



**Amalgamations Mergers & De-Mergers
Company Law & Tax Matters**

by

AKSHAY K. GUPTA, F.C.A., Kanpur



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Ordinarily Acquisition, Demergers & Mergers is possible by entering into agreements and arrangements between the parties and passing special resolution etc. This may require consents, arrangements, agreements and settlements with large number of parties, e.g. shareholders, creditors, lenders, debtors, employees, government departments etc. and may also involve substantial taxation and other operational constraints. However, the Corporate and Fiscal laws prescribe rules and procedures to facilitate such transactions and provide tax incentives in appropriate cases. This paper provides a narration on Procedure for merger and amalgamation, Valuation for M&A, Fiscal impacts and simple case studies to understand the related tax laws.

A. Procedure For Amalgamation *

Procedure for merger and amalgamation is different from takeover. Mergers and amalgamations are regulated under the provisions of the Companies Act, 1956 whereas takeovers are regulated under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations.

The beginning to amalgamation may be made through common agreements between the transferor and the transferee but mere agreement does not provide a legal cover to the transaction unless it carries the sanction of company court for which the procedure laid down U/s-391 of the Companies Act should be followed for giving effect to amalgamation through the statutory instrument of the Court's Sanction.

Although Chapter-V of the Companies Act, 1956 comprising Sections-389 to 396A deals with the issue and related aspects covering arbitration, compromises, arrangements and reconstructions but at different times and under different circumstances in each case of merger and amalgamation application of other provisions of the Companies Act, 1956 and rules made there under may necessarily be attracted. So, the procedure does not remain simple or literally confined to Chapter-V.



The procedure is complex, involving not only the compromises or arrangements between the company and its creditors or any class of them or between the company and its members or any class of them, but it involves, safeguard of public interest and adherence to public policy. These aspects are looked after by the Central Govt. through Official Liquidator or Company Law Board, Department of Company Affairs and the Court has to be satisfied of the same.

Top Management's Commitments towards Merger and Amalgamation :

Top management defines the organization's goal and outlines the policy framework to achieve these objectives. The organization's goal for business expansion could be accomplished, inter alia through business combinations assimilating a target corporate which can remove the present deficiencies in the organization and can contribute in the required direction to accomplish the goal of business expansion through enhanced commercial activity i.e. supply of inputs and market for out-put product diversification, adding up new products and improved technological process, providing new distribution channels and market segments, making available technical personnel and experienced skilled manpower, research and development establishments etc. Depending upon the specific need and cost advantage with reference to creating a new set up or acquiring a well-established set-up firm.

Search for a Merger Partner

The top management may use their own contacts with competitors in the same line of economic activity or in the other diversified field which could be identified as better merger partners or may use the contacts of merchant bankers, financial consultants and other agencies in locating suitable merger partners. A number of corporate candidates maybe short-listed and identified. Such identification should be based on the detailed information of the merger partners collected from published and private sources. Such information should reveal the following aspects viz :-

- i) Organizational history of business and promoters and capital structure ;
- ii) Organizational goals ;
- iii) Product, market and competitors ;



- iv) Organizational set-up and management pattern ;
- v) Assets profile : movable and immovable assets, land and building ;
- vi) Manpower : skilled, un-skilled, technical personnel's and detailed particulars of management employees ;

Negotiation

Top management can negotiate at a time with several identified short-listed companies suited to be merger partner for settling terms of merger and pick-up one of them which offers most favourable terms.

Negotiations can be had with target companies before making any acquisitional attempt. Same drill of negotiations could be followed in the cases of merger and amalgamation.

The activity schedule for planning merger covers different aspects like preliminary consultations with the perspective merger partner and seeking its willingness to cooperate in investigations. There are other aspects, too, in the activity schedule covering quantification, action plan, purpose, shape, and date of merger, profitability and valuation, taxation aspects legal aspects and development plan of the company after merger. The most important step at this stage of Valuation of Shares and determination of Share Exchange Ratio.

