

Opportunities & Challenges in Valuation Assignments: Legal and Regulatory Aspects

CEP: The ICAI Registered Valuers Organisation



October, 2021

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In the news

EN Entrackr

CRED raises \$251 Mn in Series E at over \$4 Bn valuation

Credit card payment app CRED has raised \$251 million in its Series E round, valuing the fintech startup at \$4.01 billion.

6 hours ago



m Mint

India comes second in unicorn race in Q3

A unicorn is a startup with a valuation of at least \$1 billion. ... year," said Amit Nawka, partner - deals and startups leader, PwC India.



ET The Economic Times

PharmEasy closes pre-IPO funding round at \$5.6 billion valuation

PharmEasy founders — Siddharth Shah, Dhaval Shah, Dhramil Sheth, Harsh Parekh and Hardik Dedhia — have received new stock options ahead of...



ET Economic Times

RIL buys out retail & wholesale biz of Future group for Rs 24,713 crore

Reliance Retail and Fashion Lifestyle (RRFLL) and RRVL will take over certain borrowings and current liabilities related to the business and ...

2 weeks ago



EN Entrackr

Jio dilutes 25% stake; raises fresh funds from Intel Capital

The latest investment values Jio platforms at an equity valuation of Rs 4.91 lakh crore and an enterprise value of Rs 5.16 lakh crore.

Jul 3, 2020



livemint Livemint

GSK sells HUL stake for Rs25,480 crore in largest secondary trade on exchanges

"GSK has, through its subsidiaries GlaxoSmithKline Pte Ltd and Horlicks Ltd, today agreed to the sale of 133,772,044 ordinary shares in HUL at a ...

May 7, 2020

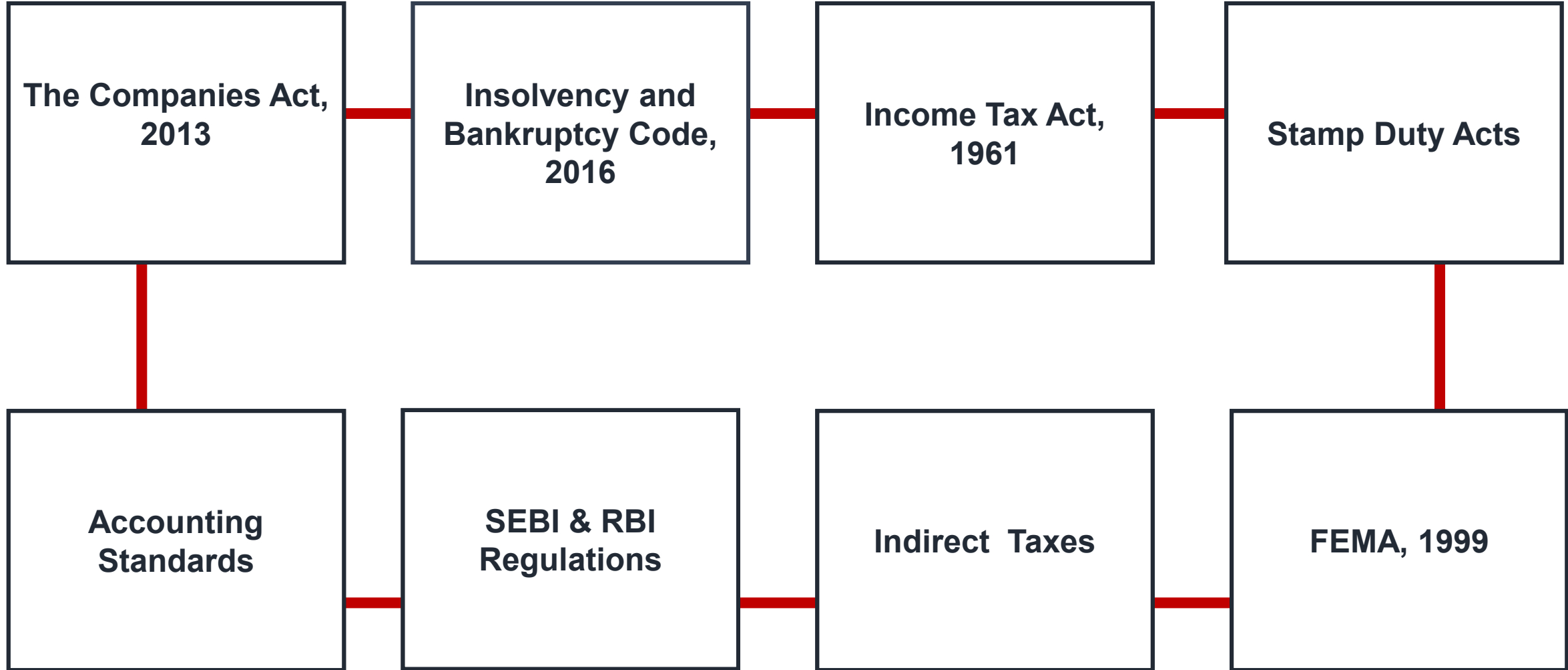


Value traps or undervalued? 18 companies in BSE500 index trade at low price-to-book value

Section 1

Background

Laws governing **Valuation**



Evolving Avenues

- ✓ Arrangements and Restructuring of companies including mergers, demergers or amalgamations, slump sale.
- ✓ Shareholder dispute, minority shareholder buyouts, JV partners exit
- ✓ Purchase/ sale/ acquisition of company
- ✓ Financial reporting valuation including purchase price allocation
- ✓ Forensic support where the valuer act as "Expert Witness"
- ✓ Valuation of brand, intellectual property
- ✓ Issue of convertibles instruments or fair value at time of conversion
- ✓ Complex financial securities valuation
- ✓ REIT, InVit, AIF, Startup Eco-system



Value V/s Price

Value

The value of any asset is a price at which an arm's length transaction can take place between a willing buyer and a willing seller.

- Not a static figure
- Nothing called precise value
- Arrival of transaction not necessary
- Fundamentals are the key
- Always involves economic benefits
- Value is 'should be price' - basis of negotiation of price

Price

Price is the amount at which particular asset is bought or sold in an open market in a particular transaction.

- A static figure
- Always precise
- An outcome of a transaction
- May not be driven by fundamentals always
- Includes economic & non-economic factors.
- Price May or not look on valuation

Knowing **what an asset is worth** and **what determines that value** is a pre-requisite for intelligent decision making - in choosing investments for a portfolio, in deciding on the appropriate price to pay or receive in a takeover and in making investment, financing and dividend choices when running a business.

Valuation Standards

With an objective to have consistent, uniform and transparent valuation policies and harmonise the diverse practices globally and across India, valuation standards are devised.

We primarily refer two set of standards for our guidance, same are listed below:

- International Valuation Standards (IVS) – Issued by International Valuation Standards Council
- ICAI Valuation Standards, 2018 (ICAI-VS) – Issued by The Institute of Chartered Accountants of India

Both set of standards are almost aligned and must be read in harmony.

In case of conflict between the two set of standards as per present regulations, the members of ICAI RVO should adhere to ICAI – VS.

Valuation Standards

International Valuation Standards (IVS)

ICAI Valuation Standards (ICAI – VS)

Framework	- Consist of general principles for valuers - Objectivity, judgement, competence, acceptable departure from IVS	- Focuses on framework of preparation of report in accordance with ICAI – VS - Consist of general principles for valuers - Objectivity, judgement, competence, professional Skepticism.
General Standards	- Designed for conduct of all valuation assignment for all type of asset class - IVS 101 to IVS 105	- Designed for conduct of all valuation assignment for all type of asset class - ICAI VS 101,102,103, 201 & 202.
Asset Specific Standards	- Includes requirement for specific type of assets - Special considerations for each asset specific requirement - IVS 200 to IVS 500	- Includes requirement for specific type of assets - Special considerations for each asset specific requirement - ICAI VS 301 to ICAI VS 303

Valuation Standards

International Valuation Standards (IVS)

ICAI Valuation Standards (ICAI – VS)

General Standards	• IVS 101 – Scope of Work • IVS 102 – Investigations and Compliance • IVS 103 – Reporting • IVS 104 – Bases of Value • IVS 105 – Valuation Approaches	• ICAI VS 101 – Definitions • ICAI VS 102 – Valuation Bases • ICAI VS 103 – Valuation Approaches • ICAI VS 201 – Scope of Work • ICAI VS 202 – Reporting and Documentation
Asset Specific Standards	• IVS 200 – Business and Business Interest • IVS 210 – Intangible Assets • IVS 220 – Non-Financial Liabilities • IVS 300 – Plant and Equipment • IVS 400 – Real property interest • IVS 410 – Development Property • IVS 500 – Financial Instruments	• ICAI VS 301 – Business Valuation • ICAI VS 302 – Intangible Assets • ICAI VS 303 – Financial Instruments

Draft Valuers Bill, 2020

A Draft Valuers Bill, 2020 has been drafted to establish a **National Institute of Valuers (NIV)** on basis of recommendations by a Committee of Experts constituted by the Ministry of Corporate Affairs (MCA) to examine the need for an institutional framework to regulate and develop valuation as a profession

- The bill has the objective of development and regulation of the valuation profession.
- Setting up of following bodies:
 - a) National Institute of Valuers to register and regulate valuers, valuer institutes, to conduct entrance and exit tests for valuers and to issue valuation standards. IBBI to continue as NIV till its formation.
 - b) Valuation Professional Organizations
 - c) Valuer's Institute to impart educational courses
- The bill also provides for penal provisions for professional misconduct of valuers.
- The bill envisages to lend credibility to the valuation profession, by issuing standards and introducing penal provisions.

