CASC BULLETIN

The Chartered Accountants Study Circle

2-L, Rear Block, Second Floor, 22-A, Cathedral Road,
(Next to Stella Maris College), Chennai - 600 086.
Phone : 28114283 E-mail : casc@vsnl.net

Volume 8 | Issue 12 | Monthly | March 2010 | Rs. 25/-

INDEX

MEETINGS

Date	Time	Speaker	Topic
11.03.10	06.15 P.M.	**CA T. BANUSEKAR**	TDS -- DOMESTIC PAYMENTS, 40 (A) (IA), 14A RW RULE 8D
25.03.10	06.15 P.M.	**MR. S. THIAGARAJAN** DY. DIRECTOR, ESIC, CHENNAI	ESIC -- AN OVERVIEW AND THE ROLE OF CHARTERED ACCOUNTANTS

High Tea 6.00 pm (for the meetings)

Annual Members and CASC Bulletin subscribers are requested to renew their subscription for 2010 - 2011

ALL ABOUT MERGER AND DEMERGER

(This is the concluding part of the Article continued from Feb. 10)

S DHANAPAL

DEMERGER

The expression 'Demerger' is not expressly defined in the Companies Act, 1956. However, it is covered under the expression arrangement, as defined in clause (b) of Section 390 of Companies Act.

Division of a company takes place when

1. Part of its undertaking is transferred to a newly formed company or an existing company and the remainder of the first company's division / undertaking continues to be vested in it; and
2. Shares are allotted to certain of the first company's shareholders.

A demerger is a form of restructure in which owners of interests in the head entity (for example, shareholders or unit-holders) gain direct ownership in an entity that they formerly owned indirectly (the 'demerged entity'). Underlying ownership of the companies and/or trusts that formed part of the group does not change. The company or trust that ceases to own the entity is known as the 'demerging entity'.

The entity that emerge have its own board of directors and, if listed on a stock exchange, have separate listings. The purpose of demerger is to revive a company's flagging commercial fortunes, or simply to lift its share price.

PROCEDURE OF DEMERGER

The procedure is as follows:

1. Incorporate the company which will be the Resulting Company.
2. Frame a scheme of Demerger
3. File a Judges Summons in the High Court praying for an Order convening separate meetings of the Creditors, Share-holders, or any class of them. Each such Judges summons must be supported by an Affidavit and a copy of the Scheme must be annexed to the Affidavit. If all the Creditors agree to the Scheme, the meeting may be dispensed with. In the case of a Demerger, it would not be possible to dispense with a meeting of the share-holders, since under Section 293 (1)(a) of the Companies Act, a general meeting of the share-holders would be essential before any such Demerger can take place.
4. Notice of the meeting must be given to the Creditors and /or members and sent individually to each Share-holder/ Creditor. Each notice must be accompanied

by a copy of the scheme, explanatory statement as required by Section 393 of the Companies Act and a proxy form.

5. The notice of meeting must be advertised in such newspapers and in such manner as the judge may direct. The Advertisement must take place at least 21 clear days before the date of the meeting, i.e. 21 days notice must be given excluding the date of advertising of the notice and the date of the meeting.

6. The Chairman of the meeting or other person directed to issue the Advertisement and notices must file an Affidavit not less than 7 days before the date of the meeting showing that the directions reg: issue of notices and advertisements have been duly complied with.

7. On the date of the meeting, the decisions of the meetings must be ascertained only be taking a poll.

8. The Chairman of each meeting must file a report in the Court within that time fixed by the Judge or where no time has been fixed, within 7 days after the conclusion of the meeting. The report must state accurately the number of creditors or class of creditors or number of members or class of members as the case may be who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted. The report shall be in Form 39 annexed to the Companies (Court) Rules, 1959.

9. Where the proposed Demerger is approved by the various meetings with or without modification, the company must present the petition to the Court, for confirmation of the Demerger within 7 days of the filing of the Chairman's Report.

10. The Court shall fix a date for hearing of the Petition and direct advertising in the same newspapers in which the notices of the meetings were advertised or in such other papers as the Court might direct. The notice must be given not less than 10 days before the date of the hearing.