Steps for Merger & Amalgamation

Once the merger partner has been identified and terms of merger are settled the subsequent steps are given below:

1) Scheme of Amalgamation :

The scheme of amalgamation should be prepared by the companies, which have arrived at a consensus to merge. There is no specific form prescribed for scheme of amalgamation but scheme should generally contain the following information :-

- i) Particulars about transferee and transferor companies ;
- ii) Appointed date i.e. Cut-Off date from which the transferor company rest with transferee company ;



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- iii) Main terms of transfer of assets from transferor to transferee with power to execute on behalf or for transferee the deed or documents being given to transferee ;
- iv) Main terms of transfer liabilities from transferor to transferee covering any conditions attached to loans/ debentures/ bonds/ other liabilities from bank/ financial institution/ trustees and listing conditions attached thereto ;
- v) Effective date when the scheme will come into effect ;
- vi) Conditions as to carrying on the business activities by transferor between 'appointed date' and 'effective date' ;
- vii) Description of happenings and consequences of the scheme coming into effect on effective date ;
- viii) Share capital of transferor company specifying authorized capital, issued capital and subscribed and paid-up capital ;
- ix) Share capital of transferee company covering above heads ;
- x) Description of proposed share exchange ratio, any conditions attached thereto, any fractional share certificates to be issued, transferee company's responsibility to obtain consent of concerned authorities for issue and allotment of shares and listing ;
- xi) Surrender of shares by share-holder of transferor company for exchange into new share certificates ;
- xii) Conditions about payment of dividend, ranking of equity shares pro-rata dividend declaration and distribution ;
- xiii) Status of employees of the transferor companies from effective date and the status of the provident fund, gratuity fund, super annuity fund or any special scheme or funds created or existing for the benefit of the employees;
- xiv) Treatment on effective date of any debit balance of transferor company balance sheet ;
- xv) Miscellaneous provisions covering income-tax dues, contingencies and other accounting entries deserving attention or treatment ;



- xvi) Commitment of transferor and transferee companies towards making applications/ petitions U/s-391 and 394 and other applicable provisions of the Companies Act, 1956 to their respective High Courts ;
- xvii) Enhancement of borrowing limits of the transferee company upon the scheme coming into effect ;
- xviii) Transferor and transferee companies give assent to change in the scheme by the court or other authorities under the law and exercising the powers on behalf of the companies by their respective Boards ;
- xix) Description of powers of delegatee of transferee to give effect to the scheme;
- xx) Qualification attached to the scheme, which require approval of different agencies, etc ;
- xxi) Description of revocation/ cancellation of the scheme in the absence of approvals qualified in Clause-XX above not granted by concerned authorities;
- xxii) Statement to bear costs etc, in connection with the scheme by the transferee company ;

2) Approval of Board of Directors for the Scheme :

Respective Board of Directors for transferor and transferee companies are required to approve the scheme of amalgamation.

3) Approval of the Scheme by Specialized Financial Institutions/ Banks/ Trustees for Debenture Holders :

The Board of Directors should in fact approve the scheme only after it has been cleared by the financial institutions/ banks, which have granted loans to these companies or the debenture trustees to avoid any major change in the meeting of creditors to be convened at the instance of the Company Court's U/s-391 of the Companies Act, 1956.

Approval of Reserve Bank of India is also needed where the scheme of amalgamation contemplates issue of share/ payment of cash to non-resident Indians or foreign



national under the provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000. In particular, regulation 7 of the above regulations provide for compliance of certain conditions in the case of scheme of merger or amalgamation as approved by the court.

4) Intimation to Stock Exchange about Proposed Amalgamation :

Listing agreements entered into between company and stock exchange require the company to communicate price-sensitive information to the stock exchange immediately and simultaneously when released to press and other electronic media on conclusion of Board meeting according approval to the Scheme.

5) Application to Court for Directions :

The next step is to make an application U/s-39(1) to the High Court having jurisdiction over the Registered Office of the Company. The transferor and the transferee company should make separate applications to the High Court. The application shall be made by a Judge's Summons in Form No-33 supported by an affidavit in Form No-34 (See Rule-82 of the Companies (Court) Rules, 1959). The following documents should be submitted with the Judge's Summons :-

- a) A true copy of the Company's Memorandum and Articles ;
- b) A true copy of the Company's latest audited balance sheet ;
- c) A copy of the Board Resolution, which authorizes the Director to make the application to the High Court.

