Derailments on the Fast Track: Hits and Misses in the 2025 Amendments to Merger Rules

Section 233 of the Companies Act, 2013 (the "**Act**") introduced the concept of fast-track mergers ("**FTMs**") to provide a simplified and expedited restructuring framework for certain classes of companies. The mechanism was intended to reduce reliance on the National Company Law Tribunal ("**NCLT**") by vesting approval powers primarily with the Regional Director ("**RD**"). This mechanism finds its roots in the J.J. Irani Committee Report of 2005 on Company Law, which suggested a less stringent framework for mergers among associated companies, private companies or companies where no public interest is involved.

The recent Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025[1] (the "**Amended Rules**") have broadened the scope of eligible entities for FTMs and have revamped certain compliances. The following classes of companies have been additionally included in the enhanced scope of eligible entities for FTMs, with certain specific applicable conditions for each of them: (i) holding company and its subsidiary company(ies); (ii) 2 or more unlisted companies; (iii) 2 or more fellow subsidiary companies; and (iv) reverse cross border merger involving a wholly owned subsidiary of a foreign company. The revamped compliances include: (i) requirement of notifying stock exchanges for listed companies and other applicable sectoral regulators for all companies; (ii) mandatory filing of scheme with the RD within 15 days of its passing in the board meeting; (iii) revision of format of forms CAA-9 to CAA 12; and (iv) clarification with regard to the *mutatis mutandis* applicability of the Amended Rules in cases of schemes of division or transfer of undertakings.

While the Amended Rules are a step in the right direction, they leave certain critical issues unaddressed. This article provides a critique of such issues persisting in the implementation of mergers and demergers under the FTM route.

1. Threshold for Shareholders' Consent

1.1. Statutory Requirement

Section 233(1)(b) of the Act mandates approval of a scheme by members holding not less than 90% of the total number of shares of each company, and by creditors representing not less than nine-tenths in value. Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**CAA Rules**") operationalises this requirement.

1.2. Practical Challenges

For companies with dispersed shareholding, including listed companies and widely held unlisted companies, securing affirmative consent from members holding not less than 90% of shares of such company is practically untenable. Non-responsive or passive shareholders including institutional and retail investors make it exceedingly difficult to meet this statutory threshold.

The Chennai Bench of NCLT, in *In Re: Stanworth Management Pvt. Ltd.*[2], affirmed the RD's order rejecting a scheme placed for approval under the FTM route, where approval of shareholders holding only 76.69% in value was obtained, citing the absence of the statutorily required approval of members holding not less than 90% of shares of the company. The NCLT further referenced the Company Law Committee Report of 2022 which recommended a twin test for FTMs (*as detailed below*), and held that the law currently in place strictly requires approval of members

[1] Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025, enacted vide Notification G.S.R. 603(E) dated September 04, 2025 issued by the Ministry of Corporate Affairs.
[2] In Re: Stanworth Management Pvt. Ltd., CA(CAA)/9/CHE/2025.

holding note less than 90% of shares of the company and
therefore the scheme could not have been sanctioned under the FTM route provided under Section 233 of the Act.

1.3. Recommendation of the Company Law Committee Report, 2022

The Company Law Committee Report, 2022 *inter alia* recommends a twin test as regards approval of equity shareholders for schemes under the FTM Route: (i) approval of majority of persons present and voting in the meeting accounting for 75% in value of the shareholding of persons present and voting; and (ii) representing more than 50% in value of the total number of shares of the company.

The first leg of this recommendation, i.e. approval of majority of persons present and voting and accounting for 75% in value of the shareholding of such persons, is in line with the threshold provided under Section 230 of the Act, as is being carried forward from Section 391 of the previous Companies Act of 1956, for approval of schemes under the NCLT route. The latter leg of this recommendation, i.e. approval of persons representing more than 50% in value of the total number of shares of the company, has been recommended for ensuring that the interests of the minority shareholders are not affected.

The implementation of this recommendation would have aligned FTM approvals with the practicality of shareholder participation while safeguarding the interests of the minority shareholders. However, this recommendation has not yet been adopted.

2. Mode of Obtaining Shareholders' Consent

2.1. Present Position

Sections 233(1)(b) and 233(1)(d) of the Act require a threshold of members holding not less than 90% of the total number of shares of each company, and by creditors representing not less than nine-tenths in value, for approval of a scheme under the FTM route. While creditors' approval is allowed to be furnished either in writing or at a meeting, the shareholders' approval is restricted only to a meeting, with no provision for written consent.

2.2. Procedural Anomaly

The difference in modes of obtaining consent from creditors and shareholders creates an anomalous position. There appears to be no concrete rationale for denying shareholders the relatively convenient mode of providing their consent for approval on the scheme in writing, when such mechanism is expressly provided to the creditors.

Further, as regards the approval of schemes through the NCLT route, the NCLT has routinely dispensed with meetings of shareholders where written consents from such shareholders holding 90% or more in value are obtained. Absence of such practice or procedure under the FTM route dilutes the fast-track character of the process.

3. Corporate Guarantees and Third-Party Securities

3.1. Nature of Obligations

A corporate guarantee is typically a contingent liability for the guarantor and does not, unless invoked, create a direct creditor relationship. Similarly, where a company provides a third-party security for a loan taken by another entity, a charge is created on such security. However, in the books of such company, no debt is shown against such security, since the debt is taken by another entity and not by such company.

