

Companies Bill to change corporate restructuring

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The Companies Bill finally received presidential assent after being passed by the Rajya Sabha on 8 August. The bill designates the National Company Law Tribunal as the authority to decide on matters relating to compromise, arrangement and amalgamation (reconstruction) and no longer necessitates approval of the high court.

Key changes

Frivolous litigation: The present Companies Act, 1956, does not provide any threshold for raising objections and in the past shareholders with minuscule holdings and creditors with insignificant outstanding debt have objected to schemes for reconstruction on frivolous grounds. Under the bill objections can be raised only by shareholders holding a minimum 10% stake or creditors holding more than 5% of the total outstanding debt as per the latest financials.

Fast-track merger: Under the act, in an amalgamation of a wholly owned subsidiary into a holding company, dispensation is sought from the procedure on the basis of judicial precedents. However, the principle is not unambiguously applied and followed by all courts. The bill provides a short and time-bound procedure for the merger of two small companies or between holding company and its wholly owned subsidiary. The scheme after being approved by 90% in value of the creditors will be filed with the central government (CG), registrar of companies (ROC) and official liquidator (OL). It will be approved by the CG where no objections are received from the ROC or the OL.

Cross-border merger: The act only permitted merger of a foreign company with an Indian company. The bill in addition permits merger of an Indian company with a foreign company subject to

prior approval by the Reserve Bank of India (RBI).

Treasury shares: Creation of treasury shares will no longer be permissible as the bill prohibits the transferee company to hold shares in its own name or under a trust whether on its behalf or on behalf of any of its subsidiary or associate companies.

Merger of listed with unlisted company: In case of merger of a listed transferor company into an unlisted transferee company, the bill provides an option to the transferee company to continue as an unlisted company with an exit offer being made to shareholders at a price that accords with a pre-determined formula/fair value and which is not less than the price arrived as per Securities and Exchange Board of India (SEBI) regulations.

Purchase of minority shareholding: The bill also offers a window for purchase of minority shareholdings by shareholders holding at least 90% of shares, who must notify their intention of buying out the minority's shares at a price determined by a registered valuer.

Claim of set-off: The bill permits a transferee company to claim set-off of any fees paid by the transferor company on its authorized capital.

Auditor's certificate: Under the bill, filing of an auditor's certificate to the effect that the proposed reconstruction conforms with accounting standards is a precondition for the issuance of the tribunal's order.

Notice: Under the act, notice of the meeting and relevant documents must be submitted only to the concerned creditors, shareholders or debenture holders. Under the bill, notice must be sent to the CG, income tax authorities, RBI, SEBI, ROC, stock exchanges, OL, Competition Commission of India if necessary, and other sectoral regulators or authorities that are likely to

be affected by the reconstruction, to seek representations, failing which no objection will be deemed. Notice must be sent to debenture-holders of the company as well as to members and creditors and must in addition to the terms of reconstruction include a copy of the valuation report and their effect on creditors, key managerial personnel, promoters and non-promoter members and the debenture-holders.

Dispensing with the meeting: Under the bill, the tribunal may dispense with calling of the creditors' meeting where at least 90% in value of the creditors provide consent by way of an affidavit.

Buy-back offer: The act is silent on whether more than one buy-back offer can be made in one year. The bill specifies that in addition to complying with other provisions, no buy-back offer will be made for a period of one year from the date of the preceding buy-back offer.

Other key changes include permitting voting by postal ballot in addition to voting in person or proxy, mandatory disclosure of reduction of share capital and any scheme of corporate debt restructuring, stipulating an appointed date from which a scheme will be effective, etc.

Conclusion

The above changes signify the intent of the legislature to adapt to the changing commercial and economic climate of corporate restructuring, providing for a more transparent and robust mechanism. Amendments will need to be gradually carried out in related statutes such that harmony in interpretation and practice is ensured.

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