



First Stage rejection of Merger Scheme is too early rules NCLAT

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The National Company Law Tribunal (NCLT) can reject a merger scheme if the arrangement is a sham device to evade taxes or violates core statutory provisions or goes against the public interest. NCLT does not act merely as a rubber stamp and evaluates schemes holistically and normally respects approval of the scheme by major stakeholders namely, shareholders and creditors, unless there is a serious challenge by a statutory authority affecting public interest.

A scheme of amalgamation of Hinduja National Power Corporation Limited (HNPCL, Transferor Company) with GOCL Corporation Limited (GOCL, Transferee Company) was presented to the NCLT Amaravati Bench (NCLT Bench). HNPCL is an unlisted company involved in the business of thermal power production and distribution while GOCL is a listed company (listed on BSE and NSE) carrying on business of manufacture of energetics, explosive devices and real estate development.

As per the Scheme of merger (the Scheme), the Appointed Date is 01st April, 2025 and the exchange ratio is allotment of 206 equity shares of GOCL for every 10,000 equity shares of HNPCL. In terms of Standard Operating Procedure (SOP) under Regulation 37 of the SEBI (LODR) Regulations, 2015 GOCL filed the draft Scheme with both BSE and NSE and SEBI issued its observation letter on 20th May, 2026. Thereafter both the stock exchanges issued their respective clearance letters in the month of May 2026.

Thereafter the parties to the Scheme filed their respective first motion application with NCLT, Amaravati Bench.

the NCLT bench Vide its Order dated 30th July 2026 dismissed the applications on the ground that:

- a. The applications have been filed belatedly.
- b. The applications have been filed after one year from the stated Appointed Date, without providing adequate justification as required under MCA Circular dated 21st August 2019. Thus, the concern was not simply that the companies had selected an earlier Appointed Date, but that the delay between the Appointed Date and the filing of the scheme application required adequate justification, which the NCLT considered insufficient.
- c. There were certain discrepancies in the annual reports, financial statements and the documents filed along with the Scheme including some typographical errors and some accounting irregularities noted by the NCLT.

Ordinarily, at the first motion application under Sections 230–232, NCLT is concerned substantially with whether the scheme should proceed to the stage of obtaining the approval of the shareholders and creditors and with issuing appropriate directions for meetings.

It is important to note that the NCLT did not reject the merger on the commercial merits of the proposed combination. It mechanically dismissed the first motion Application, principally because it simply relied on procedural and documentary deficiencies at the first motion stage.



On an appeal, NCLAT Chennai vide its Order dated 25th September 2026 set aside the NCLT Order, holding that the NCLT had intervened too early, and directed the NCLT to proceed with ordering the convening of the shareholder meeting.

The NCLAT Order has nicely critiqued the NCLT Order and reasoned that it will be too premature a stage when tribunals may interfere with the process even before the shareholders and the creditors take a decision.

The NCLAT also reasoned that the Transferee being a listed company, is required to comply with the SEBI Listing Regulations requiring listed entities seeking of clearances from stock exchanges and SEBI. Since the first motion application cannot be filed unless the said clearances are taken, the applicants cannot be faulted for the delay. It also noted that the applicants filed the applications with immediate dispatch upon clearances by the stock exchanges.

If the delay were to really crucial to reject the Scheme, the NCLAT reasoned that it is best left to the shareholders and creditors to decide as they will be right decision makers to decide as to whether the delay has impacted the valuation and hence the exchange ratio and if the shareholders and creditors approve the Scheme, the tribunal has no basis to dismiss it on that ground prematurely.

The NCLAT also held that MCA General Circular of 2019 on Appointed Date is concerned with an “ante-dated” Appointed Date and not ‘delay’ as such, and where the delay in approaching the tribunal exceeds one year, the circular only requires a company to provide an adequate justification in the scheme. The delay, particularly when a listed company is involved in a scheme, may be attributable to the time taken by SEBI for giving its observations on the Scheme and cannot be controlled by the parties. The Circular must therefore be applied pragmatically, consistent with ease of doing business, so that regulatory oversight facilitates rather than unnecessarily impedes legitimate commercial activity.

The NCLAT formulated the following proposition which needs to be kept in mind while dealing with schemes of arrangement:

“All those who are enjoined with regulatory responsibilities for ensuring the working of regulatory laws may have to realise that they are there to discipline the free flow of business and not to halt it. After all, economic status of the nation is evaluated not in terms of the restrictive intervention and interruptions made in the garb of working the regulatory laws, but by the contributions from the commercial activity of the country”.

NCLAT restored the process to the first motion and directed the NCLT to appoint the chairman and scrutineers for the meetings, fix their remuneration and prescribe the schedule for the meetings within one week and in any event by 5 October 2026.

The NCLAT's reasoning is significant because it recognizes that amalgamation is fundamentally a corporate/business decision of the companies, and that the Tribunal should ordinarily allow the statutory stakeholder consultation process to take place, and avoid unreasonably intervening unless there is an appropriate reason to stop the process at that stage.