Draft Valuers Bill, 2020

Important subjects acknowledged in the Bill

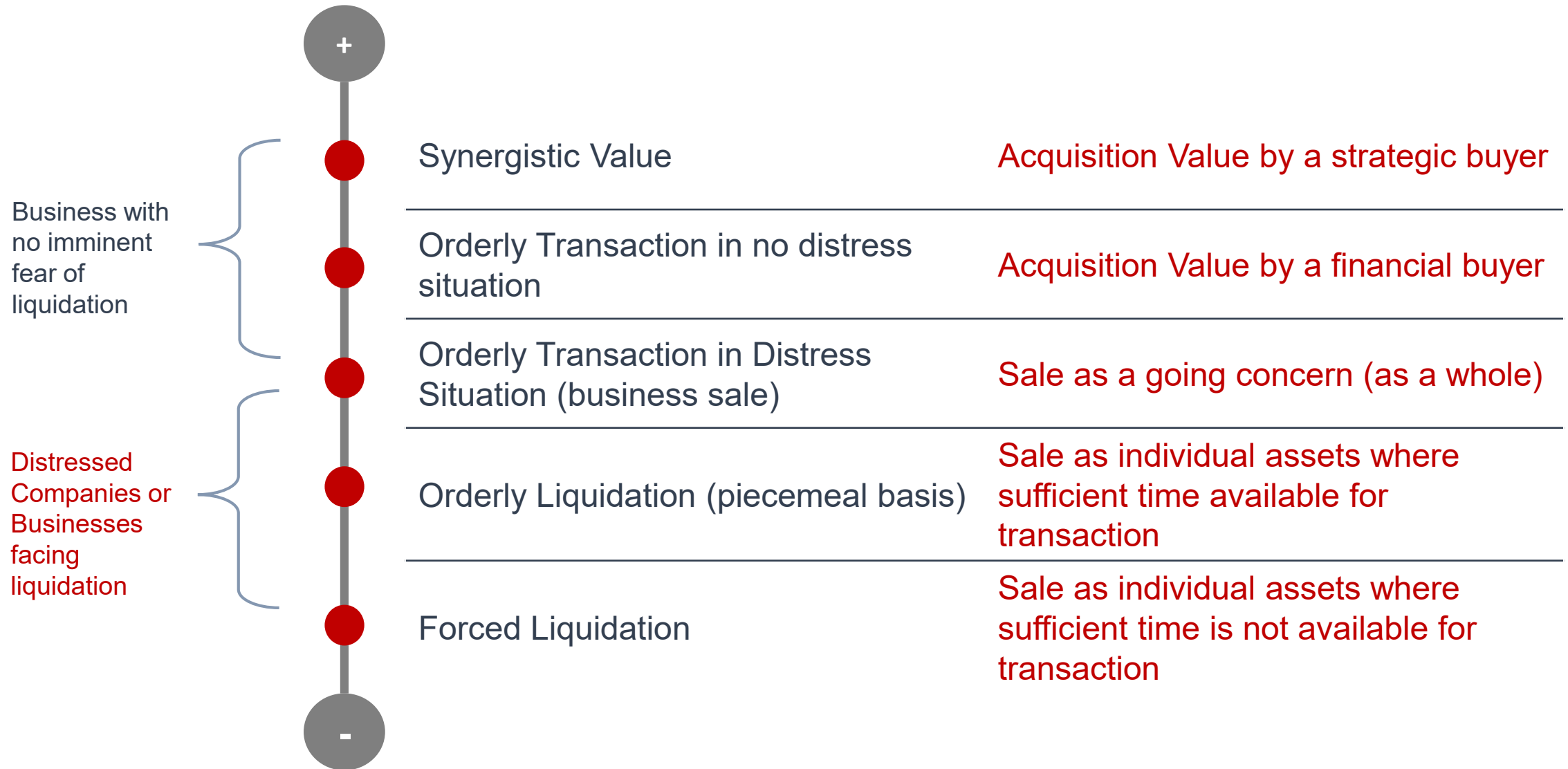
- The Bill envisages the appointment of the NIV to serve the purpose of developing the profession of valuers and regulating the market of valuation services
- Completion of either a national or graduate valuation programme ranging from 2 4 years to be registered as a valuer
- Enactment of an exclusive statute to provide for the establishment of an institute to protect the interests of users of valuation services in India
- This institute shall register and regulate Valuer Institutes, VPOs (Valuation Professional Organizations) and Valuers Valuer Institutes, who would compete among themselves for excellence, shall offer courses and conduct internal examinations, while the institute shall conduct a screening examination for admission to the courses and a qualifying examination for registration as valuers,
- Elevate valuation to a distinct profession in itself and provide for separate designations to be given to different classes of valuers
- In order to ensure at least a minimum quality of valuation services across the market, only Valuers registered under a proposed institutional framework should be permitted to render valuation services
- The proposed institutional framework should lay down valuation standards based on the recommendations of the Valuation Standards Committee and it shall be mandatory for Valuers to conduct valuation as per the valuation standards.

Standards of Value

As per the ICAI Valuation Standards, valuation bases are also called standards of value and it refers to the purpose of valuation.

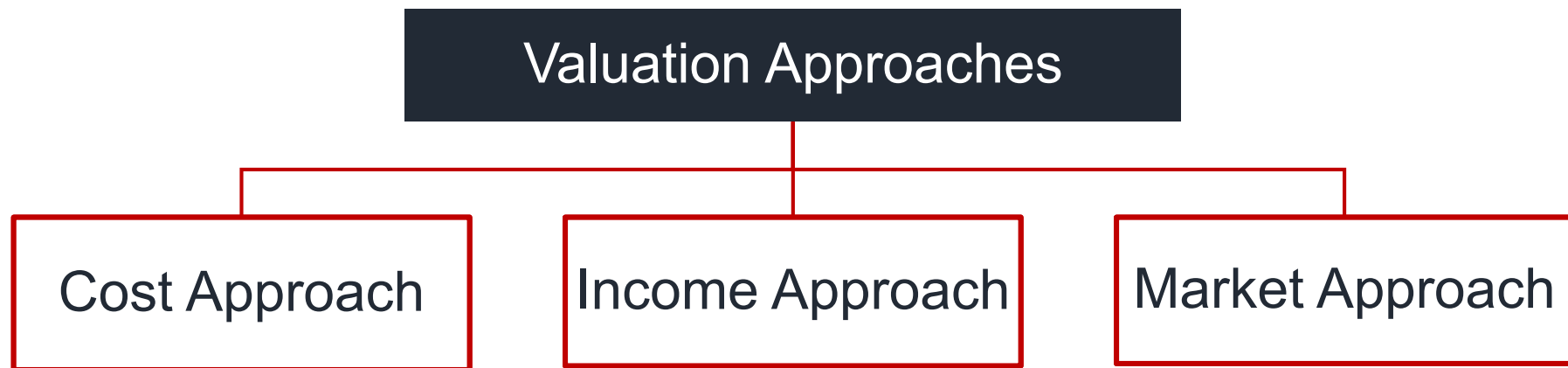
Fair Value	The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the valuation date.
Participant Specific Value	Participant specific value is the estimated value of an asset or liability considering specific advantages or disadvantages of either of the owner or identified acquirer or identified participants
Liquidation Value	It is the amount that will be realized on sale of an asset or a group of assets when an actual/hypothetical termination of the business is contemplated/assumed
Relative Value	Considered in transactions involving merger and demerger and relative values are arrived at using similar valuation approaches, methodologies and appropriate weights are assigned to arrive at a single value

Standards of Value



Valuation Approaches

There are various methods adopted for valuing the underlying assets of an entity. Certain methods are based on asset value while certain other methods are based on the earnings potential of the asset. Each method proceeds on different fundamental assumptions which have greater or lesser relevance and at times even no relevance, to a given situation. Thus, the methods to be adopted for a particular valuation exercise must be judiciously chosen. The valuation approaches and methods shall be selected in a manner which would maximize the use of relevant observable inputs and minimize the use of unobservable inputs.



Valuation Approaches

Cost Approach	The cost approach reflects the amount that would be required currently to replace the service capacity of an asset. Often, the value of the business/asset is driven in terms of the investment that would be required to replace the assets they have assembled.
Income Approach	Income approach is a valuation approach that converts maintainable or future amounts (e.g., cash flows or income, cost savings and expenses) to a single current (i.e., discounted or capitalized) amount. The fair value measurement is determined on the basis of the value indicated by current market expectations about those future amounts.
Market Approach	Market approach is a valuation approach that uses prices and other relevant information generated by market transactions involving identical or comparable (i.e., similar) assets, liabilities or a group of assets and liabilities, such as a business. The following are some of the instances where a valuer applies the market approach: a) where the asset to be valued or a comparable or identical asset is traded in the active market; b) there is a recent, orderly transaction in the asset to be valued; or c) there are recent comparable orderly transactions in identical or comparable asset(s) and information for the same is available and reliable

