Fast-Track Mergers and Demergers: Expanded, but Efficacious? Free

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Background

Section 233 of the Companies Act, 2013 was introduced to provide a simplified route for mergers between a defined and narrow set of companies, primarily small companies and a holding company with its wholly-owned subsidiary. The object was to relieve the National Company Law Tribunal ("NCLT") of routine intra-group reorganisations that involve neither dispersed public investors nor contested creditor interests, by vesting the approval power in the Regional Director ("RD") acting for the Central Government, with the Registrar of Companies and the Official Liquidator retaining a consultative role. For most of the past decade, however, the route was used sparingly. Its eligibility was confined to a few categories of companies, and its approval threshold was set at a level that, in practice, was difficult to attain. The result was that the provision, though available, was not the default for the transactions it was designed to serve.

Two developments have altered this position, and it is important to distinguish them at the outset, because they operate at different levels and carry different legal force. The first is the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 ("2025 Amendment Rules"), notified on 4 September 2025 and presently in force. Being subordinate legislation, these Rules expanded the categories of companies eligible to use the fast-track route and expressly extended it to demergers and to the division or transfer of an undertaking. The second is the Corporate Laws (Amendment) Bill, 2026 ("2026 Bill"), introduced in the Lok Sabha on 23 March 2026 and presently before a Joint Parliamentary Committee for examination. The 2026 Bill proposes to amend the Companies Act, 2013 itself, including Sections 230 to 233, and is not yet law.

This article examines the expanded fast-track route under three heads on which transactions ordinarily turn: the regulatory and structural challenges that survive the expansion; the stamp duty consequences; and the unresolved question of tax neutrality for fast-track demergers.

The Two Developments: September 2025 and the 2026 Bill

The 2025 Amendment Rules

Prior to September 2025, Rule 25 of the 2016 Rules confined the fast-track route to primarily mergers of two or more small companies and a holding company and its wholly-owned subsidiary. Demergers were not within the route at all. The practical consequence was that the provision operated, in substance, as a tool for small companies and was deployed in limited circumstances.

The 2025 Amendment Rules widened the eligibility considerably. The route now extends, among others, to two or more unlisted companies where the aggregate of outstanding borrowings, debentures and deposits does not exceed INR 200 crore and there is no subsisting default; to a holding company and its subsidiary, which need not be wholly-owned, provided the transferor company is not listed; to fellow subsidiaries of a common holding company where the transferor is unlisted; and to a foreign holding company merging into its wholly-owned Indian subsidiary.

However, one particular change which carries structural weight was also introduced. The Rules extend the fast-track machinery, *mutatis mutandis*, to demergers. Fast-track demergers are, accordingly, now expressly provided for, and the earlier doubt as to whether a hive-down into a subsidiary, including a mirror-image demerger of a parent into its wholly-owned subsidiary, could proceed under Section 233 stands resolved in favour of eligibility.

The 2026 Bill

The 2026 Bill proposes to amend the parent statute, and the key changes dealing with schemes of arrangement are recapitulated as under.

Single-bench jurisdiction: The Bill seeks to amend section 230 of the Companies Act, 2013 requiring every application under Sections 230 to 233 to be made to the Tribunal having jurisdiction over the transferee or resultant company, and providing that this single bench shall exercise all the powers of the Tribunal for all the companies in the scheme, irrespective of where the transferor companies are registered. A scheme involving companies across several States, which at present requires parallel proceedings before multiple benches, would thus be heard by a single bench.

Rationalised approval thresholds: Specifically for fast track mergers and demergers, section 233 is sought to be amended to require approval by a majority of members present and voting who hold at least 75% in value of the shares held by such members present and voting. The change is twofold: the percentage is reduced from 90% to 75%, and, of greater consequence, the denominator shifts from the total shares of the company to the shares of members present and voting. The difficulty is plain: in a company with dispersed or passive shareholding, a threshold computed on the total share capital is defeated not by opposition to the scheme but by the non-participation of shareholders. The shift in denominator proposed by the 2026 Bill, from total share capital to shares present and voting, addresses this directly.

Similarly, but as discussed later, with an important limitation, the threshold for creditor approval is also reduced from 90% to 75%.

