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Expansion of Fast-Track Mergers in India: A Study of the Regulatory Framework Under Section 233 of the Companies ACT, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules.

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Expansion of Fast-Track Mergers in India: A Study of the Regulatory Framework Under Section 233 of the Companies ACT, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules.

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Introduction

As Indian industry continues its rapid transformation, corporate restructuring has emerged as one of the most consequential tools available to businesses seeking to adapt, consolidate, or unlock value. Corporate restructuring is when a corporation reorganizes its legal, financial, or operational structure to improve efficiency, competitiveness, or long-term viability. A merger, amalgamation, demerger, slump sale, asset transfer, or capital drop is a restructuring agreement in Indian law. These financial instruments rearrange a company's assets, bills, and power to create or maintain value.

A merger is when two or more companies form one new entity. In Indian corporate law, the two words differ somewhat. A new or existing transferee company takes over the assets, debts, and liabilities of one or more transferor corporations that fail. This is merger. Sometimes "merger" refers to more than one form of business merger. The 2013 Companies Act does not define "merger". A demerger splits a company's operations or assets into their own legal entity. This usually involves a spin-off or hive-off.[1] All of these systems in India have changed throughout time.[2] This is because laws, courts, and economic demands changed.

Many legal and financial studies suggest corporations should improve their money management. The new business should be worth more than its pieces. Most mergers and acquisitions are driven by this. Many believe they wish to do this because economies of scale will cut prices, offer them greater negotiating power, lower taxes, and help them strategically situate their market. India has needed to restructure, notably in fast-merging sectors like banks, pharmaceuticals, infrastructure, and telecommunications. In 2017–2020, the Indian government tried to unite various banks. The government is overhauling this portion of the company, causing major changes.

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[1] *Economic and Political Weekly*, "Mergers, Acquisitions and Development," Vol. 36, No. 25 (2001), pp. 2207–2208.
[2] G. K. Kapoor and Sanjay Dhamija, *Company Law*, Taxmann (latest edn.).

Indian enterprises should be restructured as part of a larger initiative to make operations easier. The Indian government wanted to rise on the World Bank's Ease of Doing Business Index before it stopped updating. Laws and processes were updated to make following the regulations easier, cut corporate costs, and speed up rule approval. Understanding this reform process helps you grasp Section 233 of the Companies Act, 2013, which simplifies or speeds up company mergers.

Evolution of Simplified Merger Mechanisms: Global and Indian Context

India is no stranger to simplified or fast-track mergers. There is a growing consensus that certain merger procedures are unnecessary for less complex or uncontested transactions, such as those involving fully owned subsidiaries, businesses with few third-party creditors, or well-integrated firms. Full judicial or regulatory assessment would be expensive and time-consuming, but it wouldn't be necessary if the deal itself benefited creditors and shareholders.

In the event of a parent-subsidiary merger, a simplified merger procedure is available under Section 267[3] of the DGCL. With 90% ownership of each class of stock, a parent corporation can merge a subsidiary without shareholder voting by a resolution at the board level and a filing with the Delaware Secretary of State.[4] Merger approval is not necessary for minority subsidiary shareholders to exercise their appraisal rights under Section 262[5] of the DGCL and seek a fair value judgment from a court. Although related to the parent-subsidiary method, DGCL Section 253[6] regulates shorter mergers involving non-stock companies.[7]

A similar merger process is outlined in Sections 215A to 215J of the Companies Act (Cap. 50, 2006 Rev Ed) of Singapore.[8] To combine two or more businesses into one under this structure, a number of formalities are required, most of which are administrative in nature: approval from the boards of both companies, a special resolution in favor from shareholders, notification of creditors, and a declaration of solvency from directors attesting that the combined entity can pay its debts within twelve months. After the necessary legal requirements have been met, an amalgamation certificate is issued by the Accounting and Corporate Regulatory Authority (ACRA). ACRA is confirmatory rather than discretionary, like judicial sanction, because it checks compliance rather than evaluating business merit.