6) High Court Directions for Members' Meeting :

Upon the hearing of the summons, the High Court shall give directions fixing the date, time and venue and quorum for the members' meeting and appoint an Advocate Chairman to preside over the meeting and submit a report to the Court.

Similar directions are issued by the court for calling the meeting of creditors in case such a request has been made in the application.



7) Approval of Registrar of High Court to Notice for Calling the Meeting of Members/ Creditors :

Pursuant to the directions of the Court, the transferor as well as the transferee companies shall submit for approval to the Registrar of the respective High Courts the draft notices calling the meetings of the members in Form No-36 together with the scheme of arrangements and explanations, statement U/s-393 of the Companies Act and Form of Proxy in Form No-37 of the Companies (Court) Rules to be sent to members alongwith the said notice. Once Registrar has accorded approval to the notice, it should be got signed by the Chairman appointed for meeting by the High Court who shall preside over the proposed meeting of members.

8) Despatch of Notices to Members/ Shareholders :

Once the notice has been signed by the Chairman of the forthcoming meeting as aforesaid it could be dispatched to the members under Certificate of posting at least 21 days before the date of meeting (Rule 73 of Companies (Court) Rules, 1959).

9) Advertisement of the Notice of Members' Meetings :

The court may direct the issuance of notice of the meeting of these shareholders by advertisement. In such case Rule-74 of the Companies (Court) Rules provides that the notice of the meeting should be advertised in; such newspaper and in such manner as the Court might direct not less than 21 clear days before the date fixed for the meeting. The advertisement shall be in Form No-38 appended to the Companies (Court) Rules. The companies should submit the draft for the notice to be published in Form No-38 in an English daily together with a translation thereof in the regional language to the Registrar of High Court for his approval. The advertisement should be released in the newspapers after the Registrar approves the draft.

10) Confirmation about Service of the Notice :

Ensure that at least one week before the date of the meeting, the Chairman appointed for the meeting files an Affidavit to the Court about the service of



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notices to the shareholders that the directions regarding the issue of notices and advertisement have been duly complied with.

11) Holding the Shareholders' General Meeting and Passing the Resolutions:

The general meeting should be held on the appointed date. Rule-77 of the Companies (Court) Rules prescribes that the decisions of the meeting held pursuant to the court order should be ascertained only by taking a poll. The amalgamation scheme should be approved by the members, by a majority in number of members present in person or on proxy and voting on the resolution and this majority must represent at least $\frac{3}{4}$ ths in value of the shares held by the members who vote in the poll.

12) Filing of Resolutions of General Meeting with Registrar of Companies :

Once the shareholders general meeting approves the amalgamation scheme by a majority in number of members holding not less than $\frac{3}{4}$ in value of the equity shares, the scheme is binding on all the members of the company. A copy of the resolution passed by the shareholders approving the scheme of amalgamation should be filed with the Registrar of Companies in Form No-23 appended to the Companies (Central Government's) General Rules and Forms, 1956 within 30 days from the date of passing the resolution.

13) Submission of Report of the Chairman of the General Meeting to Court:

The chairman of the general meeting of the shareholders is required to submit to the court within seven days from the date of the meeting a report in Form No-39, Companies (Court) Rules, 1959 setting out therein the number of persons who attend either personally or by proxy, and the percentage of shareholders who voted in favour of the scheme as well as the resolution passed by the meeting.

14) Submission of Joint Petition to Court for Sanctioning the Scheme:

Within seven days from the date on which the Chairman has submitted his report about the result of the meeting to the Court, both the companies should make a



joint petition to the High Court for approving the scheme of amalgamation. This petition is to be made in Form No-40 of Companies (Court) Rules. The court will fix a date of hearing of the petition. The notice of the hearing should be advertised in the same papers in which the notice of the meeting was advertised or in such other newspapers as the court may direct, not less than 10 days before the date fixed for the hearing (Rule-80 of Companies (Court) Rules).

