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DECODING DEMERGER UNDER THE COMPANIES ACT, 2013: A COMPREHENSIVE ANALYSIS

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ABSTRACT
Corporate restructuring is considered very important to eliminate all financial crises and enhance the company's performance. The management of the concerned corporate entity facing the financial crunches hires financial and legal experts for advisory and assistance in negotiation and transaction deals by the change in ownership. Such change in the company's ownership structure might be due to the takeover, merger, adverse economic conditions, adverse changes in business such as buyouts, bankruptcy, lack of integration between the divisions, over-employed personnel, etc. Under the concept of a De-merger, the outcome is a transfer by a company of one or more of its undertakings to another company. The company whose undertaking is transferred is called the De-merged company and the company to which the undertaking is transferred is referred to as the Resulting company. The concept of demerger has gained so much importance in the present globalized as well as liberalized economy demerger is recognized as the most prominent strategy of corporate restructuring, but the Companies Act, of 2013 does not prescribe the concept of demerger. The present study has significant steps as it discusses the concept of De-merger with the help of other laws. In this paper, the authors discuss the various strategies for formulating and executing corporate restructuring in India. It also highlights the legal and regulatory framework of corporate restructuring with the help of legislative provisions defined under the Company Act, of 2013.
KEYWORDS: *Corporate Restructuring, De-merger, Globalization, Merger, Spin-off.*

INTRODUCTION

In India, the process of liberalization, privatization, and globalization initiated by the government has changed the functioning and governance of Indian enterprises since 1990. Having spread their bodies aimlessly during the day of licensing and permit raj, Indian commercial realities are now iming on the lines of core capability, request shares, global competitiveness, and connection. The process of refocusing has been whisked by the appearance of foreign challengers. The process of iming commercial restructuring is on the rise and becoming a common miracle in India. Commercial restructuring is the comprehensive process by which a company creates and enhances its long-term value by consolidating its business operations and strengthening its position to achieve the asked objectives like staying synergic, competitive, and successful. Combinations, combinations, accessions, connections, and appropriations have become an integral part of the new profitable paradigm.[1] The conception of restructuring involves embracing new ways of running an association and abandoning the old styles. It may be possible to run an establishment successfully for a short period, but in the long term, it may not be possible without the objectification of strategic changes and reforms. Restructuring means, "to give a new structure to, rebuild, or rearrange" Restructuring therefore implies rearranging the business for increased effectiveness and profitability. In other words, it's a comprehensive process by which a company can consolidate its business operations and strengthen its business position. Commercial restructuring aims to enhance the competitiveness of the company through restructuring measures.[2] i.e. Suppose X Ltd. has fat finances but it does not have any feasible systems. Whereas Z Ltd. has linked a feasible design but has no

[1]*R. Kumar, Corporate Structuring in India, Tax Guru (Feb. 16, 2013) available at - https://taxguru.in/corporate-law/corporate-restructuring-india.html (last visited on Nov. 24, 2023)*
[2] *Liangrong Zu, CORPORATE SOCIAL RESPONSIBILITY, CORPORATE RESTRUCTURING AND FIRM'S PERFORMANCE 51 (2009)*

plutocrat to fund the cost of the design. Both companies can combine which would give a feasible result by way of collective help and benefit both companies to remain in the competitive terrain. [3]

THE LEGAL AND REGULATORY STRUCTURE OF CORPORATE RESTRUCTURING

The Companies Act, 2013 is India's foundation law for combinations and de-mergers which is bandied under Chapter XV. Section 233 of the Companies Act defines the Merger and Amalgamation of certain Companies and in the light of the same Section 235 also defines the power to acquire shares of shareholders differing from a scheme or contract approved by maturity. Under the Company law while carrying out a scheme of commercial restructuring the company has to follow the vittles of Chapter XV(Section 230 to 240) of the Companies Act, 2013, Securities and Exchange Board of India(Substantial Acquisition of Shares and Appropriations) regulation, 1997, Section 5 and 6 of the Competition Act, 2002, Rules 67 to 87 Company Court(Rules) 1959, Income Tax Act, 1961, Indian Stamp Act, 1862 and SEBI(Scheme of Arrangement under the Companies Act, 2013.)[4]

METHODS AND TECHNIQUES

The conception of de-merger carries a cachet of glamour because of the captions and the business press commentary which transnational as well as public mega-deals attract. The term demerger refers to a commercial restructuring procedure as opposed to a junction i.e., it's the separation of one or further undertakings carried on by a company into a separate company to either dispose similar recently formed company or dispose of the undertaking or undertakings carried on by a company into a separate company to either dispose similar recently formed company or dispose of the undertaking or undertakings in question to the transferee company. The shares of the shareholders in the parent company are distributed in the attachment company on a pro-rata base so that both of the companies can co-occur. For illustration 'If one company, say Y Ltd. having 10 undertakings, transfers one or further of its undertakings to a new company say Z Ltd. it's a case of demerger. Y Ltd. is the demerged company and Z Ltd. is the performing company. [5]

