

In case of listed entities file the draft Scheme with Stock Exchanges

File an application to the Tribunal with the Scheme and relevant documents

Tribunal will issue an order calling meetings or it may dispense the requirement of calling the meeting.

To issue notice as directed by Tribunal

To give an advertisement in the newspaper

Filing of affidavit of service of notice

Meetings to be held on the scheduled dates to approve the scheme

Result of the meeting

Report of the result by the chairperson

To file petition before the Tribunal

Hearing for approving the scheme

Tribunal to pass order on the petition

File the order with Registrar

Listed entities to submit documents to Stock Exchanges post sanction of Scheme

Issue the Notice inviting objections from Registrar and OL within 30 days.

Approval of the scheme is approved by 90% of the shareholding and 9/10th of value of Shareholders.

File a form of Declaration of solvency in FORM CAA

File the copy of the results in Form No. CAA. 11 with the Central Government

Such copies shall also be filed with the Registrar and OL

The Tribunal may pass the order in Form No. CAA. 12 based on confirmation receive from Central Government

Such orders shall also be filed with the Registrar within 30 days

## Power to acquire shares of shareholders dissenting from the scheme

Acquirer to give notice within 2 months after the expiry of 4 months post making of an offer to acquire shares from the dissenting shareholders.

Dissenting shareholders can object to the offer within 1 month from the date on which the notice was given.

Tribunal may make an order to the contrary or the application for objection may be disposed off as the case may be or the Tribunal may modify the order.

Transferee company to send notice to the transferor company within 1 month from the date on which notice was given to the dissenting shareholders.

Transferee company to pay to the transferor company the amount or consideration for the shares to be acquired.

Transferor company to register the transferee company as the holder of shares.

Transferor company to inform the dissenting shareholders about such registrations and the price payable to them within 1 month from the date of such registration.

## Power to purchase minority shareholding

Acquirer or PAC holding 90% or more of the Equity Share Capital shall notify the company of their intentions to buy the remaining shares.

The price to be paid by the acquirer shall be determined by a Registered Valuer.

The minority shareholders may offer to the majority shareholders purchase of their shares at a price determined in accordance with the prescribed rules.

Transferor company to act as a transfer agent for purchase of shares.

Majority shareholders shall deposit the consideration payable to a separate bank account and such amount shall be there for atleast 1 year.

The disbursement to the entitled shareholder shall start within 60 days.

In the absence of physical delivery of shares the same will stand cancelled.

# Corporate Café

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FOUNDERS: Amit Bachhawat Sir  
and Ravi Varma



## A Quick Glance

Sections	Concepts
230	Compromise and Arrangement
231	Powers of the Court to modify the Scheme
232	Merger / Demerger
233	Fast Track
234	Cross Border
235	Power to Purchase Shares from Dissenting Shareholders
236	Power to Purchase Shares from Minority Shareholders
237	Amalgamation on the order of Government
238	Registration of Offer u/s 235
239	Preservation of Books and Papers
240	Liability of Officers of Amalgamating Company



## Section-wise briefings-

### **Section- 230 - 232**

In case of listed entities file the draft Scheme with Stock Exchanges.

File an application to the Tribunal with the Scheme and relevant documents in the following Forms: *NCLT-1, NCLT-2(Notice of Admission) , NCLT-6 (Affidavit)*

Tribunal will issue an order calling meetings or it may dispense the requirement of calling the meeting (*Tribunal may dispense meeting in certain cases*)

To issue notice as directed by Tribunal in Form CAA-2 (*At least 1 month before the Meeting*)

To give an advertisement in the newspaper (*30 days prior to Meeting*)

Filing of affidavit of service of notice (*At least 7 days prior to Meeting*)

Meetings to be held on the scheduled dates to approve the scheme

Result of the meeting

Report of the result by the chairperson (*in Form CAA-4*)

To file petition before the Tribunal (*Within 7 days in Form CAA-5*)

Hearing for approving the scheme

Tribunal to pass order on the petition (*Form CAA-6*), *For companies Section 232 – order will be in CAA- 7*

File the order with Registrar (*Form INC-28*)

Listed entities to submit documents to Stock Exchanges post sanction of Scheme

**Companies (Sec 232) to file Form CAA 8 with Registrar on ongoing basis within 210 days from end of Financial year**

Section	Sub-section	Content of Sections	Rules	Remarks
<b>230. Power to Compromise or Make Arrangements with Creditors and Members</b>	1	<p>Where a compromise or arrangement is proposed—</p> <p>(a) between a company and its creditors or any class of them; or</p> <p>(b) between a company and its members or any class of them,</p> <p>the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors 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.</p> <p>Explanation.—For the purposes of this sub-section, arrangement includes a</p>	<ol style="list-style-type: none"> <li>1. Company / Creditor / Member/ Liquidator to make application to Tribunal</li> <li>2. Along with the application, documents viz. Notice, Affidavit and Scheme copy to be submitted</li> <li>3. Affidavit to contain following – <ol style="list-style-type: none"> <li>(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor’s report on the accounts of the company and the pendency of any investigation or proceedings against the company;</li> <li>(b) reduction of share capital of the company, if any, included in the compromise or arrangement;</li> </ol> </li> </ol>	<p><b>Who can make application ?</b></p> <ul style="list-style-type: none"> <li>- A Company</li> <li>- any creditor</li> <li>- any member, or</li> <li>- in the case of a company which is being wound up, of the liquidator</li> </ul> <p><b>What if the Company is not applicant?</b></p> <p>Where the company is not the applicant, a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, <b>not less than 14days before the date fixed for the hearing of the notice of admission.</b></p> <p><b>Which Form to be submitted</b></p> <p>NCLT-1</p>