Regulatory and Structural Challenges That Remain

The expansion of eligibility and the proposed rationalisation of thresholds do not address every constraint on the fast-track route. Several matters remain, and they require attention before the route is treated as a straightforward administrative alternative to the Tribunal.

The Approval Threshold: Both Limbs Reduced, but Only One Re-Based

The 2026 Bill reduces both the members' threshold and the creditors' threshold from 90% to 75%. The creditor relief is of real consequence. The two reductions are not, however, of the same character, and the distinction is easily missed. For members, the Bill changes not only the percentage but the denominator: approval is now measured against the value of shares held by members present and voting, rather than against the total issued share capital. For creditors, the percentage falls to three-fourths, but it continues to be computed on the total value of creditors, not on the value of those present and voting. The members' threshold has therefore been both reduced and re-based; the creditors' threshold has only been reduced.

This asymmetry matters in practice. The re-basing for members is what addresses the difficulty of dispersed or passive shareholding, where a threshold measured against total capital is defeated by inaction rather than by opposition, and it is for this reason that the members' limb now corresponds to the Section 230 framework. The creditor limb, by contrast, remains exposed to the same structural problem at the lower percentage: a company with a large number of non-responsive small creditors must still assemble three-fourths of the total value, and the non-participation of creditors continues to count against the threshold rather than being excluded from it.

Composite Schemes: The Limits of the Fast-Track Route

A more significant limitation concerns the scope of what a fast-track scheme may contain, and it is of particular relevance to intra-group restructuring. A scheme under Section 233 may do only what the Rules permit, namely effect a merger, or a division or transfer of an undertaking. It cannot accommodate

the wider range of elements that a composite scheme under Sections 230 to 232 routinely carries, and intra-group reorganisation frequently requires that wider range: a reduction of capital under Section 66, whether by cancellation of shares, reduction of face value, or the set-off of accumulated losses against share capital, or a reorganisation of reserves, or the conversion of one class of instrument into another, or the implementation of a family arrangement through a capital reduction. Where these elements are contained within a Section 230 scheme, the settled position is that Section 66 is not separately attracted and the Tribunal passes a single composite order.

That machinery is not available under the fast-track route. The extension under Section 233 brings demerger into the fold of fast track approval route; it does not bring in the wider Section 230 framework. A fast-track scheme that requires a reduction of capital in any manner envisaged under section 66 of the Companies Act, 2013 as an integral component cannot achieve it within Section 233, and the transaction must instead proceed before the Tribunal under Sections 230 to 232, where the procedural advantage of the fast-track route is not available. The route is expeditious in part because it is confined to a narrow set of arrangements, and that confinement is also its limitation.

Eligibility Across Categories

A practical question of eligibility remains unaddressed. The expanded Rule 25 sets out a series of categories: small companies, unlisted companies within the Rs. 200 crore borrowing limit, holding-subsidiary pairs, and fellow subsidiaries. It is not clear whether companies falling within *different* categories may use the fast-track route to merge with one another. For example, whether an unlisted company that is within the Rs. 200 crore borrowing limit but is not itself a small company may merge under Section 233 with a small company.

The Rules enumerate the eligible classes; they neither expressly permit nor expressly prohibit a pairing across two classes. A conservative reading would confine each scheme to a single qualifying category. A purposive reading, consistent with the stated object of reducing the burden on the Tribunal, would permit a pairing in which each company independently qualifies under some category. In the absence of clarification by the Ministry of Corporate Affairs, this remains an area of uncertainty, and one on which the RD may take the stricter view.

The Position of Listed Companies: Takeover Code and LODR

Certain provisions of the SEBI framework remain drafted by reference to the Tribunal route, and they acquire renewed importance because the proposed reduction in the approval threshold makes the fast-track route potentially available to listed companies with dispersed shareholding, and limited creditors. Regulation 10(1)(d)(ii) of the Takeover Regulations exempts an acquisition of shares made pursuant to a scheme under an order of a court or tribunal. A scheme under Section 233 is confirmed by the RD and is not the subject of a tribunal order, with the result that the exemption may not be available, and a consolidation of promoter-group entities into a listed company could attract an open-offer obligation that it would not attract under the Tribunal route.