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[3] Delaware General Corporation Law, § 267 (Merger or Consolidation of Domestic and Foreign Corporations).
[4] Gordon A. Walter and Jay B. Barney, "Management Objectives in Mergers and Acquisitions," *Strategic Management Journal*, Vol. 11, No. 1 (1990), pp. 79–86.
[5] Delaware General Corporation Law, § 262 (Appraisal Rights).
[6] Delaware General Corporation Law, § 253 (Short-Form Mergers).
[7] Simon Deakin and Giles S. H. Haldane, *Corporate Governance and Mergers*, Cambridge University Press (2014).
[8] Singapore, *Companies Act* (Cap. 50, 2006 Rev. Ed.), ss. 215A–215J (Amalgamation Provisions).

Up until 2013, India did not have this expedited process. No matter how large or complicated the merger or amalgamation, it was necessary by Sections 391-394 of the Companies Act of 1956 to be approved by the High Court. There weren't enough judges and the court-centered process was too sluggish, according to the people. People went to the High Court with their own unique requests. After receiving reports and affidavits, the court scheduled sessions with shareholders and creditors. The court approved the plan after a hearing. Depending on the country and the difficulty of the plan, this could take anywhere from six months to two years.

This structural wasteland was originally uncovered by the 2004 J.J. Irani Committee, which recommended a reform of Indian corporation law. Simplifying procedures for small businesses and wholly owned subsidiaries was one recommendation made by the Committee in its 2005 report. It was based on what had been successful in other nations.[9] Based on these principles, India's most important revision to its company laws since independence, the Companies Act of 2013, came into being. One of the Act's core principles was established in Section 233 of the 2013 version. This paved the way for small businesses, their parents, and subsidiaries to legally join forces.

Emergence of Section 233 of the Companies Act 2013: Policy Rationale and Legislative Intent

Section 233 of the Companies Act of 2013 was enacted to facilitate the membership of organizations that do not pose a significant risk to one another. It is stipulated in the law that mergers between minor enterprises or between a parent company and a wholly owned subsidiary may only be approved by the Central Government, not the National Company Law Tribunal (NCLT). This can be accomplished with the assistance of the Regional Director's office. It is difficult to determine the significance of this design decision. Policymakers intentionally implemented this measure to facilitate the management of a category of transactions that would ordinarily be addressed by Sections 230–232. There are numerous explanations for Section 233. These documents, along with a statement of their objectives and rationale, were authored by the Parliamentary Standing Committee that examined the Companies Bill of 2011.[10] The primary objective was to assist the newly established NCLT in its initial stages. It will be inundated with cases once it commences working on them. The National Company Law Tribunal (NCLT) has been advised by Parliament to make use of its resources to address insolvency difficulties, disputed arrangements, and sophisticated plans. This was accomplished by sending straightforward merger

[9] Afsaneh Nahavandi and Ali R. Malekzadeh, "Acculturation in Mergers and Acquisitions," *The Academy of Management Review*, Vol. 13, No. 1 (1988), pp. 79–90.
[10] Paul L. Davies and Sarah Worthington, *Gower and Davies: Principles of Modern Company Law*, Sweet & Maxwell (2016).

documentation to the Central Government, rather than the reverse. The objective of Section 233 of the Act is to reduce the cost of conducting business in India as part of a broader policy framework. The NCLT adheres to the same regulations as the High Court with respect to the submission of costs, the engagement of a counsel, and the attendance at numerous meetings.[11] A small firm, particularly one with limited resources, may be unable to reorganize despite the potential benefits due to the high NCLT costs. Section 233's simplified methodology, which includes a "deemed approval" procedure and a reduced approval threshold, was designed to simplify the process.

There have been significant changes to Section 233 since it was first signed into law. The Companies (Compromises, Arrangements, and Amalgamations) Rules 2016 provide guidance on how to implement Section 233. In 2021, modifications to these regulations resulted in a reduction in the minimum amount of capital required for a "small company" to be considered lawful. However, these reforms also facilitated the rapid establishment of new enterprises. These examples demonstrate that legislators are continuing to work to expand the availability of the simpler merging approach, despite concerns regarding the effectiveness of the safety measures that accompany it.

