirmation order. This confirmation issued by the Regional Director is treated as an order sanctioning the scheme of merger. After receiving the order of RD, the company has to file it with the ROC under whose jurisdiction it falls. This step has to be completed within a period of not more than thirty days from the date of order.

Then, endless supply of complaints or recommendations, or because of some other explanation, if the central government is of the sentiment that such a plan isn't in broad daylight intrigue or in light of a legitimate concern for the loan bosses, it might record an application before the NCLT inside a time of sixty days of the receipt of the plan expressing its protests and mentioning that the Tribunal may think about the plan under s. 232.[59]

In case the Tribunal receives an application from the RD or from any person and it opines that regarding the scheme, the procedure for regular mergers should be followed, it may order the same and shall record the reason for such direction in the order itself. Alternatively, the tribunal can also confirm the scheme by a suitable order. In the absence of any objection to the scheme of arrangement by the central government, it is presumed that the same has been approved by the central government.[60]

[56] *Supra* note 12, s. 233 (2).
[57] *Id.*, s. 233 (3).
[58] *Id.*, s. 233 (4).
[59] *Id.*, s. 233 (5).
[60] *Id.*, s. 233 (6).

If the scheme is confirmed by the tribunal as mentioned above, a copy of its order has to be submitted to the concerned Registrar. The registrar must then take the scheme on his record and issue a confirmation to that effect. This confirmation must be communicated to the resulting company and the registrars where transferor company or companies were situated.[61]

Effect of Registration of Scheme approved in accordance with the FTM Process

The confirmation order passed by the tribunal or the central government, as the case may be, bears the effect of dissolving the transferor company without going through the process of winding up.[62] Other effects of registration of scheme are as follows:

1. The assets and liabilities of the transferor company stand transferred to the transferee company.[63]
2. The transferor company is replaced by the transferee company in any ongoing Legal proceedings involving the former as a party.[64]
3. Making payments of dissenting shareholders or creditors will be the duty of the transferee company.[65] If the transferring entity pays any amount of Fees on its authorized capital prior to the merger, the amount shall be set off against the enhanced fees payable by the transferee company on its authorized capital.[66]

VI. Conclusion

Since, the advent of globalisation, many countries are faced with the challenge of resetting their economic structure in order to align themselves with the realities of dynamic global economic regime. Strategically important countries have already undertaken comprehensive revisions of their respective corporate laws. United Kingdom's Companies Act was revised during the 1980s. Subsequently, other common law countries which had borrowed their legal system from United Kingdom during colonial era, such as Australia and Canada, have also reviewed their laws and introduced several important comprehensive reforms. It is a widely followed idea that for an economy to survive the dynamic global market, reformation of the legal framework for

[61] *Ibid.*
[62] *Id.*, s. 233 (8).
[63] *Id.*, ss. 233 (9)(a), 233(9)(b).
[64] *Id.*, s. 233 (9)(c).
[65] *Id.*, s. 233 (9)(d).
[66] *Id.*, s. 233 (11) Proviso.

corporate sector and continuously keeping it up to date is essential. This idea is also manifest in case of India.

Prior to the enactment of the Companies Act, 2013., the Companies Act, 1956 provided the legal framework for corporate entities in India. The growth of corporate sector in pace with the Indian economy gave rise to the need for streamlining the existing legal framework. This need was also accentuated by the inconsistency created between the Indian law and the economic needs after the Liberalisation, Privatisation and Globalisation policy adopted by Government of India in 1991. The inconsistency arose due to creation of a liberalised economy which was still being governed by conventional laws which failed to cater to the needs of new entrants to the economy which wanted to introduce new and better operational practices. Additionally, under the erstwhile Companies Act, all the disputes involving the companies were adjudicated at the respective High Court. This led to a lot of burden of pendency of cases on the High Court's leading to accumulation of backlog. This in turn would lead to slowing down of dispute resolution procedure and consequently, delayed decision in company disputes.

When the Indian Government decided to overhaul the Indian Corporate Law regime, the issue of backlog of pending company cases before the High court was one of the most important issues which was sought to be resolved. It was felt that the Indian Corporate sector needed a separate body to adjudicate upon the disputes involving the corporate law. Therefore, when The Companies Act, 2013 was enacted, a special body known as the National Company Law Tribunal and National Company Law Appellate Tribunal was created under it.[67] As discussed above, the constitution of the NCLT and NCLAT is a paradigm shift aimed at establishing a specialized forum which was equipped to adjudicate all disputes/issues pertaining to companies in India. These tribunals acted as a platform to provide a simpler, speedier and more accessible dispute resolution mechanism.

