

Compromise, Arrangement and Amalgamation

OVERVIEW

- ✓ Corporate Restructuring
- ✓ Benefits of Merger and Amalgamation
- ✓ Types of Merger
- ✓ Legal Aspect (Section 230 – Section 234)
- ✓ Single Window Clearance
- ✓ Foreign Exchange Management (Cross Border Merger) Regulation, 2018
- ✓ Stamp Duty Aspect
- ✓ Competition Act Aspect - Combination

Corporate Restructuring

Transfer of assets and liabilities involved

Transfer of assets and liabilities not involved

External restructuring

Internal Restructuring

Demerger

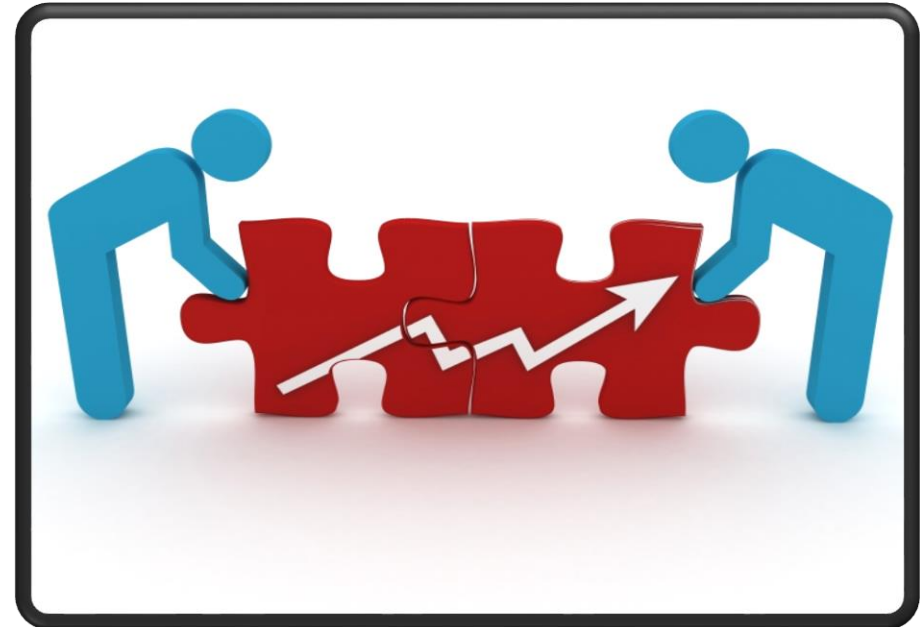
Sacrifice by shareholders

Merger & Amalgamation

Sacrifice by creditors

BENEFITS OF M & A

- Economies of Scale
- Diversification
- Elimination of Competition
- Utilisation of Tax Shields
- Better Financial Planning
- Economic Necessity
- Synergy Gain



Between two or more businesses which are belonging from the same industry having different product line

Congeneric Merger

Horizontal Merger

Between companies selling similar products+ direct competition

TYPES OF MERGER

Vertical Merger

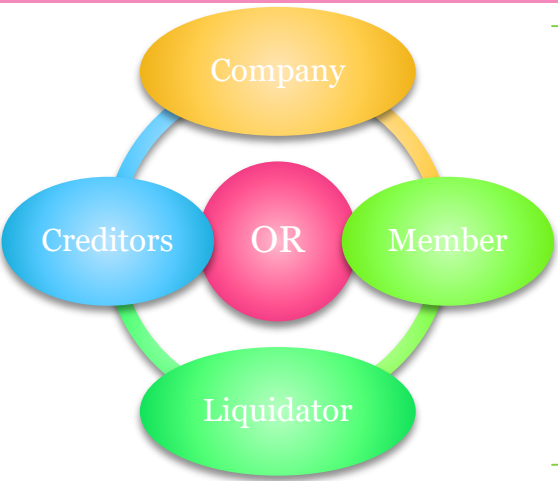
Between two companies that have no common business areas.