11. If the Court sanctions the Demerger, it may give such directions as it considers necessary for the proper working of the Demerger. The certified copy of the Order must be filed within 14 days from the date of the Order or such other time, as may be fixed by the Court.

12. Applications for Orders in connection with the Demerger or for any variation, etc. shall be made under Section 394 by Judges Summons supported by an Affidavit for directions as to the proceedings to be taken. Notice of the summons shall be given in such manner and to such person as the Court may direct. On hearing the Summons, the Court may make such Order or Directions as may be necessary.

13. The Company or any Creditor or Member thereof may at any time after the passing of the Order sanctioning Demerger, apply to the Court for determination of any question relating to the working of the compromise or arrangement. Notices and Advertisements shall be as the Court may direct. The Court may pass such Orders, give such Directions as it may think necessary.

DEMERGER OF A LISTED COMPANY

Sl.No.	Nature of Activities
	ACTIVITIES FROM BOARD MEETING FOR APPROVAL OF SCHEME TO COURT ORDER
1.	Intimation in Stock Exchange of Board Meeting date for considering Demerger
2.	Board Approval for the Scheme
3.	Informing Stock Exchange of Board's
4.	Consent from shareholders to the Scheme for Resulting Companies (in case of Closely held unlisted Companies)
5.	Filing scheme with the Stock Exchanges
6.	NOC/ Approval from Stock Exchanges (BSE/NSE)
7.	Filing of application under section 391(1) with High Court (along with Judge's summons, affidavit in support of summons and draft minutes of order)
8.	Finalising the Notice / Explanatory Statement for Meeting of the Shareholders / Secured and unsecured Creditors
9.	Hearing of company's application
10.	Hearing of Resulting Companies application
11.	Receiving authenticated copy of order for holding / dispensing with the Meeting of Shareholders/ Secured and unsecured Creditors
12.	Obtaining certified copy of order of High court for court Convened Meeting
13.	Commencement of Printing of Notice for court convened meetings
14.	Completion of dispatch of notices for meeting under UCP
15.	Advertisement of notice of meetings
16.	Filing of Notice - Advertisement of meeting with Stock Exchange(s)
17.	Filing of advertisement of meeting with court
18.	Filing of Affidavit signed by Chairman of the meeting or other person directed by the court verifying that the directions regarding the issue of notices and the advertisements have been duly complied with
19.	Meeting of Creditors and Members
20.	Reporting the decision of the poll to the High Court
21.	Filing of petition with the Court along with relevant documents
22.	Admission of the petition
23.	Minutes of order by judge fixing the date of hearing of petition and advertisement of notice of hearing

24.	Advertising the notice of hearing
25.	Obtaining certified copy of order on admission of petition
26.	Filing of copy of petition with annexures with RD / ROC through FORM 61 (eform)
27.	Filing of affidavit confirming service of notice of petition and publication newspaper
28	Follow up with RD / ROC
29.	Receipt of letter, queries etc., from RD and ROC
30.	Follow - up with RD / ROC / Legal Counsel to resolve issues, if any
31.	Initial date of hearing of petition
32.	Adjoined hearing if any
33.	Filing of amended petition if any
34.	Final date of hearing of petition
35.	Obtaining certified copy of order on petition
36.	Payment of Stamp duty, if required
37.	Filing of certified order with RD / ROC along with Form 21
	ACTIVITIES FROM COURT ORDER TILL RECORD DATE
38.	Acknowledgement of receipt from ROC and certified true copy of court order to be filed with the Stock Exchange.
39.	Notice to Stock Exchange for Record Date to determine eligibility to receive shares of the Resulting Companies and voluntarily give advertisement of the Record Date in National Dailies (30 day notice)
40.	Agreement with CDSL and NSDL for admitting its securities
41.	Printing of stationery - Allotment Advice, Share Certificate, Envelopes
42.	Application seeking exemption for relaxation of Rule 19(2)(b) from SEBI through the designated Stock Exchange
43.	Application to Stock exchange for in - principle approval for listing of shares
44.	Designated Stock exchange to forward the application to SEBI for approval under Rule 19 (2)(b) of SCRA Rules
45.	Prepare Information Memorandum (IM)
46.	Compliance with clause 49 - prerequisite for Listing
47.	File Information Memorandum with BSE and NSE
48.	Stock Exchange to receive SEBI Approval and give In-Principle approval for listing of shares of the resulting companies.
49.	Keep share certificates, covering letter, envelop of the resulting companies ready for over printing.