3.2. Interpretive Issue

Under the FTM route, consents from creditors holding 9/10th in value of the debt are required for approval of such scheme. Where a scheme alters, extinguishes, or transfers corporate guarantees or third-party securities, the corporate guarantee holders or charge holders may argue that they are "creditors" entitled to vote on the scheme.

However, in the books of accounts of the company, such corporate guarantee holders or charge holders are not reflected as creditors. In this regard, the Act and the CAA Rules are silent on whether such corporate guarantee holders or charge holders fall within the statutory definition of creditors for FTM purposes, leaving an ambiguity as to whether consent is required to be taken from such beneficiaries for approval of a scheme or not.

3.3. Market Practice

To mitigate risk, schemes often disclose all corporate guarantees and third-party securities in detail. Some schemes expressly provide for continuation or treatment of such obligations. However, whether corporate guarantee holders and charge holders of third-party security would also form part of the total 'value of creditors' for the purposes of Section 233(1)(d) of the Act remains ambiguous. Such absence of statutory clarity leaves room for disputes and potential referral of schemes by the RD to the NCLT, which defeats the purpose of the FTM process.

4. Ambiguity in the Liability Threshold for Unlisted Companies

4.1. Amended Rule

The Amended Rules *inter alia* expand FTM eligibility to certain unlisted companies where "*every company involved in the merger has, in aggregate, outstanding loans, debentures or deposits not exceeding INR 200 crore*" and is not in default.

4.2. Drafting Ambiguity

The use of the term "aggregate" is unclear. A literal reading suggests that each unlisted company must individually have outstanding loans, debentures, and deposits less than or equal to INR 200 crore. Alternatively, the provision could be interpreted to require that the combined liabilities of all companies involved in the scheme together do not exceed INR 200 crore.

This ambiguity creates transactional uncertainty. For instance, two companies with INR 150 crore liabilities each may either both qualify (if the limit is per company) or be disqualified (if the limit is cumulative).

5. Approvals and Regulatory Delays

5.1. SEBI and Sectoral Regulators

For listed companies, Securities and Exchange Board of India's ("**SEBI**") Master Circular on Schemes of Arrangement[3] continues to apply. Except for mergers between a listed company and its wholly owned subsidiary, prior SEBI/stock exchange approvals are mandatory. Further, for all companies, sectoral regulators (such as the Reserve Bank of India, Competition Commission of India, etc.) are required to be to be notified, elongating timelines in the FTM process.

5.2. Time Savings in Practice

Despite being positioned as a faster alternative, the FTM process often faces delays owing to: (i) compliance with SEBI/sectoral regulator requirements; (ii) objections from the Registrar of Companies or Official Liquidator; (iii) time taken to secure consents from members holding not

[3] Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of Securities Contracts (Regulation) Rules, 1957, issued by the Securities Exchange Board of India, vide circular number SEBI/HO/CFD/POD-2/P/CIR/2023/93, dated June 20, 2023.

less than 90% of the total number of shares of each company, and by creditors representing not less than nine-tenths in value; and (iv) the RD's discretion to refer the matter to the NCLT.

As a result, the intended efficiency gains of the FTM route are frequently eroded.

6. Ambiguity as to Applicability of Composite Schemes

6.1. Statutory Position

Section 233(12) of the Act provides that the provisions of Section 233 of the Act shall apply *mutatis mutandis* to: (i) schemes of compromise or arrangement under Section 230 of the Act; and (ii) schemes of division or transfer of undertaking of a company under Section 232(1)(b) of the Act.

The Amended Rules, however, only clarify their applicability to schemes of division or transfer of undertaking under Section 232(1)(b) of the Act. No express mention is made of composite schemes which, as a matter of practice, combine an amalgamation with one or more elements of compromise, demerger, arrangement, or reduction of share capital. Such schemes technically form a part of schemes of arrangement under Section 230 of the Act.

6.2. Interpretive Gap

This omission has created an interpretative vacuum. While the legislature appears to have intended broader application by way of Section 233(12) of the Act, the subordinate legislation has limited its clarification to schemes of division or transfer of undertaking only. Consequently, it remains unclear whether a composite scheme, incorporating multiple restructuring elements within a single scheme, can be sanctioned through the FTM route.

Owing to this, practically, companies intending to sanction their composite schemes may have to go through the relatively rigorous NCLT route, even if such companies are eligible for approval of their scheme through the FTM route.

7. Conclusion

While the 2025 amendments have broadened the ambit of FTMs, structural challenges remain to continue. The rigidity of shareholder consent requirements, ambiguity around creditor definitions, drafting inconsistencies in liability thresholds, lack of clarity on the treatment of composite schemes, and continued regulatory overlaps undermine the utility of this route.

Legislative adoption of the Company Law Committee's recommendations, particularly a more pragmatic shareholder approval framework and clearer drafting on liability thresholds and treatment of contingent obligations, along with express recognition of composite schemes under Section 233 of the Act and parity in the mode of obtaining shareholder and creditor consents, would be critical to unlocking the potential of FTMs as an effective restructuring tool. Clearer drafting on liability thresholds and treatment of contingent obligations would further ensure consistency and practice, preserving the 'fast-track' character of the framework.

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The views expressed above are personal and not of Vaish Associates. The same does not constitute legal advice.

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