Statement of Problem

The guidelines governing how it operates are universal, so any form of business can utilize it. A lot more money was required for a "eligible small company" after 2021. Another perk was a streamlined process for starting a business that relied on DPIIT standards instead of the usual regulations of commercial law. There are many unanswered legal and regulatory problems brought up by these expansions in the existing literature. Concerning the expansion of the law's scope, the most pressing issue is whether the remedies provided by Section 233 are sufficient. It was planned that the fast-track route could be easily constructed and that only a select few would have access to it at any given moment. The rule may address new businesses and the definition of "small" changes, but this remains true nonetheless. This is something we haven't really considered. Some of these companies might lose a ton of money because of problems with their shareholding arrangements.

When it comes to regulations, some find Section 233 to be confusing. Although there is a provision regarding fast-track acquisitions in the Companies Act, it is meaningless in and of itself. Mergers involving public companies or involving a change in control are required to be recorded under the Listing Obligations and Disclosure Requirements (LODR) Regulations. When it comes to international transactions, India follows the guidelines laid down by the Foreign Exchange

[11] Richard Rosecrance, "Mergers and Acquisitions," *The National Interest*, No. 80 (2005), pp. 65–73.

Management Act (FEMA). These are the guidelines that businesses in India observe. Assuming the new business satisfies all regulatory requirements, they may also be reviewed by the Competition Commission of India (CCI). To expedite agreements, it may be necessary to have the approval of more than one agency. There is a feedback loop between the rules. This is why Section 233 falls short of its intended usefulness. To address that knowledge vacuum, this paper examines the fast-track merger plan in all of its legislative contexts and provides a critical, in-depth, and practical analysis of it.

Legislative Evolution and Structural Transformation of Merger Law In India

There is no precedent for judges in India's merger legislation being difficult to grasp or for there to be an excessive amount of paperwork. Caused by the Indian Companies Act of 1913, the slow start exists. Almost identical to this statute, the English Companies Act of 1908 underwent revisions to accommodate the needs of the colonial government.[12] Establishing, operating, and dissolving companies were major topics of the 1913 Act. Mergers and acquisitions to reorganize businesses weren't as critical when the country gained its independence as they will be later on.

There were obvious problems with this system even when it was a colony. Agency houses and family-run trade groups were the most common types of clients for Indian enterprises, and they lacked the organizational capacity to manage the judicially-supervised restructuring procedures. This meant that mergers and combinations were rare. Posting notes and advertising, appearing in court, and enduring the judge's questioning all required a significant investment of time and resources. There were no transparent regulations in the 1913 Act that would have defined the distinction between a temporary merger of related businesses and a permanent, arm's-length merger of unrelated businesses with potentially conflicting interests. There is a universally consistent amount of court time required for all restructuring settlements. Even if we gain our independence, this systemic issue will persist.

Moreover, India did not have many competition laws when the 1913 Act was passed. Concerns about market dominance, anti-competitive mergers, and systemic financial risk were widespread, and not limited to mergers. The legislation was solely concerned with ensuring equitable treatment of creditors and minority shareholders. It felt appropriate to keep things focused on this one area given the state of the economy. However, it established a doctrinal path-dependency that would long make it difficult for lawmakers to enact new laws.

[12] Richard Rosecrance, "Mergers and Acquisitions," *The National Interest*, No. 80 (2005), pp. 65–73.

Jurisprudential Development: Role of High Courts in Merger Control

A lot of case law was made during the court-supervised merger system under the 1956 Act. This case law had a big effect on the substantive law of corporate combinations in India, even though or maybe because the process was so formal. The High Courts used their sanction power under Section 394 to make a complicated body of law that covers things like how to protect minorities, how fair schemes should be, the rights of creditors who don't agree, how to handle transactions involving related parties, and how to figure out the value of shares for trading. Several important High Court decisions went into more depth about the standard of judicial review under the 1956 Act. The Bombay High Court made it clear in a number of cases that when it approved a scheme, it wasn't the court's job to replace the business judgement of the shareholders or creditors with its own. Instead, it was the court's job to make sure that the scheme was one that a smart, honest person acting in their own best interests could reasonably agree with. The English term "intelligent and honest man" is similar to this one.

The High Courts also played a big role in making sure that the exchange rate was fair. There were times when the rights of minority shareholders were not well protected by other means. This court review was a very important safety net. If a different exchange rate or a different way to set up the deal might have been possible in theory, the courts were careful not to get in the way of plans. The courts are only involved in certain valuation problems. This is so judges don't have to make too many decisions that have an impact on business.

