

Date: December 24, 2019

To,
Corporate Finance Department,
Securities and Exchange Board of India,
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051,
Maharashtra, India

Dear Sir,

Subject: Request for informal guidance by way of interpretative letter under the provisions of Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("Scheme"), in relation to 'Clarification under section 232(6) of the Companies Act, 2013

1. BACKGROUND OF MINDA INDUSTRIES LIMITED ('MIL')

MIL is a public company domiciled and headquartered in India. It was incorporated on 16 September 1992 under the Companies Act, 1956 and its shares are listed on the National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) having its registered office at B64/1 Wazirpur, Industrial Area, Delhi-110052, India. The Company is engaged in the business of manufacturing of auto components including auto electrical parts and its accessories and caters to both domestic and international markets.

2. BRIEF FACTS OF THE MATTER

2.1 Minda Industries Limited has filed two independent composite scheme of amalgamation as follows:

Scheme 1:

MIL has filed a composite scheme of its amalgamation with Harita Limited, Harita Venue Private Limited, Harita Cheema Private Limited, Harita Financial Services Limited and Harita Seating Systems Limited [collectively known as 'Harita Seating'] ('the Scheme 1'). Appointed is as April 1, 2019 or such other date as may be fixed by the National Company Law Tribunal(s).

Scheme 2:

MIL has filed a composite scheme of its amalgamation with its 4 wholly owned subsidiaries i.e. M J Casting Limited, Minda Distribution and Services Limited, Minda Auto Components Limited and Minda Rinder Private Limited (collectively referred as "Transferor Companies") ['the Scheme 2']. The appointed date of the amalgamation is defined in the Scheme 2 as 1 April 2019.



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2.2 Accounting treatment by MIL ('the Transferee Company') in respect of assets and liabilities stated in para 11 of the Scheme 1 as follows:

"The Amalgamation will be accounted in accordance with the 'acquisition method' prescribed under the Indian Accounting Standard 103 (Business Combination) as notified under section 133 of the Companies Act, 2013, read together with Paragraph 3 of The Companies (Indian Accounting Standard) Rules, 2015."

2.3 Method of accounting as per para 10 of Ind AS 103 on Business Combination,

"As of the acquisition date, the acquirer shall recognise, separately from goodwill, the identifiable assets acquired, the liabilities assumed and any non-controlling interest in the acquiree. Recognition of identifiable assets acquired and liabilities assumed is subject to the conditions specified in paragraphs 11 and 12."

2.4 Para 8 and 9 of Ind AS 103 on Business Combination define the acquisition date as follows:

"8. The acquirer shall identify the acquisition date, which is the date on which it obtains control of the acquiree.

9. The date on which the acquirer obtains control of the acquiree is generally the date on which the acquirer legally transfers the consideration, acquires the assets and assumes the liabilities of the acquire- the closing date. However, the acquirer might obtain control on a date that is either earlier or later than the closing date. For example, the acquisition date precedes the closing date if a written agreement provides that the acquirer obtains control of the acquiree on a date before the closing date. An acquirer shall consider all pertinent facts and circumstances in identifying the acquisition date."

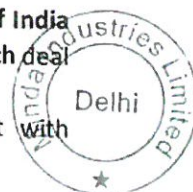
As stated in above paras, the acquirer shall account for business combination on the acquisition date and the acquisition date is defined as the date when the acquirer obtains the control of the acquiree. Hence, the date of accounting depends upon the event of obtaining control by the acquirer.

In case of scheme of amalgamation which is subject to various regulatory approvals i.e. stock exchange, SEBI, NCLT, the control is considered to be acquired once these regulatory approvals are obtained since without these regulatory approvals, scheme of amalgamation can not be given effect (these approvals are considered as substantive approvals and not mere administrative approvals).

2.5 Education material on Ind AS 103 provided by the Institute of Chartered Accountants of India also explains the acquisition date referring to some examples. Under example 6 and 7 which deal with questions on the determination of acquisition date in the following cases:

Question 6 – Business Combination without a Court approved scheme, agreement with retroactive effect

Question 7 – Acquisition date – Regulatory approval



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Under both these questions, it is concluded that acquisition date will be the date when the acquirer obtains the power to direct the relevant activities of the acquiree irrespective of any date stated in the agreement between the acquirer and the acquire which is the date of getting all necessary regulatory approvals. Examples 6 and 7 are attached as Annexure 1 to this note for your reference.

