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When Speed Meets Structure: Practical Challenges in Implementing Corporate Restructurings under Companies Act, 2013 Free

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The scheme of compromise, arrangement and amalgamation under Sections 230–232 of the Companies Act, 2013 (“CA 2013”) represents one of the most sophisticated corporate restructuring mechanisms in Indian company law. Section 233 of CA 2013, introduced as a “fast track” alternative, was intended to reduce procedural burdens initially for small companies, holding-wholly owned subsidiary mergers, start-ups and later extended to certain intra-group restructurings and listed and unlisted companies.

More than a decade into notification of these provisions, however, practical experience before the National Company Law Tribunal (“NCLT” or “Tribunal”) and Regional Directors, Registrar of Companies, Official Liquidator, Reserve Bank of India (for cross-border restructurings), Securities Exchange Board of India and stock exchanges (in case of listed companies), Insurance Regulatory and Development Authority of India (for insurance companies), Competition Commission of India (where applicable) and Income Tax Department (“Regulators”) reveals a gap between statutory design and operational reality. Several provisions—though conceptually sound—have proven commercially difficult, procedurally unpredictable, or structurally impractical.

This article identifies recurring implementation challenges and examines whether legislative recalibration is warranted.

[1] Implementation Challenges:

1. The Illusion of 30 Days – Regulators Representations:

Under Section 230(5) of CA 2013, notices of the scheme are issued to Regulators who are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of 30 days from the date of receipt of such notice, failing which, *it shall be presumed that they have no representations to make on the proposals.*

However, in practical reality –

- Regulator’s reports or representations often extend well beyond 30 days.
- There is no statutory consequence for delayed response from the Regulators.
- In practice, certain NCLT Benches wait for the Regulators representations in the form of reports even beyond the statutory timelines.

Structural Gap -

While the provisions of Section 230(5) of CA 2013 contemplates a “deemed no objection” mechanism, the absence of strict enforcement or Tribunal’s uniformity in enforcement renders the timeline aspirational rather than binding.

This affects transactional certainty, particularly in time sensitive restructurings.

2. Inconsistent Lenses for Scrutiny: Transferor vs Transferee; Scheme-Centric vs Entity-Centric

As mentioned in (a) above, Per Section 230(5) of CA 2013, petitioner companies are required to send notice of the proposed scheme to the Regulators as may be applicable and such Regulators are required to make their representations in the form of a report within 30 days of receipt of such notice.

The provision, however, does not expressly specify whether regulatory scrutiny is intended to extend equally to both the transferor and transferee companies. This legislative silence has resulted in divergent interpretational practices across jurisdictions and Regulators.

Structurally, an amalgamation under Section 232/233 of CA 2013 contemplates dissolution without winding up of the transferor company, while the transferee company survives as the continuing entity. Consistent with this architecture, the Official Liquidator traditionally confines the scrutiny to the affairs of the transferor company, since it is the entity that ceases to exist and whose past conduct must be examined for prejudice to members or public interest. This approach reflects the functional rationale underlying the requirement of the Official Liquidator’s report.

In contrast, practice indicates that –

- the Registrar of Companies and Regional Director extend scrutiny to both transferor and transferee entities. Observations are, in some instances, sought regarding the historical compliances, filings, or governance record of the transferee company, notwithstanding that it remains a going concern and is not subject to dissolution.
- Similarly, the Income Tax Department's approach varies: while in some jurisdictions scrutiny is confined only to the affairs of the transferor company in line with the approach adopted by Official Liquidator, and in some jurisdictions scrutiny extends to the transferee company and the scope of scrutiny expands to the broader assessment history and pending demands of the transferee company which is unwarranted as the transferee company continues to exist.
- Further, in some instances Regulators conduct detailed scrutiny beyond their core jurisdictions. For example, the Official Liquidator has been seen commenting on exchange control compliances, which fall within the regulatory domain of the Reserve Bank of India, and on transfer pricing matters, which are administered by the Income Tax Department. Such cross-domain observations, while perhaps motivated by caution, risk expanding the scope of merger proceedings beyond their intended supervisory character and blur the demarcation between scheme approval, specialised regulatory enforcement and results in significant delays.

The absence of clearly articulated boundaries for regulatory scrutiny results in non-uniform regulatory practice equating the scope of scrutiny for a dissolving entity with that of a continuing entity.

Greater clarity in defining whether regulatory review is scheme-centric or entity-centric would enhance consistency and align the scrutiny process with the structural logic of amalgamation jurisprudence.

