

CO-OPERATIVE LAW IN PERSPECTIVE – AMALGAMATION

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STATUTORY LAW :

1. Several enactments of the past were result of social background, political thought and economic conditions. Co-operative Credit Societies Act, 1904 and the Co-operative Societies Act, 1912 governed the law for Co-operatives and conduct of co-operative societies in British India. State laws were enacted when co-operation became state subject in constitutional structure. Bombay Co-operative Societies 1925 & Amending Act of 1948 being Act XXVIII of 1948 were enactments regulating Co-operative Societies in Bombay province. On bifurcation by Act 20 of 1960 the Act of 1928 as amended was extended to the State of Maharashtra. Maharashtra Act of 1960 being the Maharashtra Co-operative Societies Act, 1960 being Act XXIV of 1961 occupies the field of legislation for Co-operatives in Maharashtra. The Act of 1960 has been amended by several Acts including amendment by Maharashtra Act XXVII of 1996.

CONSTITUTIONAL LAW :

2. Co-operative Societies' incorporation, regulation and winding up are state subjects as per Entry 32 of List II of Schedule VII of the Constitution. Co-operatives form a specie of genus 'Corporation' and as such co-operative Societies with objects not confined to one state remain with the Union as provided in Entry 44 of List I of Schedule VII of the Constitution Multistate Co-operative Societies Act, 1984 governs such Multi state co-operatives.
3. Provisions regarding amalgamation are held to be valid against challenge under Article 14 read with Art. 13 of the constitutional as protected within Article 31A of the

Constitution, (AIR 1985 S. C. 973 – *Demansingh v. Punjab Co-operative*). Provision regarding exemption from registration of properties transferred as provided in Section 48 of the Co-operatives are held to be not void under Entry 6 List III of the Schedule VII of the Constitution (1994 Mah. L. J. 558 *Narayan v. Mahindranath*) Reservation of seats on committees and for election in co-operatives have been provided for in several amending enactments.

WORKING OF CO-OPERATIVES :

4. Conceptually the Co-operative formed on registration under the Act becomes a legal entity as Co-operative Societies (Section 36). Several provisions bring out the effect of such legal entity like in Sections 2(27), 6, 7, 11, 12 & 18. Inherent in such artificial legal entities are the human beings associates therewith. Provisions thus point out the human agencies working within the entity which becomes known as `Society`. Members of the society, and members of the committee and office-bearers become the integral part of such legal entities known as `Societies`. Relevant provisions are contained in Sections 9, 10 and Chapters III and IV in the Act. Chapters VI and VII also bring out the nature and working of Co-operative in the perspective of they being legal personality different from members.
5. Nature and rights of members, classification of societies and various incidents of societies become the subject matter of the Act. Model Bye-laws when adopted or bye-laws registered and/or amended govern the internal management of the society. They effect the day to day working of the society. For this reason interpretations of expressions used become significant.
6. Import of other laws have taken broadly two direction. Laws relating to functions of the society such as credit societies, banking, Housing societies will be governed by the Act in its working but in the carrying out of banking or credit functions the same will be governed by other laws such as Banking Regulations Act, Reserve Bank of India Act. Secondly certain classes of societies will also be governed in certain matters – by several other Acts specially enacted for the special – purpose. Thus Housing Societies will also be governed by the Maharashtra Ownership Flats Act or Apartment Owner Act, MHAD Act. Similarly taxing

statutes also operate on Co-operative Societies – for charging or for exemption.