Companies Act, 2013: Institutional and Procedural Reconfiguration

The Companies Act, 2013 changed all of Indian company law. The government talked about the Companies (Amendment) Bill for a long time before it was passed. It was tried in 2009 but failed. It was different from the 1956 Act in many important ways when it came to how businesses could join and shut down.

The National Company Law Tribunal took over power from the High Courts. This was the most important change to how things were run. Since the 2013 Act, there are new ways for people to ask the High Court to approve deals, agreements, and mergers. People now go to the NCLT instead of the High Court. Section 408[13] of the 2013 Act made the NCLT possible. In a way, this is like a court, and it has places all over India. In order for this change to happen, the High Courts had to change how they dealt with business issues.[14] This was because their schedules were too full, many benches didn't have people who were experts in business law, and treating business cases like regular lawsuits took too long.

Section 230 and 232 of the Act have been changed to make them more up-to-date. They are mostly the same as the 1956 Act when it comes to how deals, arrangements, and mergers work. There is no change to three-quarters of the

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[13] *Companies Act*, 2013, s. 408.

[14] "The Vth NLSIR Symposium on Corporate Mergers and Acquisitions in India – A Transcription," *National Law School of India Review*, Vol. 24, No. 2 (2013), pp. 89–109.

value of the relevant class, which is what most people need to agree to a plan. If you want to use the usual method, you still need to get permission from the NCLT. Notes that explain things that are in meeting notices need to give more information. Small business owners are safer, and when schemes are used, there are tighter rules for class action lawsuits.
The most important change the 2013 Act made to restructuring wasn't to the usual process supervised by the NCLT. Section 233's fast-track merger method, on the other hand, made a whole new way to do things. This part wasn't in the 1956 Act, but it made it possible for some types of mergers to go through the administration system instead of the NCLT. The idea was simple: the NCLT method was too hard to use for some types of mergers where the rights of independent creditors and minority owners were not present or were properly protected in some other way.[15] It would be possible to get the same level of security for a lot less money and with less work.

Introduction of Section 233: Scope and Objectives
Companies can now merge without having to go through a court. Section 233 of the 2013 Companies Act, which is called "Mergers and Amalgamations of Certain Companies," does this. Some deals, like those between two or more small businesses merging, could go through a fast-track merger route. Another type of deal was between a holding company and a fully owned unit of that holding company. It was clear that lawmakers wanted to make sure that the deal would be safe by adding just the right number of rules to Section 233.

There was a certain way of thinking about rules in the rules for being in Section 233. Some people with little or no experience were likely to own small businesses and lend money to them. The full NCLT process would have cost too much for these deals, so this was done instead. Another reason was to include when parent companies and subsidiaries merged. The parent company already owns the subsidiary, so the law doesn't need to protect a real minority interest in the subsidiary. The merger is mostly about sharing administrative chores from a business point of view. It's not really a deal between two different groups.

Following the steps in Section 233 was done so that regulatory assurance could be reached without going through court or quasi-court processes. This was done by getting internal approvals, telling creditors what was going on, and giving the matter close administrative review. People with shares and creditors had to be told about the plan so they could refuse it. The Registrar of Companies and the Official Liquidator had to be given a copy so they could look it over. Finally, the Central Government had to give its nod through the Regional Director.[16] A

[15] Yaakov Weber, et al., "National and Corporate Cultural Fit in Mergers/Acquisitions: An Exploratory Study," *Management Science*, Vol. 42, No. 8 (1996), pp. 1215–1227.
[16] William Cobb, "Mergers and Acquisitions," *Mississippi Review*, Vol. 20, No. 3 (1992), pp. 27–39.

"deemed approval" method was added to this part. It was thought that the plan was approved if the Central Government didn't say anything positive or negative within sixty days of getting the application. This meant that the companies that were merging could finally file the order.

Doctrinal and Procedural Analysis of the CAA rules and Section 233

Mergers and Acquisitions between firms are typically not seen by lawyers as merely commercial transactions.[17] On the contrary, they perceive them as an intricate network of treaties, statutes, and, historically, judicial oversight. In cases where the Companies Act of 1956 applied, this body of legislation controlled the merged entities. Without the approval of the High Court, no merger plan can compel creditors or minority shareholders to approve it. The court played a crucial role in ensuring transparency and fairness.