The analysis of legal procedure of M&A in India has revealed that India has an elaborate procedure for the same under The Companies Act of 2013. The objective of laying down a detailed procedure for corporate restructuring, including M&A, was to have a clear and simplified procedure so as to make the process of M&A easy. However, the result is otherwise. Presently in India, a successful M&A arrangement involves the interplay of multiple

[67] *Id.*, ss. 408, 410.

legislations such The Companies Act, 2013, The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, National Company Law Tribunal Rules, 2016, The Competition Act, 2002 and other sector specific laws, rules and regulations. For example, the case study of merger of Bharat Financial Limited with IndusInd Bank shows how the requirement of taking multiple approvals delays the process of M&A. In that case, IndusInd Bank was to have Bharat Financial as Wholly Owned Subsidiary. Consequently, before the companies could approach the Tribunal, in addition to obtaining the approval of Stock Exchanges, CCI, RBI etc. on the scheme of arrangement, the bank had to file a separate application before RBI to seek their approval in establishing Bharat Financial as its WOS. This application took approximately three months to be decided. This case again shows how the requirement of obtaining multiple approvals delays the M&A process.

Coming to the aspect of judicial intervention in the process of M&A, case studies were done on some of the largest M&A deals by value that took place after coming into force of the M&A provisions under the Companies Act of 2013. The objective of the case studies was to understand the role of judiciary (tribunal) in the process of M&A of companies. The reason why large deals were selected for analysis, was that the companies involved in these deals have large market share in their respective sectors and they are strong enough to impact the market through their decisions. In this scenario, it was necessary to understand the judicial aspect of the M&A deals entered into by these companies since these deals had far reaching implications on the respective sectors and were therefore supposed to be dealt with caution in terms of time and processing of these deals before the judicial forums.

The analysis has been done by creating a timeline of the steps of M&A deal right from the first step i.e. the approval from the Board of Directors of the party companies to the last step i.e. the date of filing the order of Tribunal granting approval to the scheme of arrangement. The purpose of creating a timeline of the various stages of the deal was to understand how much time the deal actually took, which stages were completed in how much time, and most importantly, to determine that out of the total time of the deal, what was the time taken for completion of judicial proceedings. Further, delay in judicial proceedings were sought to be identified and the reasons for the same were to be determined. The timeline method also helped the author to do a comparative study between the timelines of various deals which involved similar factors.

Pursuant to the above discussion, the research proposes that a business restructuring deal i.e. M&A deal, is a contract between two companies. Ordinarily, a contract becomes binding or legally enforceable when both the parties agree to same thing in the same sense. The parties are not required to go to the court for its approval on the terms of contract. Barring few kinds of contracts, which are void ab initio, other contracts are generally perfectly legally binding unless one of the parties challenges the same before a court of law.

Similarly, if we proceed on the premise that a scheme of arrangement is actually a contract between two companies, who enter into this contract after gaining necessary approval from their respective stakeholders in accordance with their contracts with the respective company, the need to obtain the approval of the court becomes irrelevant. In other words, if the parties which are going to bear the impact of M&A i.e. the creditors, debenture holders, shareholders and Board of Directors, give their approval to the scheme of arrangement, getting it approved from the court is unnecessary. Having said that, it is without doubt that the remedy of challenging the scheme before the tribunal shall remain open to the stakeholders of the company. However, if the need to obtain the approval of court is waived off, the process of merger will become much faster, smoother and efficient. In any case, the approval of concerned authorities such as RBI, CCI, Income Tax Department etc. would still be required so as to ensure that the scheme is not in violation of Anti-trust laws or acts to the prejudice of shareholders.

From the aforesaid discussion, the author concludes that obtaining the approval of court on the scheme of amalgamation does not solve any purpose and rather makes the M&A process longer and more cumbersome. When in effect the actual test of the scheme from various perspectives is done by the statutory authorities, there is no valid justification for necessitating the practice of taking the matter to tribunal for its approval. This is because, after filing the petition for final approval, the subsequent procedure takes at least a couple of months to complete. This extension of time can be avoided if the need to get the approval of tribunal is waived off since it has already been discussed that the actual test of scheme at the touchstone of various principles such as anti-trust, equal treatment of shareholders, consumer welfare etc. is done by the statutory bodies whose approval has been mandated under the Companies Act, 2013.

Interestingly, having a merger procedure without the intervention of court is not a new concept. At this juncture, the author comes to the second aspect of this research, the concept of Fast Track Mergers. As discussed in detail in s. 5 above, FTM in India is allowed for special class of companies namely a merger between a parent company and a wholly owned subsidiary and or the merger between two small companies. Additionally, any other kinds of companies as declared by the government from time to time, are eligible to undergo the FTM process. According to the author, the basic premise on which the idea of FTM operates is that if the stakeholders of a company agree to a scheme of arrangement and if the scheme does not in general violate any law, then there is no need to visit the court for getting the same approved.