Demergers were an American invention of the 1920s and became common in the 1950s. Commercial demerger is one of several ways through which an establishment may divest a division and ameliorate its focus. A demerger is a pro-rata distribution of the shares of an establishment's attachment to the shareholders of the establishment. There's neither a dilution of equity nor a transfer of power from the current shareholders. After the distribution, the operations and operation of the attachment are separated from those of the parent. Demerger constitutes a unique mode of divesting means since they don't involve any cash deals. therefore, they cannot be motivated by a desire to induce cash to pay off debt, as is frequently the case with other modes of divestitures. In American English, this process is nominated spin-off, and in Common Law, demerger. In recent times numerous demergers have happened as a result of family business agreements for illustration, Reliance Diligence and Bajaj Group. numerous of the companies of the DCM group which came back to life from the original demergers carried out further demergers. The demerger of L&T's cement business into a new company (Ultratech Cement) has generated a lot of interest. Another big demerger happened in recent times the separation of Tata Consultancy Services Ltd., from Tata Sons Ltd. A common adventure between the Hero Group and Honda Motor Company was resolved up in 2010 when Honda decided to move out of the common adventure. Hero Group bought the shares held by Honda and renamed their company Hero MotoCorp Ltd. The demerger of Larsen and Turbo Ltd.(L&T) into a separate company i.e. Ultra Tech Cement Co. Ltd seems to be one of L&T's grand strategies to concentrate more on structure, engineering, energy, and turnkey businesses. [6]

A demerger isn't defined under the Companies Act, 2013. In a nonprofessional sense demerger is a separation of one or further undertakings of a company, into a separate company. "Demerger is a separation of a larger company into two or further lower associations."[7]

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[3] *Pushp Lata, Demerger- A Ploy of Corporate Restructuring: An Analysis of Procedure and Practices 2013 (unpublished LL.M dissertation, GNDU, Amritsar.*

[4] *Ibid.*

[5] *Ibid.*

[6] *Supra note 3.*

[7] *The New Oxford Dictionary, available at: https://www.oxfordlearnersdictionaries.com/demerger (last visited on Nov. 20, 2023)*

Justice NV Bala Subramaniam observed that "a Scheme of the demerger is, in fact, a commercial partition of a company into two or further undertakings, thereby retaining one undertaking with it and by transferring the other undertaking to the performing company or companies. It's a scheme of business reorganization."[8]

DEMERGER

The word demerger is nowhere defined under the Companies Act, 2013. "Demerged company means the company whose undertaking is transferred, under a demerger, to a resulting company."[9] "Resulting company means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues share to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger".[10]

The concept of demerger under the Companies Act, 2013 may be deduced from;

I. An arrangement included "a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or by both those methods.[11]
II. Sale, lease, or otherwise disposal of the whole or the substantial whole of the undertaking or where the company owns more than one undertaking of the whole or substantial whole of any such undertaking.[12]
III. The scheme of compromise, arrangement, and amalgamations under sections 230 to 240 of the Companies Act, 2013.

The scheme of demerger is implied in the scheme of arrangement or compromise given under Chapter XV, Section 230 to 240 of the Companies Act, 2013. Demerger under the Companies Act, 2013 is covered under the expression arrangement. The Companies Act, 2013 defines arrangement as an arrangement that includes a reorganization of the share capital of the company by consolidating shares of different classes or by division of shares into shares of different classes or both.[13]

TYPES OF DEMERGERS

The Demerger can be classified into the following manner for the proper understanding:

I. **Spin-offs:** A spin-off occurs when a parent company receives an equity stake in a new company equal to its loss of equity in the original company. Shares are also bought and vented singly, and investors have the option of buying shares of the unit they believe will be the most profitable. A partial demerger is when the parent company retains a less-than-total stake in a demerged company. [14]
In short in a spin-off, the shares in the consequent company are distributed to shareholders of the parent via a dividend.
II. **Splits:** Depending on whether it's a split up or a split off, shareholders will either be allowed to shift their parent shares for new shares of the accessory, or the parent is liquidated into the new companies. A split-off is a spin-off with other elements.[15] Simple spilt-off occurs when multiple businesses are resolved from the parent company into different entities. However, shareholders are given the option of trading in their shares for those of the recently created beings, If the parent company is public. [16]