3. Two Dates, One Deal: Decoding the Legal Fiction of Retrospective Appointed Date

Section 232(6) of CA 2013 read with Ministry of Corporate Affairs ("MCA") [\[2\]](#) General Circular No.9/2019 dated August 21, 2019 permits flexibility in determining the "appointed date" of a scheme, even allowing retrospective effect beyond a year from the date of filing subject to providing a justification for the same in the scheme.

This date may be a specific calendar date (preceding or succeeding the filing of application) or tied to an occurrence of event or fulfilment of pre-conditions/requirements as agreed between the parties

Appointed Date is the date with effect from which the scheme shall become operative and whereas the Effective Date is the last of the dates on which the order of the Tribunal or Regional Director (in case of fast track mergers) sanctioning the scheme is filed with Registrar of Companies by the companies involved in the scheme.

Scheme becomes effective from the Effective Date but operates from the Appointed Date which is retrospective date.

Integration difficulties –

When NCLT approval for the scheme is delayed:

- Financial statements may require re-statement.
- Tax returns may need revision.
- Minimum Alternate Tax implications and deferred tax accounting complications arise.
- Goods and Service Tax credit transitions become administratively burdensome.

The longer the approval timeline, the more complex the retrospective integration becomes. The law provides flexibility; practice creates distortion.

4. Auditor's Certificate and Ind AS Complexities in Amalgamations:

Section 232(3) of CA 2013 requires a certificate from the statutory auditor of the Transferee Company confirming compliance of the scheme's accounting treatment with notified accounting standards.

Practical Friction –

- Where Ind AS applies, interpretation of pooling of interest vs purchase method may be contentious.
- Auditors often qualify their certificates pending NCLT approval.
- Differences in treatment of reserves, goodwill, and minority interest can trigger Regulators queries.

This creates a paradox: auditors are asked to confirm compliance before the scheme becomes legally effective.

5. Compromise-Neutral Schemes and the Burden of Uniform Procedure:

Even in pure amalgamations involving (i) no debt restructuring; (ii) no variation of creditor rights; (iii) no compromise between the company and creditors, meetings of creditors are often directed unless formally dispensed with basis the consent affidavits provided by creditors.

In practical reality –

- Secured lenders independently insist on separate contractual approvals.
- Trade creditors rarely attend meetings.
- Significant procedural cost is incurred without substantive creditor engagement.

This raises the question whether a "compromise-neutral" amalgamation should mandatorily trigger the

same procedural requirements as a debt restructuring.

6. Absence of Outer Time Limit for NCLT Disposal:

Unlike insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 and process under Section 233 of CA 2013 for sanctioning the scheme under fast track merger, there is no strict statutory timeline for disposing off the applications under Section 232 of CA 2013.

Tribunal's workload, administrative adjournments, and regulatory delays collectively result in extended completion cycles. This unpredictability significantly affects (i) commercial closing conditions; (ii) funding arrangements; (iii) integration planning; (iv) cost associated with the restructuring and implementation of the scheme.

7. Stamp Duty Uncertainty Post-Sanction of the Scheme:

Stamp duty on orders sanctioning schemes is governed by state-specific stamp legislations, and judicial precedents have recognised that such orders constitute "instruments" liable to duty as 'conveyance'.

However, implementation of scheme reveals several complexities –

- State stamp authorities frequently re-assess the valuation, notwithstanding that valuation has already been scrutinised by NCLT during the proceedings. Authorities may independently determine the market value of shares and compute duty, accordingly, sometimes adopting methodologies different from those placed before the Tribunal.
- Stamp duty treatment varies significantly across states. Some states levy duty on the value of shares issued by the transferee company; others assess duty on the market value of immovable property transferred; yet others adopt hybrid approaches. This lack of uniformity creates unpredictability, particularly where assets of the transferor are situated in multiple states.
- Adjudication proceedings before stamp authorities is significantly time-consuming and as a result operational integration and post-merger restructuring are delayed despite the scheme having approved by the Tribunal.

The absence of harmonised stamp duty treatment undermines finality of sanctioned schemes.

8. Scheme Sanctioned, Refund Withheld: Post-Merger Tax Friction:

Under the Income Tax Act, 1961 ("IT Act, 1961"), once the scheme is sanctioned under Section 232/233 of CA 2013, (a) the transferor company stands dissolved without winding-up; (b) all assets and liabilities vest in the transferee which includes tax refunds.

Section 170 of IT Act, 1961 (Succession to business otherwise than on death) provides that, successor (transferee company in our context) becomes liable for tax and at the same time it is also entitled to refunds.

