**LEGAL PROCEDURE OF MERGER AND ACQUISITION**

The following is the summary of legal procedures for merger or acquisition as per Section 232 of Companies Act, 2013:

* **Permission for merger**:

Two or more companies can amalgamate only when amalgamation is permitted under their memorandum of association. Also, the acquiring company should have the permission in its object clause to carry on the business of the acquired company.

* **Information to the stock exchange**:

The acquiring and the acquired companies should inform the stock exchanges where they are listed about the merger/acquisition.

* **Approval of board of directors:**

The boards of the directors of the individual companies should approve the draft proposal for amalgamation and authorize the managements of companies to further pursue the proposal.

* **Application in the NCLT**

An application for approving the draft amalgamation proposal duly approved by the boards of directors of the individual companies should be made to the NCLT. The NCLT would convene a meeting of the shareholders and creditors to approve the amalgamation proposal. The notice of meeting should be sent to them at least 21 days in advance.

* **Shareholders’ and creditors’ meetings:**

The individual companies should hold separate meetings of their shareholders and creditors for approving the amalgamation scheme. At least, 75 per cent of shareholders and creditors in separate meeting, voting in person or by proxy, must accord their approval to the scheme.

* **Sanction by the NCLT:**

After the approval of shareholders and creditors, on the petitions of the companies, the NCLT will pass order sanctioning the amalgamation scheme after it is satisfied that the scheme is fair and reasonable. If it deems so, it can modify the scheme.

* **Filing of the Tribunal order:**

 After the tribunal order, its certified true copies will be filed with the Registrar of Companies

* **Transfer of assets and liabilities:**

The assets and liabilities of the acquired company will be transferred to the acquiring company in accordance with the approved scheme, with effect from the specified date.

* **Payment by cash or securities:**

 As per the proposal, the acquiring company will exchange shares and debentures and/or pay cash for the shares and debentures of the acquired company. These securities will be listed on the stock exchange.

**Steps involved in the court approved merger of two listed companies**

* The foremost step involved in a Merger is delivering a letter of intent, from a party proposing an arrangement to the other party, it is also addressed as Memorandum of Understanding and contains a basic idea of the transaction and terms from the proposing party.
* Due- diligence plays a pivotal role in any merger as its purpose is to investigate the other party with whom it would subsequently enter into an arrangement. A party can carry out various types of due-diligences to cross-check the soundness and efficiency of the other party as represented by them. Consequently, it builds surety and trust between the two parties which is instrumental in taking further decisions.
* This is followed by the signing of a term sheet between the parties. A term sheet includes important terms and hypothetical positions of the parties involved in the proposed transaction. A term sheet is non binding on both the parties. However, it contains few clauses that are binding.
* Despite the presence of non-disclosure clause in the term sheet, the parties sign a separate non-disclosure agreement.
* Furthermore, the parties enter into the exclusivity agreement, which refrains them from negotiating the prospective deal with third party and safeguards the possibility of other party outbidding them.

One of the important steps involved in the merger is internal as well as external approvals.

**Internal Approvals**

*Board Resolution*

* Section 179(i) &(j) of the Companies Act, 2013 states that a resolution by the Board of Directors is mandatory to diversify a business and approve an amalgamation.
* A board resolution have to be passed by all/both the Companies approving the scheme of amalgamation.
* The articles of both the Companies should not in any way refrain them from getting into any arrangement with other companies. Having said that, the company can amend the articles and pursuant to it enter into arrangements.

**External Approvals**

*Approval from Competition Commission of India*

* Section 6(2) states that no combination can come into effect unless 210 days have passed from the day of passing of notice to the commission or pursuant to the order passed by the commission. In conclusion, approval from CCI is mandatory for the sanction of merger.
* If the Commission is of the view that harm is caused by the combination it issues a show cause notice to the company asking them to show how harm will not be caused pursuant to the merger.
* The commission may call for a report from the Director General and call for the affected people with their written objections also giving a chance to the company to put forward their submissions.
* Commission can propose modification if it is of the opinion that implementing the modifications can eliminate the harm.

*Approval from Stock Exchanges*

* Regulation 37(1) of SEBI (Listing Obligation and Delisting Requirements) Regulations, 2015 states that a company has to file a draft scheme of amalgamation/ arrangement in the Stock Exchanges where the stocks of the listed company are traded.
* The Stock exchanges have to check whether the draft is in compliance with the security law and then submit a No objection /Observation Letter to the company.
* The Company has to submit the Observation Letter from the Stock Exchanges along with the scheme of amalgamation in the National Company Law Tribunal.
* The Regulation specifically states that the Scheme cannot be filed in the NCLT unless it has been forwarded to the Stock exchanges and observation/NOC is obtained.

*Approval from National Company Law Tribunal*

* The necessary compliances to apply in the NCLT are mentioned in the Companies Act (Section 230 – Section 240) and Companies (Compromise, Arrangement and Amalgamations) Rules, 2016.

In Wiki Kids Ltd Vs Regional director South East Region & Ors[[1]](#footnote-0), it was held by the appellate authority (NCLAT), that a scheme of arrangement can be rejected if it is against the public interest.

* A notice accompanied by the draft of Scheme is firstly sent to the shareholders followed by statutory authorities and creditors.Rule 9 of the Companies (Compromise Arrangement and Amalgamation) Rules, 2016 specifies that a person receiving the notice can vote within a month by proxy, postal ballot or electoral means.
* The NCLT passes an order for the meeting with creditors or class of creditors on filing of the scheme for arrangement.
* The notice of the meeting has to be published in newspapers and sent firstly to the shareholders followed by authorities and the creditors. An affidavit has to be filed stating that the requirements have been complied.
* Under the Indian company law, amalgamation scheme needs to be approved by majority shareholders and creditors, constituting 75% in value, of those present and voting in the NCLT convened meetings of shareholders and creditors
* If the conditions mentioned in Section 230(1) & (2) are fulfilled then the NCLT can sanction the scheme and the report of the percentage of the voting has to be sent to the tribunal after the conclusion of the meeting.
1. (AT) No. 285 of 2017 [↑](#footnote-ref-0)