HC: Stamp duty 'double jeopardy' for RIL-RPL on amalgamation scheme sanctioned by different Courts

Full Bench of Bombay HC rules that HC order sanctioning amalgamation scheme and not the amalgamation scheme is the 'instrument' on which stamp duty is to be paid under the State Legislature; Reliance Industries & Reliance Petroleum (respondents) had approached HC questioning that since both respondents were situated in different location (RIL in Maharashtra & RPL in Gujarat), scheme of amalgamation between them was sanctioned by Bombay and Gujarat HC respectively, and stamp duty was paid in State of Gujarat on Gujarat HC order, they were entitled to deduction of stamp duty paid while paying the duty in Bombay; HC holds *"As per the scheme of the said Act (Bombay Stamp Act), instrument is chargeable to duty and not the transaction and therefore even if the Scheme may be the same, i.e., transaction being the same, if the scheme is given effect by a document signed in State of Maharashtra it is chargeable to duty as per rates provided in Schedule I..."*; Further observes that though the two orders of two different high courts pertained to same scheme they were independently different instruments and could not be said to be same document especially when the two orders of different high courts were upon two different petitions by two different companies; Rejects respondents' contention that scheme of amalgamation was the 'instrument' under Bombay Stamp Act and not the order of the Court, holds that, *"Scheme of Amalgamation by itself cannot and does not result in transferring the property. It is the Order of the Court that sanctions such a Scheme of Amalgamation results in transferring the property and it is therefore, this Order alone would be an 'instrument', as defined by the said Act, on which stamp duty is chargeable"*; Thus, holds that since neither of the parties paid stamp duty in Maharashtra on Bombay HC order sanctioning the scheme, RIL was liable to pay full stamp duty under Bombay Stamp Act: Bombay HC
[LSI-1021-HC-2016-(BOM)]

HC: Composite scheme involving different arrangements with different cos. maintainable, quashes Single Judge Order

Division Bench of P&H HC sets aside Single Judge order wherein it was held that a composite scheme u/s 391-394 of Cos Act, 1956 ('the Act') could only be an arrangement between two or more companies and not different arrangements (merger, demerger etc) involving different companies; Division Bench holds that the term 'arrangement' u/s 391, not defined under the Act, is of 'wide amplitude' and an arrangement scheme often requires consideration of various enactments, components; Thus, states that *"The legislature, therefore, advisedly did not restrict the scope of the term arrangement by defining it. A view to the contrary would place an unwarranted fetter upon the activities of a company and restrict the choice of its members, creditors, debenture holders and other stakeholders."*; Division Bench observes that in instant case merger and de-merger were part of one composite scheme, and stakeholders did not compartmentalize each of the mergers and demerger and consider them separately; Rejects Single Judge view that the balance sheets, figures and finances of companies would be different, holds this as irrelevant point, and states that stakeholders of the company involved in the scheme would examine the same and it was entirely in their domain; Relies on Bombay HC rulings in re: P.M.P. Auto Industries Ltd. and re; Larsen and Toubro Ltd. and observes that, *"there was nothing illegal/ unusual about a composite scheme, in fact, in most cases, creditors and/or shareholders agreed only to various elements in scheme taken together and not independently"*, and sanctions the scheme :Punjab & Haryana HC
[LSI-915-HC-2015-(P & H)]

HC: Manufacturing co.'s demerger of real estate assets a 'sham', strikes down 391-394 scheme

HC strikes down de-merger scheme petition, upholds Regional Director's objection that the same was a design to avoid capital gains tax and stamp duty; De-merger scheme sought to transfer certain portion of land of transferor co. claimed to be engaged in real estate business, to 9 resultant companies; Notes that transferor co. had only been engaged in business of manufacturing and sale of Vanaspati edible oil, and though it had amended its object clause in MoA to include 'real estate business', there was no real estate activity carried out; Observes that*, "company did not carry out any real estate activity as neither was such activity reflected in its books of accounts by way of turnover, income and profit therefrom nor for that matter was the land of the company included in inventory under the head of Current Assets warranted under applicable Generally Acceptable Accounts Principles.. for real estate businesses"*; Rejects co's contention that it intended to commence real estate business, holds mere intent could not bring de-merger within the scope of Sec 2(19AA) of Income Tax Act ('IT Act') (which defines 'de-merger'); Holds *"while sanctioning a scheme the court in the exercise of its jurisdiction under Section 391(2) read with 394 of the Act of 1956 cannot negate other laws as it would be plainly contrary to public policy to do so";* Further notes that in lieu of equity shares, redeemable preference shares were sought to be compulsorily allotted by resultant companies to demerged company, states that important criterion for restructuring by way of demerger is that same persons carry on business restructuring, however holders of compulsorily redeemable preference shares have no rights in co's business, and only have right to dividend; Holds that though Company Court cannot sit in judgment thereof on merits u/s 391-394, sanction *"is not to be mechanically granted on the mere askance as if the court were a mere rubber stamp. The company court has to wisely exercise its discretionary jurisdiction vested in it to sanction the scheme, having regard to various aspects such as considering the background and material..."*; Relies on SC rulings in Macdowell, Hindustan Lever Vs. State of Maharashtra, Gujarat HC ruling in Wood Polymer Limited: Rajasthan HC
[LSI-954-HC-2016-(RAJ)]

HC: Rejects Regional Director's accounting related objections in subsidiaries & parent co. amalgamation

HC rejects Regional Director's ('RD') objections while sanctioning the amalgamation scheme between two wholly owned subsidiaries (transferor cos.) and their parent holding company (transferee co.); Rejects RD's accounting related objection that as both Transferor Cos. were 100% subsidiaries of