Valuation Approaches

Cost Approach

Income Based Approach

Market Approach

Replacement
Cost Method

Reproduction
Cost Method

Discounted
Cash Flow

Capitalization
of Earnings
Method

Excess
Earning
Method

Option
Pricing

Relief from
Royalty

With or
Without
Method

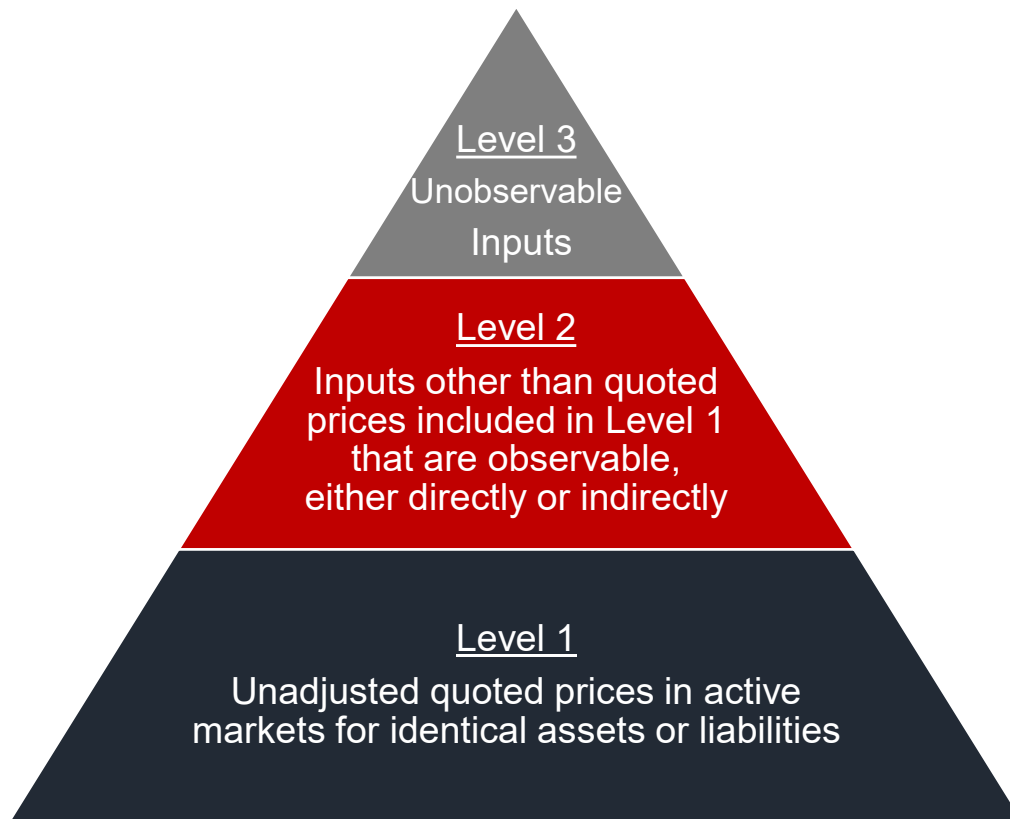
Comparable
Companies
Multiples
Method

Comparable
Transactions
Multiples
Method

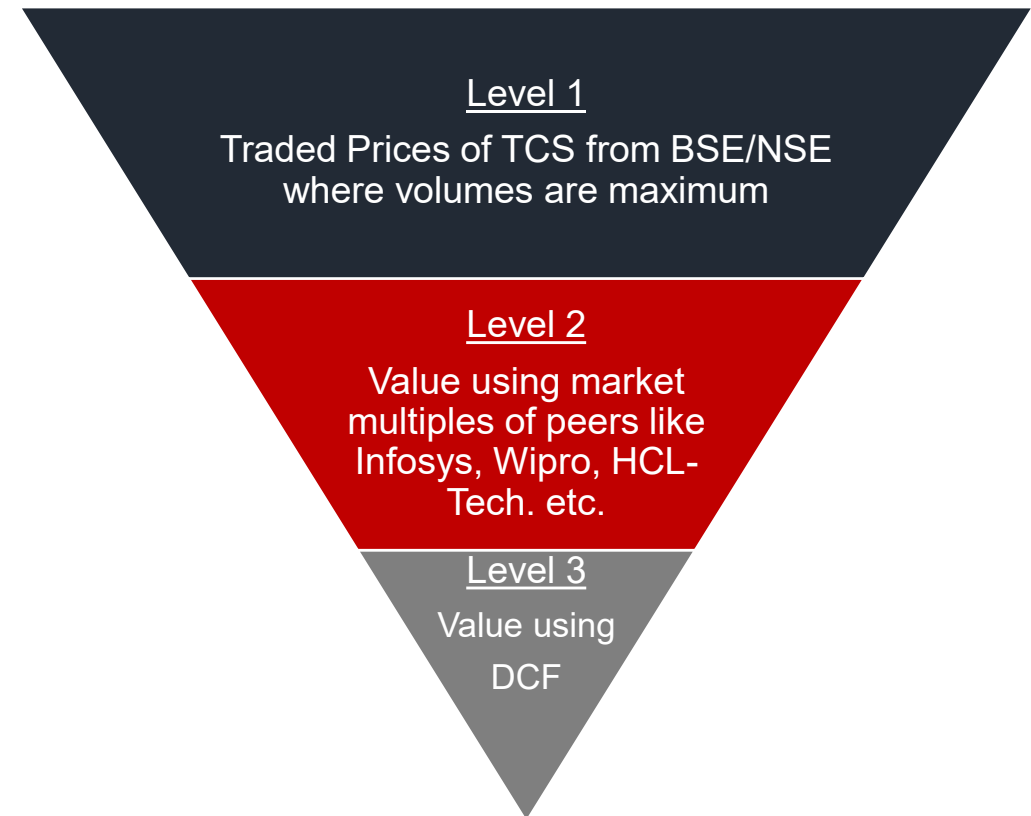
Market
Value- When
quoted prices
available

Under the lens of **IND AS 113**: Fair Value Measurement

Fair Value Hierarchy: Ind AS 113 establishes a three-level fair value ' hierarchy for inputs to ' measure fair value':



Example: TCS



Steering with Caution

Lucrative times and bullish markets set up the pace for a good run, as it can be observed the valuations are sky-rocketing and everyone is chasing the golden duck. It can be observed in through following numbers:

IPO Performance Tracker						
Company Name	Listed On	Issue Price	Listing Day Close	Listing Day Gain	Current Price	Profit/Loss
Paras Defence And Space Technologies Limited	01-Oct-21	175	498.75	185%	750.35	328.77%
Ami Organics Limited	14-Sep-21	610	934.55	53.20%	1393.95	128.52%
Devyani International Limited	16-Aug-21	90	123.35	37.06%	112.65	25.17%
Rolex Rings Limited	09-Aug-21	900	1166.55	29.62%	1083.1	20.34%
Tatva Chintan Pharma Chem Ltd	29-Jul-21	1083	2310.25	113.32%	2271.25	109.72%
Zomato Limited	23-Jul-21	76	125.85	65.59%	144.05	89.54%
Clean Science and Technology Ltd	19-Jul-21	900	1585.2	76.13%	2160.05	140.01%
G R Infraprojects Limited	19-Jul-21	837	1746.8	108.70%	1995.75	138.44%
Dodla Dairy Limited	28-Jun-21	428	609.1	42.31%	588.85	37.58%
Nazara Technologies Limited	30-Mar-21	1101	1576.8	43.22%	2796.45	153.99%
Laxmi Organic Industries Limited	25-Mar-21	130	164.6	26.62%	550.85	323.73%
MTAR Technologies Limited	15-Mar-21	575	1082.25	88.22%	1724.3	199.88%
Heranba Industries Limited	05-Mar-21	627	812.25	29.55%	775.65	23.71%
RailTel Corporation of India Limited	26-Feb-21	94	121.4	29.15%	139.6	48.51%
Nureca Limited	25-Feb-21	400	666.65	66.66%	1900.3	375.08%
Indigo Paints Limited	02-Feb-21	1490	3118.65	109.31%	2493.85	67.37%
Antony Waste Handling Cell Limited	01-Jan-21	315	407.25	29.29%	343.75	9.13%
Mrs. Bectors Food Specialities Limited	24-Dec-20	288	595.55	106.79%	417.3	44.90%
Burger King India Limited	14-Dec-20	60	138.4	130.67%	161.5	169.17%
Chemcon Speciality Chemicals Limited	01-Oct-20	340	584.8	72%	435.35	28.04%
Route Mobile Ltd	21-Sep-20	350	651.1	86.03%	2263.35	546.67%
Happiest Minds Technologies Ltd	17-Sep-20	166	371	123.49%	1408.05	748.22%
Rossari Biotech Ltd	23-Jul-20	425	742.35	74.67%	1507.05	254.60%

Source: NSE/BSE

Data as on 19-10-21

Steering with Caution

Increase in funding activity noted across all sectors, both in terms of value as well as volume

Funding value (USD million) – first three quarters of 2020 vs 2021			Deal count (numbers) – first three quarters of 2020 vs 2021		
	Funding amount (in USD million)			Deal count (numbers)	
	CY20 (3Qs)	CY21 (3Qs)		CY20 (3Qs)	CY21 (3Qs)
FinTech	1,229	4,617	FinTech	85	128
EdTech	1,832	3,334	EdTech	47	70
SaaS	960	3,279	SaaS	121	183
E-Commerce B2B	126	1,937	E-Commerce B2B	19	31
FoodTech	1,030	1,876	FoodTech	17	9
D2C	270	1,705	D2C	65	80
Media and entertainment	273	1,581	Media and entertainment	25	28
Logistics tech	294	1,574	Logistics tech	26	39
E-Commerce B2C	220	1,498	E-Commerce B2C	29	40
HealthTech	519	1,471	HealthTech	40	57
Online gaming	337	787	Online gaming	12	13
Real estate tech	754	251	Real estate tech	16	15
Others	149	235	Others	50	53

Source: Venture Intelligence

Sectoral snapshots

FinTech: A nearly fourfold increase in funds raised was witnessed in the first three quarters of CY21 when compared to the first three quarters of CY20. Six FinTech companies attained unicorn status. Further insights into FinTech deals can be found in section 10.

EdTech: The Indian EdTech market gained significant traction during pandemic. User base and engagement have increased significantly, leading to a concentrated base of companies raising additional capital.

SaaS: Indian SaaS start-ups in growth stage, such as Postman, ChargeBee, Innovaccer and WhatFix, have raised significant capital in CY21. Also, the number of deals in this sector has been high when compared to other sectors (high early-stage emerging SaaS start-ups raising small tickets).

FoodTech: Funding was largely dominated by Swiggy and Zomato deals, driving approximately 95% of PE funding activity in this sector. Specialist cloud kitchen players have seen good business traction and investor interest.

E-commerce (B2B): There has been an increase in funding by approximately seven times, driven by big amounts raised by key players in this segment in CY21 such as Udaan, Meesho, Zetwerk, Infra.Market and Moglix.

D2C: A number of new players have seen success and received funding in the last 12–15 months, given the changing buyer behaviours.

Others: We have observed high deal activity and a large number of deals across all other sectors as well.

Steering with Caution

A significant number of Indian start-ups (29) attained unicorn status during the first three quarters of CY21, largely across the SaaS, FinTech and EdTech sectors

No.	Name	Sector
1	Apna.co	SaaS
2	CoinDCX	SaaS
3	Mindtickle	SaaS
4	BrowserStack	SaaS
5	Chargebee	SaaS
6	Gupshup	SaaS
7	Innovaccer	SaaS
8	BharatPe	FinTech
9	OfBusiness	FinTech
10	Zeta	FinTech
11	Groww	FinTech
12	CRED	FinTech
13	Digit	FinTech
14	Vedantu	EdTech
15	Eruditus	EdTech

Source: Venture Intelligence

No.	Name	Sector
16	upGrad	EdTech
17	Zetwerk	E-commerce B2B
18	Moglix	E-commerce B2B
19	Meesho	E-commerce B2B
20	Infra.Market	E-commerce B2B
21	Grofers	E-commerce B2C
22	Droom	E-commerce B2C
23	Urban Company	E-commerce B2C
24	Licious	D2C
25	FirstCry	D2C
26	PharmEasy	HealthTech
27	BlackBuck	Logistics Tech
28	ShareChat	Media and entertainment
29	Mobile Premier League	Online gaming

A unicorn is a startup with a valuation of at least \$1 billion.