Regulation 37 of the LODR Regulations, which requires prior approval of the stock exchanges and SEBI for a scheme proposed to be filed before a court or tribunal under Sections 230 to 234, is similarly framed. The position is not that a fast-track scheme involving a listed company is impermissible, but that the liberalisation of the company-law provision has not been accompanied by a corresponding adjustment of the SEBI provisions.

Stamp Duty: The Rate and the Concession

Stamp duty on a scheme is a cost that is frequently underestimated at the structuring stage, and the position turns first on the applicable rate. Indian stamp law charges duty on the instrument, not on the underlying transaction, and in the case of a scheme sanctioned by a court or tribunal the chargeable instrument is the order sanctioning the scheme, not the scheme of arrangement itself. The rate at which that order is charged is not uniform across the country, and the divergence is material. Several States provide a concessional rate for schemes of arrangement. Maharashtra, under Article 25(da) of the Maharashtra Stamp Act, levies duty of approximately 0.7% on the value of shares issued pursuant to the scheme, as against the standard conveyance rate of around 3% that would otherwise apply to a transfer of property. This treatment is not uniform, and that is where a difficulty specific to the fast-track route arises.

The concessional articles in several States are worded by reference to a scheme of arrangement or amalgamation sanctioned under Sections 230 to 232, and make no reference to a scheme confirmed under Section 233. A fast-track scheme, being confirmed by the Regional Director rather than sanctioned by the Tribunal under Sections 230 to 232, may therefore fall outside the concessional article and attract duty at the full conveyance rate, even where an identical scheme routed through the Tribunal would have qualified for the concession. The manner in which the order is characterised, and the provision under which it is passed, thus has a direct bearing on the duty payable, and the difference between the concessional and the conveyance rate is often the largest single item of transaction cost.

Stamp Duty: Set-Off, the Single Bench, and the Question of One Instrument or Several

The second question is what happens where a scheme spans more than one State, and here the consolidation of jurisdiction before a single bench interacts with stamp duty in a way that is easily mistaken, because the consolidation of the forum is liable to be read as a consolidation of the duty. The two are distinct, but the change could work to the taxpayer's advantage.

Under the existing position, a multi-State scheme gave rise to separate sanction orders from separate benches. The Bombay High Court in Reliance Industries Limited held that the scheme of amalgamation is not itself the chargeable document; duty attaches to the order sanctioning it, and where the companies' registered offices lie in different States and separate orders are passed, each order is a separate instrument chargeable in its own State.

The difficulty this created for set-off is plain. Section 19 of the relevant Stamp Act allows duty paid on an instrument executed outside the State to be set off when that instrument is received within the State; but where each State had its own distinct order, the authorities in one State could contend that the order passed in another was a different instrument altogether, never received in their State, so that Section 19 had no application and duty fell to be paid afresh in each State without credit.

The single-bench reform removes that obstacle. One Tribunal now passes one order for the entire scheme, and on the reasoning in Reliance that single order is a single instrument, the practical consequence is straightforward and favourable: the company pays duty on that order in the State levying the highest rate, and then, carrying the same instrument to the other States in which immovable property is situated, claims set-off under Section 19 for the duty already paid, rather than being met with the objection that it is a different instrument. The multiplicity of instruments, which was the foundation of the revenue's argument against set-off, no longer exists. The single bench thus supplies the very feature, one instrument for one scheme, on which the set-off provision is designed to operate.

What remains is for the States to give effect to that logic, since stamp duty continues to be governed by the State Stamp Acts and to arise by reference to the location of assets and registered offices. Whether duty is computed on the order as a whole, or on the conveyance attributable to the immovable property in each State with a corresponding set-off for duty paid elsewhere, is a question on which a uniform position is now both possible and desirable. The single-bench reform does not by itself resolve it, but it creates the conditions in which it can be resolved in the taxpayer's favour.

Tax Neutrality of Fast-Track Demergers

The extension of the fast-track route to demergers is, as a matter of company law, a clear advance. As a matter of tax law, it has been brought into a difficulty that the legislative record indicates was retained deliberately.

