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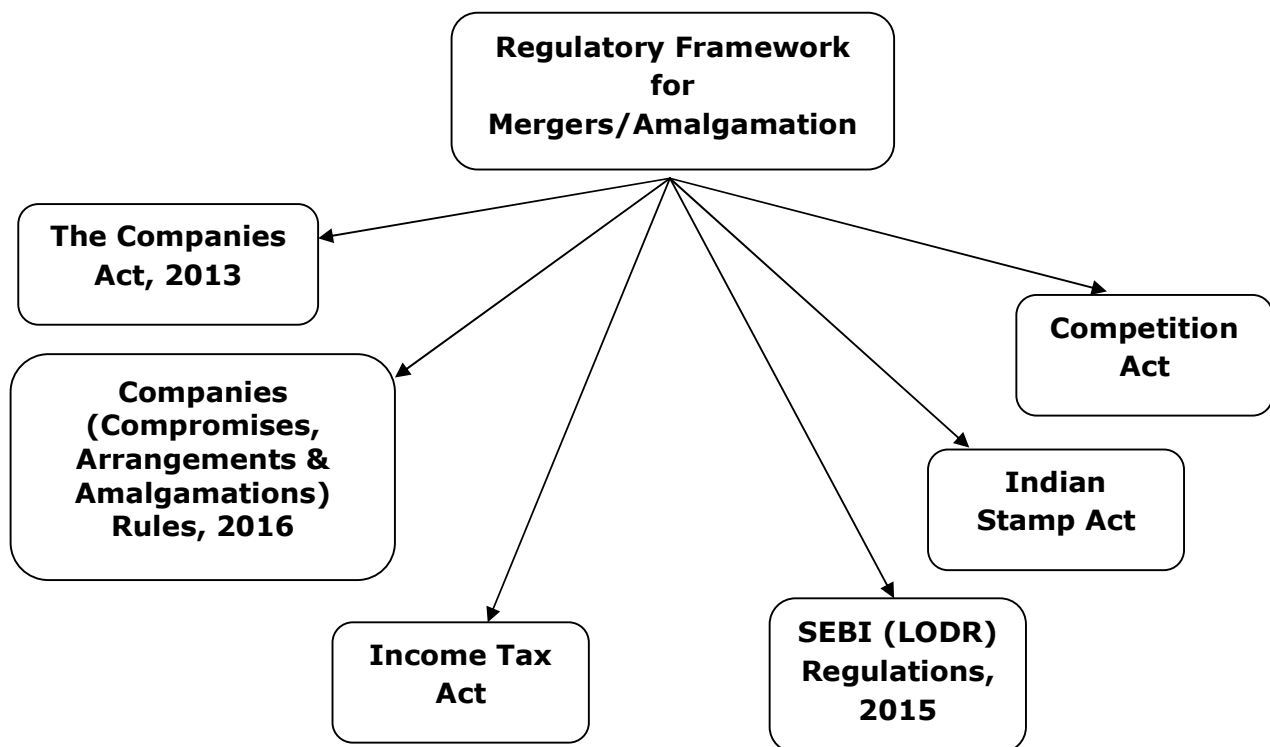
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Chapter 2

Compromises, Arrangements & Amalgamation (Legal & Procedural Aspects)



Chapter XV of the Companies Act, 2013

Section no. 230 to 240

Companies (Compromises, Arrangement & Amalgamation) Rules, 2016

Section 230 : Power to Compromise and Make Arrangements with Creditors and Members :

Section 230(1) : Where a Compromise or Arrangement is proposed -

(a) between a Company and its Creditors or any class of them or

(b) between a Company and its Members or any class of them

The Tribunal may, on the application of the Company or of any Creditor or Member of the company or in the case of the company which is being wound up, of the liquidator, order a meeting of the creditor or class of creditors, or of the members or class of members as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Note : For the purpose of this sub-section, arrangement includes a reorganisation of the Company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both of those methods.