Currently, India has two decacorns in the private market sector, namely Byju's and Paytm

A decacorn is a company that is valued at more than USD 10 billion.

Steering with Caution

Top transactions and active PE/VC investors in Q3 CY 21

Key transactions/funding rounds

Name	Sector	Amount raised (in USD million)
Pine Labs	FinTech	700
Eruditus	EdTech	650
Meesho	E-commerce B2B	570
Ola Cabs	LogisticsTech	500
PharmEasy	HealthTech	500
Swiggy	FoodTech	450
Dailyhunt	Media and entertainment	450
Unacademy	EdTech	440
BharatPe	FinTech	370
OfBusiness	FinTech	367
CARS24	E-commerce B2C	259
Gupshup	SaaS	240
Postman	SaaS	225
Digit	FinTech	216
Ola Electric	LogisticsTech	200

Source: Venture Intelligence

Active investors

Name	Number of deals	Segment
Sequoia Capital	45	FinTech-13, SaaS-8, D2C-6, E-commerce B2B -3, AgriTech-2, HealthTech-2, Media and entertainment -2, E-commerce B2C -1, EdTech-1, Logistics Tech -1, Online gaming-1, Real Estate Tech-1 and Others-4
Accel	16	HealthTech-3, Media and entertainment-3, FinTech-2, SaaS-2, E-commerce B2B-1, D2C-1, Online gaming-1, Real Estate Tech-1 and Others-2
Matrix Partners	14	FinTech-4, SaaS-3, E-commerce B2B -2, D2C-2, Online gaming-1, EdTech-1 and Others-1
Blume Ventures	13	FinTech-5, SaaS-4, HealthTech-1, AgriTech-1, Logistics Tech-1 and others-1
Elevation Capital	13	FinTech-4, EdTech-3, SaaS-1, Media and entertainment-1, E-commerce B2B-1, D2C-1 and Others-2
Lightspeed Ventures	13	SaaS-6, EdTech-3, E-commerce B2B-2, FinTech-1 and E-commerce B2C-1
Nexus Venture Partners	13	SaaS-5, Logistics Tech-1, HealthTech-1, Online gaming-1, FinTech-1 and Others-3
3one4 Capital	11	FinTech-4, HealthTech-4, SaaS-1, Logistics Tech-1 and Others-1
IIFL VC	11	D2C-2, FinTech-2, Logistics Tech-2, Real Estate Tech-1, Media and entertainment-1, EdTech-1 and Others-2
Tiger Global	11	FinTech-3, EdTech-2, E-commerce B2B-1, E-commerce B2C-1, SaaS-1 and Others-3

Source: Venture Intelligence

Steering with Caution

With an aggressive growing business environment and investment space one should always be grounded and extra cautious and close with the principles and fundamentals. One can afford to go wrong when stakes are of this magnitude.

With no regards to the status of stakeholders, the scale of assignment and other external factors, the valuer is expected to be independent, fair and reasonable in his/her analysis and conclusions.

Section 2

Valuations under various Regulations

Company Law

The Companies Act, 2013	Description
Section 62(1)(c)	Valuing further issue of shares.
Section 192(2)	Valuing assets involved in arrangement of non-cash transactions involving directors.
Section 230{2}{c}{v}	Valuing shares, property and assets of the company under a scheme of corporate debt restructuring
Section 230{3} & Section 232{2}{d}	Valuation including share swap ratio under a scheme of compromise/ arrangement.
Section 236{2}	Valuing equity shares held by minority shareholders.
Section 281{1}{a}	Valuing assets for submission of report by company liquidator.
Section 232{3}{h}	Where under a scheme of compromise/ arrangement, the transferor company is a listed company and the transferee company is an unlisted company, for exit opportunity to the shareholders of transferor company, valuation may be required to be made by the Tribunal

Registered Valuer authorized by Insolvency and Bankruptcy Board of India (IBBI) can carry out valuation under Companies Act, 2013

Company Law – Case Study

Cadbury India Ltd - Capital Reduction	
Facts	Held
- Cadbury obtained 2 valuation reports - Bansil Mehta & Co and SSPA which returned a value of INR 1,1,340 per share for CR - Certain minority shareholders took exception to the original valuation price and the Court directed a fresh valuation to be undertaken by an independent firm (EY) as Cadbury sought Court's guidance to settle the dispute - The independent firm in the first instance returned a value of INR 1,743 using the CCM method - This report was then requested to be updated by using DCF method. The revised value was INR 2,014.5 per share was arrived based on unaudited Sep 2009 numbers after giving equal weightage to CCM and DCF which was upheld by court.	- Terminal growth rate of 6% while sales and profit were growing at 20% and 40% respectively was justified since a conservative terminal growth is more probable indication of projection. - Flat tax rate of 33.99% was considered realistic and fairer even though Company was presently availing various tax breaks - Valuer will be justified in falling back on last available PAT in case non-availability of PAT for a given date - On the Nestlé's growth rate of 11% - Court opined that product mix, division, process, market etc., differentiate two companies and Nestle operates in much broader spectrum of markets and products than Cadbury and therefore the growth rate cannot be considered an equal. "Before a Court can decline sanction to a scheme on account of a valuation, an objector to the scheme must first show that the valuation is ex-facie unreasonable, i.e., so unreasonable that it cannot on the face of it be accepted."

Valuation undertaken as per Internationally accepted principles cannot be challenged

Company Law – Case Study

Hindustan Lever Employees' Union v. Hindustan Lever Ltd - Business Combination	
Facts	Held
- The valuer had adopted the combination of three well known methods of valuation to arrive at the exchange ratio of the two companies - Hindustan Lever Limited and Tata Oil Mills Company Ltd. (In brief 'TOMCO'). - The ratio of 2:2:1 was concluded for value arrived at under the Income, Market and Asset approach. - According to the contention of appellants (from the valuation perspective) – A. Valuation of share exchange ratio is grossly loaded in favor of HLL. B. Interest of employees of both the Companies was not adequately taken care of. C. Preferential allotment of shares to Unilever (to maintain majority shareholding) was less than market price, which is not in public interest.	- The jurisdiction of the court sanctioning a claim of merger is not to ascertain mathematical accuracy of the determination of share exchange ratio has satisfied the arithmetic test. It exercises a jurisdiction found on fairness. - What is imperative is that such determination should not have been contrary to law and that it was not unfair for the shareholders of the company which was being merged. - The Hon'ble Supreme Court also held <i>"We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the court. To do so, it's incompetent and improper and therefore, out of bounds."</i>

Court is governed by fairness & lawfulness rather than ascertaining mathematical accuracy

Company Law – Case Study

German Remedies limited - Business Combination	
Facts	Held
- Petitioner along with other 3 companies was going to be merged into Cadila Healthcare Ltd. Scheme was approved by shareholders with 99% majority. - The Valuation as made considering 3 methods, namely, the NAV, PE Value and the Market Value of the quoted shares. - Petitioners raised objections on the Valuation Report stating that it was not legal, proper and accurate and that the swap ratio was unfair and improper. - Further, the swap ratio of 8:4 was demanded against the current 7:4.	- The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the scheme by requisite majority. - The Court had no jurisdiction to interfere in the valuation and swap ratios unless it finds the scheme unjust, unfair and unreasonable.

High Court to only examine that the scheme is just, fair and reasonable and not contrary to the law

Company Law – Case Study

Miheer H M a/at/al vs. Ma/at/al Industries Limited -Business Combination	
Facts	Held
- Petitioner, a director of the transferor company, raised objections on the Scheme in Gujarat HC which was duly approved by requisite majority of Shareholders of both companies. - Earlier, when the same Scheme was being sanctioned by the Bombay HC, being the court of jurisdiction of the transferor company, no such objections were filed by the petitioner. - Petitioner raised a point in front of the Courts that the share-exchange ratio was unreasonable to the shareholders of the transferee company.	- Where a reputed firm of CAs, having considered all relevant aspects and keeping in view accounting principles underlying valuation of shares, suggested an exchange ratio which was found acceptable by Directors of both companies as well as majority of shareholders, it could not be held that exchange ratio was unfair. - Jurisdiction of Courts on the matters of Valuation extends to taking cognizance of the fact that the Scheme as a whole is found to be just, fair and reasonable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the Scheme is meant.

Valuation provided by a reputed CA firm after considering all the relevant aspects and which is acceptable to a prudent men cannot be held to be unfair

Company Law – Case Study

Dinesh Vrajlal Lakhani V/s Parke Davis (India) Ltd – Business Combination	
Facts	Held
- Parke Davis was proposed to be merged into Pfizer pursuant to Scheme of Amalgamation. - Court directed a meeting of SHs of Parke Davis be held for approval of Scheme. - In the meeting, the petitioner raised a motion to amend the Scheme for changing the swap ratio from 4:9 to 4:6. - This motion was held not in order by the Chairman. The petitioner contended that such action by the Chairman invalidated the proceedings of the meetings and consequently the shareholders' approval thereto.	- Court held that the act of the Chairman was valid since it was not for the petitioner as a shareholder to amend the Scheme. Shareholders of a party to a Scheme could merely approve or reject the scheme and not amend it since the Scheme is devised by mutual agreement to the parties thereto and cannot be modified unilaterally by one of them. - Court is neither a valuer nor an appellate forum to reappreciate the merits of the valuation.