15) Issue of Notice to Regional Director, Company Law Board U/s-394-A

On receipt of the petition for amalgamation U/s-391 of Companies Act, 1956 the Court will give notice of the petition to the Regional Director, Company Law Board and will take into consideration the representations, if any, made by him.

16) Hearing of Petition & Confirmation of Scheme

Having taken up the petition by the court for hearing it will hear the objections first and if there is no objection to the amalgamation scheme from Regional Director or from any other person who is entitled to oppose the scheme, the court may pass an order approving the scheme of amalgamation in; Form No-41 or Form No-42 of Companies (Court) Rules. The court may also pass order directing that all the property, rights and powers of the transferor company specified in the schedules annexed to the order be transferred without further act or deed to the transferee company and that all the liabilities and duties of the transferor company be transferred without further act or deed.

17) Filing of Court Order with ROC by both the Companies

Both the transferor and transferee companies should obtain the Court's order sanctioning the scheme of amalgamation and file the same with ROC with their respective jurisdiction as required vide Sec-394(3) of the Companies Act, 1956 within 30 days after the date of the Court's Order in Form No-21 prescribed under the (Central Government's) General Rules and Forms, 1956. The amalgamation will be given effect to from the date on which the High Court's Order is filed with the Registrar.



18) Transfer of the Assets & Liabilities

Section-394(2) vests power in the High Court to order for the transfer of any property or liabilities from transferor company to transferee company. In pursuance of and by virtue of such order such properties and liabilities of the transferor shall automatically stand transferred to transferee company without any further act or deed from the date the Court's Order is filed with ROC.

19) Allotment of Shares to Shareholders of Transferor Company

Pursuant to the sanctioned scheme of amalgamation, the share-holders of the transferor company are entitled to get shares in the transferee company in the exchange ratio provided under the said scheme. There are three different situations in which allotment could be given effect :-

- i) Where transferor company is not a listed company, the formalities prescribed under listing agreement do not exist and the allotment could take place without setting the record date or giving any advance notice to shareholders except asking them to surrender their old share certificates for exchange by the new ones ;
- ii) The second situation will emerge different where transferor company is a listed company. In this case, the stock exchange is to be intimated of the record date by giving at least 42 days notice or such notice as provided in the listing agreement ;
- iii) The third situation is where allotment to Non-Resident Indians is involved and permission of Reserve Bank of India is necessary. The allotment will take place only on receipt of RBI permission. In this connection refer to Regulations- 7, 9 & 10B of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000 as and where applicable.

Having made the allotment, the transferee company is required to file with ROC with return of allotment in Form No-2 appended to the Companies (Central Government's) General Rules and Forms within 30 days from the date of allotment in terms of Sec-75 of the Act.



Transferee company shall having issued the new share certificates in lieu of and in exchange of old ones, surrendered by transferor's shareholders should make necessary entries in the register of members and index of members for the shares so allotted in terms of Sec-150 and 151 respectively of the Companies Act, 1956.

20) Listing of the Shares at Stock Exchange

After the amalgamation is effected, the company which takes over the assets and liabilities of the transferor company should apply to the stock exchanges where its securities are listed, for listing the new shares allotted to the shareholders of the transferor company.

21) Court order to be annexed to Memorandum of Transferee Company

It is the mandatory requirement vide Sec-391(4) of the Companies Act, 1956 that after the certified copy of the Court's Order sanctioning the scheme of amalgamation is filed with Registrar, it should be annexed to every copy of the Memorandum issued by the transferee company. Failure to comply with requirement renders the company and its officers liable to punishment.

22) Preservation of Books & Papers of Amalgamated Company

Sec-396A of the Act requires that the books and papers of the amalgamated company should be preserved and not be disposed of without prior permission of the Central Government.

23) The Post Merger Secretarial Obligations

There are various formalities to be complied with after amalgamation of the companies is given effect to and allotment of shares to the shareholders of the transferor company is over. These formalities include filing of the returns with Registrar of Companies, transfer of investments of transferor company in; the name of the transferee, intimating banks and financial institutions, creditors and debtors about the transfer of the transferor company's assets and liabilities in the name of the transferee company, transfer of employees, gratuity, PF and Pension funds etc.