Conglomerate Merger

Between companies in the same industry, but at different stages of production process

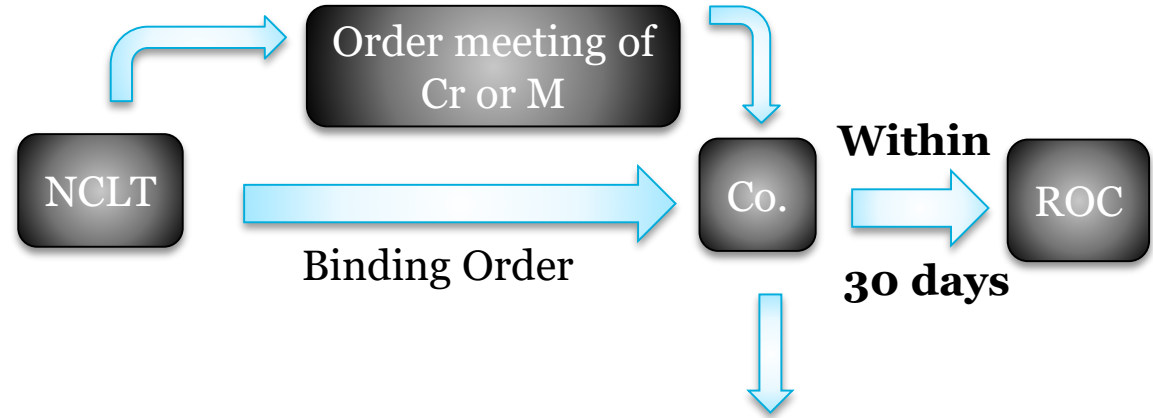
SECTION 230 :

**Power to Compromise or Make Arrangements
with Creditors and Members**



Application for C & A between Co & M or Co & Cr

- Shall disclose by Affidavit –
- 1) All Material Facts
 - 2) Reduction of Share Capital
 - 3) Corporate Debt Restructuring



Notice + Copy of Scheme, Valuation Report, Effects on Directors, KMP etc.

Cr, DH, M

Advertisement of Notice

Sectoral Regulators

Objections

Approval

Company's Website

Stock Exchange & SEBI Website

Newspapers

Seeking Representation within **30 Days**

At least **5%** of total o/s debt

OR

At least **10%** of total share holding

At least **50%** majority

&

At least **3/4th** in value

Landmark Cases u/s 230:

- 1) Re. Vasant Investment Corporation Ltd. (1982) : An arrangement under this section can also take a company out of winding up.
- 2) Rajdhani Grains and Jaggery Exchange Ltd. (1983) : Even though a winding up order has been made, every member has a right to file an application u/s 391 (presently s. 230) for the revival of company.
- 3) Laurel Aromatics Pvt. Ltd. In, Re. (2011) : High Court can sanction the scheme of arrangement/ amalgamation of one company with another company, even though there is no such enabling provision in the MOA of the transferor or the transferee company. The power of amalgamation/ arrangement by way of scheme is statutorily available.
- 4) Kirloskar Electric co. Ltd. Re. (2003) : The majority of the 3/4th value must be of the persons who are present and have taken part in the voting. Thus, mere presence would not be enough.

SECTION 231 :

**Power of Tribunal to enforce Compromise or
Arrangement**

NCLT

Order passed u/s sec. 230

Supervise the implementation of the Scheme as per the order
+
Give such directions as it may consider necessary for proper implementation.

