FAST-TRACK MERGERS IN INDIA: WILL THE PROPOSED COMPANY LAW AMENDMENTS HELP SPEED THE PROCESS?

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Background

Section 233 of the Companies Act, 2013 (the "**Act**") offers an expedited route for specified mergers, including those between: (i) small companies; (ii) a holding company and its wholly-owned subsidiary; or (iii) a prescribed class of companies. Unlike a conventional scheme under Sections 230 to 232 of the Act, the expedited process is largely administered by the Central Government (i.e., the respective Regional Director) and avoids the extensive procedural requirements of the National Company Law Tribunal (the "**NCLT**"), unless the scheme is referred to the NCLT under Section 233 of the Act.

Section 233(1)(b) requires members holding at least 90% of the company's total shares to approve the scheme of arrangement.

The ruling in Mallcom (India) Limited's case

A recent decision of the NCLT, Kolkata Bench, in *Regional Director, Eastern Region, Ministry of Corporate Affairs v. Mallcom (India) Limited and Anr.*, C.P. No. 172/KB/2025 (the "**Mallcom Order**"), shows how the shareholder approval test continues to impede completing fast-track mergers quickly. In the scheme of arrangement (the "**Scheme**") between Mallcom (India) Limited ("**Mallcom**") and its wholly-owned subsidiary, Mallcom VSFT Gloves Private Limited, although almost every shareholder present and voting supported the Scheme, the approving shareholder votes did not represent 90% of the total shares of Mallcom.

As per the scrutinizer's report, 99.98% of the votes cast supported the Scheme; however, those votes represented only 82.19% of Mallcom's paid-up share capital. As the 90% threshold was not met, the Regional Director, Eastern Region, raised an objection under Section 233(5) of the Act and requested the NCLT to consider the Scheme under Section 232 of the Act. Sections 233(5) and (6) of the Act provide for the Regional Director to refer a fast-track merger to the NCLT if it considers the scheme contrary to public interest or the interests of creditors, following which the NCLT may direct that the scheme be dealt with under Section 232 or pass such order as it deems fit.

Before the NCLT, Mallcom argued that the requirement of "total number of shares" pertained to shares held by the members present and voting at the meeting, and not "total number of shares of the company." However, the NCLT disagreed and held that the phrase "total number of shares" indeed referred to a company's entire issued and paid-up share capital. The NCLT also declined to consider the Scheme under Section 232 (which empowers the NCLT to sanction a scheme, in accordance with Sections 230 to 232 of the Act), holding that a reference under Sections 233(5) and (6) presupposes a scheme "duly approved" under Section 233(1). In Mallcom's case, as the Scheme had not obtained the requisite approval under Section 233(1), the statutory precondition for NCLT's consideration under

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Sections 233(5) and (6) was not satisfied and, therefore, the NCLT quashed the pending proceedings related to the Scheme.

The Mallcom Order highlights the issues that arise due to the requirement of having affirmative votes from members holding 90% of a company's total paid-up share capital. A shareholder who does not vote can actually block the fast-track route even without opposing the scheme.

The proposed changes

The Corporate Laws (Amendment) Bill, 2026 (the "**Bill**") proposes a different test. If enacted in its current form, a merger will require the approval of shareholders present and voting who hold at least 75% in value of the shares of the company, represented at the meeting. This will have the following effect: (i) the overall threshold will be reduced from 90% to 75%; and (ii) only the participating shareholders' shareholding will count and not the company's total paid-up share capital. The emphasis will shift to the decision made at the meeting by shareholders present and voting who should at least comprise 75% of the total shareholding of the company.

The Joint Committee, through its report on the Bill, which was presented to the Lok Sabha on August 3, 2026, has supported this proposal under the Bill and recommended a statutory exit right to the dissenting shareholders in specified cases.

Key takeaways

The Mallcom Order clearly demonstrates that the 90% test is not easy to satisfy even where the shareholders participating in the meeting overwhelmingly support the merger. The proposed amendments will make Section 233 easier to comply with and useful for intra-group mergers, holding company-subsidiary reorganisations and other transactions that do not materially alter ultimate ownership or control, especially for listed companies.

Nevertheless, the proposed changes will not remove the need for careful preparation. Companies will have to assess shareholder composition and expected participation, creditor exposure, valuation, disclosure, regulatory objections, and sector-specific approvals. They will have to build a clear engagement plan for dissenting and non-voting shareholders and allow for any protections introduced in the Bill after enactment.

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