

M&A Update

**NCLT approves Merger
despite objections by
Tax Authority**



Panasonic Merger Cleared by NCLT, Emphasizing Business Synergy Over Tax Implications

- In the realm of mergers and acquisitions, legal scrutiny and regulatory compliance play a crucial role in determining the success of such transactions. One notable case in this context is the merger between Panasonic India Private Limited (Transferor Company) and Panasonic Life Solutions India Private Limited (Transferee Company). The petitioners filed for the sanctioning of their merger scheme before the National Company Law Tribunal (NCLT), Chandigarh Bench, and the case was adjudicated on May 19, 2022.
- The merger faced significant objections from the Income Tax Department, which raised concerns about potential revenue losses due to the transfer of accumulated losses from the Transferor to the Transferee Company. Specifically, the Department pointed out that the effective ownership of both

companies was held by Panasonic Corporation, Japan. The Transferor Company had accumulated losses amounting to ₹ 1437.5 crores for the assessment year 2020-21, which could lead to a substantial loss of revenue, approximately ₹ 359.4 crores plus surcharge and cess, due to the set-off of these losses post-merger. Additionally, the Department highlighted the potential non-payment of capital gains tax by the shareholders of the Transferor Company, who were residents of Singapore and the Netherlands, benefiting from respective Double Taxation Avoidance Agreements (DTAAs).

- The petitioner companies countered these objections by asserting that the merger was primarily aimed at achieving operational synergy and business consolidation rather than tax avoidance. They emphasized that the tax neutrality provisions under the Income-tax Act were applicable, and compliance with conditions under Section 72A of the Act could be verified during assessments. They further argued that

the General Anti-Avoidance Rules (GAAR) were not applicable as the merger did not constitute an impermissible avoidance arrangement.

- The NCLT, in its detailed analysis, acknowledged the concerns of the Income Tax Department but noted the absence of any adverse observations from other regulatory authorities such as the Registrar of Companies, the Official Liquidator, and the Competition Commission of India. The Tribunal considered various judicial precedents, including the landmark ruling of Hon'ble Supreme Court in the case of Vodafone International Holdings B.V. v. Union of India, which established that transactions undertaken for legitimate business purposes could not be disregarded solely for resulting in tax benefits.
- In its final judgment, the NCLT emphasized that the petitioner companies had demonstrated a clear case of operational synergy and business consolidation. The Tribunal found that the tax implications were incidental

to the merger's primary objectives and not its driving force. Consequently, the NCLT sanctioned the merger, directing the petitioner companies to comply with requisite formalities and regulatory requirements.

For details, please refer to the NCLT order dated 19 May, 2022 from the link below:

https://nclt.gov.in/gen_pdf.php?filepath=/Efile Document/ncltdoc/casedoc/0404116005782021/04/Order-Challenge/04_order-Challenge_004_165295929017230049746286283acccc4.pdf

DISCLAIMER: - The summary information herein is based on NCLT order dated 19.05.2022. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.