7. In this perspective relevant provisions for amalgamation of two or more co-operative societies, the broad procedure for amalgamation and the statutory Authority/ ies empowered to amalgamate two or more co-operative societies is being delineated.
8. Office bearers and members of Co-operative Societies are familiar with the procedure of constitution and registration of a Co-operative Society. Section 9 of the MCS Act empowers the Registrar and/or his delegate to satisfy members that the proposed Society has complied with provisions of the Act and Rules. On such satisfaction the Registrar may issue Certificate of Registration, which shall be conclusive evidence of registration of the Society.
9. A Society, in course of its existence, may find a need for change by way of amalgamation with another society or to transfer its assets and liabilities in whole or part to another Society or to divide an existing Society into two or more Societies or convert itself into another class of societies. The above contingencies have been contemplated by the MCS Act and The Maharashtra Co-operative Societies Rules, 1961 (MSC Rules) framed by the State Government in exercises of powers conferred by Section 165 of MSC Act.
10. As this perspective is only in respect of amalgamation of two or more Societies the other contingencies set out above are not being discussed.
11. The MCS Act makes provision for amalgamation of societies by two distinct and separate modes. The first mode of amalgamation is initiated by a proposal formulated by the members of the Society. The second mode of amalgamation is where the Registrar is satisfied that it is essential in public interest or in the interest of the co-operative movement or for the purpose of securing proper management of any society, two or more societies be amalgamated then in such a situation the Registrar has the power to pass order for amalgamation of two or more societies.
12. Amalgamation of two or more societies initiated by members of the Society are set out in Section 17 of the MCS

Act read with Rule 16 of the MCS Rules. For the sake of clarity Section 17 of the MCS Act and Rule 16 of the MCS Rules are reproduced below

“17. Amalgamation, transfer, division or conversion of societies:

MSC Act

(1) A society may, with the previous approval of the Registrar, by resolution passed by two-thirds majority of the members present and voting at a special general meeting held for the purpose, decide:

- a) to amalgamate with another society;
- b) to transfer its assets and liabilities, in whole or in part, to any other society;
- c) to divide itself into two or more societies; or
- d) to convert itself into another class of society:

Provided that when such amalgamation, transfer, division or conversion, aforesaid, involves a transfer of the liabilities of a society to any other society, no order on the resolution shall be passed by the Registrar, unless he is satisfied that:

- i) the society, after passing such resolution, has given notice thereof in such manner as may be prescribed to all its members, creditors and other persons, whose interests are likely to be affected (hereinafter in this section referred to as “other interested persons”), giving them the option, to be exercised within one month from the date of such notice, of becoming members of any of the new societies, or continuing their membership in the amalgamated or converted society, or demanding payment of their share or interest or dues, as the case may be;
- ii) All the members and creditors and other interested persons, have assented to the decision, or deemed to have assented thereto by virtue of any member creditor or any other interested person failing to exercise his option within the period specified in clause (i) aforesaid, and
- iii) all claims of members and creditors and other interested persons, who exercise the option within the period specified, have been met in full or otherwise satisfied.

Provided

(2) Notwithstanding anything contained in the Transfer of Property Act, 1882, or the Indian Registration Act, 1908, in the event of division or conversion, the registration of the new societies or, as the case may be, of the converted society, and in the event of amalgamation, on the amalgamation the resolution of the societies concerned with amalgamation shall in each case be sufficient conveyance to vest the assets and liabilities of the original society or amalgamating societies in the new societies or converted or amalgamated society, as the case may be.

- (3) *The amalgamation of societies, or division or conversion of a society shall not affect any rights or obligation of the societies so amalgamated, or society so divided or converted, or render defective any legal proceedings which might have been continued or commenced by or against the societies, which have been amalgamated, or divided or converted; and accordingly, such legal proceedings may be continued or commenced by or against the amalgamated society, or as the case may be, the converted society, or the new societies.*
- (4) *Where two or more societies have been amalgamated, or a society has been divided or converted, the registration of such societies or society shall be cancelled on the date of registration of the amalgamated society, or the converted society, or the new societies between which the society may have been divided.”*

“16. Amalgamation, transfer of assets and liabilities, division or conversion of societies:-