24) Withdrawal of the Scheme not Permissible

Once the scheme for merger has been approved by requisite majority of shareholders and creditors, the scheme cannot be with-drawn by subsequent meeting of shareholders by passing Resolution for withdrawal of the petition submitted to the court U/s-391 for sanctioning the scheme.

B. Valuation For M&A*

The value of a business is a function of the business logic driving the M&A, and is based on bargaining powers of buyers and sellers. Since business is based on expectations which are dynamic, valuation also tends to be dynamic and not static which means that the same transaction would be valued by the same players at different values at two different times.

There are several techniques to value a business. Broadly, these can be classified into earnings based valuation, market based valuation and asset based valuation. Earnings based valuation (*discounted cash-flow being the most common technique*) takes into consideration the future earnings of the business and hence the appropriate value depends on projected revenues and costs in future, expected capital out-flows, number of years of projection, discounting rate and terminal value of business. Thorough diligence has to be exercised in deciding these above factors since these factors would differ from sector to sector and company to company.

In a cost to create approach, the cost for building up the business from scratch is taken into consideration and the purchase price is typically the cost plus a margin. This is suitable in cases like build-operate-transfer deals. The value of a business is estimated in the capitalized earnings method by capitalizing the net profits of the business of the current year or average of three years or a projected year at required rate of return.

While using the market based valuation for unlisted companies, comparable listed companies have to be identified and their market multiples (*such as market capitalizations to sales or stock price to earnings per share*) are used as surrogates to arrive at a value.

The asset based value considers either the book value (*assets net liabilities*) or the net adjusted value (*revealed net assets*). If the company has intangible assets like brands,



copyrights, intellectual property etc., these are valued independently and added to the net asset value to arrive at the business value. Sometimes, if the business were not to be acquired on a going concern basis, the liquidation value (*or the realization from sale of assets*) is considered for the purpose of valuation.

Premiums and discounts are typically attached to a business valuation, based on the situation. These could be market share premium, controlling stake premium, brand value premium, small player discount or unlisted company discount. In addition, it may be required to work out various potential scenarios in each methodology and arrive at the likely probabilities of each while deriving the values.

Timing is very critical while divesting a business since valuation depends on the timing. Timing of sale is crucial keeping in mind economic cycles (*deal valuation takes into consideration GDP growth rates*), stock market situations (*which would decide market multiples*), global situations (*like a war or terrorist attacks*). In times like the above, the price expectations between the buyer and the seller would widely vary. For example, during a stock market lull, there could be a situation where there are more buyers but no sellers due to the low valuation.

The basis for M&A is the expectation of several future benefits arising out of synergies between businesses. There is a risk involved in realizing this synergy value. This could be due to corporate, market, economic reasons or wrong estimation of the benefits/synergies. A key case in point here is the high valuations at which internet companies were acquired in the year 2000 (*such as Satyam's acquisition of India World for USD 100 Million*).

There are also social and cultural issues post-merger. These are primarily related to work culture, management style and human resources. Synergies fructify only when these issues could be sorted out very early in the merger.

It is also important to try and work out valuations from as many of the above methods as possible and then try and see which methodology is to be taken in and which are to be rejected and derive a range of values for the transaction in different situations in case one is called upon to assist in advising the transaction valuation. Some methods like Net Asset value or past earnings based methods may prove inadequate in case of growing businesses or those with intangible assets.



Valuation Techniques can thus be summarized as under:

- ◆ Earning based valuation : Discounted cash flow/free cash flow
Cost to create approach
Capitalized earnings method
- ◆ Market based valuation : Market capitalization for listed companies
Market comparables for unlisted companies
- ◆ Asset based valuation : Net adjusted value or economic book value
Intangible asset valuation
Liquidation value

* extracts from CA Journal, May 2004.