The definition of demerger that confers tax neutrality, contained in Section 2(19AA) of the Income-tax Act, 1961 and carried forward into the Income-tax Act, 2025, is framed by reference to transfers under Sections 230 to 232 of the Companies Act. A scheme confirmed under Section 233 is not, on a plain reading, a transfer under Sections 230 to 232; it is a confirmation by the RD under a separate provision.

The result is that, although the Ministry of Corporate Affairs has expressly brought demergers within the scope of Section 233, the tax statute continues to define a qualifying demerger solely by reference to the Tribunal route. The asymmetry lies within the fast-track provision itself: a fast-track *merger* under Section 233 obtains tax neutrality where the conditions of Section 2(1B) are satisfied, while a fast-track *demerger*, which passes through the same approvals and the same regulatory scrutiny, falls outside the definition.

The consequences of falling outside the definition are not minor. The loss of tax-neutral status affects the transferor company, the resulting company and the shareholders, and it places at risk the carry-forward of accumulated business loss and unabsorbed depreciation, even in the case of a bona fide internal reorganisation in which beneficial ownership does not change. At the level of the shareholder, the exposure is more acute: a receipt of shares in the resulting company that would otherwise be tax-neutral is at risk of being treated as a deemed dividend, taxable at a rate materially higher than the rate applicable to capital gains. The effect is to render commercially genuine intra-group demergers fiscally unviable, which is the opposite of the purpose that the fast-track route is intended to serve.

What distinguishes this from an inadvertent omission is the legislative history. The exclusion of Section 233 schemes from the definition was, on the record of the Parliamentary Standing Committee, consciously retained. It was not a definition that escaped attention; it was a definition that was considered and left as it stood. That makes the remedy correspondingly more difficult, since it cannot be characterised as the correction of a drafting error. It requires a positive decision to extend the definition of demerger to a confirmation under Section 233, whether by amendment to the Income-tax Act, 2025 or by a clarificatory circular, and preferably in conjunction with a Budget. Until that decision is taken, the prudent course, where tax neutrality is essential to a demerger, is to proceed under Sections 230 to 232, which alone secures it. The fast-track demerger, notwithstanding its standing under company law, does not at present deliver tax neutrality, and a scheme undertaken in reliance on the assumption that it does would be exposed.

The Bigger Picture: The Need for Alignment Across Frameworks

Considered together, the three heads examined above share a common character. The fast-track route has been reformed in stages, by different instruments, and the neighbouring frameworks have not been adjusted to keep pace. The 2025 Amendment Rules widened the categories of companies that may use the route; the 2026 Bill, once enacted, will rationalise the approval thresholds and consolidate the forum. Yet the Income-tax Act, 2025 continues to withhold tax neutrality from fast-track demergers, and the Takeover Regulations and the LODR Regulations continue to be drafted by reference to the Tribunal rather than the Regional Director. Stamp duty occupies a more hopeful middle position: the single-bench reform supplies the one feature, a single instrument for a single scheme, on which a coherent and set-off-friendly treatment can be built, but that treatment still awaits the States giving effect to it. In each case the difficulty is, in substance, the same: a change to one part of the framework that the adjacent parts have not accommodated.

This is the larger consideration, and it extends beyond the fast-track route. Corporate restructuring operates at the intersection of company law, tax law, securities regulation and stamp law, and these are made by different authorities, with different objects, on different timetables. The Ministry of Corporate Affairs may widen eligibility by notification; the alteration of an approval threshold awaits the legislature; the tax definition awaits the revenue administration and the Budget; and stamp duty rests with the States, over which the Centre has no power of direction. A reform that improves the efficiency of one component without a corresponding adjustment of the components with which it must operate does not produce a faster process; it produces a process whose constituent parts are out of step with one another.

The direction of travel is, nonetheless, toward alignment, and the 2026 Bill itself reflects a coordinating intent, evident in its harmonisation of the Section 233 thresholds with the Section 230 framework. The task that remains is to extend that intent across the boundaries the Centre does not itself control. The fast-track route will be genuinely effective when the tax definition recognises a demerger confirmed under Section 233, when the SEBI Regulations accommodate confirmation by the Regional Director alongside an order of the Tribunal, and when a coherent treatment of the single sanction order is settled among the States. Until then, the route is more accessible than it was, which is a real improvement, but it remains, for a meaningful class of transactions, a route that ends before the Tribunal in any event.