Court to ensure that the determination should not be contrary to law or unfair

Company Law – Case Study

Jindal Steel and Power Limited – The Power Hiving Transaction

- In April, JSPL said that it will sell 96.43 percent in Jindal Power Limited, which has an installed capacity of 3,400 MW, to Worldone Private Ltd, wholly owned by JSPL promoter, for a cash consideration of INR 3,015 crore.
- In a report to subscribers, proxy advisory firm Stakeholders Empowerment Services (SES) has questioned the valuation of the deal, particularly in absence of a valuation report, the lack of transparency in the sale process, and financial restructuring in JPL
- According to the proxy advisor, the valuation of JPL would be more than INR 20,000 crore.
- It also raised concerns about the lack of a valuation report.
- The deal was rejected by the shareholders
- JSPL, revisited the drawing board, obtained valuation reports from two reputed independent valuers and fairness opinion upon the reports obtained for valuations of JPL.
- “The enterprise value of INR 9,730 crore for the 3,400 MW assets of JPL is in line with market valuations on a per megawatt basis at INR 2.86 crore per megawatt,” said a report by InGovern Research Services, a corporate governance advisory firm.
- In June, the company announced a revision in the offer to INR 7,401 crore and decided to launch an additional transparent competitive bidding process for the proposed stake sale of JPL to win the confidence of the investors.
- Retail and institutional investor advisory firms have given their nod for JSPL to divest its power business Jindal Power Ltd (JPL) to Worldone Private Limited.

Company Law – Case Study

Siemens India – Related Party Transaction

Facts

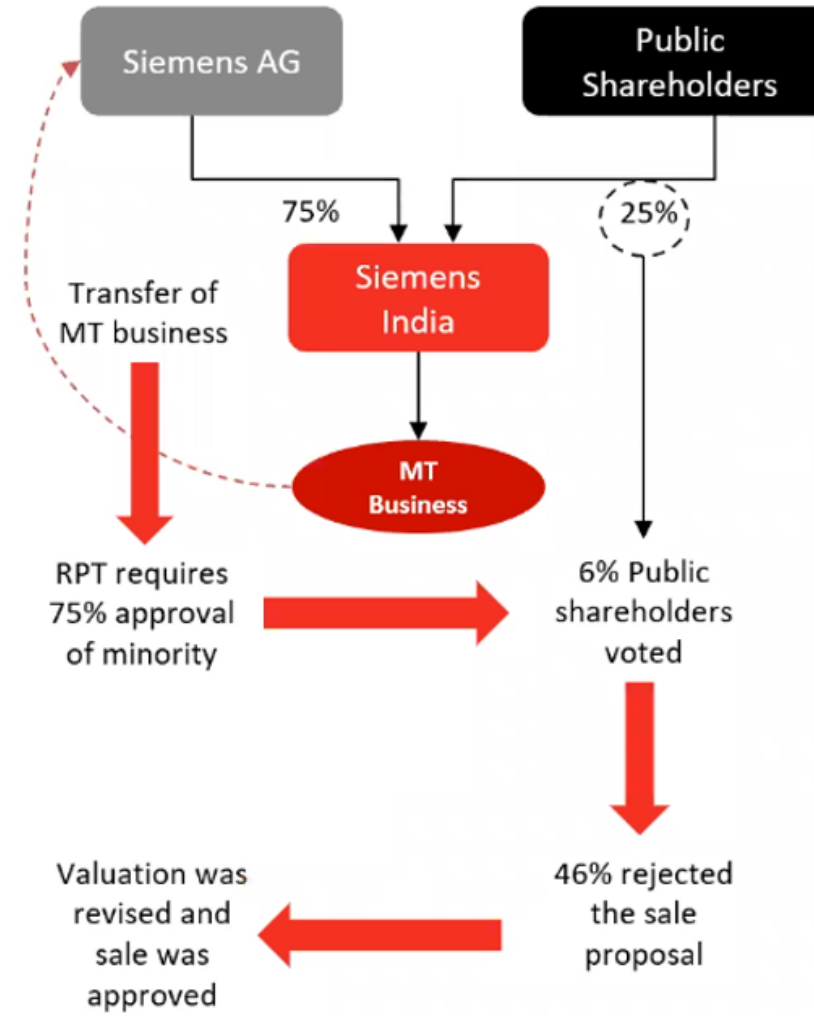
- In August 2014 the Board of Siemens India proposed to sell its metals technology (MT) business at a valuation of INR 8530 mn to its German parent, Siemens AG.
- MT business was to be transferred to a JV of Siemens and Mitsubishi post the above purchase.

Issues

- Valuation at which the MT business is being transferred to Siemens AG was lower than the value at which Siemens AG had earlier sold the business to Siemens India via scheme of amalgamation.
- RPT required the resolution to be passed by 75% of minority shareholders present and voting.
- Minority shareholders rejected the resolution

Outcomes

- Revised offer of INR 10,230 mn (a 20% increase) was considered and approved by the Committee of the Siemens India Board
- In Nov 2014, a revised resolution with far greater disclosures, including the financials of the MT business, reasons for poor performance of the business and an additional Fairness Opinion by ICICI Securities was placed before the minority shareholders. The shareholders approved this resolution.



Income Tax Act, 1961 and Income Tax Rules, 1962

Transaction where valuation is required:

- ✓ Issue of ESOPs/ Sweat Equity
- ✓ Slump Sale
- ✓ Indirect Transfers
- ✓ Transfer Pricing
- ✓ Direct Transfers
- ✓ Infusion of funds in company

Income Tax Act, 1961 and **Income Tax Rules, 1962**

Transaction	Methodology Followed
Allotment of ESOPs / Sweat Equity Shares	- Listed Shares -Average of opening price and closing price of the share on the exercise date. - Unlisted shares and any other security -Valuation by Merchant Banker on the specified date, no methodology prescribed
FMV of Jewelry, archaeological collections, drawings, paintings, sculptures or any work of art	To be determined by Registered Valuer, if value exceeds ₹50,000
FMV on transfer of shares	- Listed Shares -Shares received on stock exchange then value recorded in the exchange - Listed Shares -off market, lowest price the stock traded on stock exchange - Unquoted Equity Shares – NAV as per rule
FMV of unquoted shares and securities other than equity shares which are not listed	Estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation .
FMV of shares issued by a closely held company	NAV or DCF (at the option of the assessee). DCF valuation to be done by the merchant banker

Income Tax Act, 1961 and **Income Tax Rules, 1962**

Valuation on issue of shares / Primary Infusion / Angel Investment

Provision under Sec 56 (2) (viib)

To tax any excess premium received by a closely held company upon the issue of shares

Not applicable

Money received from Venture Capital Company / Fund any other person as specified

Methodologies Prescribed

At the option of the assessee:

1. Net Asset Value method: $(A-L) \times PV/PE$, where,
 A = BV of the assets in the balance sheet (-) amount of tax paid (-) unamortized amount of deferred expenditure (-) and any amount shown in the balance sheet as asset which does not represent the value of any asset

L = BV of liabilities shown in the balance-sheet, excluding certain items

2. Discounted Cash Flow method (per the merchant banker)

Income Tax Act, 1961 and **Income Tax Rules, 1962**

Valuation on issue of shares / Primary Infusion / Angel Investment

Provision under Sec 56 (2) (viib)

To tax any excess premium received by a closely held company upon the issue of shares

Not applicable

Money received from Venture Capital Company / Fund any other person as specified

Key Considerations

- Assessee has the option to choose the valuation methodology, i.e. NAV or DCF under Rule 11UA(2). The Tax officer cannot impose its own method
- Revenue can not ask to prepare the valuation report based on actuals vis-a-vis the projections in the report as it is not contemplated in Rule 11UA(2)(b).
- AO can scrutinize the valuation report and make adjustments only if some arithmetic mistakes are found. In case, the assumptions made are erroneous or contradictory, he may suggest the necessary modification and alterations based on sound reasoning and rational basis.
- In case of Primary Infusion - valuation rules as per Companies Act, 2013 also need to be considered

Income Tax Act, 1961 and **Income Tax Rules, 1962**

Transfer of Assets at less than fair value

Provision under Sec 56 (2) (x)

To tax the amount by which consideration is less than the FMV

Not applicable

Relative, Marriage gifts, charitable trusts, certain Section 47 exemptions, etc.

Methodologies Prescribed

FMV of unquoted equity shares $= (A+B+C+D-L) \times (PV) / (PE)$, where;

A = BV of assets excluding jewelry, artistic work, shares, securities and immovable property

B = FV of jewelry and Artistic work

C = FV of shares and securities as determined under Rule 11UA(1)

D = Stamp Duty Value of immovable property

L = BV of liabilities; excluding; certain items

PV = the paid up value of such equity shares

PE = total amount of paid up equity share capital as shown in the balance sheet

Income Tax Act, 1961 and Income Tax Rules, 1962

Transfer of Assets at less than fair value

Provision under Sec 56 (2) (x)

To tax the amount by which consideration is less than the FMV

Not applicable

Relative, Marriage gifts, charitable trusts, certain Section 47 exemptions, etc.

Key Considerations

- Treatment of Deferred Tax Assets/ Liabilities?
- Equity Capital under IND AS vs Indian GAAP - Compulsorily convertible debentures are disclosed under other equity,: however, under the Indian GAAP it is considered as debt and disclosed under liability till they are converted
- Would Preference share capital be included for the purpose of computation of NAV under Rule 11UA?
- NAV in case of differential rights associated with different classes of shares

Income Tax Act, 1961 and Income Tax Rules, 1962

New Slump Sale Valuation Rules Prescribed

Section 50B of the Income Tax Act, 1961 ('Act') dealing with Slump Sale has been substantially amended by the Finance Act, 2021. One of the amendments made to these provisions is around the Fair Market Value ('FMV') of the Undertaking (that is being transferred) which can be considered as the Full Value of Consideration for computing capital gains. These amendments were retroactive in nature, being applicable from FY20-21.

The CBDT, vide Notification No 68/2021/ F.No 370142/16/2021-TPL; dated 24th May 2021, have notified a new rule - viz. Rule 11UAE - under the Income tax Rules 1962 for the purpose of determining FMV on a Slump Sale.

Income Tax Act, 1961 and **Income Tax Rules, 1962**

Rule 11UAE

The New Rule 11UAE lays down the following two computational formulas:

Determination of FMV of the Undertaking [Rule 11UAE(2)]	Determination of the FMV of the consideration received/accrued on account of the transfer of the Undertaking [Rule 11UAE(3)]
FMV 1 = A+B+C+D – L	FMV 2 = E+F+G+H
A= book value of all the assets except for assets given under B, C and D below transferred by way of slump sale as reduced by — (i) income-tax paid (net of refund claimed); and (ii) Unamortised deferred expenditure not representing the value of any asset;	E = value of the monetary consideration received or accruing as a result of the transfer;
B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;	F= fair market value of non-monetary consideration received or accruing as a result of the transfer represented by property referred to in sub-rule (1) of rule 11UA determined in the manner provided in sub-rule (1) of rule 11UA for the property covered in that sub-rule;

Income Tax Act, 1961 and Income Tax Rules, 1962

Rule 11UAE

Determination of FMV of the Undertaking [Rule 11UAE(2)]	Determination of the FMV of the consideration received/accrued on account of the transfer of the Undertaking [Rule 11UAE(3)]
FMV 1 = A+B+C+D – L	FMV 2 = E+F+G+H
C = fair market value of shares and securities as determined in the manner provided in sub-rule (1) of rule 11UA;	G = the price which the non-monetary consideration received or accruing as a result of the transfer represented by property, other than immovable property, which is not referred to in sub-rule (1) of rule 11UA would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer, in respect of property;
D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;	H = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property in case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property.