C. Fiscal Impact of Amalgamation

If A and B merges the fiscal impact is explained below:

a) Income Tax :

- ◆ To claim benefits under income-tax, under the scheme of amalgamation, all assets and liabilities of X should be transferred to Y against consideration of shares. And not less than 75 per cent shareholders of X should become shareholders in Y.
- ◆ Unabsorbed carry forward losses and depreciation shall be allowed in appropriate cases.
- ◆ Capital gains arising out of transfer of capital assets are exempt from taxation.
- ◆ Capital gains arising out of exchange of shares by Z in company Y against shares in company X would be exempt from taxation.
- ◆ All depreciable assets of X would be transferred to Y at WDV.
- ◆ Benefits of 10B/ 80IB for un-expired period would be transferred to Y.
- ◆ Following benefits for un-expired period would also be transferred to Y :-



- ◆ Deduction for patent expenditure.
 - ◆ Deduction for know-how expenditure under section 35AB.
 - ◆ Deduction for license fees to operate telecom services under section 35ABB.
 - ◆ Deduction for preliminary expenditures under section 35D.
 - ◆ Deduction for prospecting of minerals under section 35E.
 - ◆ Amalgamation expenditure is allowed over a period of five years at 1/5th of total expenditure per annum.
 - ◆ VRS expenditure is allowed over a period of five years at 1/5th of total expenditure per annum.
 - ◆ Benefits for payments under section 43B would be available to Y.
 - ◆ Even after the appointed date, payments of advance tax, filing of returns and other tax compliance of X would be performed by it. However, after approval of the scheme, the same would be transferred to Y including credit for advance tax paid by X.
- b) **Sales Tax** – Since sales tax is payable on sales of assets and under amalgamation, no sale is involved, sales tax implication is Nil. Sales tax deferment scheme available to X would be continued with Y.
- Customs Duty** – There is no change in the customs duty liability consequent to the amalgamation as the customs duty as such is payable on goods imported and has no correlation whatsoever to the entities amalgamating. Customs duty benefits available to X would be transferred to Y.
- c) **Excise Duty** – There is no change in excise duty liability consequent to the amalgamation as the excise duty as such is payable on goods manufactured and has no correlation whatsoever to the entities amalgamating. Similarly even modvat credit benefits remain unaffected consequent to the merger. Excise duty benefits available to X would be transferred to Y.
- d) **Service Tax** – Service tax chargeable on services by X to Y and vice versa would be saved for future transactions.



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- e) **TDS** – TDS would no longer be required for payments by X to Y and vice versa.
- f) **Stamp Duty** – Stamp act varies from state to State. As per Bombay Stamp Act, conveyance includes an order in respect of amalgamation; by which property is transferred to or vested in any other person. As per this Act, rate of stamp duty is 10 per cent.
- g) **ROC Fees** – Y has to pay fees for increase in authorized share capital to effect allotment of shares to Z.
- h) **Tenancy Rights** – Without prior permission of the landlord, the tenancy rights of X cannot be automatically transferred to Y. Accordingly, tenancy agreements should be amended suitably.

CASE STUDY-1 :

Dot Com India Limited is engaged in the business of providing online interactive services to the overseas community world wide and has set-up Taj online for online shopping deliveries in India against orders sourced in overseas market. It started the business on 01.04.2001. The brought forward losses and unabsorbed depreciation upto Assessment Yr : 2003-04 are Rs.200 lacs and Rs.100 lacs respectively.

On appointed date i.e. 01.04.2003, it was amalgamated with Dot Industries Limited, which continued to carry on its business.

Query :

- a) Whether Dot Industries Limited shall be entitled to set-off or carry forward the unabsorbed business loss and depreciation of Dot Com India Limited.
- b) Would the position be changed if :
 - i) the business of the Dot Com India Limited is software manufacturing instead of aforesaid business;
 - ii) another business of the Dot Com India Limited, is manufacturing of software and the aforesaid business loss and depreciation is after set-off of profits in software business and both the business were commenced on 01.04.2000.



CASE STUDY-2 :

Jaya Sugar Limited has two sugar mills in the same premises having net book value of fixed assets of Rs.300 lacs and Rs.100 lacs respectively of 'A' unit and 'B' Unit as on 31st March, 2002.

