

## LEGAL UPDATES

### **NCLT: NO REPRESENTATIONS REGARDING THE MERGER SCHEME FROM AUTHORITIES WITHIN 30 DAYS OF NOTICE, IMPLIES NO OBJECTION**

A case of an obligation to notify the transferor party was filed in the NCLT. The issue raised was that the Applicant companies that are proposing the merger of wholly owned subsidiaries by absorbing them in its holding under Sec. 230-232 of the Companies Act, should serve notices accompanied by a copy of the scheme to the respective Regional Director, Income Tax Authority, the RoC as well as GST Authorities. The case was adjudicated by Shri. Rajesh Sharma (Member – Technical) and Ms. Suchitra Kanuparthi (Member – Judicial). The applicant claimed that the current Scheme is a Plan of Amalgamation of the Transferor Company with the Transferee Company and their shareholders under Sec.s 230 to 232 of the Companies Act, 2013. They added that the Scheme had been consented to by the Board of Directors of the Applicant Company at their respective meetings for both companies. The purpose of the Composite Scheme was explained, and they further argued that, in light of the consent affidavits signed by the two equity shareholders of the Applicant Company, there is no need to call and keep a meeting of the Applicant Company's equity shareholders in order to consider and, if deemed appropriate, endorse the suggested Scheme with or without modification(s). The claim that the company had no secured creditors was then made. They argued that since the current Scheme is between the Applicant Company, the Transferor Company, and their shareholders as contemplated under Sec. 230(1)(b) of the Companies Act, 2013, there is no compromise or arrangement with any of the Unsecured Creditors and no sacrifice is required, convening and holding a meeting of the Unsecured Creditors of the Applicant Company is not necessary. Additionally, because all unsecured creditors would be compensated in the regular practice of business, the rights of the unsecured creditors would not be impacted. As a result, it was unnecessary to conduct a meeting of the applicant company's unsecured creditors to approve the merger plan. NCLT observed that the companies should serve the notice via Registered Post-AD/Speed Post and Hand Delivery to

the respective GST Authority as per Sec. 230(5) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016, and clarified that if the Tribunal does not receive any response from the Goods and Service Tax Authority within 30 days from the receipt date of the notice, it would be assumed that the authority does not object to the proposed scheme. The Transferor Company should also serve the notice of meeting via registered Post-AD/Speed Post and Hand Delivery to the Official Liquidator (OL) as per Sec. 230(5) of the Companies Act, and appoint an OL to examine the Company's books for the past 3 years and submit its representation to the Tribunal. It further observed that the authorities mentioned could submit their representations within 30 days from the receipt date of this notice to the Tribunal and if not, it would be presumed that they have no representations to make. NCLT clarifies that in case no representation is received within 30 days from receipt of the notice, it will be assumed that the OL has no representation and hence has no objection against the proposed scheme. Therefore, the Transferor Company was required to serve notices in the prescribed manner to both authorities. NCLT directed the applicant to serve the required notices.