Budget curtails carry-forward losses for M&As

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The Union Budget 2025-26, while promising a new framework for smoother mergers and acquisitions (M&As), has plugged a major loophole on carry-forward losses for a total of eight assessment years between amalgamating company and amalgamated company from the date of loss instead of date of the merger.

For all mergers effected on or after April 1, 2025, the losses can be carried forward only for the residuary period (counting from the date of loss).

Amrish Shah, partner, Deloitte India, said mergers will now become less attractive due to restriction on losses carried forward. "Insolvency and bankruptcy cases may not get full value in the auction process if a merger is envisaged for the utilisation of losses by the acquirer," Shah said.

Abhishek Mundada, partner, Dhruva Advisors, said losses eligible to be carried forward under amalgamation/merger can no longer be evergreened (i.e. have fresh life) and time limit for setoff of such losses shall be restricted to the period of eight assessment years following the year in which it was first computed for original predecessor entity. "This shall be applicable for amalgamation being effected on and after April 1, 2025. The provisions have been aligned as applicable for demerger transactions," he said.

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Finance Minister Nirmala Sitharaman announced plans to rationalise requirements and procedures for mergers. The changes are set to benefit both domestic and cross-border M&A activity, potentially reducing the time required for corporate restructurings, according to executives.

Bankers and tax experts said at present schemes of arrangement (such as mergers and demergers) usually go through the National Company Law Tribunal, barring some exceptions in the form of a "fast track route" for "small companies". This process has become very cumbersome with too much paperwork, and timelines are not aligned to commercial reality. "Private company schemes are usually taking 6-9 months, and listed companies over a year. Functioning in a state of suspended animation during the interregnum causes serious commercial issues, including for customers, vendors, and employees. The FM's Budget speech does seem to recognise this aspect and suggests some reform to speed up the process, though no details have been spelled out," said Ketan Dalal, founder and managing director (MD) of Katalyst Advisors.

Anish Shah, partner, M&A Tax and Regulatory Services of BDO India, said relaxation in fast-track merger provisions will help entities to opt for the fast-track route, which will reduce the timelines and compliance required as compared to the NCLT route of mergers.

In the case of listed companies, the requirement for stock exchange approval usually adds three months to the timeline for merger/demerger schemes, which means that the whole process consumes a year or more. "This would be evident in all such recent initiatives, such as ITC, Strides, and many others. One suggestion is that the stock exchange application/NCLT process can begin simultaneously, with the caveat that shareholder/creditor meetings cannot be held till stock exchange approval; that will crunch timelines by a few months," Dalal said.

For "small companies" (defined as those with a share capital of up to ₹4 crore and turnover of up to ₹40 crore), there is a "fast-track" process; this process avoids the NCLT route and requires only the approval of the regional director, Ministry of Corporate Affairs. "However, there are issues with this process, both in terms of scope (for example, 'demergers' coverage for such process is not expressly mentioned) and also some administrative issues. The upshot has been that it has not worked well, and that needs streamlining for it to become truly 'fast track'. The FM's speech suggests that this is also being looked into," said Dalal.