During the accounting year 2002-03 the financial institutions acquired and sold Unit-'A' to recover their dues. The company amalgamated with Hema Sugar Limited, w.e.f. 01.04.2003. The accumulated losses and carried forward depreciation of Jaya Sugar Limited for assessment year 2003-04 were Rs.200 lacs. It has also carried forward book losses U/s-115JA of Rs.100 lacs.

Query :

- i) If Hema Sugar Limited carries on the business of Jaya Sugar Limited, is it eligible to carry forward the unabsorbed losses and depreciation and book losses of Jaya Sugar Limited.
- ii) Would it make any difference if financial institution acquire and sell the Unit-'A' after amalgamation in December 2003.

CASE STUDY-3 :

Ashwarya Sugar Limited, amalgamated with Sushmita Sugar Limited on 01.04.2003. The book value of fixed assets of Ashwarya Sugar Limited as on 31.03.2003 was as under :-

Land	-	Rs.	50 lacs
Building	-	Rs.	150 lacs
Plant & Machinery	-	Rs.	800 lacs
Other Fixed Assets	-	Rs.	50 lacs
Total	-	Rs.	1050 lacs

and its accumulated losses and unabsorbed depreciation for assessment year 2003-04 were Rs.200 lacs. Sushmita Sugar Limited continued the business of Ashwarya Sugar Limited and completely modernized the sugar factory in the accounting year : 2004-05



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and made substantial addition in the book value of the assets of Ashwarya Sugar Limited. In this process it dismantled the old machineries, buildings and miscellaneous fixed assets etc. worth book value of Rs.800 lacs on 31.03.2003.

Query :

Whether unabsorbed business loss and depreciation of Ashwarya Sugar Limited, shall be allowed to be set-off or carried forward to the Sushmita Sugar Limited.

CASE STUDY-4 :

Babur India Limited demerged its pharma business to Babur Pharma Limited under scheme of arrangement sanctioned by Hon'ble High Court w.e.f. 01.04.2003 and the shareholders in Babur India Limited, were allotted the shares of Babur Pharma Limited in the ratio of 1 share for every 2 shares held in Babur India Limited. The statement of affairs of the companies was as under :-

(Rs.in Lacs)

PARTICULARS	BABUR PHARMA LTD. AS ON 01.04.2003	BABUR INDIA LTD. AS ON 31.03.2003
Shareholder's Funds	16000	40000
Secured Loan(s)	400	3000
Unsecured Loan(s)	4400	8000
Current Liabilities & Provisions	1200	21000
Total Liabilities	22000	72000
Fixed Assets	6000	20000
Investments	6000	12000
Current Assets	9000	34000
Loans & Advances	900	6200
Deffered Tax/ Miscellaneous Expenditure	100	(-)200
Total Assets	22000	72000



Query :

If the cost of acquisition of 1 share in Babur India Limited was Rs.100/-, find the cost of acquisition of 1 share in Babur Pharma Limited and Babur India Limited after the demerger. Refer section-49(2C) and (2D) of the Income Tax Act.

CASE STUDY-5 :

XYZ Limited amalgamated with ABC Limited w.e.f. 01.04.2003. The statement of affairs of both the companies on 31.03.2003 are as under :-

Liabilities	XYZ Ltd.	ABC Ltd.	Assets	XYZ Ltd.	ABC Ltd.
Share Capital	3000	4000	Fixed Assets	2400	4000
General Reserve	1000	1000	Current Assets	2000	3000
Revaluation Res.	500	—	Profit & Loss A/c	500	—
Profit & Loss A/c	—	1000	Deferred Tax Assets	100	—
Deferred Tax Liabilities	—	200			
Current Liabilities	500	800			
Total-(Rs)	5000	7000	Total-(Rs)	5000	7000

- i) Prepare opening balance sheet of ABC Limited as on 01.04.2003 under Pooling of Interest Method.
 - a) if exchange ratio is 2 shares in ABC Limited for every 3 shares in XYZ Ltd; and
 - b) if exchange ratio is 4 shares in ABC Limited for every 3 shares in XYZ Limited.
- ii) In aforesaid if case the fair market value of the fixed assets of XYZ Limited is 4400. It is intended to account for the fair value in amalgamated company balance sheet. If exchange ratio is 1 share for every 1 share held. Calculate goodwill/ capital reserve.