If NCLT thinks that -
The order passed u/s 230 can't be implemented by the company satisfactorily
+
The company is unable to pay the debts to the creditors then -



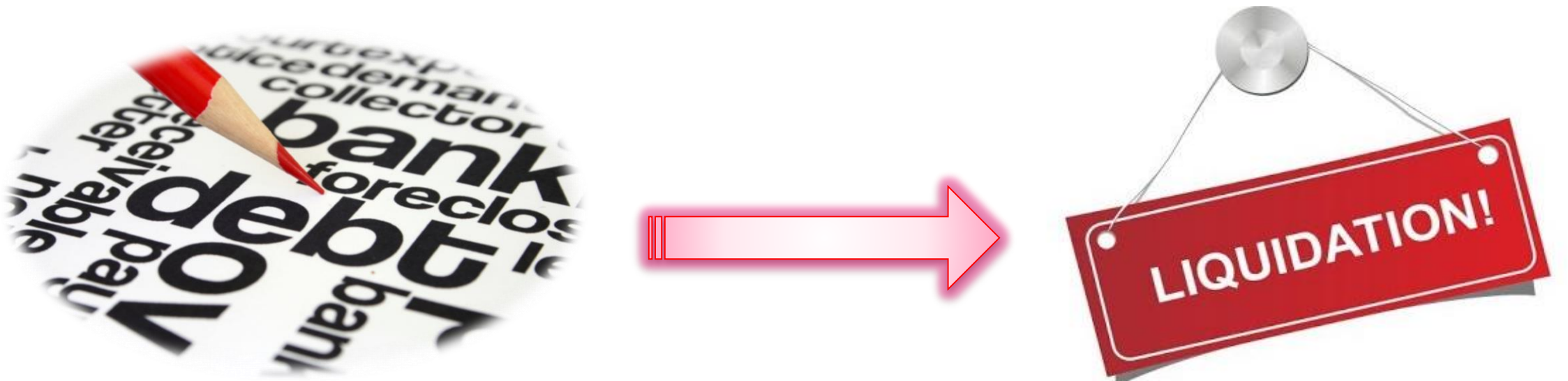
Order of Winding Up may be given by NCLT

Such winding up order shall have the same effect as compulsorily winding up of the company u/s. 273

Landmark Case u/s 231:

1) S. K. Gupta v/s K. C. Jain (1979) :

- If the scheme is workable with or without modification, the court has no power to pass a winding up order u/s 392 of 1956 Act.
- The court must attempt to find out what modifications if any, are necessary to make scheme workable, and if necessary, may proceed suo-motu in this regard.



SECTION 232 :

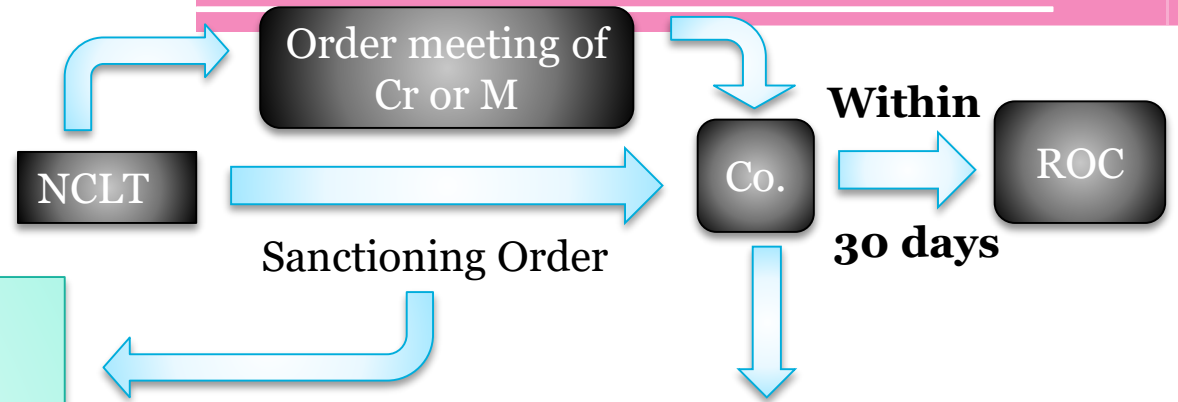
Merger and Amalgamation of Companies

Application made for

M & A

Transfer of property, undertaking or liabilities

- 1) Transfer whole or any part of undertaking/assets/liabilities
- 2) Allotment of Shares/Deb. To SH of Transferor Company
- 3) Transferor company stands to be dissolved w/o winding up process
- 4) Employees of transferor co. becomes employees of transferee co.
- 5) Continuation of all legal proceeding of transferor company in the name of transferee company
- 6) Cancellation of crossholding of shares
- 7) Provision of exit price for dissenting SH



