Our Views

Restructure the corporate restructuring laws

The corporate sector is a vital element of any economy. The listed corporates in India have a market cap of over US$ 3 trillion. Overall, the corporate sector, both listed and unlisted, contributes more than 50% of direct taxes in the country. Therefore, it is important to facilitate smooth functioning of this sector and to help enhance its efficiency to be globally competitive. Towards this, one of the areas that requires decongestion is corporate restructuring. The process today is quite tedious and time-consuming. While as a country we have made significant progress on the corporate incorporation process, both winding up and restructuring process remain long drawn and inefficient.

Of course, there has been progress from the time prior to the Companies Act 2013, when the process of corporate restructuring was court-driven and extremely lengthy. An approval of the High Court was required for any merger, acquisition or restructuring. With the Companies Act 2013, the National Company Law Tribunal (NCLT) was empowered to approve or reject schemes of arrangement, mergers, demergers, and corporate restructuring plans proposed by both listed and unlisted companies. This step was aimed at improving the ease of doing business and providing a specialized forum for handling company law matters. The transfer of jurisdiction for scheme approvals from the High Court to the NCLT was intended to expedite the approval process and to provide a more efficient and dedicated platform for resolving company-related issues.

Initially established to handle schemes of arrangement under the Companies Act, the NCLT's workload today has expanded to include cases under the Insolvency and Bankruptcy Code (IBC). Consequently, there have been delays in approving schemes of arrangement, with an average waiting period of 6 to 9months or more between the application filing and approval stages. The NCLT currently has 12,963 cases of insolvency, 1,181 cases of merger and amalgamation (M&A), and 7061 other cases, with a total of 21,205 pending cases as of January 2023.

These delays in approval of schemes negatively impact the ease of doing business, causing disruptions, unsettling employees, and draining management resources or an outright deal failure. This, in turn, will impact India’s global economic ranking in ease of doing business.

Notably, SEBI, as a capital markets regulator for listed companies, has also been monitoring these schemes. The SEBI regulations for listed companies ensures that M&A transactions in the Indian securities market are conducted in a fair and transparent manner, with all relevant information made available to investors and with the approval of the stock exchanges and shareholders. SEBI, via stock exchanges, provides its comments and consent.

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The scope of the NCLT's power while adjudicating a scheme of arrangement is ideally limited to overseeing potential violations of the law and safeguarding the interests of stakeholders. It functions as a watchdog, without significant involvement in the commercial aspect of the scheme. Therefore, NCLT's authority is primarily supervisory in nature. Its role is to broadly ensure legal compliance and to protect public interest. This can be achieved by applying broad principles inherent in any scheme such as fairness and investor protection.

In case of Banks, once the scheme of amalgamation is approved by the requisite majority of shareholders, in accordance with the provisions of section 44 of The Banking Regulation Act, 1949, RBI has the discretionary authority to authorize the voluntary merger of two banking entities. This enables banks with faster approvals and implementation of M&A schemes which in turn helps in reduction in the cost of doing business.

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