Practical difficulties –

- Although income tax and GST refunds legally vest in the transferee company upon sanction of a scheme, practical realisation of such refunds is often delayed. Income tax refunds under the IT Act, 1961 are PAN-linked and system-driven; once the transferor company stands dissolved and its PAN is deactivated, refunds may continue to be processed in the name of the transferor and directed to its bank account. Where such account has been closed post-amalgamation, credit failures occur, requiring rectification requests and manual intervention.
- Similar constraints arise GST as refunds are GSTIN-based and portal limitations may prevent filing or processing after cancellation of registration.

The disconnect between universal succession under company law and entity-specific tax administration frequently results in significant delays in securing refunds despite the scheme having attained legal finality.

Section 233 of CA 2013: Fast Track or Fragile Track?

Section 233 of CA 2013 was introduced to reduce procedural load initially for mergers small companies, start-ups and holding and wholly owned subsidiaries. Subsequently, the scope of entities eligible for fast track mergers was expanded to wider set of unlisted companies, group companies, foreign holding and companies with their wholly owned Indian subsidiaries and listed companies (being transferee company only). However, practical barriers limit its usage.

9. 90% Approval Threshold: A Structural Impediment:

Section 233(1)(b) of CA 2013 requires approval of members holding at least 90% of the total number of shares and such approval should come only at a shareholders meeting while creditors may grant approval either at a meeting or through written consent representing 9/10th in value.

However, the MCA has not aligned the manner of obtaining shareholder approval with that of creditors—written consents from shareholders, particularly in closely held companies, could have avoided the need for formal meetings and saved valuable time in the process.

Practical Constraint –

- Requiring approval from members holding 90% of the total number of shares is often impractical, particularly for large public unlisted companies and virtually impossible for listed transferee companies, where securing participation of such a large proportion of shareholders is highly unlikely.
- Even one dissenting minority shareholder can derail the process.
- Start-ups with ESOP holders face aggregation difficulties.

- Dormant shareholders become procedural bottlenecks.

The inclusion of listed transferee companies as eligible entities will remain largely theoretical and will never be put to implementation because of impractical shareholder approval requirement.

Adopting a threshold based on the value of shares, as applicable for creditors, or as applicable under Section 232 of CA 2013, may have been more workable and commercially sensible approach.

Reconciling Stakeholder Protection with Commercial Efficiency:

The legislative intent of Sections 232 and 233 of CA 2013 appears to balance the (i) minority protection; (ii) regulatory oversight; (iii) transactional flexibility. However, the effective implementation of these provisions is defeated by –

- Process-heavy oversight vs business speed
- Uniform procedure for diverse merger types
- Tribunal discretion without timeline limitation

As a result “fast track” is more in theory for listed transferee companies and widely held public limited companies than in practice, and “regular track” is process-heavy.

Conclusion:

Sections 232 and 233 of CA 2013 provides a progressive restructuring framework. However, procedural layering, regulatory overlaps, and absence of enforceable timelines dilute the objective of efficient corporate restructurings.

If the corporate restructuring process is to become smoother and more predictable, certain practical improvements may be considered under the Companies Act, 2013 by way of amendments such as:

- Tribunals strictly enforcing deemed approval if Regulators do not respond within 30 days.
- Put in place an online portal where companies can upload all the documents for Regulatory scrutiny and eliminate the physical submissions to speed up the process.
- Introducing statutory outer timelines for NCLT disposing off the applications.
- Reducing 90% approval threshold under Section 233 of CA 2013 to a supermajority approval aligned with Section 232 of CA 2013 and provide for written consent approvals for members.
- Defining clearly the regulatory scrutiny is scheme-centric or entity-centric.
- Distinguishing between compromise schemes and pure amalgamations for procedural intensity.
- Creating uniform stamp duty guidelines for sanctioned mergers.

While the Regulators and authorities continue to discharge their responsibilities with diligence and in furtherance of public interest, greater procedural clarity and institutional co-ordination would significantly enhance the efficiency of the framework.

As India continues to position itself as a global investment destination, corporate restructuring laws must evolve from procedural formality to transactional facilitation—without compromising stakeholder protection.

[1] References to mergers and amalgamations in this article shall, unless the context otherwise requires, be construed to include demergers, division of undertakings or any other compromise or arrangement effected through schemes of arrangement under Sections 230–232 of CA 2013.

[2]<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM2MTk=&docCategory=Circulars&type=open>