2.6 General Circular No. 09/2019 by Ministry of Corporate Affairs dated August 21, 2019 – Clarification under section 232(6) of the Companies Act, 2013 (refer Annexure 2 for your perusal)

MCA issued the aforesaid circular which provides the clarification on the appointed date stated in the scheme of amalgamation and the acquisition date stated in Ind AS 103 as follows:

- a) The provision of section 232(6) of the Companies Act, 2013 ('the Act') enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be specific calendar date or may be tied to the occurrence of an event such as a grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirements as agreed upon between the parties, etc., which are relevant to the scheme.
- b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind AS 103 Business Combinations).
- c) Where the 'appointed date' is chosen as specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.
- d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

2.7 Post the issuance of the aforesaid circular, the appointed date as stated in the scheme of amalgamation will be considered as the acquisition date for accounting as per Ind AS irrespective of the date of receiving the requisite regulatory approvals i.e. change in the erstwhile definition of acquisition date as per Ind AS 103.

3. Accounting prescribed under Ind AS 103 in case of amalgamation among common control entities (wholly owned subsidiaries) – Scheme 2

"Upon the scheme becoming effective the transferee company shall account for the amalgamation of transferor companies in the books of account in accordance with applicable accounting standards prescribed under section 133 of the Companies Act, 2013 read with the companies (Indian Accounting Standards) Rules, 2015 as amended ("Ind AS") and other accounting principles generally accepted in India and specifically under "pooling of interest method of Accounting as

J. Ravastav

laid down in appendix C of Ind AS 103 (Business Combination of entities under Common Control) on appointed date."

Appendix C of Ind AS 103 states as follows:

"8 Business combinations involving entities or businesses under common control shall be accounted for using the pooling of interests method.

9 The pooling of interest method is considered to involve the following:

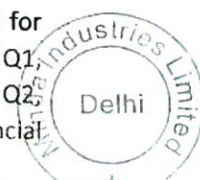
- I. The assets and liabilities of the combining entities are reflected at their carrying amounts*
- II. No adjustments are made to reflect fair values, or recognise any new assets or liabilities. The only adjustments that are made are to harmonise accounting policies.*
- III. The financial information in the financial statements in respect of prior periods should be restated as if the business combination had occurred from the beginning of the preceding period in the financial statements, irrespective of the actual date of the combination. However, if business combination had occurred after that date, the prior period information shall be restated only from that date."*

In case of amalgamation of wholly owned subsidiaries, the financial statements in respect of prior periods are restated since transferee company's control over the transferor company has been in existence since prior period.

4. CLARIFICATIONS SOUGHT in case of the Scheme 1

Now, since the effect of the amalgamation is to be given in the accounts from the appointed date which in case of the Scheme 1 will be the retrospective date i.e. April 1, 2019, following clarifications are sought for the preparation of the **standalone financial results of Minda Industries Limited for quarter 4 of 2019-2020 (Q4 2020) under regulation 33 of SEBI LODR.** Suppose, if the approval of NCLT on the Scheme 1 is received in Q4 2020, then:

- i) Standalone financial results of Minda Industries Limited would already be prepared, declared and published for the period covering April 2019 to December 2019. Now, since the effect of the amalgamation is required to be given with effect from April 1, 2019 as per aforementioned MCA circular, will the results of Harita Seating for the period covering April 2019 till December 2019 be included in the standalone results of Minda Industries Limited for Q4 2020?
Or
- ii) Will only Q4 2020 results of Harita Seating be included in the Q4 results of Minda Industries Limited?
- iii) Do we need to restate the comparatives numbers of quarter 3 2019-20 (Q3 2020) while preparing the standalone financial results for Q4 2020 of Minda Industries Limited after including the results of Harita Seating for Q3 2020?
- iv) While preparing quarterly standalone financial results for the financial year 2020-21, do we need restate the standalone financial results of Minda Industries Limited for the comparative quarters of the financial year 2019-20 i.e. for financial results of Q1, Q2, Q3 of 2020-21, do we need to restate the standalone financial results of Q1, Q2, Q3 of 2019-20 which were prepared and published without the inclusion of financial results of Harita Seating?