CASE STUDY-6 :

ABC Company (P) Limited amalgamated with XYZ Company Private Limited w.e.f. 01.04.2003. The unabsorbed losses and depreciation of both the companies for the Assessment Year : 2003-04 were Rs.10 lacs and Rs.15 lacs respectively. On allotment of shares of XYZ Company Private Limited to the share-holders of ABC Company (P) Limited the total paid-up capital of XYZ Company Private Limited increased from Rs.100 lacs to Rs.250 lacs and members increased from 5 to 15.

Query:

- i) Determine the unabsorbed loss and depreciation to be carried forward by XYZ Company (P) Limited for the assessment year : 2003-04.
- ii) If the unabsorbed loss and depreciation of ABC Company (P) Limited of Rs.10 lacs pertains to assessment year 1999-00. Determine the subsequent assessment years upto which the losses of ABC Company (P) Limited can be carried forward for set-off by XYZ Company Private Limited if otherwise eligible.



CHECKLIST OF ACTIVITIES BY AMALGAMATING COMPANY

1. Internal consensus by top management
2. Revaluation of assets
3. Pass necessary entries in the books to effect
4. Revaluation of assets
5. Valuation of shares for exchange ratio
6. Preparation amalgamation scheme
7. Approval from Board of Directors
8. Amendments in Memorandum and Articles
9. * Approval from Stock Exchange
* Approval from RBI (in case of NBFC/ Banking Company)
* Approval from SIA (FIPB)
* Approval from STP authority
* Approval from labour unions
* Approval from banks/ FI/ debenture holders
* Approval/ Intimation to other stake holders (if required as per terms of agreements with them)
10. File application with High Court
11. Convene meeting of shareholders & creditors after making necessary compliances
12. File Chairman Report with High Court
13. File confirmation petition (Form No-40) with High Court
14. Publication of Notice in Newspapers
15. Ensure filing of report by Official Liquidator
16. Filing of High Court Order with ROC
17. Transfer of employees
18. Transfer of assets and liabilities
19. Intimation to all stakeholders (Customers, Vendors, Govt. Deptts, Banks etc.)
20. Dissolution without winding up
21. Preservation of books and papers



CHECK-LIST OF ACTIVITIES BY AMALGAMATED COMPANY

1. Internal consensus by top management
2. Revaluation of assets
3. Pass necessary entries in the books to effect
4. Revaluation of assets
5. Valuation of shares for exchange ratio
6. Preparation amalgamation scheme
7. Approval from Board of Directors
8. Intimation to Stock Exchange
9. Amendments in Memorandum and Articles
10. * Approval from Stock Exchange
* Approval from RBI
* Approval from SIA (FIPB)
* Approval from STP authority
* Approval/ Intimation to other stake holders (if required as per terms of agreements with them)
11. File application with High Court
12. Convene meeting of shareholders & creditors after making necessary compliances
13. File Chairman Report with High Court
14. File confirmation petition (Form No-40) with High Court
15. Publication of Notice in Newspapers
16. Ensure filing of report by Official (Central Govt.)



17. Filing of High Court Order with ROC
18. Transfer of employees of X
19. Addition of assets and liabilities of amalgamating company
20. Intimation to all stakeholders (Customers, Vendors, Govt. Deptts, Banks etc.)
21. Approval from PF/ Gratuity/ Superannuation Commissioners and tax officers for inclusion of employees of amalgamating company
22. Allotment of shares to shareholders of amalgamating company
23. Application to stock exchanges for listing of shares
24. Amendment in charges created by amalgamating company
25. Entry in accounts/ secretarial records/ registers
26. Tribunal order to be annexed with memorandum and articles



LUCKNOW CHARTERED ACCOUNTANTS' SOCIETY

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LUCKNOW CHARTERED ACCOUNTANTS' SOCIETY

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