This procedure is altered by the establishment of fast-track mergers under Section 233 of the Companies Act of 2013. It demonstrates a change in legislative mindset, moving away from distrust and toward trust, administrative control over judicial oversight, and meticulous process over speed. Therefore, it's more than just theoretical interest in figuring out the legal procedures and safeguards associated with fast-track mergers.

Mergers of certain kinds of businesses are permitted under Section 233 to take place outside of the NCLT. The process is overseen by the regional director, who is employed by the federal government. Notifying the appropriate parties, submitting a merger plan, and collecting objections within the allotted time are all steps in the process. The plan will move forward if all parties involved, including the Regional Director, are in agreement. One of the most intriguing aspects of the fast-track mechanism is the "deemed approval" that results from the NCLT-driven procedure.

The requirements of company law for efficiency and protection are met by the fast-track merger framework. Businesses, according to the efficiency principle, should adapt quickly and inexpensively if they want to improve the market's functioning. When it comes to decisions taken by the majority, the protection principle safeguards employees, minority shareholders, and unsecured creditors. Indian law, like merger legislation globally, seeks a compromise between the two competing concerns. A few select start-ups, small businesses, and holding corporations that control all of their subsidiaries are now eligible for the fast-track approach thanks to the addition of Section 233 in 2021. The assumption that these groups pose less of a threat justifies this less complex approach.

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[17] Amrita Ray Chaudhuri, "Cross-Border Mergers and Market Segmentation," *The Journal of Industrial Economics*, Vol. 62, No. 2 (2014), pp. 229–257.

Additionally, to posing problems with protection and efficiency, fast-track mergers can raise constitutional concerns. The principles of natural justice are violated when creditors' and shareholders' rights are taken away when a merger plan is accepted. The right to an impartial hearing is fundamental under Indian law.[18] The "notice and objection" procedure may not adequately safeguard individuals who are negatively affected by Section 233 but lack significant political or financial influence.

Section 233 merger offers, once accepted, possess the same level of legal authority as a statutory contract. Treatment plans are affected by this distinction. No one may simply sue for breach of contract if they are dissatisfied with an approval. They are instead required to challenge the approval's validity in either the High Court, the NCLT, or the NCLAT. Due to its novelty and the difficulty in reversing successful mergers, this provision has not yet established significant legal precedent. Precautions should be taken before a merger occurs, as post-merger adjustments may not be sufficient or even feasible.

Eligibility Architecture Under Section 233

What people can do is spelled out in Section 233 of the Companies Act, 2013. The most important part of the fast-track merger scheme might be these rules. The way the system works in real life changes based on how well it works. The rule was only meant to cover certain things when it was first made. It only applied to two types of mergers: those between two or more small businesses and those between a parent company and a fully owned subsidiary. The law kept the reach very small because they thought it was so dangerous. People thought that these kinds of mergers wouldn't have a big effect on the economy for small companies. Companies that were fully owned also didn't have to worry about these deals. This idea makes sense to me, but it's not as simple as it looks. More thought should be given to it.

The Act's Section 2(85) defines a "small company" and tells them how much money they need to make based on their sales and paid-up share capital. It used to be that a business was "small" if it had paid-up capital of less than ₹50 lakh and sales of less than ₹2 crore a year. But many people believed these rules were too strict. Because of this, the Ministry of Corporate Affairs raised the boundaries to ₹2 crore for paid-up capital and ₹20 crore for sales in 2021. The Companies (Amendment) Act, 2023 raised them to ₹4 crore and ₹40 crore, which is even more. Because of the growth, more people can now use the fast track. However, this has also made some things harder in real life.

[18] Marcelo Bombau, et al., "International Mergers and Acquisitions," *The International Lawyer*, Vol. 40, No. 2 (2006), pp. 311–335.