However, in India, this process is open to only special class of companies mentioned above. After an analysis of the procedure done in s. 5, the Author concludes that there is no reasonable explanation for making the process of FTM applicable to only two class of companies mentioned above. It is a notable feature of FTM that it can be applied to a company of any size and structure. In this background, it becomes difficult to explain the reason behind making FTM applicable to small companies only. Similarly, there is nothing in FTM procedure that hinders its applicability to companies related in various manners. Hence, its applicability to only parent-WOS relation is also beyond the purview of logical explanation according to the Author.

VII. Suggestion

It is suggested that the procedure for merger as laid down in the Companies Act, 2013 and The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 needs to be made more specific and definite timelines be strictly adhered to. At the same time, it is the need of the hour that the procedure be simplified so as to make it more efficient in terms of cost, time and effort. Here it is worth emphasising that the author is not arguing for de-regulation of the M&A activity. It is without doubt that the M&A sector needs to be regulated because of its very nature of promoting monopolistic behaviour and affecting competition in the market. It is well established that the M&A activity is, conceptually an anti-thesis of competition because it results in removal of competition by joining of hands between often competing entities. At the same time, the relevance of the corporate restructuring mechanism of a country to the ease of doing business cannot be undermined. In other words, a country with a heavily regulated, complex and time consuming restructuring process is much less likely to gain the attention of foreign companies as compared to a country that has a simple and quick procedure for corporate

restructuring. Such, country has better chances of attracting foreign direct investment and incoming foreign companies thereby creating much better avenues of economic growth for itself.

It is thus, suggested that the FTM procedure should be made optional for the parties to choose and it should be made available to all kinds of companies irrespective of their size, mutual relationship or any other factor. This becomes all the more important in case of non-hostile mergers since the arrangement in those cases is primarily strategic and the parties generally combine through free will.

Another major advantage of taking the M&A process out of the judicial purview will be the reduction of burden of pending litigation on the NCLT. Since the contracting parties have consented to the scheme, the traffic of approving the scheme shall be directed towards the concerned statutory authorities such as CCI, RBI, Income Tax Department thereby taking the load M&A petitions off the NCLT. This will not only quicken and simplify the process of M&A, but will also allow NCLT to give verdicts faster in other matters thereby increasing the pace of decision-making in general.

Additionally, in case the companies choose to go for the court, the author suggests that the process for business restructuring as laid down in the Companies Act, 2013 and The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 should be made more time efficient so as to quicken the process of merger in cases where the court is involved. As we have already discussed above, there are many stages in the conventional merger process where no time limit has been laid down in the Act and neither in the Rules. These lags furnish breeding grounds for the delays in the process of M&A, especially at the stages that involve proceedings before NCLT.

The current national and international corporate landscape has given rise to the need for simplifying laws governing the Indian corporate sector. So, that the laws act as catalysts in efficient corporate functioning and give to the companies a framework that would facilitate their faster growth. Today, the environment is highly competitive. Business operations have been taken over by technology. In this scenario, it is important that businesses be given increased autonomy for regulating their affairs, even to the extent of business restructuring. It is time to extend the policy of "minimum intervention" in corporate functioning so that

companies do not have to go to court for business restructuring. Even if the process of court is followed, it has a lot of room for bringing in more transparency and reasoned orders.

Hence, as a concluding remark, it would be trite to suggest that the process of fast track merger should be made applicable to all the domestic mergers and acquisitions and it should be for the companies to choose which procedure to follow. At the same time, the standard merger process should also be retained but it should be improvised to bring a time efficient procedure wherein M&A petitions are disposed of within minimum time so as to make the process cost, time and labour efficient. Having said that, it cannot be doubted that opening the doors of fast track merger process as an alternative to the standard merger procedure would reduce the pendency of M&A petitions in the tribunals.

Lastly, the environmental concerns have emerged as very crucial in business restructuring arrangements. Therefore, in the light of environmental obligations under India's BIT, with respect to the cross-border mergers, environmental obligations should also be listed in the Act and relevant rules so as to strengthen environmental obligations for parties to cross-border mergers. Even with respect to domestic M&A activity, just like the approval of CCI is mandatory under the procedure, so should be the approval of environmental protection agency of India. In addition, even with regard to domestic M&A activity, the parties should be obligated to report the environmental impact of the restructuring and should get the same approved from the Environmental Protection Agency.