

Compromises, Arrangements & Amalgamations

Question 1

The shareholders and creditors of Superfine Limited, in a meeting convened for approval of a scheme of reconstruction of the company, passed resolutions. The scheme of reconstruction provided for the following:

- (i) Sale of plant machineries and appropriation of proceeds for payment of outstanding wages, tax dues and repayment of loan. Unsecured creditors to forego 60% of their claims against the company and
- (ii) Receive debentures for the balance amount. A few shareholders and creditors raised objections against the said arrangements.

Advise the directors about the steps to be taken to give effect to the proposed scheme under the Companies Act, 2013.

OR

Eternal Health Limited was facing acute financial difficulty as operations were continuously disrupted due to (a) non-availability of raw material (b) successive drought in its marketing areas and loss of demand and (c) frequent breakdown due to non-replacement of old plant and machinery. On the verge of liquidation, the Management proposes one last arrangement between creditors and the company, whereby the creditors have to forego 50 % of their dues to the company. This has evoked strong protest from some of the creditors who may block the arrangement. You are requested to examine the arrangement in the light of the Companies Act, 2013 and advise the course of action/procedure to be adopted by the company to implement the same.

Answer

The provisions pertaining to Section 230 of the Companies Act 2013 are applicable. The steps taken to give effect to the proposed scheme are as follows:

1. **Application by company or creditor or class of creditors or class of members to Tribunal.**
2. **Tribunal may on the application call a meeting of creditor or class of creditors or class of members to Tribunal.**
3. **The following documents shall be filed to the Tribunal**
 - (a) all material facts relating to the company like-financial statements, auditors report, copy of pending investigation.
 - (b) reduction of share capital of the company, if any.
 - (c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value.
4. **Notice of such meeting** shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report explaining their

effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders.

5. The notice shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot.
6. The notice along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and there representations shall be taken. If no representation is received within 30 days it shall be presumed that no representation is received.
7. **Approval at meeting-** Where, at a meeting, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on all the parties.
8. Tribunal shall pass the necessary order to give effect to the scheme of compromise or arrangement.
9. The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.

Question 2

A meeting of members of DEF Limited was convened under the orders of the Court for the purpose of considering a scheme of compromise and arrangement. The meeting was attended by 300 members holding 9,00,000 shares. 120 members holding 7,00,000 shares in the aggregate voted for the scheme. 140 members holding 2,00,000 shares in aggregate voted against the scheme. 40 members holding 1,00,000 shares abstained from voting. Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme was approved by the requisite majority?

Answer

As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held **representing 3/4th in value**, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing 3/4th Value shall be counted of the following:

- ◆ the creditors, or
- ◆ class of creditors or

- ◆ members or
- ◆ class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The **three-fourths value** is to be computed with reference to **paid-up capital held by members present and voting at the meeting.**

In this case 300 members attended the meeting, but only 260 members voted at the meeting. As 120 members voted in favor of the scheme the requirement relating to majority in number (i.e. 131) is not satisfied.

260 members who participated in the meeting held 9,00,000 shares, three-fourth of which works out to 6,75,000 while 120 members who voted for the scheme held 7,00,000 shares. The majority representing three-fourths in value is satisfied.

Thus, in the instant case, the scheme of compromise and arrangement of DEF Limited is **not approved** as though the value of shares voting in favor is significantly more, the number of members voting in favor do not exceed the number of members voting against.

Question 3

Long Lasting Ltd. applied to the Tribunal for the approval of proposed merger scheme. State the process to be complied with for the approval of the proposed merger scheme drawn by the directors of the Long Lasting Ltd.

Answer

Filing of an application for purpose of reconstruction or companies involving merger/ amalgamation or transfer of undertaking, property etc.:

Where an application is made to the Tribunal under **section 230** for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
- (b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted. Where an order has been made by the Tribunal, the merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the relevant information for the meeting in compliance with section 232(2) of the Companies Act, 2013.