It's not always easy to know when to group things together. Section 233 says that a business may still be a "small company" even if it has grown a lot since the last financial year. This is because those numbers determine who is eligible.[19] This means that the official status of a business doesn't match up with how well it's doing right now. And some people have said it doesn't make sense that both capital and turnover must be met at the same time. Many times these days, change is a better way to tell how busy a business is in the market. The fast-track way can't be used by a company that only meets one of the requirements, though. It may look like this rule is too strict. Section 2(85) also makes it clear that parent companies, subsidiary companies, Section 8 (non-profit) companies, and companies that are run by special rules are not small businesses. Holding and subsidiary companies can't use the "small company" group to get in because they aren't included. This is a big problem. Section 233's separate holding-subsidiary rule should also be in place before they can join the fast-track scheme.

The second part of the qualifying requirements isn't clear: mergers between a holding company and a fully owned subsidiary of that holding company. The phrase "wholly owned" sounds easy, but it causes a lot of trouble in real life. Ask yourself this question: Does it still count as fully owned if shares are held by people who work for the parent company? A lot of the time, courts and government officials have put "substance over form." In this case, "beneficial ownership" is more important than "technical shareholding." But the law isn't very clear on this point, so there is some doubt. Someone else wants to know if the phrase "wholly owned subsidiary" in Section 233 should be understood the same way it is in Section 2(87) of the Act. In regulatory work, that more broad sense is often used, but Section 233 doesn't have a clear cross-reference, so it's not clear what it means. Different people may have different ideas and regulators may be hesitant because of this. In the long run, this can make the fast-track merger process less useful.

Expansion through Amendments: Start-UPS, revised Small Company thresholds, and The Policy Logic of Inclusion

There was a reason for the first set of rules for qualifying under Section 233 of the Companies Act, 2013; they made sense in theory. The courts used to handle mergers, so this was a big change. At first, the government did the right thing by limiting what it could do. But later changes and additions to the kinds of things that can be used show that trust in the government is slowly being rebuilt.[20] The government started to use the fast-track system more when it was clear that it could work without being abused by many people. With this change, policy has

[19] Bena Jan and Kai Li, "Corporate Innovations and Mergers and Acquisitions," *The Journal of Finance*, Vol. 69, No. 5 (2014), pp. 1923–1960.

[20] Alireza Tavakol Moghadam, et al., "Mergers and Acquisitions and Greenfield Foreign Direct Investment in Selected ASEAN Countries," *Journal of Economic Integration*, Vol. 34, No. 4 (2019), pp. 746–765.

gone from caution to a level of trust. Section 2(85) changed what a "small company" meant in 2021. This was one of the most important events in this area. It was made possible to have more paid-up shares (from ₹50 lakh to ₹2 crore) and more income (from ₹2 crore to ₹20 crore). Through delegated law, the Ministry of Corporate Affairs made these changes. This meant that government did not have to officially make them. This made it possible for things to change quickly, but it also brings up important questions about the boundaries of legislative power that should be looked at more closely in the constitution.

Many more businesses were able to join quickly after the new rules were put in place. Many businesses that weren't able to before were now called "small companies," which meant they didn't have to go through the National Company Law Tribunal (NCLT) process. It's easier to do business and there are fewer wait times for treatments, but it also brings about new issues. Bigger businesses can now use an easier process that was made for low-risk mergers, as long as they stay within the new limits. It was a bigger change when start-ups were added as a new group under Section 233(1) in 2021. Now that this has changed, it's easier for start-ups or start-ups and small businesses to join quickly. A lot of other rules define "start-up," but the Companies Act doesn't. It instead follows rules set by the DPIIT as part of the Start-up India program. In a strange way, this makes statutory law and executive policy rely on each other. This makes people worry about their legal safety.

When you add start-ups, you create new issues that need to be fixed. Start-ups don't always have small amounts of money like small businesses do. Start-ups that get money from investors often have a lot of cash on hand but not many sales.[21] However, they still meet DPIIT guidelines. On the other hand, this means that big businesses could use the fast-track way, which goes against the idea that it would only work for low-risk mergers. The problems are made worse by the fact that start-up recognition takes time. DPIIT rules say that a company is no longer a start-up ten years after it was began. What will happen if a business is considered a start-up when the merger plan is filed but is no longer a start-up before it is approved? The law doesn't say. It's not clear how to use the rule because of this gap.