Section	Sub-section	Content of Sections	Rules	Remarks
		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.	<p>(c) any scheme of corporate debt restructuring consented to by not less than 7ty-five per cent. of the secured creditors in value, including—</p> <p>(i) a creditor's responsibility statement in the <b>Form No. CAA.1</b>;</p> <p>(ii) safeguards for the protection of other secured and unsecured creditors;</p> <p>(iii) report by the auditor 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;</p> <p>(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified</p>	<p><b>Documents to be submitted with application:</b></p> <p>(A) a notice of admission in Form No. <b>NCLT-2</b></p> <p>(B) an <b>affidavit in Form No. NCLT -6</b>;</p> <p><b>Disclosure to be made in Affidavit:</b></p> <p>(a) <b>all material facts</b> relating to the company, such as <b>the latest financial position of the company</b>, the <b>latest auditor's report</b> on the accounts of the company and the <b>pendency of any investigation or proceedings</b> against the company;</p> <p>(b) <b>reduction of share capital</b> of the company, if any, included in the compromise or arrangement;</p> <p>(c) <b>any scheme of corporate debt restructuring consented to by not less than 7ty-five per cent. of the secured creditors in value</b>, including—</p> <p>(i) a creditor's responsibility statement in the <b>Form No. CAA.1</b>;</p>

Section	Sub-section	Content of Sections	Rules	Remarks
			<p>by the Reserve Bank of India, a statement to that effect; and</p> <p>(v) 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.</p> <p>4. Tribunal MAY order a Meeting of the Creditor or Members as the case may be</p>	<p>(ii) safeguards for the protection of other secured and unsecured creditors;</p> <p>(iii) report by the auditor 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;</p> <p>(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and</p> <p>(v) 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.</p> <p>(C) a <b>copy of scheme of compromise or arrangement</b>, which should include disclosures as per sub-section (2) of section 230 of the Act; and</p> <p>(D) fee as may be applicable.</p>



Section	Sub-section	Content of Sections	Rules	Remarks
				<p><b>The listed entity shall place the Observation letter or No-objection letter</b> of the stock exchange(s) before the Court or Tribunal at the time of seeking approval of the scheme of arrangement:</p> <p>Provided that the <b>validity of the ‘Observation Letter’ or No-objection letter of stock exchanges shall be six months from the date of issuance, within which the draft scheme of arrangement shall be submitted</b> to the Court or Tribunal.</p> <p><b><u>WHAT ORDERS TRIBUNAL WILL PASS:</u></b></p> <p>Upon hearing the application under sub-section (1) of section 230 of the Act, the <b>Tribunal shall, unless it thinks fit for any reason to dismiss the application</b>, give such directions as it may think necessary in respect of the following matters:-</p> <p>(a) <b>determining the class or classes of creditor or of members whose meeting or meetings have to be held</b> for considering the proposed compromise or arrangement; <b>or DISPENSING WITH THE MEETING OR MEETING FOR ANY CLASS OR CLASSES OR CREDITORS</b> in terms of sub-section (9) of section 230;</p> <p><b><u>The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.</u></b></p> <p>(b) <b><u>fixing the time and place</u></b> of the meeting or meetings;</p> <p>(c) <b><u>appointing a Chairperson and scrutinizer for the meeting or meetings</u></b> to be held, as the case may be and fixing the terms of his appointment including remuneration;</p> <p>(d) <b><u>fixing the quorum and the procedure to be followed at the meeting or meetings</u></b>, including <b><u>VOTING IN PERSON OR BY PROXY OR BY POSTAL BALLOT OR BY VOTING THROUGH ELECTRONICS MEANS;</u></b></p>

Section	Sub-section	Content of Sections	Rules	Remarks
	3	Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting 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 the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:	<p><b><u>NOTICE TO BE SENT TO MEMBERS / CREDITORS / FORMATS:</u></b></p> <p>(1) It shall be in <b>Form No. CAA.2</b> and shall be sent <b>individually to each of the creditors or members.</b></p> <p>(2) <b><u>The notice shall be sent by the chairperson appointed</u></b> for the meeting,</p> <p style="text-align: center;">OR</p> <p><b>if the Tribunal so directs, by the company (or its liquidator), or any other person as the Tribunal may direct.</b></p> <p><b><u>DOCUMENTS REQUIRED WITH THE NOTICE:</u></b></p>	<p><b>Is it mandatory to send Notice to all Members or Creditors ?</b></p> <p>Yes, in Form No. CAA2</p> <p><b>Who will send Notice ?</b></p> <p>Chairperson appointed or any other person as the Tribunal decide.</p>