Question 4

A meeting of members of ABC Limited was convened under the orders of the Court to consider a scheme of compromise and arrangement. Notice of the meeting was sent in the prescribed manner to all the 600 members holding in the aggregate 25,00,000 shares. The meeting was attended by 450 members holding 15,00,000 shares. 210 members holding 11,00,000 shares voted in favor of the scheme. 180 members holding 3,00,000 shares voted against the scheme. The remaining members abstained from voting.

Examine with reference to the relevant provisions of the Companies Act, 2013 whether the scheme is approved by the requisite majority.

Answer

As per section 230 (6), of the Companies Act, 2013 where majority of persons at a meeting held

representing $\frac{3}{4}$ th in value, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order. The majority of person representing $\frac{3}{4}$ th Value shall be counted of the following:

- ⊕ the creditors, or
- ⊕ class of creditors or
- ⊕ members or
- ⊕ class of members, as the case may be,

The majority is dual, in number and in value. A simple majority of those voting is sufficient. Whereas the 'three-fourths' requirement relates to value. The three-fourths value is to be computed with reference to paid-up capital held by members present and voting at the meeting.

In this case out of 600 members, 450 members attended the meeting, but only 390 members voted at the meeting. As 210 members voted in favor of the scheme the requirement relating to majority in number (i.e. 196) is satisfied. 390 members who participated in the meeting held 14,00,000, three-fourth of which works out to 10,50,000 while 210 members who voted for the scheme held 11,00,000 shares. As both the requirements are fulfilled, the scheme is approved by the requisite majority.

Question 5

ABC Limited is a wholly owned subsidiary company of XYZ Limited. The Company wants to make application for merger of Holding and Subsidiary Companies under Section 232. The Company Secretary of the XYZ Limited is of the opinion that company cannot apply for merger as per section 232. The company shall have to apply for merger as per section 233

i.e. Fast Track Merger. Is the contention of Company Secretary being valid as per law?

Answer

As per section 233 (1), notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered between,

- ▶ 2 or more small companies
- ▶ a holding company and its wholly-owned subsidiary company. If 100% of its share capital is held by the holding company, except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187
- ▶ such other class or classes of companies as may be prescribed.

The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Hence, here the Company Secretary of the XYZ limited has erred in the law and his contention is not valid as per law. The company shall have an option to choose between normal process of merger and fast track merger.

Question 6

A scheme of amalgamation was approved by overwhelming majority of members of both the merging companies at meetings called as per directions of the Court. When the scheme of amalgamation was awaiting sanction of the Court, the exchange ratio was questioned by a small group of members of one of the merging companies. The exchange ratio was fixed by a reputed firm of Chartered Accountants.

Examine with reference to the decided case law under the Companies Act, 2013 whether the dissenting shareholders will succeed? Would your answer be different if the exchange ratio was objected to by the Central Government?

Answer

Amalgamation – Exchange Ratio: In the matter given in the question, the court leaves the aspect of share valuation to expert valuers and shareholders. Unless the person who challenges the valuation satisfies the court that the valuation is grossly unfair, the court will not disturb the scheme of amalgamation. (*PiramalSpg. Vs. Weaving Mills Ltd.*)

In this case, the valuation is confirmed to be fair by reputed firm of Chartered Accountants and is also confirmed by majority of members. The objection raised by some shareholders of a small group cannot be sustained. (*Hindustan Lever Employees Union Vs. Hindustan Lever Ltd.*)

Section 232 read with 230 of Companies Act , 2013 only requires the company to give notice to the CG and consider its representation.

The role played by the Central Government is that of impartial observer who acts in public interest and advises the court whether it is or it is not feasible for the two companies to amalgamate. Thus, in case of objection by the Central Government, the court will refuse to interfere unless the Government establishes that the exchange ratio was unfair and not in public interest. (*M.G. Investment & Industrial Co. Ltd. Vs. New Shorrock Spinning & Mfg. Co. Ltd.*)

Question 7

A scheme provides for Amalgamation of PQL International Limited, a foreign company, with DHP Limited, an Indian company registered under the Companies Act, 2013. Referring to the provisions of the above Act, decide whether the scheme providing amalgamation of a foreign company as a transferor company can be sanctioned by the Court (NCLT).

