Our Views

Speed of Doing Business for Ease of Doing Business: Streamlining India's Corporate Restructuring

Corporate restructuring is the process of reorganizing a company's structure, operations, or ownership, through mergers, acquisitions, demergers, or other arrangements, to improve efficiency, unlock value, or respond to changing market conditions.

Being a vital mechanism for a dynamic market in India, listed companies alone have a market capitalization over USD 5.13 trillion, and corporation tax alone had a GDP contribution of a little over 3% in the last financial year. With such high stakes, streamlining the corporate restructuring process is essential. A smooth, efficient restructuring regime means companies can adapt quickly, investors gain confidence, and the overall business climate remains robust.

Not long ago, corporate restructurings in India used to be court-driven and extremely drawn-out processes. The Companies Act 2013 sought to modernize this by shifting jurisdiction from High Courts to a specialized tribunal. Thus, the National Company Law Tribunal (NCLT) was empowered to approve or reject schemes of arrangement, mergers, demergers, and other corporate restructuring plans for both listed and unlisted companies.

In practice, while NCLT did bring some improvement over the High Courts, the gains have been limited. Over time, NCLT's workload expanded dramatically beyond just Companies Act schemes. Notably, with the advent of the Insolvency and Bankruptcy Code, 2016, NCLT became the **default forum for insolvency resolution** in India. The tribunal that was meant to fast-track restructuring approvals found itself swamped with thousands of bankruptcy cases, in addition to other company law matters. The transfer of jurisdiction achieved one goal, **moving matters out of the general courts**, but it also inadvertently concentrated a vast array of complex proceedings (from mergers to insolvency to shareholder disputes) in a single institution, leading to bottlenecks in the restructuring approval process once again.

The data on NCLT case pendency and throughput underscore the severity of the challenge. As of March 2025, over 15,000 cases were pending before the NCLT. This congestion directly translates into delays. On average, companies must wait **9 to 12 months** or more from the time of filing a scheme of arrangement to finally getting NCLT approval. It is not uncommon for straightforward mergers, even those approved by all shareholders and regulators, to languish for several months awaiting a tribunal hearing and order. Such delays impose significant costs: business plans are put on hold pending legal sanctions, synergies from mergers are deferred, and uncertainty looms over employees and investors.

A key reason for the delay is the **overlap** of NCLT's **restructuring function with its insolvency function**. Under the IBC, resolution proceedings are time-bound (330 days outer limit, though often extended) and tend to dominate tribunal schedules due to their urgency and the stakes involved. As a result, merger/demerger applications (which have **no statutory deadline**) often **take a backseat**.

Another issue is that the NCLT process suffers from delicacy of efforts. For listed companies, before approaching NCLT, a scheme must be vetted by SEBI (via stock exchanges) for compliance with securities laws and minority shareholder protection. After SEBI and shareholders' approval, the matter goes to NCLT, which primarily checks whether due process was followed. In effect, NCLT's role in many merger cases is largely **supervisory**, ensuring legal compliance, rather than **evaluating the business merits of the deal**. This raises the question: **Is the extra layer of NCLT approval always necessary, especially in cases where regulators and stakeholders are already on board**?

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A favorable jurisprudence is ideally one that minimizes judicial intervention in routine business matters. In this regard, India can draw valuable lessons from global models that have struck a more efficient regulatory balance. The **United States**, for instance, adopts a **market-led**, **regulatory-overseen model** where corporate mergers typically do not require court approval unless a dispute arises. Regulatory bodies like the SEC and the antitrust authority step in only for specific oversight, and even those processes are governed by well-defined, time-bound frameworks. This clarity and predictability reduce legal uncertainty and allows corporate transactions to close swiftly, often in **under three months**. A similar principle underlies **Singapore's** restructuring framework, where administrative merger routes are standard and courts play a role only when necessary. A step ahead of USA in terms of regulatory feasibility, Singapore's Companies Act permits court-free statutory amalgamations, where two companies can merge simply by **gaining shareholder approval** and notifying the regulator (ACRA), thereby further reducing the role of state (let alone judiciary) in what essentially is supposed to be a market driven practice. The **United Arab Emirates** also conducts corporate mergers under its Commercial Companies Law follow an **administrative process**, requiring **no court approval** unless objections arise from creditors or significant minority shareholders. Even then, the objection period is **capped at 30 days**, after which the merger proceeds by default. The UAE has further institutionalized time-bound regulatory review: its Competition Committee, empowered under the 2023 Competition Law, must assess large merger notifications within 90 days. Globally, **trust is placed in regulatory frameworks and judicial intervention, reserved for exceptions, is not the norm.** By emulating **global best practices**, India has the opportunity to reimagine its corporate restructuring ecosystem.