Transferee Co., 'pooling interest method' & not 'purchase method' under Accounting Standard 14 (AS-14), viz., 'Amalgamation in nature of merger' shall be applied; Holds that pooling of interest method cannot be invoked as condition for its applicability mentioned under section 3(e) of AS-14 were not satisfied, states that "in the Scheme had the Transferee Company proposed to use the pooling of interest method, that would have been completely incorrect and contrary to AS-14. An objection to that would have had to be upheld."; Further rejects RD's case that Transferee Co. should show actual investment value rather than fair market value of investment since two wholly owned subsidiaries were being amalgamated and merged with their parent, holds that if framers of AS-14 intended to draw a distinction or make an exception for cases where wholly owned subsidiaries are merged with their parents, they would undoubtedly have said so but there exists no such exception or distinction: Bombay HC
[LSI-1019-HC-2016-(BOM)]

HC: Sec. 391-394 'complete code', overrides new Company Law's Sec. 180; Regional Director objections dismissed

HC sanctions scheme of arrangement filed u/s 391 – 394 of Companies Act, 1956 for hiving off United Spirits Ltd's ('transferor co.') undertaking to Enrica ('transferee co.') by way of slump sale on a going concern basis; Rejects Regional Director's objections that proposed scheme of arrangement does not fall u/s 391-394 but u/s 180 of Companies Act, 2013 (relating to restrictions of the powers of the Board), holds that Sec. 391 to 394 is a complete code providing powers of Company Court in dealing with scheme of amalgamation / reconstruction; States that "When it is held that Sec. 391 - 394 is a code by itself necessarily it would have precedence over the other provisions of the Act…… Therefore, it cannot be said that the non-compliance of Section 180 would run contrary to the provisions of Sections 391 to 394"; Observes that terms of proposed scheme will be beneficial to all stakeholders (transferor & transferee co., creditors' interest, shareholders, employees, secured / unsecured creditors etc.), also notes that Madras HC has sanctioned scheme filed by Enrica (i.e. Transferee Co.) and it cannot be said that affairs of United Spirits Ltd's are conducted in manner prejudicial to creditors, shareholders, employees etc; Also observes that CCI, SEBI, BSE, NSE & Bangalore SE have already given their consent / approval: Karnataka HC
[LSI-367-HC-2015-(KAR)]

HC: Shareholders' commercial wisdom supreme, non-allotment of transferee co. shares can't invalidate de-merger

HC approves composite scheme of arrangement between Sterling Holiday Resorts (India) Ltd, Thomas Cook Insurance Services (India) Ltd ('TCISIL') and Thomas Cook (India) Ltd ('TCIL'), rejects Regional Director's objections under Cos Act, 1956 and Income Tax Act; The scheme proposed demerger of resort business of Sterling Holiday to TCISIL and amalgamation of its residual undertaking with TCIL, resulting in dissolution of Sterling Holiday; As consideration for Sterling Holiday-TCISIL demerger, scheme proposed allotment of shares in TCIL & not TCISIL, the resulting company; HC rejects Regional Director's objection that only a transferee company could allot shares towards consideration of transfer, and not any other person u/s 394 and in instant case, for demerger TCIL was allotting shares to Sterling Holiday, which was a parent co. of transferee co. - TCISIL; Holds that clauses (i) to (vi) of Sec 394 (1) are *"merely enabling provisions.. not in the nature of conditions for exercise of power of the company court under Section 394. These enabling provisions, therefore, cannot be construed as compulsory in any sense"*; Relies on SC ruling in Miheer Mafatlal vs Mafatlal Industries Ltd., observes *"It is not that in every case the consideration for transfer of an undertaking as part of scheme of an arrangement must come in the form of allotment of shares of a transferee company or for that matter allotment of any shares....Acceptance of any particular consideration is part of the commercial wisdom to be exercised by the shareholders of the transferor company."* ; Further rejects Regional Director's tax objection that demerger proposed in instant scheme was not as defined u/s 2(19AA) of Income Tax Act, holds that "The scheme at the same time makes it clear that if any terms or provisions of the scheme are inconsistent with the provisions of Section 2(19AA) of the Income-tax Act 1961, the provisions of Section 2(19AA) of the Income-tax Act shall prevail and the scheme shall stand modified to the extent"; Relies on co-ordinate bench rulings in Pantaloon Retail (India) Limited and Keva Aromatics Private Ltd: Bombay HC
[LSI-654-HC-2015-(BOM)]

HC: Allows Regional Director to raise tax-objections to amalgamation scheme, rejects MCA Circular reliance

HC allows Regional Director (RD) to raise tax related objections to scheme of amalgamation, rejecting petitioners' contention that RD was precluded to raise such objections, and levies costs on petitioners for suppressing tax liabilities; Holds that, *"Regional Director is not only entitled to but is duty bound to bring to the attention of the Court any provision in the scheme which may contravene/circumvent the provisions of any law including the law pertaining to Income Tax"*; Rejects petitioners' reliance on MCA

Circular dated January 15, 2014 that since Income Tax Authorities did not raise any objection within 15 days of notice, it was presumed that they did not object to the scheme, and thus, RD was precluded to raise any tax related objection; Rules that, *"The Circular merely provides a mechanism for the Regional Director to invite the comments of the Income Tax Department.. does not prevent the Regional Director from raising such objections..with regard to the scheme as he may deem fit including objections and observations pertaining to taxation laws"*; Further rejects petitioners' reliance on SC tax ruling in Marshall Sons & Co. (India) Ltd to contend that since Income Tax Authorities had made protective assessment on them, they had accepted the scheme; Holds that, *"merely because a protective assessment is made, it does not mean that the Income Tax Department has accepted a scheme. It only means that the protective assessment is not a final assessment and the same would be finalised after the Court passes an order approving or rejecting the scheme"*; With respect to RD's objection that petitioners by choosing a retrospective appointed date in the scheme violated Section 139(5) of Income Tax Act, which provides for filing revised income tax return, as then the return would not be filed within the prescribed period, directs petitioners to delete the respective clause and directs Income Tax Dept to decide petitioners' tax liability pursuant to scheme approval not bound by appointed date: Bombay HC
[LSI-386-HC-2015-(BOM)]

HC: Sanctions amalgamation scheme, permits transferee co.'s name change, MCA circular 'advisory'