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[8] *Samridhi Neupane, Demerger under Company Law, Legal Services India, available at: https://www.legalservicesindia.com/article/420/Demerger-under-Company-Law.html (last visited on Nov. 26, 2023)*
[9] *Section 2(19AA), The Income Tax Act, 1961*
[10] *Section 2(41A)*
[11] *Section 230, The Companies Act, 2013.*
[12] *Section 1802 (1) (a)*
[13] *Supra Note, 3*
[14] *Demerger: Definition, How It Works, Reasons, and Types, Available at https://www.investopedia.com/terms/d/demerger.asp (last visited on 1st March 2025)*
[15] *Demergers and Divestments, Available at https://www.ansarada.com/mergers-acquisitions (last visited on 28th February 2025)*
[16] *Demerger: Definition, How It Works, Reasons, and Types, Available at* https://www.investopedia.com/terms/d/demerger.asp (last visited on 1st March 2025)

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III. **Carve-outs:** In a carve-out, a portion of the shares of the subsidiary is sold to the public via IPO.[17]

APPROACHES AND STRATEGIES OF DEMERGER

Divestiture, spin-off, split up, split off, and equity carve-out are the kinds of the demerger. Divestitures are the sale of a segment of a company for cash or securities to an outside party. Spin-off involves the division of a company into a wholly owned subsidiary of the parent company by the distribution of all its shares of the subsidiary company on a pro-rata basis. Split-ups involve the division of the parent company into two or more separate companies where the parent company ceases to exist after demerger. In split-off-shareholders of the parent company get shares in the subsidiary company in exchange for their shares in the parent company. In equity, some (minority) part of the shareholding of the subsidiary company is sold out to the public by an offer for sale and the parent company continues to enjoy control over the subsidiary company by holding a controlling interest. Demergers could be affected by any of the following three ways.[18]

I. English Law is quite exhaustive on the issue of demerger. While the demerger is affected by the agreement and the original company is wound up after division, it was held in Cardiff Preserved Coal and Coke Co v. Norton[19] that the liquidator cannot dispute the validity of the transaction and therefore cannot require its shareholders to transfer to him the shares which have been allotted in the new company or companies so that he may sell them and use the proceeds to pay the original company's debt. Further, English law supports that in such events where the creditor accepts an undertaking from the purchasing company to honor the original company's obligation or if he accepts a benefit from the purchasing company to which he is not entitled under his contract with the original company, there will be a novation and the original company's liability will be discharged.[20]

II. Based on the powers a company has in its Memorandum; it can carry out division or split of its entity in the same manner as it could accomplish amalgamation through a scheme of arrangement under the provisions of the Companies Act. The procedure laid down in Chapter XV under the Companies Act, 2013 regarding Arbitration, Compromises, and Arrangements would be followed in the case of a demerger of the company.[21]

III. Chapter XV, sections 230 to 240 of the Companies Act, 2013 prescribes the procedure applicable to a scheme of arrangement or compromise. The chapter deals with the procedure to be adopted for demerger. In the very beginning of section 230, the term company is defined. The expression "company" means 'any company liable to be wound up under this Act.[22] *In the case of Malayalam Plantation India Limited & Harrisons & Cross Fields India Ltd., Re* [23] it was held that the Company includes even an unregistered company. It includes companies incorporated outside India, and having business operations in India.[24] The scheme of demerger may be deduced from the scheme of arrangement under the Companies Act, 2013.

CONCLUSION

At the last, we can conclude that there is no bar on companies willing to break down into smaller units if they are unable to function together. After the merger of the companies, if they find out that they are unable to work together as a single company they may converse the process of merger and get separated by several means under the company law. The concept of demerger gained so much importance in the present globalized as well as liberalized economy demerger is recognized as a most prominent strategy of corporate restructuring. The Concept of demerger, also known as a spin-off or divestiture, involves the separation of a company's business units or means into independent realities. This restructuring strategy aims to produce focused realities with distinct strategic aims and functional autonomy. Demergers can do this for colorful reasons, such as streamlining operations, unleashing shareholder value, or centering on core abilities.

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[17] *Demergers and Divestments, Available at https://www.ansarada.com/mergers-acquisitions (last visited on 28th February 2025)*

[18] *Pushp Lata, Demerger- A Ploy of Corporate Restructuring: An Analysis of Procedure and Practices 2013 (Unpublished LL.M dissertation, GNDU, Amritsar.*

[19] *(1867) 2 Ch. App 405.*

[20] *Ibid.*

[21] *Supra note 3.*

[22] *The Companies Act, 2013.*

[23] *(1985) 2 Comp LJ 409 (Ker.)*

[24] *Suresh Kumar Thakral, Procedural Aspects including documentation for Mergers and Amalgamations, 43 Chartered Secretary-The Journal for Corporate Professionals, (January, 2013).*