Answer

As per Section 234 of Company Act 2013,

A foreign company, may with the prior approval of the Reserve Bank of India, may merge with a Indian company.

If the Transferor Company is foreign Company and Transferee Company is Indian Company or Vice-versa is allowed provided rules of RBI is followed and sanction of RBI is obtained.

The terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts or partly in cash and partly in depository receipts.

Question 8

The Central Government in the public interest ordered for the amalgamation of ABC Limited and DEF Limited into a single company named KPN Limited through a notification in the official gazette. In this connection the prescribed authority ordered that the equity shareholders of ABC Limited were to be provided with a cash compensation of Rs. 2,000/- and two equity shares in KPN Limited for every single equity share held in ABC Limited. Mr. Ganesh, an equity shareholder of ABC Limited was dissatisfied not only with the amalgamation but also with the compensation offered by the prescribed authority. Advise him whether he can challenge the above amalgamation order of the Central Government. Also advise him within how many days and before which authority he can prefer an appeal against the order of the prescribed authority. Advise him referring to the provisions of the Companies Act, 2013 in this regard.

Answer

According to section 237 of the Companies Act, 2013 where the Central Government is satisfied that it is essential in public interest that the two public limited companies should amalgamate, the said Government may by order notified in the Official Gazette, provide for the amalgamation of the said two companies into a single company with such constitution; with such property, powers, rights, interest, authorities and privileges and

with such liabilities, duties and obligations as may be specified in the order. This power of Central Government is notwithstanding anything contained in sections 230 and 232 of the Act that deal with amalgamation and reconstruction of companies.

The Central Government has also the power to pass and provide for any consequential incidental and supplementary provisions in connection with the amalgamation including the confirmation by or against the transferee company of any legal proceedings pending by or against any transferor company.

Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation.

Any member or creditor who is aggrieved by the order of the amalgamation resulting in any financial loss is entitled to compensation which will be assessed by such authority as may be prescribed. Any person aggrieved by the order of compensation can file an appeal to the Tribunal within 30 days of the publication of the order of compensation.

Any order passed by the Central Government under this section can be made only where the draft copy thereof is sent to both the companies who have right to make an appeal and the same has been either disposed of or no appeal has been filed within the time provided thereof. The Central Government has duty to make such modifications in the light of any suggestions and objections received. All copies of the orders made under this section shall be laid before both the Houses of Parliament as soon as the same has been made.

Question 9

Cotton On Yarn Ltd., and Country Cotton Blossom Ltd., are two listed companies engaged in the Business of Textiles. The companies are not making profits and as such their share's market price have gone down. A substantial portion of their share capital is held by Central Government as well as some Public Financial Corporations. In order to increase the share value, the Central Government wants to amalgamate the aforesaid two companies into a single company. Examine the powers of Central Government to amalgamate the two companies in public interest as per the provisions of the Companies Act, 2013.

Answer

According to **section 237** of the Companies Act, 2013 where the Central Government is satisfied that it is essential in public interest that the two public limited companies should amalgamate, the said Government may by order notified in the Official Gazette, provide for the amalgamation of the said two companies into a single company with such constitution; with such property, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order. This power

of Central Government is notwithstanding anything contained in **sections 230 and 232** of the Act that deal with amalgamation and reconstruction of companies.

The Central Government has also the power to pass and provide for any consequential incidental and supplementary provisions in connection with the amalgamation including the confirmation by or against the transferee company of any legal proceedings pending by or against any transferor company.

Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation.

Any member or creditor who is aggrieved by the order of the amalgamation resulting in any financial loss is entitled to compensation which will be assessed by such authority as may be prescribed. Any person aggrieved by the order of compensation can file an appeal to the Tribunal within 30 days of the publication of the order of compensation.

Any order passed by the Central Government under this section can be made only where the draft copy thereof is sent to both the companies who have right to make an appeal and the same has been either disposed of or no appeal has been filed within the time provided thereof. The Central Government has duty to make such modifications in the light of any suggestions and objections received. All copies of the orders made under this section shall be laid before both the Houses of Parliament as soon as the same has been made.