High Court sanctions scheme of amalgamation of Michelin India Pvt. Ltd. ('transferor co.') with Michelin India Tamil Nadu Tyres Pvt. Ltd. ('transferee co.') Under Sections 391-394 of Cos. Act, 1956; Rejects Regional Director's objection that for change of transferee co.'s name to 'Michelin India Pvt. Ltd.', it is necessary to comply with procedure u/s 21 of Cos. Act, 1956 (corresponding to Sec. 13 of Cos. Act, 2013), holds that such 'repeated exercise' is not necessary, as there is elaborate provision in scheme of amalgamation for such name change; HC holds that Chapter V of Companies Act, 1956 (relating to 'compromises, arrangements & reconstructions') is a complete code by itself and is comprehensive enough to include name change consequent on the amalgamation / arrangement; Rejects Regional Director's reliance on MCA Circular w.r.t. change of name, relies on SC ruling in Bhagwati Developers Vs Peerless General Finance and Investment Co., holds that circulars do not have any mandatory effect and are merely 'advisory' in character; Observes that terms of proposed scheme will be beneficial to all stakeholders, creditors interest, shareholders, employees, secured/ unsecured creditors etc. of both transferor & transferee companies: Madras HC
[LSI-675-HC-2015-(MAD)]

HC: Allows 'effective date' leeway in merger scheme contingent on RBI license

Madras HC allows petition filed u/s 391-394 of Cos. Act, 1956, sanctions merger of Equitas Micro Finance Ltd. and Equitas Housing Finance Ltd. (Transferor Cos.) with Equitas Finance Ltd. (Transferee Co.); Notes that RBI had granted in-principle approval to Equitas Holdings Ltd. (holding co. of transferor and transferee cos.) for establishing Small Finance Bank subject to condition that proposed merger would be effected prior to commencement of business of such Bank; Further notes that RBI had fixed 18 months' validity period for completion of relevant formalities by the holding co. before license for Small Finance Bank could be issued u/s 22 of RBI Act; Rejects Regional Director's objection that scheme of amalgamation does not fix the 'appointed date' as same linked with 'effective date', notes the definition of 'effective date' in the Scheme as working day immediately preceding date of commencement of business by proposed Small Finance Bank; Observes that commencement of business of proposed Small Finance Business is dependent on license being issued by RBI, which in turn, is dependent on scheme being sanctioned by HC, thus referring the entire context as 'chicken and egg situation'; Peruses RBI's in-principle approval and opines *"the manner in which the in-principle approval is framed, there is no guarantee that banking licence would follow if, for any reason, RBI, comes to the conclusion that all formalities and conditions stipulated by it, do not, stand fulfilled";* Holds that the Scheme can neither provide a clear appointed date nor can fix share exchange ratio nor provide for dissolution of transferor co. without winding up, as there is a possibility that RBI may not issue license to amalgamated co. / merged entity; Perusing Sec. 394 (relating to 'provisions for facilitating reconstruction and amalgamation of cos.'), HC states that the Court, either while sanctioning compromise / arrangement or by a subsequent order, is entitled to make provisions for all or any of the matters (including allotment of shares by transferee co., dissolution without winding of transferor co.), as may be necessary to ensure that amalgamation is fully and effectively carried out; Observes that determination of share-exchange ratio is not difficult as same is discernable (i.e. linked to the date of commencement of business by Small Finance Bank) and it can be worked out based on methodology articulated therein i.e. book value method; Opines that while a scheme for amalgamation may be sanctioned, the actual date of amalgamation / merger be delayed till such time the necessary pre-requisites are fulfilled; Holds, *"Sanctioning of compromise/arrangement does not necessarily fetter the Court from delaying date of actual amalgamation/merger of entities";* Notes Regional Director's affidavit and Official Liquidator's Report which indicate that affairs of transferor co. are not carried out in a manner prejudicial to its member or public: Madras HC
[LSI-1121-HC-2016-(MAD)]

HC: Dividend payment vide 'share gifting' illegal; Strikes down Sec 391-394 scheme, upholds tax-objection

HC refuses to sanction Indian Seamless Enterprises Limited's ('petitioner') arrangement scheme u/s 391 - 394 of Cos Act, 1956, whereby it sought to make a gift of shares held by it in Taneja Aerospace and Aviation Limited ("TAAL"), to its shareholders, holds the same as 'illegal & 'contrary to law'; Accepts Regional Director's objections that gifting of shares in instant case amounts to payment of dividend, which violates Sec 123 of Cos Act, 2013 (relating to prohibition of dividend in kind) & Section 281 of Income Tax Act ('IT Act'); Relying on SC tax rulings in Kantilal Manilal vs CIT & CIT vs Central India Industries, holds that distribution of properties or rights having monetary value by a co. among its shareholders constitutes 'dividend'; Observes that in instant case, not just right to acquire shares is being gifted, but shares themselves are being gifted, holds "this is clearly distribution of dividend by the Petitioner Company"; Observes that though definition of 'dividend' u/s 2(35) Cos Act

2013 is an inclusive definition, it does not exclude ordinary meaning of dividend from its purview, and holds that in instant case gifting of shares was thus dividend and Sec 123 ought to have been complied

with; Rejects petitioner's contention that Sec 123 is inapplicable as it is a scheme of distribution of co's assets under Sec 391-394 which is a complete code, holds that even if a company distributes its assets among its shareholders by means of a scheme of compromise or arrangement u/s 391 to 394, Sec. 123 shall have to be complied with if such distribution of assets amounts to distribution of dividend; Rejects petitioner's reliance on Bombay HC (Division Bench) ruling in SEBI vs Sterlite Industries (India) Ltd, as distinguishable on facts; With respect to tax related objection of Regional Director that the scheme violated Sec 281 of Income Tax Act (which prohibits gift of any asset by assessee to any person during pendency of proceedings under IT Act without permission of Assessing Officer), notes that assessment proceedings, outstanding demands & penalty proceedings under IT Act were pending against petitioner, despite such fact, it proposed to gift its shares, thus, holds the scheme as void; Rejects petitioner's contention that it had sufficient means to discharge tax liability as and when it accrued, petitioner cannot avoid applicability of Sec 281 of Income Tax Act on such a ground: Bombay HC