Companies (Compromises, Arrangement & Amalgamation) Rules, 2016

Rule 3 (1) : An application under Section 230(1) of the Act may be submitted in Form no. **NCLT-1** along with :

☞ a notice of admission in Form no. **NCLT-2**

☞ an affidavit in Form no. **NCLT-6**

☞ a copy of scheme of compromise or arrangement, which should include disclosures as per Section 230(2)

☞ fee as prescribed in schedule of fees

Rule 3 (2) : Where more than one company is involved in a scheme in relation to which an application is made, such application may, at the discretion of companies, be filed as joint application

Rule 3(3) : Where the company is not an applicant, a copy of the notice of admission and affidavit shall be served on the company or where the company is being wound up, on its liquidator, not less than 14 days before the date fixed for hearing of the notice of admission.

Rule 3(4) : The applicant shall also disclose to the tribunal, the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

Companies (Compromises, Arrangement & Amalgamation) Rules, 2016

Rule 5 : Directions at hearing of the application : Upon hearing the application under Section 230(1) of the Act, the Tribunal shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters :

- a) Determining the class or classes of creditors or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement or dispensing with the meeting or meetings for any class or classes of creditors in terms of Section 230(9)
- b) Fixing the time and place of the meeting or meetings
- c) Appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration
- d) Fixing the quorum and procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronic means
- e) Determining the values of the creditors or members whose meetings have to be held.
- f) Notice to be given of the meeting or meetings and the advertisement of such notice
- g) Notice to be given to sectoral or regulatory authorities as required under Section 230(5)
- h) The time within which the chairperson of the meeting is required to report the result of the meeting to the Tribunal and
- i) Such other matters as the Tribunal may deem necessary.

Section 230 (2) :The company or any other person, by whom an application is made under Section 230(1), shall disclose to the Tribunal by way of **Affidavit :**

- a) All material facts relating to the company, such as the latest financial position of the company, latest auditor's report of the company and the pendency of any Investigation or proceedings against the company.
- b) Reduction of Share capital of the company, if any, included in the Compromise or Arrangement.

Important : Provisions of Section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

- c) Any scheme of Corporate Debt Restructuring consented to by not less than 75% of the Secured Creditor **in value** , including :
- i) Creditors Responsibility Statement in the prescribed form
 - ii) Safeguards for the protection of other secured and unsecured creditors
 - iii) Report by the auditors that the fund requirements of the Company after the Corporate Debt Restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board.
 - iv) Where the company proposes to adopt the Corporate Debt Restructuring guidelines specified by the RBI, a statement to that effect provided to them by the Board.
 - v) Where the company proposes to adopt the Corporate Debt Restructuring guidelines specified by the Reserve Bank of India, a statement to that effect and
 - vi) A valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable of the company by a registered valuer.

Companies (Compromises, Arrangement & Amalgamation) Rules, 2016

Rule 4 : The Creditors Responsibility Statement as referred to in Section 230 (2)(c)(i) shall be in **Form CAA-1** and it shall be included in the scheme of Corporate Debt Restructuring

Section 230(3) : Where a meeting is proposed to be called in pursuance of Tribunal order under Section 230(1), a notice shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture holders of the company, **individually** at the address registered with the company which shall be accompanied by a statement disclosing details of compromise or arrangement, valuation report, effect on stakeholders and such other details as may be prescribed.

- Notice and other documents shall also be placed on the website of the company and also sent to SEBI and Stock Exchange, if the company is listed and shall also be published in newspaper as may be prescribed.
- Where the notice for the meeting is also issued by way of an advertisement, it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned person free of charge.

- The notice under Section 230(3) shall provide that the persons to whom notice is sent, **may vote either themselves or through proxies or by postal ballot** to the adoption of the compromise or arrangement within one month from the date of receipt of such notice. (**Section 230(4)**)

However, it must be noted that, any objection to the compromise or arrangement shall be made only by persons holding **not less than 10%** of the shareholding or having outstanding debt amounting to **not less than 5%** of the total outstanding debt as per the latest audited financial statement.