- (1) *Every society desiring to effect amalgamation, transfer of assets and liabilities, division or conversion shall make an application to the Registrar in that behalf, giving full details about such amalgamation, transfer, division or as the case may be, conversion.*
- (2) *On receipt of such application, the Registrar may, after examining the details furnished in the application and other particulars which he may call upon the society to furnish, give his approval to the amalgamation, transfer, division or conversion, if he considers such amalgamation, transfer, division or conversion, as the case may be, to be in the interest of the society,*
- (3) *After the receipt of Registrar's approval under sub-rule (2), the society shall convene a special general meeting by giving notice of at least 15 clear days to all its members and creditors and pass a resolution for amalgamation, transfer of assets and liabilities, division or conversion, as the case may be, by two-third majority of the members present and voting at the meeting. The resolution so passed shall contain the purpose and the full scheme indicating how the proposed amalgamation, transfer, division or conversion would be useful to the society and be given effect to. Where the scheme does not involve transfer of liabilities of the society to another society, a statement to that effect shall be made in the application to be made under sub-rule (1). Where the scheme involves transfer of liabilities of the society, the society shall give written notice in Form 'G' to all its members, creditors and other persons whose interests are likely to be affected by such transfer. The notice shall also be published in at least one newspaper in circulation in the district in which the society's office is situated and a copy thereof shall be exhibited on the notice-board in the society's and Registrar's office. [Provided that the State Government may, in the case of any society, dispense with the giving of such*

MSC RULES

notice, regard being had to the extent of liabilities, the financial position of the society and its members and other relevant factors pertaining to such society.]

- (4) Within one month from the date of notice referred to in sub-rule (3), the members, creditors and other persons whose interests are likely to be affected by the transfer of the society's liabilities may exercise their option as required by clause (f) of the proviso to sub-section (0 of Section 17 failing which they shall be deemed to have assented to the transfer of liabilities of the society to another society.*
- (5) The society shall meet in full and otherwise satisfy all claims of members and creditors and other interested persons who exercise the option.*
- (6) The society shall submit a report to the Registrar of the action taken by it and request him to give effect to its decision for amalgamation, transfer, division or conversion by registering the amalgamated or converted society or the new society, as the case may be, and cancelling the registration of the societies which have been amalgamated, divided or converted.*
- (7) On receipt of the report from the society under sub-rule (6), the Registrar shall, after satisfying himself that the procedure has been properly followed, register the amalgamated, divided or converted societies and cancel the registration of the societies which have been amalgamated, divided or converted."*

BRIEF ANALYSIS OF THE ABOVE PROVISIONS :

13. For amalgamation of two or more Societies initiated by members of the societies the following steps are required to be observed:
 - i. The Societies, which desire to amalgamate, should draft a Scheme setting out full details as to how the proposed amalgamation would be useful to the Society and the benefits which the members of the Society desiring amalgamation would have if the proposal is given effect to.
 - ii. It would be advisable that such a Draft Scheme may be placed before a specially convened General Body so as to receive the views and suggestions of members of the General Body and if necessary incorporate useful suggestions, in the Draft Scheme.
 - iii. Upon the Draft Scheme being finalised the Society desiring to effect amalgamation shall make an

Application to the Registrar in that behalf. To the said Application the Draft Scheme be attached.

- iv. The Registrar, on receipt of such Application, is required to examine the details furnished. If the Registrar is of the opinion that further or better particulars are required for considering the Application, he may call for the same. The Society shall furnish such further or better particulars as may be called upon so as to enable the Registrar to form an opinion that amalgamation would be in the interest of the Society.
- v. The Registrar, upon being satisfied that the proposal for amalgamation and the scheme is in the interest of the Society, shall grant approval to the amalgamation.
- vi. After receipt of Registrar's approval, the Society shall convene a Special General Body meeting by giving minimum 15 days' clear notice to all its members and creditors.
- vii. The Special General Body shall consider the resolution for amalgamation and the Draft Scheme as approved and pass a resolution for amalgamation.
- viii. The Resolution has to be passed by 2/3 majority of the members present and voting at the meeting.
- ix. The Resolution should contain the proposed and the full Scheme indicating how the proposed amalgamation would be useful to the Society.
- x. The Society shall submit report to the Registrar if the Resolution to amalgamate is passed by a majority 2/3 members of the Society and request him to give effect to the decision of the General Body for amalgamation.
- xi. When the Resolution to amalgamate is passed, each Society takes a new identity. The old registration of the society will be cancelled and the newly amalgamated society formed will be registered in its place and stead.