[LSI-734-HC-2015-(BOM)]

HC: Sanctions amalgamation scheme; Tax reduction not against public policy

HC sanctions scheme of amalgamation between 14 transferor cos. and their majority equity shareholder - Hill County Properties Limited ('transferee co.', formerly Maytas Properties Limited); Notes that lands possessed by transferor cos. were given to transferee company for development in consideration for a share in the development, and the proposed amalgamation was aimed to achieve synergistic integration of businesses of transferor & transferee cos.; Rejects Regional Director's tax objection (based on Income Tax Dept's letter) that the scheme was intended only to offset transferee co's losses against profits made by transferor cos. which acquired agricultural land at cheaper cost and received huge profits out of development of such lands, and this was done with a view to evade payment of income tax; Notes that pursuant to the collapse of SATYAM, which was promoter of transferee co., a new management had taken (by IL&FS Group by infusing Rs 850 crores), thus, instant scheme was proposed in order to

offset the losses of transferee co., holds that proposed arrangement was not sham; Observes that main purpose of proposed amalgamation was to streamline affairs of companies by ensuring that all 14 transferor cos. which have stopped their activities were wound up, thus, it was bona fide, states that *"If one of the reasons for the proposed amalgamation is tax planning,.. the scheme cannot be invalidated only on that ground. The intention of a party to reduce tax liability cannot be said to be contrary to public interest or against public policy*"; Refers to SC tax rulings in McDowell and Co. Ltd. Vodafone International Holdings BV vs. UOI, UOI vs Azadi Bachao Andolan and observes that, *"if a transaction is entered as sham with a view to circumvent tax laws and evade taxation, the Court will not approve such transaction ...The intention of a party to reduce tax liability cannot be said to be contrary to public interest or against public policy"*: Telangana & AP HC

[LSI-825-HC-2015-(TEL & AP)]

HC: Orders re-visiting of "illogical, absurd" merger swap-ratio; Upholds Regional Director's objection

HC in amalgamation scheme petition observes share exchange ratio (For every 1 Equity share of Rs.1,000/- each in transferor co., the transferee co., proposed to issue and allot 786 equity shares of Rs. 10/- each to transferor co.'s shareholders) to be unfair, unjust and not based on market realities, thus, directs RoC to work out exchange ratio in a fair manner through independent experts; Amalgamation scheme petition was filed by two Assam based cos. ('petitioners') engaged in cultivation and sale of tea with the object to increase the capital base, which was approved in shareholders & creditors meeting, however, a shareholder of transferee co. ('objector') as also the Regional Director had raised an objection regarding share exchange ratio; Notes business profile of both transferor & transferee (public listed co.) cos., and share exchange ratio, i.e. for every Rs.1,000 value of shares in transferor co., a shareholder in transferor co. would get Rs.7,860 value of shares in transferee Company; Observes that, "it is quite apparent that the exchange ratio proposed in the scheme which is heavily loaded in favour of the shareholders of the Transferor Company appears to be unrealistic and illogical, if not downright absurd"; Rejects explanation that share exchange ratio was based on earning capacity of transferor co and confirmed by independent Merchant Banker, absent proof; Further observes the litigation history between objector & petitioners, states that objection regarding share exchange ratio could not be brushed aside and states that "since it is a case of valuation of the shares of the two companies.. keeping in mind that the Transferee Company is a public limited company and a listed company.. there cannot be any doubt that substantial public interest is involved in the above exercise"; Holds that though valuation of shares and consequently share exchange ratio between two merging companies is a complex issue requiring technical expertise, "The Court in its supervisory jurisdiction can however certainly look into and examine the justification or otherwise of the valuation and exchange ratio proposed and in appropriate cases may lift the veil to see the real purpose.. While exercising its jurisdiction, the Court is competent to examine the bonafides or fairness of the valuation of shares..", relies on Calcutta HC ruling in Bengal Tea Industries Ltd.: Gauhati HC
[LSI-864-HC-2015-(GAU)]

HC: Dismisses Govt. objection to amalgamation scheme over procedural non-compliance; Co.'s Articles prevail

HC rejects Central Govt's objection to scheme of amalgamation regarding compliance of Sec 117 of Companies Act, 2013 (which stipulates that copy of every resolution / agreement, passed in meeting shall be filed with the Registrar within thirty days of its passing / making thereof) and filing of form MGT-14; Accepts petitioner's stand that since Article 25 of Articles of Association of transferee company specifically stated that *"share capital can be altered by passing any 'Ordinary Resolution'"*, such scheme of amalgamation need not be amended; States that, *"I find that observations of the Regional Director, Company Law Board, Eastern Region, Ministry of Corporate Affairs made in paragraph 2(a) of their Affidavit are unnecessary..It is held that compliance with provisions of Section 117 of the Companies Act, 2013 and filing of e-form MGT-14 are not required"*; Directs for approval of scheme of amalgamation: Gauhati HC
[LSI-297-HC-2015-(GAU)]

HC: Rejects Govt.'s objection to IDFC's demerger-scheme over bonds transfer, capital gain liability

HC approves demerger of financial undertaking of IDFC Ltd ('Demerged co.') to IDFC Bank Ltd ('Resulting co.'); On demerged co.'s request to transfer its long term infrastructure bonds ('LTIBs') to resulting co. & its conversion from secured to unsecured bonds, Ministry of Finance (Govt. of India), replied that since no banking company was allowed to issue LTIBs, transfer of bonds issued by demerged Company to resulting Company, would not be possible and exchange of bonds would attract capital gains in hands of bond-holder; However, HC accepts petitioners' (IDBI Ltd & IDBI Bank Ltd) submission this was done u/s 80CCF of Income Tax Act & RBI New Banking Guidelines and such conversion of LTIBs would not attract capital gains because the original issuer was substituted and once the bonds were redeemed, they would get their face value as interest was paid periodically; Further HC observes that demerged co.'s had submitted an affidavit that resulting Company had enough assets to meet liabilities on repayment of LTIBs & undertaken guarantee that it would honour the said liability and make payment to bondholders; Thus, HC holds *"no objectionable feature in the Scheme of Arrangement (Demerger) detrimental to the (bondholders) employees of the Demerged company or of the Resulting company."*: Madras HC
[LSI-580-HC-2015-(MAD)]