Income Tax Act, 1961 and Income Tax Rules, 1962

Rule 11UAE

Determination of FMV of the Undertaking [Rule 11UAE(2)]	Determination of the FMV of the consideration received/accrued on account of the transfer of the Undertaking [Rule 11UAE(3)]
FMV 1 = A+B+C+D – L	FMV 2 = E+F+G+H
L= book value of liabilities as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, but not including certain items	

The value to be considered as 'Full Value of Consideration' for capital gain purposes is **either of the two, whichever is higher.**

The value of the undertaking as per Rule 11UAE is to be determined as on the date of slump sale. Respective terms such as registered valuer, securities have been appropriately defined.

Income Tax Act, 1961 and Income Tax Rules, 1962

Rule 11UAE

Key Considerations

- While the Section 50B amendment has been made retroactively from FY20-21, the CBDT Notification remains silent on the effective date of the applicability of the Rules. While a natural assumption would be that these rules too would be applicable retroactively, a suitable clarification on the application date would have averted any confusion for the taxpayers.
- The new rules effectively consider the Section 50C-value as the minimum value of immovable property transferred under a slump sale. Till the introduction of these new rules, the applicability of Section 50C of ITA, in a situation of slump sale was verboten. This could impact the transaction costs, esp. in case of internal restructuring transactions.
- No different valuation treatment prescribed for hybrid instruments like CCPS, CCDs, etc.

Indirect Tax Laws and Stamp Duty

Stamp Duty	- No prescribed methodology under the Stamp Duty law for Valuation - Generally payable on market value of the property which is the subject matter of the instrument Market Value generally is determined basis the nature of the asset, - Deal Value or Circle Rate in case of immovable property; whichever is higher - Other Assets - As commercially agreed between the parties
Customs Laws	- Generally, transaction value is considered where the buyer and seller are not related person and price is sole consideration. - If any of above condition is violated, the value is determined based on value of identical goods, similar goods, sale price in importing country, cost of production in same order. - Also, if purchased from related person, Special Valuation Branch process is to be followed.
Goods and Service Tax Laws	- Generally, transaction value is considered where the buyer and seller are not related person and price is sole consideration. - Value of supply is adjusted for taxes/duties other than GST, interest for delayed payment of consideration, subsidies (unlinked to product) and discount (pre-agreed and linked to Invoice). - In case, the consideration is in kind or transaction is between related parties, open market value of the goods/services is considered. Further, where the related person is eligible for full input tax credit, the value declared in the invoice shall be deemed to be transaction value. - If valuation cannot be determined, then cost plus 10% mark up or any other reasonable method can be considered for the purpose of valuation.

Foreign Exchange Management Act, 1999

FDI Valuation Norms

Listed Companies

Unlisted Companies

Transfer from Resident to Non Resident	As per SEBI Pricing Guidelines (i.e. Preferential Allotment / Delisting Guidelines) - Purchase / sale to be the "Relevant Date"	Not less than the valuation arrived by a merchant banker / chartered accountant / cost accountant based on the internationally accepted pricing methodology
Transfer from Non Resident to Resident	As per SEBI Pricing Guidelines (i.e. Preferential Allotment / Delisting Guidelines) - Purchase / sale to be the "Relevant Date"	Not higher than the valuation arrived by a merchant banker / chartered accountant / cost accountant based on the internationally accepted pricing methodology
Others	Swap - Valuation by a SEBI registered Merchant Banker / Investment Banker registered outside India Put Call Option allowed but no assured exit price - Earlier assured exit price was allowed based on RoE of latest audited balance sheet Share Warrants - Pricing / conversion formula to be determined upfront Issue on Incorporation – no pricing guidelines applies	

Foreign Exchange Management Act, 1999

FDI Valuation Norms

Foreign Venture Capital Investors (FVCI)	No pricing guidelines applies – purchase/ sale possible at mutually agreed price.
Other Non Repatriate Basis	Pricing guidelines not applicable in case of investment on non-repatriable basis.
Rights Issue	Pricing guidelines not applicable - however, for non-residents subscribing to shares received pursuant to renouncement, pricing guidelines to apply.
Cross Border Mergers	Valuation to be done by a member of a recognized body and based on internationally accepted principles on accounting and valuation

Summary of Applicability of FEMA Valuation Norm

Seller	Buying	Pricing Guidelines
Resident	Non-Resident	Yes
Non-Resident	Resident	Yes
Resident	Non-Resident Non - Repatriable	No
Non-Resident Non - Repatriable FOCC	Resident	No
Resident	FOCC	Yes
FOCC	Non-Resident	Yes
Non-Resident	FOCC	Yes
FOCC	FOCC	No
FOCC: Indian company (owned or controlled by persons resident outside India or not owned and not controlled by resident Indian citizens)		

Foreign Exchange Management Act, 1999

ODI Valuation Norms – At the time of investment

Investment in Existing Foreign Company	• If Value is More than US \$5 mn - Valuation by a SEBI registered Cat I Merchant Banker or Investment Banker/ Merchant Banker registered outside India. • In other cases - Chartered Accountant or a Certified Public Accountant.
ODI Through ADR / GDR	• If foreign company is listed - Based on monthly average price for last three months preceding the month in which acquisition was committed and any premium, if recommended by Investment Banker • In case of unlisted foreign company - as per recommendation of Investment Banker

Foreign Exchange Management Act, 1999

ODI Valuation Norms – At the time of Exit

Write/off on sale (Exit Price is lower than Investment value).	Sale	Restructuring of overseas company's balance sheet
Such cases requires prior approval of RBI except in following cases: - Where overseas co is listed; - Where Indian investor is listed and has net worth of more than INR 100 crs - Where Indian investor is listed but net worth is less than INR 100 crs, if investment is not more than USO 10 mn - Where Indian investor is unlisted, if investment is not more than USO 10 mn	In case of listed shares - to be transferred on stock exchange In case of unlisted shares and transferred on private placement – not less than the value certified by a Chartered Accountant/ Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS	Indian Party having holding more than 51 % stake in overseas co can undertake write off for its investment or other receivables: For listed Indian company - up to 25% of the equity investment, under automatic route For unlisted Indian company - up to 25% of the equity investment, under approval route For write-off, Indian Company to submit (i) financials of overseas company; and (ii) project ions for next 5 years to substantiate the benefit of write-offs

Foreign Exchange Management Act, 1999

Case Study

Dispute on Valuation - Tata - NTT Docomo

The Agreement of 2008

- In November 2008, pursuant to a SPA signed between Tata Sons Ltd., Tata Teleservices Ltd. and NTT Docomo, NTT Docomo invested USD2.7 billion by way of primary infusion for 26.5% in Target.
- As Tata was unable to find a buyer for Investor as per terms of SPA, Investor invoked the put option and issued a notice for acquiring its stake at fair value or at 50% of the investment value, whichever is higher

Issues

- 50% amount was higher than the fair value, therefore, Tata Sons approached RBI for approval
- However, RBI citing pricing guidelines under FEMA Regulations, stated that sale of shares has to be effected at fair value only and not at pre agreed value.
- Investor initiated arbitration and got arbitration award in its favor
- However, on the implementation of arbitration, RBI contested that the same can be implemented as it is violative of FEMA regulations

Outcomes

- Ultimately, the Delhi HC approved the implementation of arbitration award and rejected RBI's contentions on the ground that "... there's no provision in law which permits RBI to intervene in a petition seeking enforcement of an arbitral Award to which RBI is not a

SEBI Regulations

Pricing Guidelines- Scheme of Arrangement and Preferential allotment of shares

Scheme of Arrangements

Valuation approach

Asset Approach

Income Approach

In case of allotment of shares only to a select group of shareholders or shareholders of unlisted companies, pricing provision as per preferential guideline to follow

Market Approach

Preferential Issue of shares			
Listed for a period more than 26 weeks: Not less than higher of: • average of the weekly high and low of the 'volume weighted average price' during the twenty-six weeks; or • average of the weekly high and low of the 'volume weighted average price' during two weeks	<u>Allotment made between July 1, 2020 and December 31, 2020 :</u> Not less than higher of: • average of the weekly high and low of the 'volume weighted average price' during the twelve weeks; or • average of the weekly high and low of the 'volume weighted average price' during two weeks	<u>Listed for a period less than 26 weeks:</u> Not less than higher of: • Issue price in the IPO; • Average of the weekly high and low of the 'volume weighted average price' during the listed period or two weeks <i>Recomputed on completion of 26 weeks from the date of listing and short-fall in pricing shall be paid by allottee</i>	<u>Infrequently traded shares:</u> Price determined by the issuer shall take into account the valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies - Certificate from Independent valuer

SEBI Regulations

Pricing guidelines - Open offer price under SEBI Takeover Code/Floor price for de-listing

In case of Direct Acquisition or Indirect acquisition under regulation 5(2) Offer price shall be the highest of

- highest negotiated price** per share for any acquisition under the agreement attracting the obligation to make open offer
- volume-weighted average price paid or payable for acquisitions by acquirer / PAC during the **fifty-two weeks** immediately preceding the date of the public announcement
- highest price paid or payable for acquisitions by acquirer / PAC during the **twenty-six weeks** immediately preceding the date of the public announcement
- For frequently traded shares:** volume-weighted average price of such shares for a period of **sixty trading days** immediately preceding the date of the public announcement
- For in-frequently traded shares:** price determined by the acquirer and the manager to the open offer taking into account valuation parameters including, book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies
- In a specified situation under indirect transfer of shares:** per share value of the target company taken into account for the acquisition, along with a detailed description of the methodology adopted for such computation

The above regulations are also applicable for determination for Floor price in case of Delisting and Final offer price shall be determined through book building post finalization of Floor price

SEBI Regulations Important Judgments

Case Study

Linde India Limited

Underlying transaction

- Business combination agreement executed in October 2018 pursuant to which Linde Pie acquired indirect control over the Target company i.e. Linde India triggering open offer requirement as per SEBI takeover code.