- xii. Amalgamation of the Society will not affect the existing rights and obligations of members, creditors or persons likely to be affected by such amalgamation. The newly amalgamated Society will have to discharge the obligation or exercise rights vested in the old societies.
 - xiii. Losses incurred by the old societies will be carried and will have to be borne by the newly amalgamated Society.
14. The other mode of amalgamation is set out in Section 18 of the MCS Act read with Rule 17 of the MCS Rules. The said provisions are reproduced below for ease of reference

“18. Power to direct amalgamation, division and reorganization in public interest, etc

- 1) Where the Registrar is satisfied that it is essential in the public interest or in the interest of the co-operative movement, or for the purpose of securing the proper management of any society, that two or more societies should amalgamate or any society should be divided to form two or more societies or should be reorganised then notwithstanding anything contained in the last preceding section but subject to the provisions of this section, the Registrar may, after consulting such federal society as may be notified by the State Government by order notified in the Official Gazette, provide for the amalgamation, division or reorganisation of those societies into a single society, or into societies with such constitution, property rights, interests and authorities, and such liabilities, duties and obligations as may be specified in the order.
- 2) No order shall be made under this section, unless:
 - a) a copy of the proposed order has been sent in draft to the society or each of the societies concerned;
 - b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions and objections which may be received by him within such period (not being less than two months from the date on which the copy of the order as aforesaid was received by the society) as the Registrar may fix in that behalf, either from the society or from any member or class or members thereof, or from any creditor or class of creditors.
- 3) The order referred to in sub-section (1) may contain such incidental, consequential and supplemental provisions as may, in the opinion of

MSC ACT

the Registrar, be necessary to give effect to the amalgamation, the division or reorganisation.

- 4) Every members or creditor of (or other person interested in) (These words were inserted by Mah.20 of 1986s.9) each of the societies to be amalgamated, divided or reorganised who has objected to the scheme of amalgamation, division or reorganisation, within the period specified, shall be entitled to receive, on the issue of the order of amalgamation, division or re-organisation his share or interest if he be a member and the amount in satisfaction of his dues if he be a creditor.
- 5) On the issue of an order under sub-section (2), the provisions in sub-sections (2), (3), and (4) of section 17 shall apply to the societies so amalgamated, divided or re-organised as if they were amalgamated, divided or reorganised under that section, and to the society amalgamated, divided or reorganised.
- 6) Nothing contained, in this section shall apply for the amalgamation of (Sub-section (6) was added by Mah.5 of 1976s.2) (two or more co- operative banks or two or more primary agricultural credit societies). (These words were substituted for the words “two or more co- operative banks” by Mah.4 of 1977s.2).

Notes: If the Registrar of his own believes that it is in the best interest of the public to have amalgamation of the co-operative societies, will prepare a draft scheme showing how the new committee or committees of the society or societies on such amalgamation shall be constituted and their bye-laws that they have to follow. The Registrar will consult the society and take the suggestions and consideration, if any, given by the federal society. The Registrar will send a draft copy of the scheme to society or societies who are going to be affected or amalgamated and invite their members for any objections, etc. and also from the creditors of the society and the society or societies have to send their suggestions and objections within two months. The Registrar on the suggestions and objections if any, found satisfactory may modify the draft and issue a final order.

If the creditor and members object to the scheme of the Registrar then the interest or share of the creditors or member should be paid on their tendering the

objections to the Registrar will be nominated. To comply with order of the Register the society or societies will meet in full and pay all due claims of the members and creditors in full within the time specified by the Registrar,;

If the society is amalgamated then section 17 of this Act will be applicable for the consultation, property rights, interests and authorities and liabilities and duties and obligations of the society which will be notified in the Official Gazette.”

