

LEGAL UPDATES

NCLT: LACK OF ANY ADVERSE OBSERVATIONS BY THE AUTHORITIES IS EQUIVALENT TO NO OBJECTIONS, SANCTIONS MERGER SCHEMES

The Amravati NCLT bench approved the merger scheme as proposed by the Transferor (Petitioner) and the Transferee, observing that the scheme was accepted and approved by the required majority of shareholders and creditors of the petitioner. The petitioners submitted that if merely 7 shareholders have raised any objection with regard to the scheme then the said equity shareholders are ineligible to raise objections since they had less than 10% stakes. The bench observed that u/s. 230(4) of the Companies Act ('the Act') it has been stipulated that the objection to any arrangement can be made only by the shareholders having more than 10% shareholding in order to be eligible to raise objections and in the instant case the total shareholding is less than 10% of the shareholders who have raised objections. The Adjudicatory tribunal ruled that the contention of the petitioner is good in the eyes of law, referring to rule 8(3) of the Companies rules, the bench highlighted that the shareholders are only required to make representations and hence, a no-objection is not required to be obtained from them and further held that, "When such representation is only that they have no adverse observation, it amounts to having no objection." Hence, the adjudicatory tribunal upheld that the petitioner has acted in accordance with the Act with regard to the merger and hence, there is no reason to disallow the merger benefits to the petitioner and directs them to take measures as per the statute with regard to the approved scheme.