Question 10

CPR Ltd. and TJC Ltd. are wholly owned by Government of Tamil Nadu. As a policy matter, the Government issued administrative orders for merging TJC Ltd. with CPR Ltd. in the public interest. State the authority with whom the application for merger is required to be filed under the provisions of the Companies Act, 2013. Also state the provisions governing the preservation of Books and Records of TJC Ltd. after merger under the said Act.

Answer

Authority to whom the application for merger is to be made

According to **Section 237 of the Companies Act, 2013**, where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company

Thus, In the given situation of merger between two wholly owned Government companies in public interest, there is no specific authority with whom the application for merger is required as the Central Government shall by notification in the Official Gazette, will provide

for the amalgamation of the two said companies into a single company.

Preservation of books and records of amalgamated companies

According to Section 239 of the Companies Act, 2013, the books and papers of a Company which has been amalgamated with, or whose shares have been acquired by, another Company shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares

Question 11

Ramakrishna Ltd. and Jai Ram Ltd. went into a merger arrangement. State the provisions related to the registration of offer involving transfer of shares as per the Companies Act, 2013.

Answer

Registration of offer of Schemes involving transfer of shares [Section 238]

- (1) **Registration of circular/ offer involving transfer of shares:** In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—
- (a) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as prescribed in Rule 28;
 - (b) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and
 - (c) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered.

The Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

(2) **Appeal against the order of the registrar:** An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).

(3) **In case of failure of registration:** The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Question 12

Sunrise Company Limited was merged with Moonlight Company Limited on account of

amalgamation. Some workers of sunrise Company Limited refused to join as workers of Moonlight Company Limited and claimed compensation on the ground of premature termination of their services. Moonlight Company Limited resists the claim of the workers on the ground that their services have been transferred to Moonlight Company Limited in view of the order of amalgamation and merger and hence the workers must join the service of Moonlight Company Limited and cannot claim any compensation.

State the powers of the Tribunal about the matters that would be considered while sanctioning the scheme of amalgamation under the provisions of the Companies Act, 2013. Decide whether the contention of the workers is justified.

Answer

While sanctioning the scheme of amalgamation, the Tribunal **under section 232** of the Companies Act, 2013 may make provision for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;
- (b) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (d) the dissolution, without winding up, of any transferor company;
- (e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;
- (f) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;
- (g) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;
- (h) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (i) the dissolution, without winding up, of any transferor company;
- (j) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

An order under section 232 of the Companies Act, 2013 transferring the property, rights and liabilities of one company to another does not automatically transfer contracts of personal service which are in their nature incapable of being transferred and no contract of service is thereby created between an employee of the transferor company on the one hand and the transferee company on the other.

In *Nokes vs. Doucaster Amalgamated collieries Ltd. (1940 (3) all 2k 549)* the House of Lords clearly stated that the workers are not furniture and their services cannot be transferred without their consent. Thus the contention of the workers of Sunrise Company Limited against the Moonlight Company Limited is correct and justified.

Question 13

Premier Technologies Limited proposes to takeover Modern Solutions Limited, an unlisted company, by making an offer to the members of Modern Solutions Limited to purchase all their shares. At present, Premier Technologies Limited are not holding any shares in Modern Solutions Limited. Explain briefly the steps to be taken under the Companies Act, 2013 to give effect to the proposed takeover.

Answer

Takeover of Company by Acquisition of Shares: This is a method by which a company may acquire business and control of another company by acquisition of a majority of shares in that company. Section 235 of the Companies Act, 2013, provides a means for the compulsory acquisition of the shares of the dissenting minority to prevent such a minority from extracting unreasonably high price for its shares.