HC: Sahara ruling doesn't confer SEBI 'locus' to challenge Sec. 391-394 scheme; Accounting non-compliance immaterial

HC dismisses SEBI application for recall of HC order sanctioning composite scheme between Kakinada Fertilizers Limited [(KFL) Transferee Company], erstwhile Nagarjuna Fertilizers and Chemicals Limited [(erstwhile NFCL) Transferor Company No. 1 – Demerged Company], Ikisan Limited [(Ikisan) Transferor Company No.2) and Nagarjuna Oil Refinery Limited [(NORL) Transferee Company No. 2/Resulting Company]; Under the composite scheme approved by 99.83% shareholders, oil business of erstwhile NFCL was demerged into NORL and erstwhile NFCL together with its residual business and Ikisan were merged into KFL, and after the merger, KFL was renamed as NFCL; HC primarily rejects SEBI's locus standi to file such an application, relies on Bombay HC (Division Bench) ruling in SEBI vs. Sterlite Industries India Ltd wherein it was held that SEBI cannot, as a matter of right, be heard in all scheme petitions coming up before Court u/s 391 of Cos Act 1956; Rejects SEBI's reliance on SC ruling in Sahara India Real Estate Corporation Ltd. and others vs. SEBI wherein it was held that SEBI has very wide powers to take any action/step necessary for investor protection, holds SC observations as 'general in nature' and not overriding Division Bench ruling in Sterlite; HC further observes that *"If SEBI has no locus to appear in a Scheme Petition, SEBI can hardly be a "person aggrieved" who would be entitled to file a petition seeking a review/recall of the order sanctioning the scheme."*; However, noting that SEBI had alleged suppression of facts by parties to the scheme, thereby contending perpetration of fraud on HC, Court delves into the merits of the case; Notes that parties had filed all relevant documents pertaining to the scheme, also observes that approval was granted to the scheme by Stock Exchanges (as required under Clause 24(f) of Listing Agreement) after seeing relevant documents including the valuation report and holds that fairness opinion by Stock Exchanges also shows that question of suppression of valuation report or any relevant facts does not arise; Notes that prior to sanction of the scheme, SEBI had received a complaint from NFCL's shareholder that implementation of scheme was detrimental, however, instead of looking into the matter, SEBI forwarded the matter to

Stock Exchanges for listing purpose; Thus, rejects SEBI's submission that grant of approval under Clause 24 (f) of Listing Agreement pertains to listing and does not pertain to Court's jurisdiction under Sections 391-394; Holds that, "If the Stock Exchanges were only concerned with the grant of approval for listing under Clause 24 (f) of the Listing Agreement and not with the scheme propounded under the provisions of Sections 391-394 of the Act.. SEBI ought to have investigated the complaint at its own end instead of forwarding the same to the Stock Exchanges... The stand now taken by SEBI is an opportunistic one motivated only by its failure to give timely, indeed any, attention to the Complaint filed by a shareholder"; On SEBI's allegation of violation of Accounting Standards in valuation of assets, HC relies on co-ordinate bench rulings in Hindalco Industries Limited and Reliance Communications Ltd. to hold that "mere non-compliance of the Accounting Standards (though not true in the present case) cannot be a ground for recall or review of a court sanctioned scheme especially when due process of law has been complied with... accounting only records the transaction and does not change the character or the value" ; Also rejects SEBI's challenge to Grand Thorton's valuation report being "unrealistic, perverse and incredibly high", holds that such contention is "an attempt on the part of SEBI to challenge the valuation which is inherently based on future projections by applying what is essentially a hindsight view.. valuation is not an exact Science and can never be done with arithmetic precision", relies on SC ruling in Miheer Mafatlal; Dismisses SEBI petition with costs: Bombay HC
[LSI-739-HC-2015-(BOM)]

HC: Approves Ranbaxy-Sun Pharma merger, rejects income tax/public interest objections of OL

HC sanctions scheme of arrangement relating to merger of Ranbaxy Laboratories Ltd. ('Transferor company') into Sun Pharmaceuticals Industries Ltd. ('Transferee Company'), however appoints monitoring agency until completion of disinvestment, for purpose of observing drug prices manufactured by combined entity; Rejects Official Liquidator's ('OL') objection that arrangement was prejudicial to interest of revenue and designed to "carry forward accumulated losses and unabsorbed depreciation" of transferor co. and set it off against profits of transferee co.; Refers Regional Director's affidavit that scheme was in accordance with requirement of AS-14 (Accounting for Amalgamation) and was sent to Income Tax Department but no comments were received, states that "in case it is legally permissible for the Transferor Company to carry forward and set off all the losses, it shall be entitled to the benefit in case the law does not put a restriction thereon"; On OL's objections pertaining to losses suffered by transferor co. regarding ban of drugs in U.S. and pending litigations thereof, HC observes that "these are factors which are required to be considered by the Transferor and Transferee Companies and not the Court"; Further on objection that arrangement will impact public at large, peruses CCI's order to the scheme, states that CCI has undertaken exhaustive exercise for finding effect of merger and has taken full care of interest of consumers of medicines manufactured by both cos.:Punjab & Haryana HC
[LSI-378-HC-2015-(P & H)]

HC: Transmission procedure applicable for 'share-transfer' under amalgamation scheme, upholds CLB order