[Signature]

5. CLARIFICATIONS SOUGHT in case of the Scheme 2

Following clarifications are sought for the preparation of the **standalone financial results of Minda Industries Limited for quarter 4 of 2019-2020 (Q4 2020) under regulation 33 of SEBI LODR.**

Suppose, if the approval of NCLT on the Scheme 1 is received in Q4 2020, then:

- i) Standalone financial results of Minda Industries Limited would already be prepared, declared and published till Q3 2020. The effect of the amalgamation is required to be given with effect from the prior periods and hence financial statements for the year April 2018 till March 2019 will be restated.
While preparing the standalone financial results for Q4 2020 of Minda Industries Limited, will the effect of results of 4 wholly owned subsidiaries results till Q3 2020 will be included in the standalone results of Minda Industries Limited for Q4 2020?
Or
- ii) Will only Q4 2020 results of 4 wholly owned subsidiaries be included in the Q4 2020 results of Minda Industries Limited?
- iii) Do we need to restate the comparatives standalone financial results of Q3 2020 and Q3 2018-19 (Q3 2019) of Minda Industries Limited after including the results of Q3 2020 and Q3 2019 of 4 wholly owned subsidiaries?
- iv) While preparing quarterly standalone financial results for the financial year 2020-21, do we need restate the standalone financial results of Minda Industries Limited for the comparative quarters of the financial year 2019-20 i.e. for financial results of Q1, Q2, Q3 of 2020-21, do we need to restate the standalone financial results of Q1, Q2, Q3 of 2019-20 which were prepared and published without the inclusion of financial results of four subsidiaries stated above?

6. REQUEST FOR CONFIDENTIALITY

Considering that the above contemplated transactions may be material event and/or price sensitive information, we request you that this letter and its contents be kept confidential for the maximum period permissible under the Scheme i.e. up to 90 (ninety) days or for such numbers of days as you may deem fit from the date of issue of response by your good office

7. COMPLIANCE WITH PARAGRAPH 6 OF THE SCHEME

We have enclosed herewith a pay order no. 044090 dated 17/12/2019 of INR. 25,000/ (Indian Rupees Twenty-Five Thousand Only) in favour of "Securities and Exchange Board of India" drawn on Kotak Mahindra Bank Limited, Branch Mumbai- Fort, towards for obtaining informal guidance as specified under clause 6 of the Scheme.

8. All material facts, circumstances and legal provisions which in your opinion are relevant for the purpose of determination of this request are stated herein. In view of above mentioned details, we request your good offices to provide us informal guidance by way of interpretive letter.



Aravind

Minda Industries Ltd.



9. Any request for further clarification/information sought in relation to this letter, can be addressed to:

Minda Industries Limited
Nawada Fatehpur, Sikanderpur Badda, Manesar, Gurugram – 122004, Haryana, India

Thank You,

For and on behalf of Minda Industries Limited

Tarun Srivastava

Company Secretary and Compliance Officer



Business Combination without a Court approved scheme

Question 6

Company ABC Ltd. acquired all the shares of Company XYZ Ltd. The negotiations had commenced on 1 January 2016 and the agreement was finalised on 1 March 2016. While ABC Ltd. obtains the power to control XYZ's operations on 1 March 2016, the agreement states that the acquisition is effective from 1 January 2016 and that ABC Ltd. is entitled to all profits after that date. In addition, the purchase price is based on XYZ's net asset position as at 1 January 2016. What is the date of acquisition?

Response

Paragraph 8 of Ind AS 103 provides that acquisition date is the date on which the acquirer obtains control of the acquiree.

Further paragraphs 6 and 7 of Ind AS 110, Consolidated Financial Statements, inter alia, state as follows:

6 An investor controls an investee when it is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee.

7 Thus, an investor controls an investee if and only if the investor has all the following:

- a) power over the investee;*
- b) exposure, or rights, to variable returns from its involvement with the investee; and*
- c) the ability to use its power over the investee to affect the amount of the investor's returns."*

Further, paragraph 9 of Ind AS 103 clarifies that the date on which the acquirer obtains control of the acquiree is generally the date on which the acquirer legally transfers the consideration, acquires the assets and assumes the liabilities of the acquiree—the closing date. However, the acquirer might obtain control on a date that is either earlier or later than the closing date. For example, the acquisition date precedes the closing date if a written agreement provides that the acquirer obtains control of the acquiree on a date before the closing date. An acquirer shall consider all pertinent facts and circumstances in identifying the acquisition date.

Therefore, in this case, notwithstanding that the price is based on the net assets at 1 January 2016 and that XYZ's shareholders do not receive any dividends after that date, the date of acquisition for accounting purposes will be 1 March 2016. It is only on 1 March 2016 and not 1 January 2016, that ABC has the power to direct the relevant activities of XYZ Ltd. so as to affect its returns from its involvement with XYZ Ltd. Accordingly, the date of acquisition is 1 March 2016.