Unsuccessful delisting offer

- In November 2018, detailed public statement was filed by Acquirer and intention to voluntary delist the shares of Target Company under Regulation SA of SEBI Takeover Code was expressed. A delisting offer was announced in January 2019.
- The offer price was determined at Rs. 2,025 per equity share by reverse book building process through bids of public shareholders which was approx. 4-5 times of the floor price determined by Company.
- The promoters decided to reject the discovered price for delisting and hence open offer was resumed.

Open offer

- In February 2019, Acquirer filed draft letter of offer for 25% shares of Target Company at price of Rs. 328.21/- per share (including interest).
- Since the shares of company were not frequently traded, base price was determined relying on the valuation report of E&Y.
- In May 2019, SEBI appointed CNK & Associates LLP as independent valuer which determined the base price at Rs. 376.63 per share. Equal weightage was provided to Comparable Companies Multiple Method and DCF
- Offer price was revised by SEBI to Rs. 478.40 per share.

SEBI Regulations Important Judgments

Case Study

Federal-Mogul Goetze {India) Limited

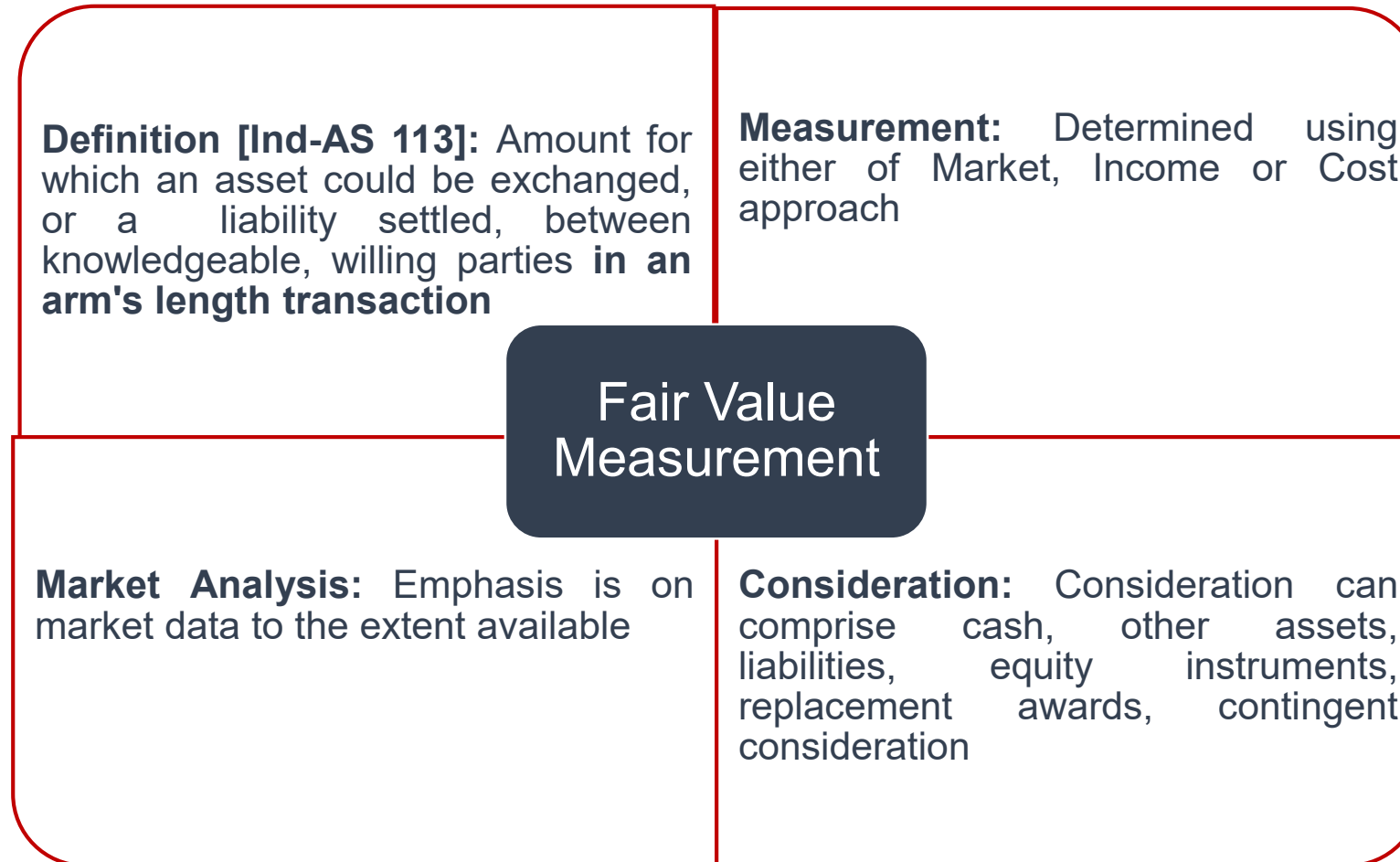
- **October 2018:** Primary Transfer of Federal Mogul USA into Tenneco Inc.
- **October 2018:** Draft letter of offer filed by Tenneco Inc for open offer for shares of FMGIL (Target Company) @ 400 per share. Since shares were not traded frequently, per share price was determined through valuation reports of 2 valuers i.e. MSKA (Rs. 372.10) and J.D. Jhaveri (Rs. 397.66)
- **November 2018:** SEBI appointed Haribhakti & Co. LLP to undertake independent valuation of FMGIL under Regulation 8(16) of SEBI Takeover Code
- **March 2019:** Haribhakti & Co. LLP determined share price of Rs. 600 per share Based on this report, SEBI issued a Final Observation Letter directing Acquirer to modify offer price to Rs. 608.46
- **April 2019:** Acquirer appealed before SAT against SEBI' s direction on the ground that no opportunity was given to it before Haribhakti was appointed and before accepting its valuation report.
- **July 2019:** SAT decided the case against the acquirer
- **December 2019:** Supreme Court refused to interfere in the Tribunal order
- **January 2020:** Company filed revised open offer letter with offer price of Rs. 667.50 (*Base Price - 608.46 + Interest under Regulation 8{12} - 59.04*).

SAT in its decision held that price determined by the valuer appointed by Appellant didn't consider the comparable companies namely Bosch Limited and WABCO India Limited in their report.

Ind-AS

Navigating Ind-AS 113: Fair Value Measurement

Ind-AS 113 defines **Fair Value**, sets out a single framework for its **Measurement** and **required Disclosures**.



Ind-AS

Navigating Ind-AS 113: Fair Value Measurement

Disclosure Requirements

Recurring Fair Value Measurements

- 1 Fair value measurement at the end of the period and the level in the hierarchy.
- 2 Transfers between level 1 and level 2 of the hierarchy and reasons for these transfers.
- 3 A description of the valuation techniques, the Inputs used in levels 2 and/or level 3, any changes to the valuation techniques and reasons for that change.
- 4 A narrative description of sensitivity analysis for level 3 measurements and the effect of changing an unobservable input where such a change would affect the fair value significantly.

Non-recurring Fair Value Measurements

- 1 Fair value measurement at the end of the period and the level in the hierarchy
- 2 Policy for determining when transfers between levels of the hierarchy are deemed to have occurred
- 3 A description of the valuation techniques, the Inputs used in levels 2 and/or level 3, any changes to the valuation techniques and reasons for that change

Ind-AS

Navigating Ind-AS 109: Financial Instruments

Financial Assets:

- Amortized cost
- Fair value through OCI
- Fair value through Profit and loss

Financial Liabilities:

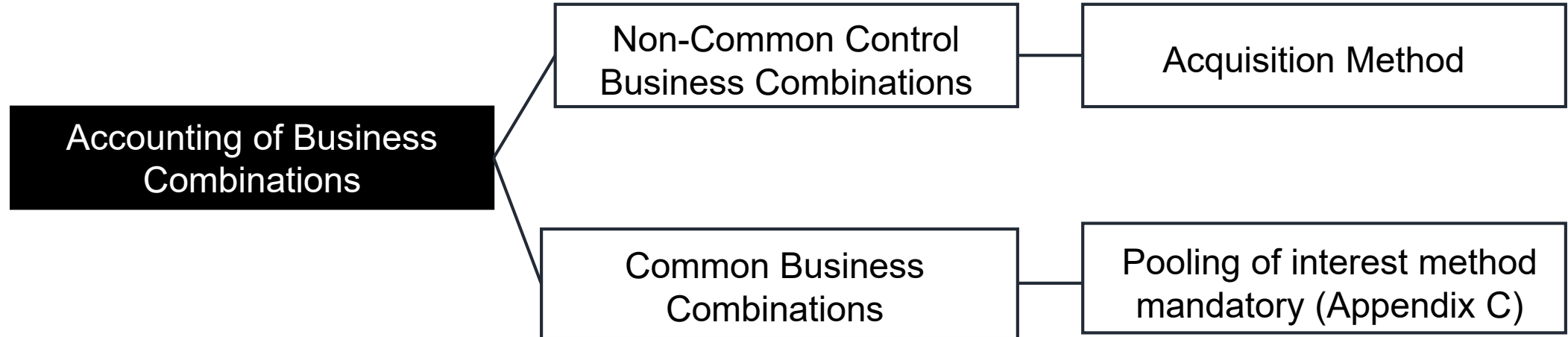
- Amortized cost
- Fair value through Profit and loss

Disclosures in relation to fair value:

- Fair value of each class of asset and liability
- Methods to arrive at fair value
- Valuation techniques and assumptions used to arrive at fair values
- For each class of financial instruments, disclosures include:
 - Level of fair value hierarchy into which fair value measurements are categorized
 - Significant transfers and reasons for such transfers between levels
 - Reconciliation of balances for fair value measurements at Level 3
 - Sensitivity analysis for Level 3 fair value measurements

Ind-AS

Ind-AS 103: Business Combinations



Under pooling of interest method, all the assets and liabilities are initially recognised at their **carrying values** existing in the books of Acquiree.