Bombay HC holds that in company amalgamation there is no general proposal for share transfer and there is no particular value for such transfer which takes place on sanctioning of scheme, upholds CLB order; Notes that Appellant co. had rejected Respondent co.'s (transferee co.) application on ground

that transfer of shares was in breach of relevant Articles of Association, not providing for pre-emption right; Observes that transfer occurs upon or subject to Court sanctioning the Scheme, holds that in amalgamation there is transfer of co. or its undertaking as going concern and not of any individual assets (including shares held by transferor co.); Peruses Articles, holds that share transfer occasioned by amalgamation scheme is not transfer of shares under Article 21 to 38 (relating to 'share transfer procedure') but Article 39 (relating to 'share transmission') by 'any lawful means other than by transfer'; Holds that such transmission merely requires production of evidence under Article 39, and states *"all entitlements to shares other than by virtue of transfers in pursuance of Articles 21 to 38 are covered by Article 39 and must abide by it";* States in such share-transmission clause, directors are not under any obligation to give consent, but if directors refuse to give consent, then respondent would be free to invoke regulations which apply to share transfer: Bombay HC
[LSI-987-HC-2016-(BOM)]

HC: Dismisses FTIL plea to peruse Govt-FMC communication on proposed merger with NSEL

HC dismisses Financial Technologies (India) Ltd.'s (FTIL) application seeking internal communications/memoranda exchanged between MCA and Forward Markets Commission & Ministry of Law & Justice's opinions on its proposed amalgamation with NSEL; Holds that since Govt. has passed only a draft order of proposed amalgamation, it would be premature to consider any contention relating to prejudice caused to FTIL/public interest; Observes that only when such opinions/documents sought are relied on and an adverse final order is passed by Central Govt., can petitioner seek such documents; Accepts Central Govt.'s contention that merely because certain documents are referred does not mean that they were going to be relied on to pass an adverse order & opinions/notings did not partake the character of binding order passed by Govt; Also notes that FTIL had filed writ petition challenging powers of Central Govt. to order such amalgamation u/s 396 of Cos Act, 1956 whereby HC without deciding the legal question, had permitted Central Govt. to pass final order, in light of such order, holds *"we do not see any reason for the relief of the present nature being granted."*: Bombay HC

[LSI-673-HC-2015-(BOM)]

HC: Share transfer pursuant to Sec. 391-394 scheme to be reckoned for oppression/mismanagement petition

Calcutta HC holds that transfer of shares pursuant to an order sanctioning amalgamation scheme does not require compliance of Section 108(1) of Cos. Act, 1956 (relating to 'transfer of shares'); Also holds that transferee of shares pursuant to an order sanctioning scheme of amalgamation is entitled to cite such shareholding to meet qualification u/s 399 any time after the order sanctioning the scheme becomes effective for instituting proceedings u/s 397/398 against the company; HC states that *"There is no doubt that a scheme of amalgamation involves the transfer of the assets and liabilities to another but there is a key distinction between a 'transfer of shares simpliciter' and a 'transfer pursuant to the sanction of a scheme of amalgamation'";* Peruses Section 108(1), 391 and 394, states that *"it does not appear appropriate to regard transfer of shares in company sanctioned by an order u/s 391-394 as 'transmission by operation of law', there is no need to dilute finality of an order u/s 394 by taking recourse to the excuse under second proviso to Sec. 108(1) thereof"*; Holds that *"by virtue of extraordinary transfer recognised in Section 394(2), the compliance with Section 108(1) thereof becomes redundant. In any event, negative mandate in Section 108(1) operates on concerned company and does*

not affect transfer of property in shares recognised by Section 394(2), that is completed upon an order sanctioning scheme of amalgamation / arrangement becoming effective"; HC holds that mere failure of petitioner to intimate company regarding vesting of relevant shares in their favour to sanction the scheme of amalgamation would not follow that their title to such shares would vanish into thin air, states *"It would be grossly disproportionate to the acts of omission on the part of the second petitioner before the CLB or its immediate predecessors–in–interest to rob them of their valuable rights in the shares on account of a minor transgression"*: Calcutta HC
[LSI-894-HC-2015-(CAL)]

HC: Inadequate quorum in Court-convened meeting a 'statutory infraction'/'nullity', dismisses demerger petition

Rajasthan HC dismisses petition filed u/s 391-394 of Cos. Act, 1956 for sanctioning scheme of arrangement relating to demerger of business unit; Observes that only 4 members of demerged co. (public limited co.) attended Court convened meeting, holds that there was no requisite quorum in accordance with the provisions of Cos. Act and Articles of Association; Peruses Rule 69 of Company Court, Rules (which provides for Company Court to issue direction for convening and conducting members' meetings), observes that in instant case, Company Court has not determined the quorum and therefore issue cannot be left to member's discretion but will be governed by Cos. Act provisions; Observes that demerged co.'s Articles of Association had no provision relating to quorum for members'

meeting, peruses Sec. 170(2)(b) and Sec. 174 (1) of Cos. Act, opines that public limited co.'s general meeting is equated to other meetings of co. including meetings of its members or any class, and provisions relating to 'quorum' are applicable; Relies on SC ruling in Miheer H. Mafatlal Vs. Mafatlal Industries Ltd. where it was held that sanctioning court has to ensure that requisite statutory procedure for supporting scheme has been complied with and requisite meetings as contemplated by Section 391(1) (a) have been held; Holds *"non-availability of quorum of the members' meeting of the demerged company was not a mere irregularity where the doctrine of "substantial compliance" would operate, but a statutory infraction, an illegality which bears a nullity on its head"*: Rajasthan HC
[LSI-830-HC-2015-(RAJ)]

HC: Sanctions amalgamation scheme, rejects RD's 'procedural' objection over co.'s name change

Madras HC sanctions Sec. 391-394 petition with Transferee Co.'s name change as part of amalgamation scheme; Rejects Regional Director's objection for following separate procedure for such name change after amalgamation; Notes that Court had dispensed convening of transferor and transferee co.'s meeting as 100% equity shareholders filed their consent affidavits and did not object to the Transferee Co.'s name change, holds *"it is abundantly clear that there is no necessity for repeating the exercise once again for the purpose of change of co. name";* States that there is no objectionable feature in Scheme which is detrimental either to employees of Transferor Co. or of Transferee Co., not violative of any statutory provisions, holds that scheme is fair, just, sound and is not against any public policy/public interest: Madras HC