Letting start-ups in is meant to make it easier for businesses to run and speed up the process of growth in a world that is always changing. Venture capitalists, angel investors, and people who own staff stock options can make it hard to figure out who owns a start-up, though. They are not like other small businesses in this way, especially when it comes to protecting clients. Because of this, it might be

[21] Marcelo Bombau, et al., "International Mergers and Acquisitions," *The International Lawyer*, Vol. 41, No. 2 (2007), pp. 395–414.

too easy to treat both groups the same in a streamlined system. The Companies (Amendment) Act, 2020 gives the Central Government the power to list more types of companies that are qualified under Section 233(1)(c). This is the third part of how the rules are changing. The law can be changed to allow for even more growth because of this rule. This is flexible, but it also makes people worry that too few people will have too much power. The current method for who can join is not meant to stay the same, even though no new classes have been announced yet. This clause makes that clear.

Role of the Regional Director and Oversight by the ROC and Official Liquidator

The Regional Director (RD) is the most important person in the fast-track merger process. What makes the fast-track way work well as a regulatory tool is the RD's institutional knowledge and its own judgement. So, it's a bit strange that neither Section 233 nor Rule 25 explain in detail how the RD should do his or her job, how to tell if a plan is "prejudicial" to members or the public interest, what to do when objections are received, or how to get the NCLT's attention on the problem. There is a lot of room for discretion, which is only publicly limited by the rules set by law and not really guided by other rules.

It's not very old that the RD plays a part in the fast-track merger process. Before the 1956 Act, there were Regional Directors, but they did something different and were not as important. Also, the RD's office hasn't been able to handle as many and more complicated fast-track merger requests as quickly as the administration's preference for this plan has grown.[22] Each of the Regional Directors has an office in one of the many regional hubs. Each one includes a large area and a lot of companies that have signed up. Practitioners have said that the quality and speed of RD review vary a lot from one area to the next. One reason for this is that companies in some areas actually gain more from a fast-track system that is more flexible or effective than companies in other areas. This is not what a broadly uniform framework was meant to do.

It was used to judge administrative mergers before the 2013 Act, which is where the RD's standard for review comes from: is the plan "prejudicial to the interests of the members or the public interest"? It does, however, bring up some unique problems when small businesses and new businesses join. The standard of "interests of the members" is pretty simple to follow when there is a clear question of value or when a group is being pushed out without fair pay. It is a lot harder to use when the plan looks fair but actually helps the promotion group in the long run. The RD can't look into this kind of hiding because they work for the

[2222] Patricia H. Werhane, "Mergers, Acquisitions and the Market for Corporate Control," *Public Affairs Quarterly*, Vol. 4, No. 1 (1990), pp. 81–96.

government and don't have access to proof like a judge does. Unless someone points it out, they can't. Even less clear is the "public interest" rule. When two small businesses join together, it probably won't make as many people worry about jobs, competition, or the way the market is set up as big deals do. The reason for this is that people aren't as interested in small business deals. That's why the RD is likely to only send a case to the NCLT for the public interest reason and not for business reasons. This is because there should be clear proof of fraud or big mistakes in the process.[23] The fast-track route doesn't give the RD a way to check if the scheme's terms are economically fair from the point of view of minority shareholders who might not be able to explain their concerns in legal terms. This is probably the right way to think about it, but it does show a problem with the current system.

In the eyes of the law, the jobs of the Registrar of Companies and the Official Liquidator aren't very important, but they are in real life. What the ROC cares most about when they look at the plan is how well it follows the rules for formalities and steps. Say, for instance, has the business followed all the rules for telling, disclosing, and filing? The ROC usually can't say if the deal's terms are fair from a business point of view or if the values used to back the merger are right. Still, the ROC's report to the RD is an important part of the administrative review process. If the ROC doesn't agree with how things are being done, it can make the process take a lot longer than planned. One of the weirdest jobs in a fast-track setting is that of the Official Liquidator (OL). In most cases, the OL is a court official who handles the winding-up process. The fact that the OL is now in charge of merger cases shows that lawmakers are concerned that mergers could be used to avoid real obligations to wind up companies. Most of the time, the OL's review of fast-track merger plans is just an exercise. This is because the OL doesn't have the forensic tools to check if a plan hides the debts of a bankrupt company. But if it does, it's a sign of the worst kinds of fraud.