50.	Keep text and stationary ready for intimation of corporate actions for the Resulting Companies
51.	Letter relating to cost of Acquisition to be sent to Shareholders
52.	Ex Date for Stock Exchange for F & O
53.	Record Date
	ACTIVITIES FROM RECORD DATE TILL LISTING
54.	Procure details of Register of Members from R&T agent as on Record Date
55.	Prepare list of eligible shareholders of the resulting companies, including details of the shareholding
56.	Hold Board Meeting of Resulting Companies for allotment of shares
57.	File Form 2 with ROC
58.	Resulting Companies to submit the Corporate Action Forms to depositories and pay fee for the same
59.	Over Printing of share certificates, cover letter, envelops and Despatch of Share certificates or demat credit of equity shares of the resulting companies.
60.	Despatching share certificate
61.	Send intimation to the shareholders of each of the resulting companies regarding the corporate Action
62.	Application to Stock exchange, attaching dispatch certificate/demat credit certificate and copy of advertisement, for trading permission
63.	Publication of the Advertisement (as per Schedule 28 of SEBI DIP Guidelines) in one English Daily, Hindi Daily, and Regional Daily
64.	Trading of shares at Stock Exchange

CONCLUSION

To put it in nutshell, the following are real advantages that normally available to the corporate sector by virtue of any Schemes of Arrangement as per the Section 391 to 394 of the Companies Act 1956:

In case of Amalgamation/Merger

i. the operational costs will be considerably reduced and the management will be able to operate and run the amalgamated company as a single unit more effectively and economically resulting in better turnover and profits.

ii. with the enhanced capabilities and resources at its disposal, the amalgamated company will have greater flexibility to market and meet customer needs and will be able to compete more effectively.

iii. the facilities available with the companies could be pooled together and the amalgamated company will be better able to exploit the facilities available as one single unit for the benefit of the amalgamated company and such amalgamation will be conducive to better and more efficient and economic control and conduct of the companies.

iv. It would bring in greater economies in operation and will help in reducing expenditure considerably and a larger and growing company will mean enhanced financial and growth prospects for the people and organizations connected with the company and will be in public interest.

v. It would result in better and optimum utilization of the assets of the companies by pooling their resources and reducing their overheads. An integration of activities would be economic and in the interests of all the companies concerned. The amalgamation when it materializes would result in centralised administration, economy of operations, integrated business approach, greater efficiency and investment in professional management.

In case of Demerger

a) The demerger of relevant Division of the concerned Applicant Company in a different company would enable the said division to grow as a focused business entity and help attract capital /strategic investors and facilitate the Company in becoming a major market player in the said business.

b) It will unlock the value of the relevant Division for the shareholders of the Demerged Company and paves way for funding future growth of the relevant Division by attracting equity from various sources, globally. Further upon the approval of the Scheme of Arrangement, the shareholders of the Applicant Company would also become shareholders in another company namely Resulting Company thereby providing them with an opportunity to participate in the management, operations, decision making process and profits of the Applicant Company as well as the Resulting Company.

c) It will ensure better operational management and focus on accelerated growth of individual units and will also ensure higher returns to the shareholders, creditors, employees and is also in general public interest.

d) The growth in size of the business of the Applicant Company normally may result in a situation where the need for focus and operational and financial independence begin to overshadow the need for the earlier strategy of diversification. The restructuring will enable greater focus on the respective business operations and products.

Therefore, in the ordinary course of business of any Company in India, the Scheme of Amalgamation, Merger, Demerger and other type of scheme of arrangements as per Section 391 to 394 of the Companies Act 1956 will always benefit the companies to their effective growth and prospect and would produce effective results and attractive returns not only to the shareholders of the Company but also to the stake holders of Company.

The author is a Chennai based practicing Company Secretary. He can be reached at csdhanapal@gmail.com