

F. No. 7/12/2019/CL –I
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi
Dated: 21st August, 2019

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification under section 232(6) of the Companies Act, 2013

Sir,

Several queries have been received in the Ministry with respect to interpretation of the provision of section 232(6) of the Companies Act, 2013 (Act). Clarification has been sought on whether it is mandatory to indicate a specific calendar date as 'appointed date' in the schemes referred to in the section. Further, requests have also been received to confirm whether the 'acquisition date' for the purpose of Ind-AS 103 (Business Combinations) would be the 'appointed date' referred to in section 232(6).

2. The matter has been examined in detail in the Ministry in the light of the provisions of the Act, applicable rules, prevalent practices and orders passed by Courts/NCLT. It is noted that companies have been filing schemes under sections 230-232 of the Act indicating 'appointed date' either as a specific calendar date or an event based date, as may have been mutually agreed upon by the parties to the scheme. Section 232(5) also requires that every company in relation to which the order is made shall file a certified copy of the order with the Registrar of Companies for registration within 30 days of the receipt of certified copy of the order.

3. In Marshall Sons & Co. India Ltd. v. ITO [223 ITR 809], it was held by the Hon'ble Supreme Court that every scheme of amalgamation has to necessarily provide a date with effect from

which the amalgamation/transfer shall take place, and that such date may precede the date of sanctioning of the scheme by the Court, the date of filing of certified copies of the orders of the Court before the Registrar of Companies, and the date of allotment of shares, etc. It was observed therein that, the scheme, however, would be given effect from the transfer date (appointed date) itself.

4. In another case, in the matter of amalgamation of Equitas Housing Finance Limited and Equitas Micro Finance Limited with Equitas Finance Limited in C.P.Nos.119 to 121 of 2016, the Hon'ble Madras High Court held that the provisions of section 394 (1) of the Companies Act, 1956 (corresponding to section 232 of the Companies Act, 2013) provided enough leeway to a company to delay the date on which the scheme of amalgamation shall take effect and tie the same to the occurrence of an event. Thus, the Court rejected the argument that the 'appointed date' in the scheme should necessarily be a specific calendar date.

5. Section 232(6) of the Act states that the scheme shall be deemed to be effective from the 'appointed date' and not a date subsequent to the 'appointed date'. This is an enabling provision to allow the companies to decide and agree upon an 'appointed date' from which the scheme shall come into force.


6. In view of the above, it is hereby clarified that:

- a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.
- b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).

- c) Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.
- d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

7. This issues with the approval of the competent authority.

Yours faithfully,


(Pranay Chaturvedi)
Deputy Director
01123071190

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1. E-Governance Section with a request to place this circular on the Ministry website.
2. Guard File