Companies (Compromises, Arrangement & Amalgamation) Rules, 2016

Rule 6 (1) : Where a meeting of any class or classes of Creditors or members has been directed to be convened, the notice shall be in **CAA-2** and shall be sent individually to each of the creditors or members.

Rule 6(2) : The notice shall be sent by the Chairperson appointed for the meeting or by the company/liquidator/any person (as per directions of the Tribunal), by registered post or speed post or by courier or by e-mail or by hand delivery or by any other mode as directed by the Tribunal to their last known address at least one month before the date fixed for the meeting.

Notice shall be deemed to have been served, at the expiration of 48 hours after the letter containing the same is posted.

Rule 6(3) : The notice of the meeting to the creditors and members shall be accompanied by a copy of the scheme of compromise or arrangement and a statement disclosing following details **if such details are not already mentioned in the scheme** :

- ☞ details of the order of the Tribunal directing the calling/convening of meeting
- ☞ details of the company including CIN/GLN, PAN, Name, date of incorporation, name, main objects, details of capital structure, promoters and such other details
- ☞ explanatory statement containing details of the compromise or arrangement including parties involved, summary of valuation report, rationale for compromise or arrangement & its benefits, amount due to unsecured creditors etc.
- ☞ disclosure about the effects of compromise or arrangement on KMP, Directors, depositors, creditors, debenture holders, employee etc.
- ☞ disclosure about effect of compromise or arrangement on material interests of directors, KMP and debenture trustee.
- ☞ Investigation or proceedings, if any, pending against the company under the Act.
- ☞ details of the availability of various documents such as latest audited financial statements, material contracts etc.
- ☞ details of approvals, sanctions or no-objections received, if any, from Governmental or regulatory authority.

- ☞ a statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, by voting through electronic means.

Companies (Compromises, Arrangement & Amalgamation) Rules, 2016

Rule 7 : Advertisement of the Notice of the Meeting : The notice of the meeting under Section 230(3) shall be advertised in **Form CAA-2** in at least one English Newspaper and in vernacular newspaper having wide circulation in the state where Registered office of the company is situated and shall also be placed, at least 30 days before the date fixed for meeting, on the website of the company and also on the website of the SEBI & concerned Stock Exchange (in case of listed company).

A joint advertisement may be given even if separate meetings are called for classes of creditors or members.

Section 230(5) : A notice under Section 230(3) along with all the documents in such forms as may be prescribed shall also be sent to the Central Government, the Income Tax Authorities, the RBI, SEBI, ROC, concerned Stock Exchanges, Official Liquidator, CCI and such other sectoral regulator or authorities which are likely to be affected by the Compromise or Arrangement and such notice shall require that, representations, if any, shall be made within 30 days from the date of receipt of notice, failing which it shall be presumed that they have no representations to make on the proposal.

Companies (Compromises, Arrangement & Amalgamation) Rules, 2016

Rule 8 : Notice to Statutory Authorities :

Rule 8 (1) : For the purpose of Section 230(5), the notice shall be in **Form no. CAA-3** and shall be accompanied with a copy of the scheme of compromise or arrangement, the explanatory statement and disclosures required and shall be sent to :

- ✓ Central Government, ROC and Income tax authorities in all cases
- ✓ RBI, SEBI, CCI and Stock Exchange, as may be applicable
- ✓ Other sectoral regulators and authorities as may be required by the Tribunal

Rule 8(2) : The notice shall be sent by registered post or speed post or courier or hand delivery at the office of the authority, and such notice shall be sent **after** the notice is sent to the members/creditors.

Rule 8(3) : If the authorities desire to make any representation, the same shall be sent to the Tribunal within 30 days from the date of receipt of such notice and a copy of such representation shall also be sent to the companies. If no representation is received, it shall be presumed that the authorities have no representation.