[LSI-968-HC-2016-(MAD)]]

HC: Dismisses amalgamation petition, upholds ED's objection on co.'s links to Saradha scam entity

Calcutta HC dismisses petition filed u/s 391-394 of Cos. Act, 1956, for company amalgamation, observes that one of the petitioner co. had business transactions with legal entity under the control and management of person who is involved in chit fund scam; Notes that investigation in chit fund scam (Saradha chit fund scam) is underway and SC has issued various directions for monitoring it, observes that though CBI has not objected to the Scheme, Enforcement Directorate ('ED') opposed the scheme as approving it would hamper discovery of proceeds of crime involved and money laundering under Prevention of Money Laundering Act; HC peruses Co. (Court) Rules, 1959, notes that it is necessary to direct issuance of notice in newspapers for ascertaining public views, states that such procedures can be adopted after adjudicating on ED objections, as such objections are substantial; HC holds *"apprehension of ED cannot be termed to be without basis. The allegation is of an economic offence…. the allegations are yet to be established before a Court of law. Nonetheless, the gravity of the allegations and the nature of the offences alleged, in my view, require a Court to adopt a cautious approach"*; Observes that sanction of amalgamation scheme would make available to the persons in control and management of cos. various materials which would otherwise not be available but for the grant of sanction, to camouflage the crime already committed; Observes that if Scheme is sanctioned it would prevent better investigation and would assist in shielding a crime, holds *"Scheme, if sanctioned, has every potentiality of allowing an offender of an economic offence not only to camouflage and hide the economic offence but to set this sanction up as a defence to such investigation. The order of sanction has every potential of seriously prejudiciary the ongoing investigation. Scheme itself then may result in an economic offence"*; Observes that sanctioning of scheme would permit the person controlling the cos. / transferee co. to contend before authorities that HC has looked into allegations of commission of alleged economic offences and did not find any merit thereto, holds *"this would allow the accused to scuttle ongoing investigation"*: Calcutta HC
[LSI-974-HC-2016-(CAL)]]

HC: Sanctions composite amalgamation scheme, upholds OL's role in transferor company's dissolution without winding-up

Kerala HC sanctions composite scheme of amalgamation of Manjilas Agro Foods Pvt. Ltd, Q One Foods and Ingredients Pvt. Ltd. ('Transferor Cos.'), MO John & Sons ('Transferor partnership firm') with Manjilas Food Tech Pvt. Ltd. ('Transferee Co.', collectively referred to as 'Petitioners'); Rejects petitioners' objection to the Official Liquidator's ('OL') Report that OL's role is envisaged only in cases of winding-up of cos. u/s 443, 448 and 509 of Cos. Act, 1956; Relies on Apex Court's decision in Sesa Industries Ltd. Vs Krishna Bajaj, wherein it was held that OL assists the Court in appreciating the other side of the picture before it, and it is only upon the consideration of amalgamation scheme, together with OL's report that the Court could arrive at final conclusion as to whether Scheme is keeping with mandate of Act/public interest; Peruses second proviso to Sec. 394(1) (which states that no order for dissolution of any transferor co. shall be passed, unless OL has made a report that affairs of company have not been conducted in a manner prejudicial to the interest of members/public), relies on Apex Court's decision in Sesa Industries Ltd. Vs Krishna Bajaj, wherein it was held that *"OL has to act as watchdog of the Company Court that the affairs of the co., being dissolved have not been carried in manner prejudicial to interest of its members/public";* Notes the expression 'shall be made' in second proviso to Sec. 394(1), relies on Calcutta HC's decision in

Marybong And Kyel Tea Estate, wherein it was held that "second proviso to section 394(1) would apply only in cases where there is commencement of winding-up either by presentation of a winding-up petition or resolution of voluntary winding-up of co. was passed"; Holds *"whenever and wherever dissolution without winding-up of any transferor co. is to take place merely because there is no winding-up, it cannot be said that the OL has no role to play and he has no statutory burden to discharge by making a report to the Company Court regarding whether or not the affairs of transferor co. were carried on in a manner prejudicial to the interests of members/public*"; Peruses Sec. 582(b) (relating to 'unregistered company'), observes that it would include any partnership, association or company consisting of more than 7 members at the time when the petition for winding-up is presented, relies on Bombay HC ruling in Kirtilal Kalidas Diamonds Exports Pvt. Ltd., wherein in it was held that amalgamation of partnership firm with a co. could be sanctioned u/s 394 treating 'partnership firm' as 'unregistered co.'; HC holds that there is no reason to hold that the scheme is unfair / prejudicial to interests of shareholders/creditors, opines that amalgamation would enable better productivity and efficiency; Relies on Apex Court's ruling in Miheer Mafatlal Vs Mafatlal Industries Ltd., notes the broad contours of Company Court's jurisdiction, states that *"parameters of scope and ambit of jurisdiction of the Court are not exhaustive but only broad illustrative of the contours of Court's jurisdiction"*; Holds *"Court cannot merely act as a rubber stamp and automatically give its seal of approval on such scheme…. Court has to ensure that Scheme is fair, just and reasonable and it is not contrary to any provisions of law and it does not violate any public law… Court has a valuable bounden duty to ascertain that all the conditions under the statutory provisions have been complied with and the shareholders/members are carefully informed of the Scheme sought to be sanctioned"*; HC observes that Courts are not exercising 'appellate jurisdiction' over Scheme and exercising only 'supervisory jurisdiction', however the Court cannot merely go by the ipse dixit of the majority shareholders/creditors who might have showered the scheme with requisite majority: Kerala HC
[LSI-1030-HC-2016-(KER)]

HC: Sanctions Tata Group Co's capital reduction scheme, rejects ROC/minority shareholder's objection of financial injury