- 1) Notice of meeting
- 2) Draft of proposed terms of schemes
- 3) Confirmation of filing scheme with ROC
- 4) Effect of scheme on KMP, Pr., Non Pr., SH
- 5) SWAP Ratio
- 6) Valuation Report
- 7) Supplementary Accounting Statements

❖ **NOTE:**

- 1) NCLT shall not issue confirmation order unless auditor provides a certificate confirming that the proposed scheme of C & A is in accordance with accounting standards.
- 2) Every company w.r.t NCLT order shall file annual statement duly certified by PCA/PCS/PCWA to ROC that scheme complied as per NCLT order.

SINGLE WINDOW CLEARANCE



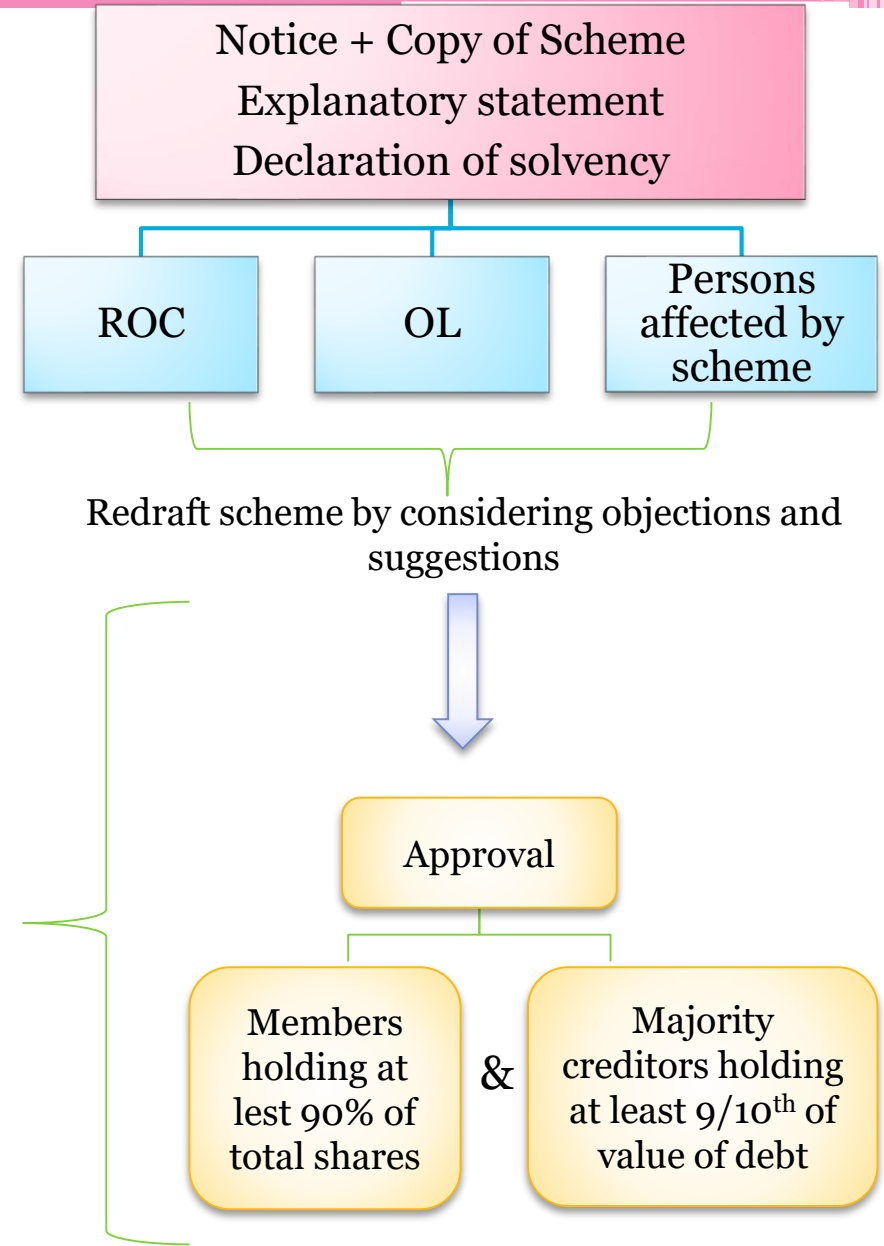
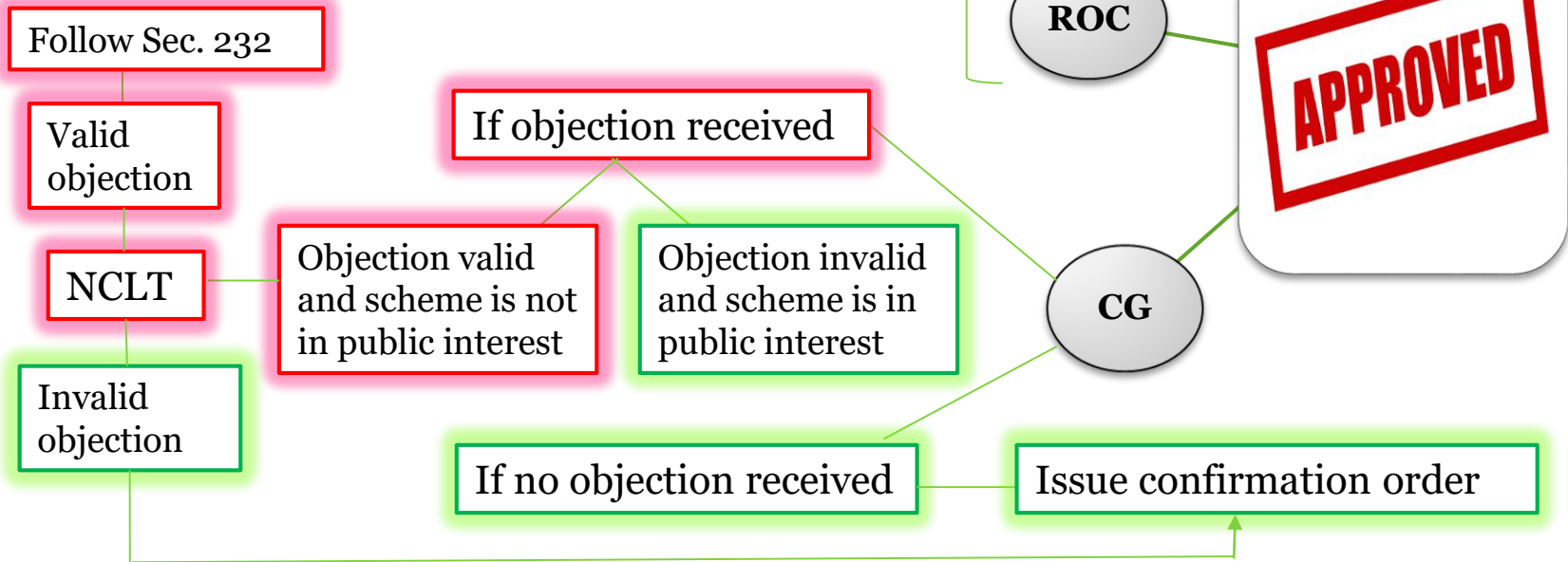
- When the scheme envisages various incidental proposals as an integral part of scheme , the procedures prescribed under the Companies Act, need not be separately undertaken.
- **Landmark Cases :**
 - 1) **Jaypee Cement Ltd. Re. (2004) :** Change of name can be carried out as a part of scheme.
 - 2) **Rangkala Investments Ltd., Re. (1997) :** Procedure for change in object clause need not be separately followed.
 - 3) **Stephon Walters & Sons. Ltd. (1926) :** The court can sanction reduction of capital as a part of the scheme.