Expansion of Scope: from Small Companies to Start-Ups and Government Entities

The rules were particularly severe when Section 233 was added in 2016. In some cases, including with smaller businesses, holding corporations, or wholly owned subsidiaries, it might be possible to close rapidly. The crew was being careful since they had to test the method in safe conditions before employing it in more dangerous ones. The full definition of "small company" in Section 2(85) supports the idea even more. Companies that had paid-up share capital of less than 50 lakh and made less than 2 crore a year were sometimes considered "tiny." The truth was that these rules were too tight. If a lot of companies had chosen an easier way

[23] Pramod Mantravadi and A. Vidyadhar Reddy, "Type of Merger and Impact on Operating Performance: The Indian Experience," *Economic and Political Weekly*, Vol. 43, No. 39 (2008), pp. 66–74.

to merge now, they would have made a mistake. This group includes included privately owned medium-sized businesses. These companies can profit from making their operations easier because they produce a lot of money and don't need outside partners. They were still left out, though.

To close this gap, the Ministry of Corporate Affairs changed the rules in 2021. You can make 20 crore in sales if you have 2 crore in paid-up capital. I have to admit, that's a tremendous change. India's private sector still didn't have a good representation, even with these fresh data. Just because a closely held corporation is "small" and not a threat to the public or creditors doesn't mean it fits the requirements.[24] One key problem with the threshold-based model is that it analyzes the company's size to figure out how risky a merger is, when it should be looking at how risky it is for creditors and minority shareholders. The change in 2021 also let entrepreneurs apply. Its expansion was caused by policies, not market forces. India's business sector evolved swiftly, therefore mergers and reorganizations had to be more adaptable. The tide had turned. Most new businesses do best in places that are fast-paced and intriguing. Long legal processes could make it harder to make big choices like mergers and acquisitions. The DPIIT says that a start-up is a legal entity since the law says it is. A startup is a business that is less than ten years old, produces less than ₹100 crore a year, and is continually looking for new methods to make money. This word doesn't derive from business law, yet it is nevertheless useful for strategy. The fast-track method was created since the prior way of showing if a structure was easy or low-risk wasn't very good. So, there may yet be a chance for rich corporations with very strong control systems to join in. I can't help but think that it could be better for them if signing up were easier. Several high-ranking government officials have recently urged that businesses owned by the government employ the speedier method. That is to say, it makes sense. Politics generally come first when government-run firms merge, which means that the demands of minorities are often ignored. It might not be worth it to go to court about this. This increase is a fantastic start, but we need a more open and risk-focused eligibility process right away.

The process for deciding who is eligible under Section 233 is still open, even with these changes. There are many other sorts of organizational structures that businesses can choose from, such as single proprietorships, partnerships, and holding-subsidiary arrangements. This makes the problem harder and leaves more holes. Even while there isn't much risk, the fast-track process won't work for mergers involving companies that don't clearly belong into these groups. Is the real risk profile of the acquisition more relevant than how the company is

[24] Nagesh Kumar, "Mergers and Acquisitions by MNEs: Patterns and Implications," *Economic and Political Weekly*, Vol. 35, No. 32 (2000), pp. 2851–2858.

rated? This is the most difficult question concerning policy that comes up. A transaction-based method would be better for achieving the goal of Section 233 since it is more flexible, faster, and safer.

Conclusion

Section 233 of the Companies Act, 2013 marks a significant shift from India's traditionally court-heavy merger framework toward a leaner, administratively driven process. By opening a fast-track pathway for small companies, holding-subsidiary mergers, and start-ups, it has meaningfully reduced the cost and time burden of corporate restructuring. Yet this evolution carries real risks. Each expansion of eligibility through revised thresholds, DPIIT-linked start-up recognition, and delegated legislative power has stretched the framework beyond its original low-risk design, without a corresponding strengthening of safeguards. The replacement of NCLT oversight with Regional Director review, combined with the "deemed approval" mechanism, raises genuine concerns about transparency and the protection of minority shareholders and creditors. Regulatory overlap with SEBI, FEMA, and CCI further dilutes the efficiency gains the provision promises. Section 233's value is undeniable, but its long-term credibility depends on balancing speed with substantive fairness ensuring that a faster process does not quietly become a less accountable one.

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