“17.Direction by Registrar for amalgamation, division and reorganisation of societies:-

MSC RULES

- (1) Before issuing any order under sub-section (I) of Section 18 providing for the amalgamation, division or reorganisation of any society or societies, the Registrar shall prepare a draft scheme in respect of such amalgamation, division or reorganisation stating in particular the manner in which the new committee or committees, of the society or societies resulting from such amalgamation, conversion or reorganisation shall be constituted and the by-laws which such society or societies shall follow. The Registrar shall then consult such federal society as may be notified by the State Government in the Official Gazette, and after considering the suggestions, if any, that will be made by such federal society, shall send a copy of the draft of the order proposed to be issued by him under sub-section (i) of Section 18, to the society or each of the societies concerned calling upon it or them to invite objections or suggestions from any member or class of members thereof or from any creditor or class of creditors and to submit such objections and suggestions together with its own or their own suggestions and objections within a period of not less than two months from the date on which the copy of the draft aforesaid was received by it or them.
- (2) The Registrar shall consider all such suggestions and objections and make such modifications in the draft order as may seem to him desirable in the light of those suggestions or objections and then issue a final order under sub-section (I) of Section 18.
- (3) Any member or creditor of each of the societies to be amalgamated, divided or reorganised, who has objected to the scheme of amalgamation, division or reorganisation within the period specified in sub-rule (i), may apply to the Registrar for payment of his share or interest, if he be a member, and the amount in satisfaction of his dues, if he be a creditor. Such application shall be separate and distinct from the objection or suggestion which he may have submitted to the society or the Registrar under clause (b) of sub-section (2) of Section 18. It shall be competent for the Registrar to nominate an officer not below the rank of a Deputy Registrar to

investigate such applications and to determine the payments required to be made to the members or creditors, as the case may be.

(4) Subject to the provisions of the Act, the rules and the by-laws, the Registrar may by order require the society concerned to meet in full or satisfy otherwise all due claims of the members and creditors and thereupon the society shall be bound to meet in full or satisfy otherwise all due claims of the members and creditors within such time as may be specified by the Registrar in the order.”

15. A conjoint reading of the aforesaid provisions following steps emerge:

- a. The Registrar shall first prepare a Draft Scheme.
- b. The Registrar shall then consult a federal society. As a part of process of consultation the Registrar is obliged to send the Draft Scheme to the Society.
- c. Suggestions, if any, made by the federal Society have to be considered by the Registrar. The Registrar shall thereafter prepare a draft order proposed to be issued by him.
- d. The Draft order shall then be sent to the concerned Society calling upon the said Society to invite objections or suggestions from any of its members.
- e. If any suggestions or objections are made to the Draft Order the Registrar shall consider if any modification is required to be made.
- f. After considering the objections suggested to the Draft order and modifications, if any, to be incorporated, the Registrar shall issue a final order of amalgamation.

16. **PROS AND CONS OF AMALGAMATION :**

- a. Upon amalgamation both societies lose their original identities and shall acquire a new identity, i.e. amalgamated Society.
- b. Upon amalgamation the Managing Committee of the old societies will stand automatically dissolved. The

amalgamated societies will have to elect its Managing Committee.

- c. Strength of the committee of the amalgamated societies and the strength of quorum for attending the meeting would be regulated by Model bylaw 115. The strength of the Managing Committee and Quorum for conducting the meeting as per model by law is reproduced below:

No. of Members strength of the M.C.				Quorum in MC
	General	Reserved Seats, W, SC/ST, OBC, VJ/NT/SBC	Total	
Up to 100	6	2, 1, 1, 1	11	6
101 to 200	8	2, 1, 1, 1	13	7
201 to 300	10	2, 1, 1, 1	15	8
301 to 500	12	2, 1, 1, 1	17	9
501 and above	14	2, 1, 1, 1	19	10

- d. One of the benefits of amalgamation is that if one Society is financial weak then upon amalgamation with a financially strong Society the amalgamated society would be financially viable.
- e. During the process of amalgamation, the Scheme sets out the strength and weaknesses of each of the Societies that are proposed to be amalgamated. Hence upon amalgamation the new Managing Committee would be in a better position to take effective action to ensure that weaknesses, which were present in the earlier societies stand redressed and the amalgamated society does not suffer from inherited problems and deficiencies.

17. This perspective gives a birds eye view of statutory provisions regulating amalgamation of two or more Co-operative societies and does not incorporate or address various legal issues or situations which may arise in the process of amalgamation of two or more societies.
18. As amalgamation has serious consequences, the societies would be well advised to engage a competent legal team to advise and take toward the decision of its member to amalgamate.
19. **DISCLAIMER :**
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MUMBAI

FOR M/S. C. R. NAIDU & CO.

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