SECTION 233 :

Merger and Amalgamation of certain Companies
FAST TRACK MERGER



Communicate with CG within 30 days whether having any objection/suggestions or not



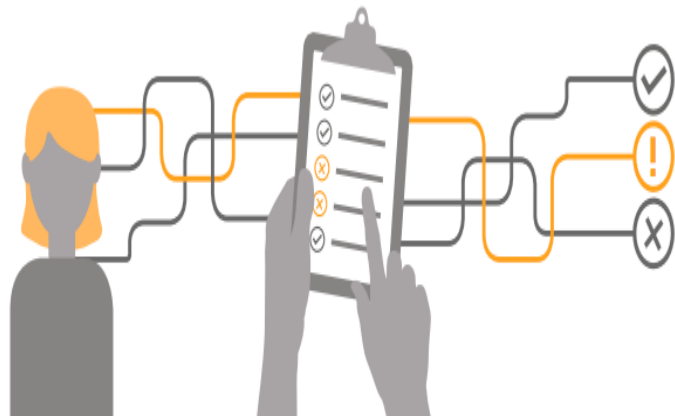
IS FAST-TRACK MERGER ACTUALLY FAST?



- The answer is **NO...!!!** Some of its major drawbacks are :

DEFECTS OF FAST TRACK MERGER

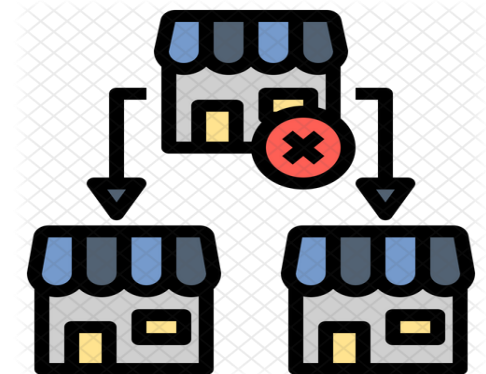
Multiple Clearance



Time Consuming

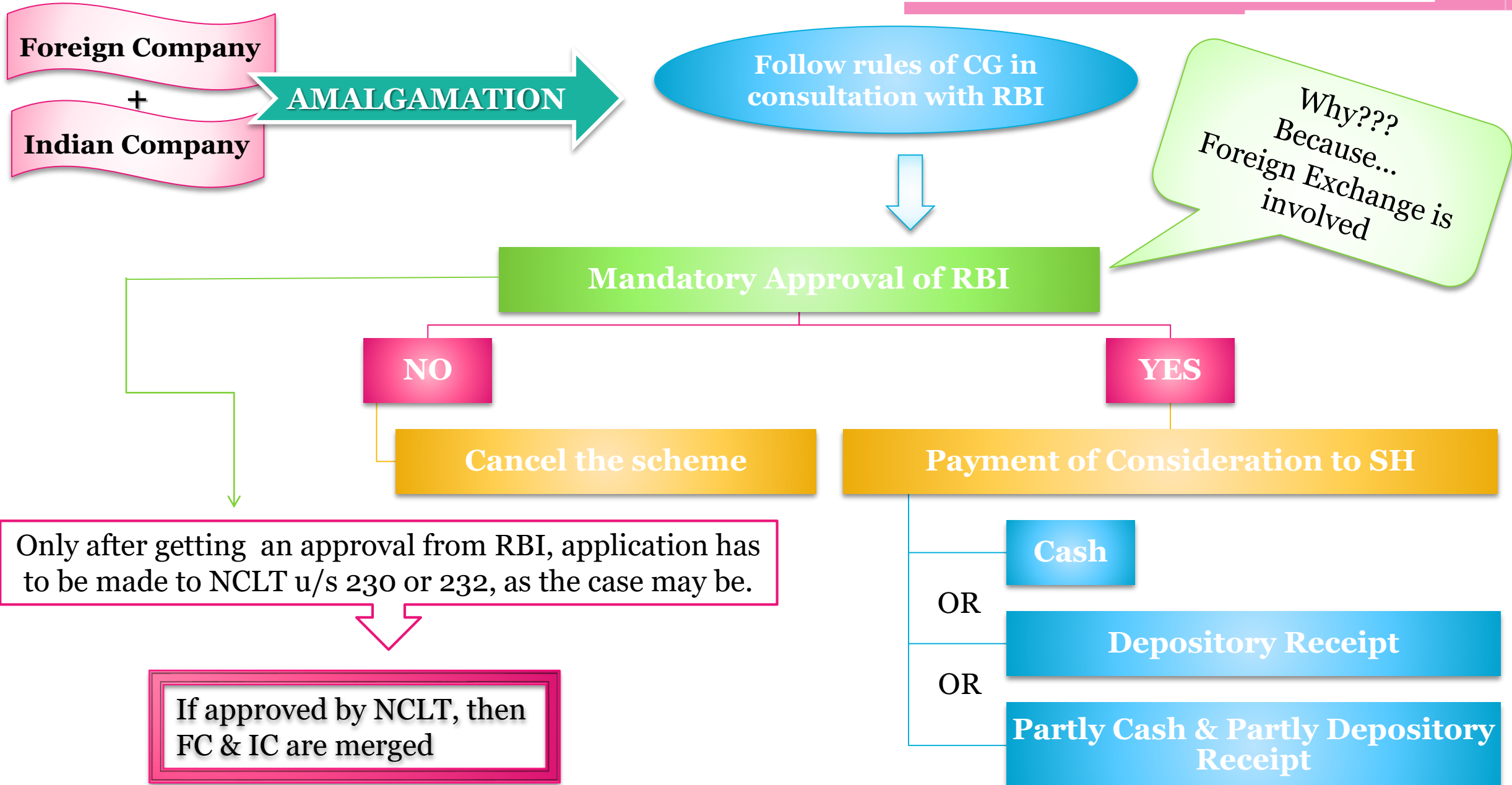


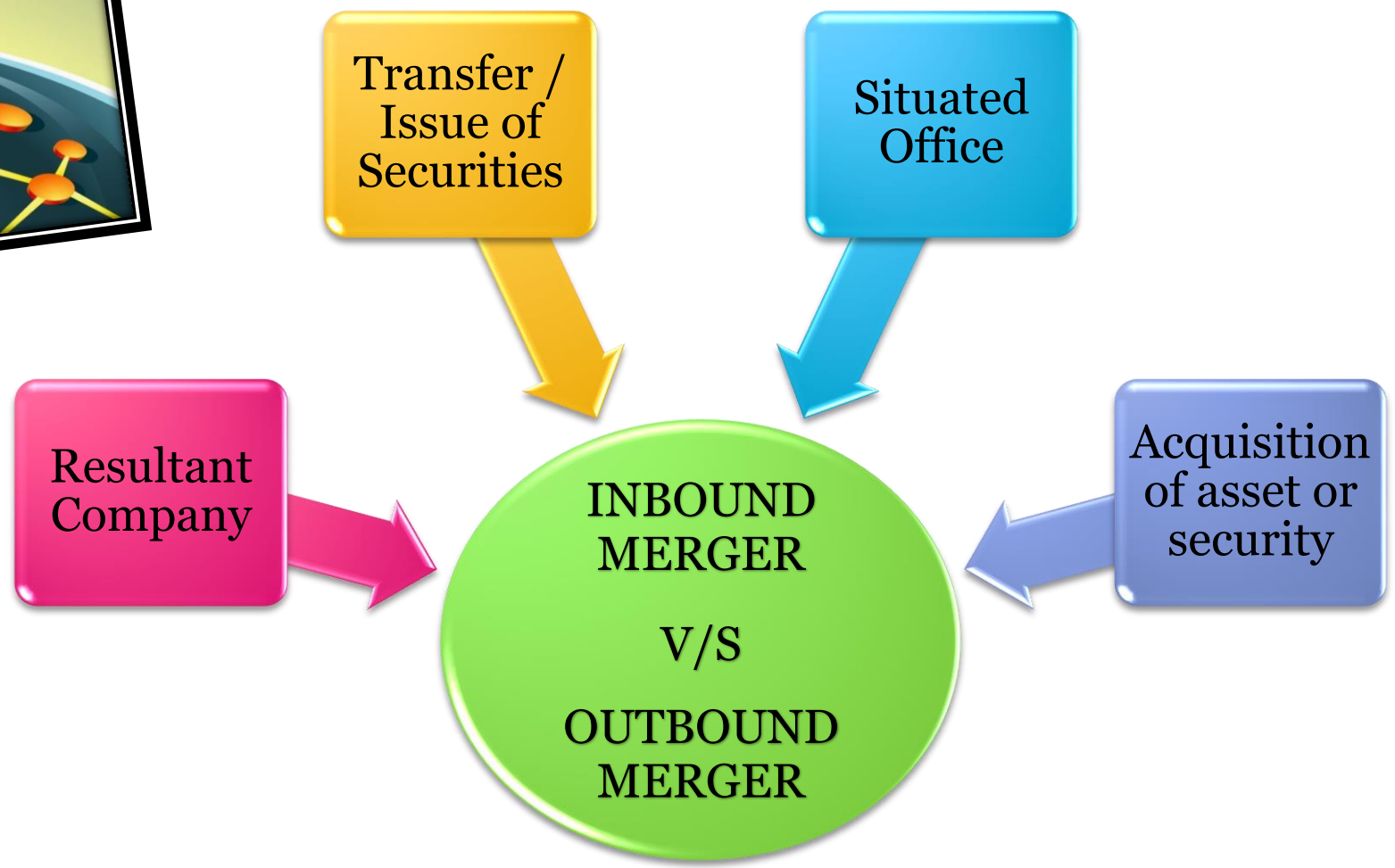
No Scope of Demerger