- (1) Approval of holders of shares: As per law, a scheme of contract involving the transfer of shares or any class of shares in a company has first to be offered for approval of the holders of such shares by the company seeking to acquire the shares.
- (2) Period for the approval: The scheme of contract must then be approved by the holders of not less than 90% in value of the shares concerned within four months from the date of the offer (by the transferee company).
- (3) Where such shares which are to be transferred are already held by the offeror (i.e. transferee company) or its nominee or its subsidiary to value greater than 10% of the aggregate of values of all the shares of the transferor company, the terms of the offer must be the same for the holders of all other shares and the scheme of contract must not only be approved by 9/10th in value of such holders but they must also be not less than 3/4th in number.
- (4) Notice to dissenting shareholders by Transferee Company: After satisfying these conditions, the transferee company may give notice to any dissenting shareholder, expressing its desire to acquire his shares. This notice, must be served within 2 months after the expiry of the period of 4 months.
- (5) Transferee company bound to acquire shares, after serving of notice : If such notice is given, the transferee company is entitled and bound to acquire these shares on the terms approved by the majority.
 Except where the dissenting shareholder applies to the Tribunal within one month from the date of the notice, and the Tribunal orders otherwise.
- (6) Copy of notice forwarded with an instrument of transfer to the transferor: After serving notice, the transferee company must within the prescribed period, send a copy of the notice to the transferor together with an instrument of transfer executed by the transferee company and on behalf of the shareholders, by a person appointed by the transferee company.
- (7) Payment of amount: The transferee company must pay or transfer to the transferor

company the amount or other consideration representing the price payable for the shares, which the transferee company is entitled to acquire.

- (8) Registering of transferee company as the holder: The transferor company must thereupon register the transferee company as the holder of those shares, and within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the money or other consideration representing the price payable to them by the transferee company.
- (9) Money received must be held in trust: All sums of money and any other consideration received by the transferor company from the transferee company are to be held in trust for the several persons entitled to the shares in respect of which they have been received and until disbursed, these are to be kept in a separate bank account. These are to be paid to the shareholders against the deposit of relevant share certificates.
- (10) Advice to dissenting shareholders: Transferor company to advise the shareholders, whose shares have been taken over, as to the price payable to them within one month of the date of registration of the shares in favour of the transferee company and of the receipt of the amount or other consideration representing the price.

SELF COMPILED QUESTIONS FROM THE AUTHOR

Q. 1 A group of shareholders having 5 % of the total shareholding objected to the scheme of compromise and arrangement. Is there objection sustainable?

Answer

As per **Proviso to Section 230(4)**

any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement.

Q. 2 Tribunal can sanction the scheme of compromise and arrangement involving Buy Back of shares even when company does not comply with the procedure of buy back given under Companies Act. Comment.

Answer

As per Section 230(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-

back is in accordance with the provisions of section 68.

Q. 3 When may the Tribunal dispense of with the requirement of calling a meeting of creditors under Section 230 of the companies Act?

- (a) at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.
- (b) at least seventy five per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.
- (c) at least ninety per cent. value, agree and confirm, by way of application, to the scheme of compromise or arrangement.
- (d) at least seventy five per cent. value, agree and confirm, by way of application, to the scheme of compromise or arrangement.

Answer

(a) The same is specified in Section 230(9).

Q. 4 What are the conditions for a fast track merger in Companies Act, 2013.

Answer

As per Section 233 of the Companies Act 2013,

A fast track merger can be entered between two small companies or a holding company and its wholly owned subsidiary.

The conditions are as given under:

- ↗ Board resolution shall be passed at Board Meeting approving the scheme.
- ↗ The transferor and transferee company is required to give a notice of the proposed scheme to ROC and Official Liquidator within 30 days asking for suggestions/objections.
- ↗ the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. Of the total number of shares;
- ↗ each of the companies involved in the merger files a declaration of solvency to the ROC.
- ↗ the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

Q. 5 It is optional for a acquirer company to offer to acquire the minority shareholding of the other company when it acquires 90 % of the shares. Comment.

Answer

The given statement is false.

As per Section 236 (1)

In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, **shall** notify the company of their intention to buy the remaining equity shares.

The word used in the section is shall which makes it mandatory for the acquirer to give an offer to acquire the shares of the minority at a price determined on the basis of valuation by a registered valuer .