Acquisition date- Regulatory approval

Question 7

Company ABC Ltd. and Company XYZ Ltd. are manufacturers of rubber components for a particular type of equipment. ABC Ltd. makes a bid for XYZ Ltd.'s business and the Competition Commission of India (CCI) announces that the proposed transaction is to be scrutinised to ensure that competition laws are not breached. Even though the contracts are made subject to the approval of the CCI, ABC Ltd. and XYZ Ltd. mutually agree the terms of the acquisition and the purchase price before competition authority clearance is obtained. Can the acquisition date in this situation be the date on which ABC Ltd. and XYZ Ltd. agree the terms even though the approval of CCI is awaited (Assume that the approval of CCI is substantive)?

Response

Paragraph 8 of Ind AS 103 provides that acquisition date is the date on which the acquirer obtains control of the acquiree.

Further, paragraph 9 of Ind AS 103 clarifies that the date on which the acquirer obtains control of the acquiree is generally the date on which the acquirer legally transfers the consideration, acquires the assets and assumes the liabilities of the acquiree—the closing date. However, the acquirer might obtain control on a date that is either earlier or later than the closing date. For example, the acquisition date precedes the closing date if a written agreement provides that the acquirer obtains control of the acquiree on a date before the closing date. An acquirer shall consider all pertinent facts and circumstances in identifying the acquisition date.

Since CCI approval is a substantive approval for ABC Ltd. to acquire control of XYZ Ltd.'s operations, the date of acquisition cannot be earlier than the date on which approval is obtained from CCI. This is pertinent given that the approval from CCI is considered to be a substantive process and accordingly, the acquisition is considered to be completed only on receipt of such approval.

F. No. 7/12/2019/CL-I
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,
Dr R.P. Road, New Delhi
Dated: 21st August, 2019

To

All Regional Directors,
All Registrars of Companies,
All Stakeholders.

Subject: Clarification under section 232(6) of the Companies Act, 2013

Sir,

Several queries have been received in the Ministry with respect to interpretation of the provision of section 232(6) of the Companies Act, 2013 (Act). Clarification has been sought on whether it is mandatory to indicate a specific calendar date as 'appointed date' in the schemes referred to in the section. Further, requests have also been received to confirm whether the 'acquisition date' for the purpose of Ind-AS 103 (Business Combinations) would be the 'appointed date' referred to in section 232(6).

2. The matter has been examined in detail in the Ministry in the light of the provisions of the Act, applicable rules, prevalent practices and orders passed by Courts/NCLT. It is noted that companies have been filing schemes under sections 230-232 of the Act indicating 'appointed date' either as a specific calendar date or an event based date, as may have been mutually agreed upon by the parties to the scheme. Section 232(5) also requires that every company in relation to which the order is made shall file a certified copy of the order with the Registrar of Companies for registration within 30 days of the receipt of certified copy of the order.

3. In *Marshall Sons & Co. India Ltd. v. ITO* [223 ITR 809], it was held by the Hon'ble Supreme Court that every scheme of amalgamation has to necessarily provide a date with effect from

which the amalgamation/transfer shall take place, and that such date may precede the date of sanctioning of the scheme by the Court, the date of filing of certified copies of the orders of the Court before the Registrar of Companies, and the date of allotment of shares, etc. It was observed therein that, the scheme, however, would be given effect from the transfer date (appointed date) itself.

4. In another case, in the matter of amalgamation of Equitas Housing Finance Limited and Equitas Micro Finance Limited with Equitas Finance Limited in C.P.Nos.119 to 121 of 2016, the Hon'ble Madras High Court held that the provisions of section 394 (1) of the Companies Act, 1956 (corresponding to section 232 of the Companies Act, 2013) provided enough leeway to a company to delay the date on which the scheme of amalgamation shall take effect and tie the same to the occurrence of an event. Thus, the Court rejected the argument that the 'appointed date' in the scheme should necessarily be a specific calendar date.

5. Section 232(6) of the Act states that the scheme shall be deemed to be effective from the 'appointed date' and not a date subsequent to the 'appointed date'. This is an enabling provision to allow the companies to decide and agree upon an 'appointed date' from which the scheme shall come into force.


6. In view of the above, it is hereby clarified that:

- a) The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.
- b) The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).

- c) Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.
- d) The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

7. This issues with the approval of the competent authority.

Yours faithfully,


(Pranay Chaturvedi)
Deputy Director
01123071190

Copy to:-

1. E-Governance Section with a request to place this circular on the Ministry website.
2. Guard File