SECTION 234 :

**Merger and Amalgamation of a Company with
Foreign Company**







As per sec. 2(i) of Bombay Stamp Act, 1958, “Instrument” includes every document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded but does not include a bill of exchange, cheque, promissory note, bill of lading, letter of credit, policy of insurance, transfer of shares, debentures, proxy and receipt.”

❖ **LANDMARK CASE: *Li Taka Pharmaceuticals v. State of Maharashtra (1996)***

- ✓ Order of the court = Instrument
- ✓ State has jurisdiction to levy stamp duty under entry 44 list III
- ✓ Stamp duty would be levied on net assets.

COMBINATION UNDER COMPETITION ACT, 2002

IN INDIA	Applicable To	Assets		Turnover	
	Individual	Rs. 2000 Cr.		Rs. 6000 Cr.	
	Group	Rs. 8000 Cr.		Rs. 24000 Cr.	
IN INDIA AND OUTSIDE	Applicable To	Assets		Turnover	
		Total	Minimum Indian Component	Total	Minimum Indian Component Out of Total
	Individual Parties	\$ 1 Bn.	Rs. 1000 Cr.	\$ 3 Bn.	Rs. 3000 Cr.
	Group	\$ 4 Bn.	Rs. 1000 Cr.	\$ 12 Bn.	Rs. 3000 Cr.

THANK
YOU

BY

HARSHIL

MATALIA