Encouragingly, the Indian government signaled in the latest budget that it similarly intends to extend and simplify such speedy merger processes for a broader set of companies. In the Union Budget speech in Feb 2025, the Finance Minister announced that "***requirements and procedures for speedy approval of company mergers will be rationalized.*** *The scope for fast-track mergers will also be widened and the process made simpler.*" The government has shown intent, and thus, a timely policy recommendation is warranted.

The stated objectives of efficiency and regulatory comity with globally aligned standards can be achieved in two ways.

For **unlisted entities** a potential path to fast-track restructuring is to expand the mandate for the Regional Directors (RDs) of Ministry of Corporate Affairs (MCA) who already oversee certain corporate approvals. India's legal framework already contains a germ of this idea in the form of "**Fast Track Mergers**." The Companies Act, 2013, provides a simplified route for certain small mergers (e.g. between a holding company and its wholly-owned subsidiary, or between two small companies) where **NCLT approval is not required**. This fast-track mechanism is narrow in scope, applicable only to small firms or intra-group restructurings. However, it **demonstrates the viability of bypassing the tribunal** when matters are **straightforward or low risk**. In fact, to make fast-track mergers more effective, the government amended the rules in 2023 to enforce strict timelines: the RD must ordinarily give confirmation within 45 days (if no objections) or 60 days (if minor objections) of receiving the scheme, failing which the scheme is deemed approved.

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Alternately, the government can create a **"Corporate Restructuring Authority", akin to SEBI**, for approving schemes of arrangement of unlisted companies. Such an authority would operate under the MCA and specialize in **corporate restructurings of privately held companies** with a mandated timeline crossing which the proposal shall be considered passed *per defaltam*. NCLT shall only be resorted to in cases where the proposed authority finds something amiss. Such a dedicated body would bring several advantages: it would **build expertise** in restructuring, corporate valuation, accounting, and legal compliance for merger schemes, leading to more **consistent and informed decisions;** it would be more **accessible**; and it could maintain **faster turnaround** times. In essence, unlisted companies would get a regulator dedicated for their restructuring needs, ensuring they are **not left behind in the push for efficiency.**

For listed companies, a compelling case can be made that the final approval of merger/demerger schemes should be handled by the SEBI, without requiring NCLT intervention. SEBI is already deeply involved in the process. As the capital markets regulator, it reviews and comments on every scheme of arrangement involving a listed firm. No listed company merger or demerger can even be filed at NCLT without prior SEBI approval and a compliance certificate from the stock exchange. In other words, SEBI serves as a **first- line gatekeeper**. SEBI has the **expertise and mandate to protect investors**, which is the **core concern in listed-company restructurings**. The NCLT's authority in such cases is primarily to act as a watchdog, ensuring the procedure was fair, minority shareholders and creditors were not short-changed, and all legal formalities are in order. Thus, by the time a scheme has passed through SEBI and shareholder approvals, the **role left for NCLT is quite limited and arguably adds redundant delay**.

A useful precedent exists in India's banking sector. **Bank mergers do not go to NCLT at all.** They are governed by a separate mechanism under the Banking Regulation Act, wherein the final authority to sanction the merger lies with the RBI, not a court or tribunal. This framework has worked well to facilitate faster consolidation in the banking industry, a **testament to the efficacy of this model**.

SEBI could play an analogous role for listed non-bank companies, where it could act as a nodal authority, would cut out several months of waiting and procedural hearings, leading to shorter timelines for deal closure, reduced legal uncertainty, and one less layer of regulatory cost for companies.

Delegating listed-company schemes entirely to SEBI, expanding fast-track merger eligibility, and creating a dedicated Corporate Restructuring Authority under the Ministry of Corporate Affairs for unlisted firms would not only cut down on procedural bottlenecks, but also align India's business landscape with the regulatory agility of leading economies. This must be a timely reform, to power the **next phase of India's growth story**.

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