Identifiable Net Assets	Non-controlling Interest (NCI)	Goodwill	Deferred Consideration	Contingent Consideration
Asset/Liability, including Contingent Liability, to be recognized on acquisition date at fair value	NCI to be measured at Proportionate interest in fair value of identifiable net assets or Fair value	Goodwill resulting from transactions is to be recorded as an asset and tested annually for impairment.	Deferred Consideration, if forming part of the transaction, shall be separately recognised at fair value on acquisition date.	Contingent consideration, to be accounted at fair value on acquisition date, and re-measured at fair value at the end of each reporting period.

Ind-AS

Ind-AS 102 Share based payments

As per Ind-AS 102, for valuation of employee share options, two routes can be adopted:

Fair Value approach

Fair value is defined as the amount for which an asset could be exchanged, a liability settled, or an **equity instrument granted** could be exchanged, between knowledgeable, willing parties in an arm's length transaction.

Intrinsic Value approach

Intrinsic Value it is given that it is the difference between the fair value of the shares to which the counterparty has the (conditional or unconditional) right to subscribe or which it has the right to receive, and the price (if any) the counterparty is (or will be) required to pay for those shares.

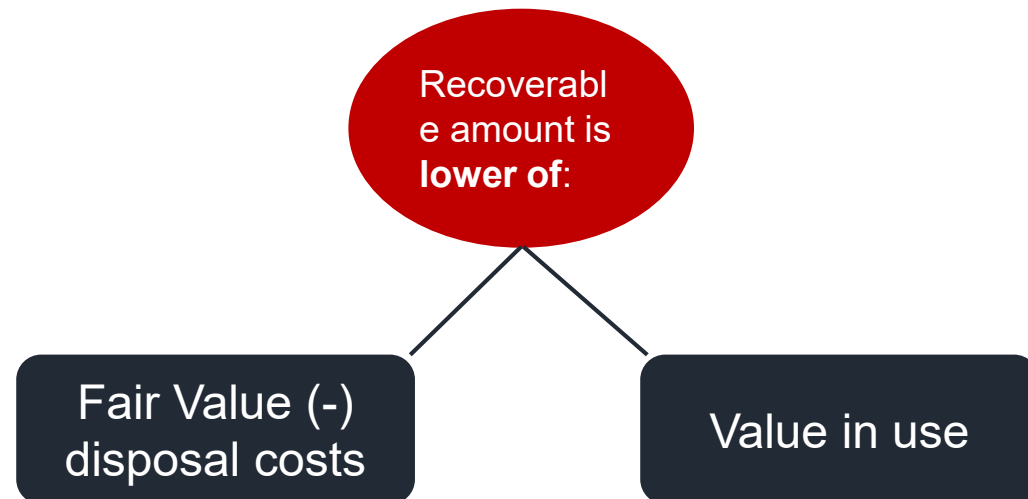
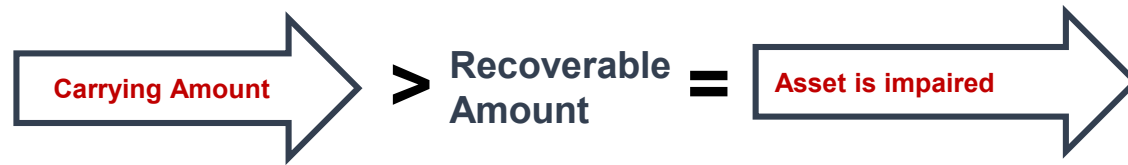
Continued Fair Valuation....An entity shall measure the **fair value** of equity instruments granted at the **measurement date**, based on **market prices if available**, taking into account the terms and conditions upon which those equity instruments were granted. In many cases, there **are no quoted market price** for most of the share-based payment awards (e.g. stock options). Even in case of listed entities, fair value is typically available only for immediate purchase of shares and not stock options granted to employees. If quoted market price for share-based payment award is not available, Ind-AS 102 requires entities to **estimate fair value of their share-based payment awards using the option pricing models**. There are various options pricing models available which can be adopted for fair valuation of options depending upon the nature and features of options, some of the most common ones being:

- Black Scholes Merton Model
- Binomial Model
- Binomial Lattice Model
- Simulation Model

Ind-AS

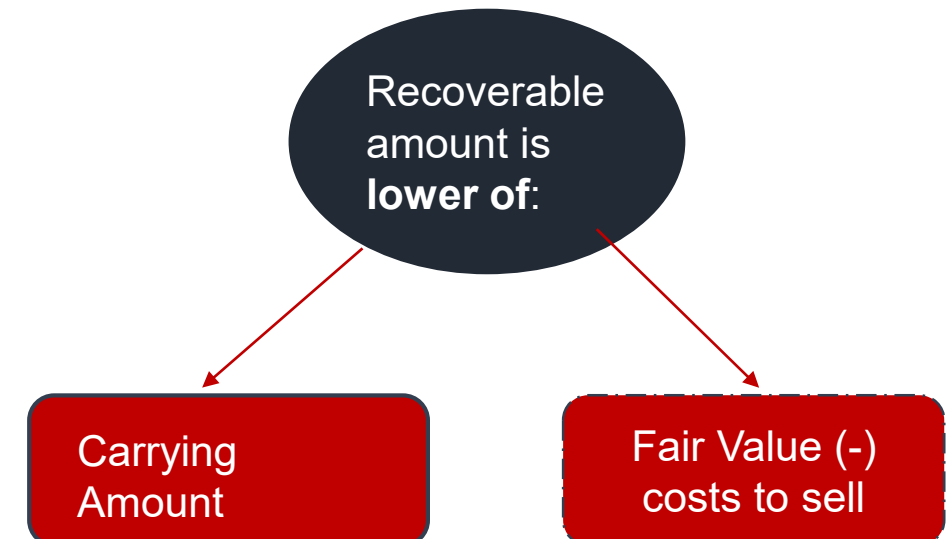
Ind-AS 36 - Impairment and Ind-AS 105 Discontinued operations

Ind-AS 36 - Impairment



Ind-AS 105 Non-current assets held for sale and discontinued operations

Non-current assets held for sale shall be measured at recoverable amount



Ind-AS

Others

Ind-AS 16 Property, Plant and Equipment and Ind- AS 38 Intangible Assets

Ind-AS 40 - Investment Property

Initial measurement	• Cost (except for specific intangible assets)	• Cost
Subsequent measurement	• Cost or Revaluation	• Cost, However, fair value to be disclosed.
Exchange of assets for Non-monetary assets	• Fair Valuation (unless specific conditions not met)	• NA

Ind-AS

Others

Certain other areas where fair valuation has an impact

Ind-AS 115

- Ind-AS 115 "Revenue from Contracts with Customers" - Measurement of non-cash consideration at Fair Value, for determination of transaction price.

Ind-AS 116

- Ind-AS 116 "Leases" Separation of lease and non-lease components from arrangements containing a lease
- Separating the operating (non financial) and financial lease component of a lease arrangement
- Interest free refundable security amount is measured at Fair Value

Appendix – D to Ind-AS 109

- Appendix-D to Ind-AS 109 "Financial Instruments" -
- Fair valuation of equity instruments issued to extinguish all or part of a financial liability -Debt for Equity Swaps

Insolvency and Bankruptcy Code, 2016

Valuation Requirements

- Insolvency Resolution Process for Corporate Persons – CIRP
- Fast Track Insolvency Resolution Process for Corporate Persons –Fast Track CIRP
- Liquidation
- Voluntary Liquidation
- Bankruptcy Process for Personal Guarantors to Corporate Debtors

fair value and the **liquidation value** of the corporate debtor to be computed **in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor**

Fair Value: “fair value” means

- ✓ the estimated realizable value
- ✓ of the assets of the corporate debtor,
- ✓ if they were to be exchanged on the insolvency commencement date
- ✓ between a willing buyer and a willing seller
- ✓ in an arm’s length transaction,
- ✓ after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion

Liquidation Value: “liquidation value” means

- ✓ the estimated realizable value
- ✓ of the assets of the corporate debtor,
- ✓ if the corporate debtor were to be liquidated on the insolvency commencement date.

Regulation 2(hb) &(k) of Insolvency and Bankruptcy Board of India
(Insolvency Resolution Process for Corporate Persons) Regulations, 2016

The objective of IBC Is value maximization.

Insolvency and Bankruptcy Code, 2016

Case Study

Maharashtra Seamless Limited Vs. Padmanabhan Venkatesh & Ors.

Honorable Supreme Court held that

- there is no provision in the Code, or regulations which prescribe that the bid of any resolution applicant has to match the liquidation value;
- the object behind prescribing the valuation process is to assist the CoC to take a decision on the resolution plan properly; once the resolution plan has been approved by the CoC, the AA ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan itself based on quantitative analysis.
- Therefore the scope of interference by the AA in limited judicial review has to be within 4 corners laid down in the judgment of ESSAR Steel
- SC reiterating the ratio laid down in Maharashtra Seamless Limited (supra), set aside the NCLAT judgment given on similar grounds in case of M/s Accord Life Spec Private Limited

SC has upheld that any bid value accepted by COC is valid in absence of legislative provision mandating minimum bid value

Lesser known **Avenues**

- ✓ Real Estate Investment Trust
- ✓ Infrastructure Investment Trust
- ✓ Alternative Investment Fund
- ✓ Special Purpose Acquisition Companies*
- ✓ General-Anti Avoidance Rule ('GAAR')
- ✓ NBFCs and Housing Finance Companies and their reporting/ valuation regulations

The above have their own specific set of rules and regulations. Not only this, but each of them has their own regulator which helps regulate the same.

* Rules and regulations for SPACs are under draft stage.

What the future holds

- ✓ Increased Scrutiny by Regulatory Authorities
- ✓ Active role of Proxy Advisory Firms
- ✓ *Longer lead time for transaction consummation affecting valuation dynamics from inception to closure*
- ✓ *Increased complexity due to requirements under multiple regulations*
- ✓ *Rapid dissemination of information leading to greater attention*
- ✓ *Balancing multiple subjective factors to arrive at fair valuation in a volatile, uncertain, complex and ambiguous environment*



Thank You



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