Karnataka HC sanctions scheme of arrangement u/s 391-394 read with Sec. 100 of Cos. Act, 1956 ('the Act') between Tata Advanced Materials Ltd. ('Petitioner Co.'), its creditors and its members for reduction of issued/subscribed/paid-up equity-share capital by extinguishing the shares held by non-promoter shareholders and paying them fair value; Notes that Petitioner Co. has total of 11,741 shareholders, of which Tata Industries Ltd., (i.e., promoter co.) holds 99.91% of total share capital and 11,740 non-promoter shareholders holds 0.09% shareholding; Rejects objection raised by Registrar of Cos. and one of the shareholders that by the proposed scheme, non-promoter shareholders will be put into financial loss/injury; HC peruses valuation report by an independent firm of Chartered Accountants, observes that the petitioner co. has taken into consideration market value of share (Rs. 10/-) and doubled the amount they have proposed to pay to its shareholders (Rs. 20/-); Rejects objector's contention that non-promoter equity shareholders has to be considered as one class and their consent for proposed arrangement is to be obtained by holding separate meeting, relies on Delhi HC's ruling in Ram Kohli Vs. Indrama Investment Pvt. Ltd.; HC observes that the petitioner co. has produced certificate from its Statutory Auditors wherein it has mentioned reasons / financial effects for deviating to comply with Accounting Standards as contemplated u/s 129(5) of Cos. Act, 2013; Holds that the scheme is not unfair or inequitable: Karnataka HC
[LSI-1109-HC-2016-(KAR)]

HC: Rejects Govt. objection, sanctions demerged co.'s conversion to private co. in arrangement scheme

Madras HC sanctions petitions filed u/s 391-394 of Cos. Act, 1956, approves demerger scheme of arrangement between Integrated Enterprises (I) Ltd., Integrated Registry Services Ltd., IEP Insurance Broking Services Pvt. Ltd. (Demerged Cos.) and Integrated Registry Management Services Pvt. Ltd. (Resulting Co.); Rejects Regional Director's objection that conversion of demerged cos. into private limited cos. cannot be part of Scheme as such conversion requires separate procedure under Cos. Act, holds "only change in name of new entity is the deletion of the word 'private' does not require approval of Central Government, as Chapter V of Cos. Act, 1956 (dealing with the compromise, arrangement or amalgamation), is the complete code by itself"; Rejects Regional Director's objection that re-structuring of paid-up capital of demerged cos. (by reduction in face value from Rs.10/- per share to Re. 1/- per share) requires separate procedure, holds *"Section 391 of Cos. Act is a complete code in itself which gives power to approve reduction in share capital, if it is otherwise in order. Giving approval while exercising power u/s 391 obviates the need to file a separate application for reduction in capital";* Notes that share capital reduction does not affect interest of secured creditors and the Scheme is not prejudicial to the interest of any person/entity; Notes that the petitioners have undertaken to amend the Articles of Association and file necessary e-Forms with the Registrar; Relies on its own ruling in KPR Mills Pvt. Ltd.: Madras HC
[LSI-1111-HC-2016-(MAD)]

HC: SEBI not 'necessary party' in capital-reduction petition, Dismisses impleadment for SCRA non-compliance

HC dismisses SEBI's impleadment application in co. petition filed by Khoday India Limited (listed company, 'Khoday') u/s 100-104 of Cos. Act, 1956 (seeking confirmation for reduction of share capital); Notes the fact that Khoday failed to achieve minimum public shareholding requirement as contemplated under Securities Contract Regulation Act ('SCRA') for which SEBI had initiated proceedings(which is now pending before SAT), holds that capital reduction petition is independent which shall not effect proceedings for non-compliance of minimum public shareholding; Relies on Bombay HC Division Bench ruling in MCX Vs SEBI, wherein it was held that sanctioning of scheme of capital reduction by u/s 391-393 read with sec. 100-103 of Cos. Act, 1956 does not preclude SEBI from determining as to whether provisions of minimum public shareholding regulations have been complied with and SEBI is independently entitled to ensure compliance as cognate legislation are not diluted; Separately, holds that sanctioning of capital reduction scheme cannot be a shield to protect itself in proceedings initiated to justify non-compliance with requirements of other regulations and states "action initiated for non-achievement of public shareholding will continue and consequence, if any, will follow"; Thus, holds that SEBI has right to proceed against the co. for not complying with SEBI Regulations, and allowing SEBI to implead themselves in instant petition would be wholly unnecessary :Karnataka HC

[LSI-741-HC-2015-(KAR)]

HC: Approves Cadbury's scheme; Refuses to step into valuer's shoes, undertake convoluted analysis

HC approves Cadbury's capital reduction scheme, holds valuation by very definition is 'inexact', 'approximation', 'estimation' and 'best-judgment assessment'; There must be cogent, clear and unambiguous material to show that scheme is inherently unjust or unreasonable; To upset a valuation, a wrong approach must be demonstrated clearly and unequivocally; Sanctioning court not an appellate body, it cannot substitute its own view for the collective, commercial wisdom of voting members as also valuer; Every single shareholder holding to ransom the collective wisdom of shareholders expressed in a properly conducted extraordinary general meeting, cannot possibly be the purpose of Sec 100 of Companies Act, 1956; Court must not venture into the realm of convoluted analysis, extrapolation, and taking on itself an accounting burden that is no part of its remit or expertise, and no part of a statutory obligation; Court must weigh scheme and must see whether it is fair, just, reasonable, conscionable and is not contrary to any provisions of law/any public policy and must also balance commercial wisdom of shareholders against desires and fancies of few; Gives dressing down to Objectors for making strongly worded, egregious allegations against Court, states that such allegations are meant only to camouflage a lack of all substance; Terms E&Y writing to the Court to defend its valuation a *"small, and certainly immaterial, misstep in E&Y's otherwise unexceptionable, even exemplary, conduct*": Bombay HC
[LSI-22-HC-2014-(MUM)]