

## “No Sanction for Forced Merger” SC

*First under Companies Act, 1956.*

CIVIL APPEAL NO. 4476 OF 2019

(Arising out of Special Leave Petition (Civil) No. 4210 of 2018)

Description
<p>63 MOONS TECHNOLOGIES LTD. (FORMERLY KNOWN AS FINANCIAL TECHNOLOGIES INDIA LTD.) &amp; ORS</p> <p style="text-align: right;">... APPELLANT</p> <p style="text-align: center;">VERSUS</p> <p>UNION OF INDIA &amp; ORS.</p> <p style="text-align: right;">... RESPONDENT</p>
<p><b>Questions to be decided:</b></p> <ol style="list-style-type: none"> <li>1. Interpretation, Construction and applicability of Section 396 of the Companies Act, 1956?</li> <li>2. Derivative immunity under Article 31A(c)?</li> </ol>
<p><b>Observation of Apex Court:</b></p> <ol style="list-style-type: none"> <li>1. <b><i>U/s-396 of Companies Act, 1956,</i></b> “Where the Central Government is satisfied that it is <b>essential in the public interest</b> that two or more companies should amalgamate, then, notwithstanding anything contained in sections 394 and 395 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution ; with such property, powers, rights, interests, authorities and privileges ; and with such liabilities, duties, and obligations ; as may be specified in the order.” <ol style="list-style-type: none"> <li>a. Section 396 used the expression "<b>essential in public interest</b>". Therefore, the amalgamation order must be not only in public interest, but also should satisfy the test of being essential.</li> <li>b. Welfare of the <b>public</b> or the interest of society as a whole, as contrasted with the "<b>selfish</b>" interest of a group of <b>private individuals</b>.</li> <li>c. <b>Private interests</b> of investors <b>do not amount</b> to public interest.</li> <li>d. Production of goods or services essential to the nation so that they may contribute to the nation's welfare and progress, and in so doing, may also provide much needed employment</li> <li>e. <b>Combining of resources of two or more companies so as to impact production and consumption of goods and services and employment of persons relatable thereto</b> for the general benefit of the community.</li> <li>f. Any action that impedes promotion of industry or obstructs growth which is in national or public interest would run counter to public interest.</li> </ol> <p><i>Article 31A(c) of the Constitution of India states that "no law providing for- the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations shall be deemed to be void</i></p> <ol style="list-style-type: none"> <li>1. <b><i>on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19"</i></b> <ol style="list-style-type: none"> <li>a. The bench held that the <b>amalgamation order was an administrative order</b> issued under Section 396, which cannot be held to be "law" within the meaning of Article 13. Therefore, the government order cannot claim derivative immunity under Article 31A(c).</li> </ol> </li> </ol> <p style="text-align: center;"><b>Conclusion</b></p> <p><i>Mind</i> has to be applied to whether a compulsory amalgamation under Section 396 is <b>indispensably necessary, important in the highest degree and whether such amalgamation is both basic and necessary</b>", Hence The Hon'ble SC set aside the amalgamation of two companies ordered by the MCA.</p> </li></ol>
<p><b>Justice-</b> <b>J.R F Nariman</b> <b>J.Vineet Saran</b></p>

- Mr. Ravi Mediratta (Senior Counsel) And CS Pooja Garg

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