

# ICSI-EIRC NEWSLETTER



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## THE INSTITUTE OF Company Secretaries of India

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

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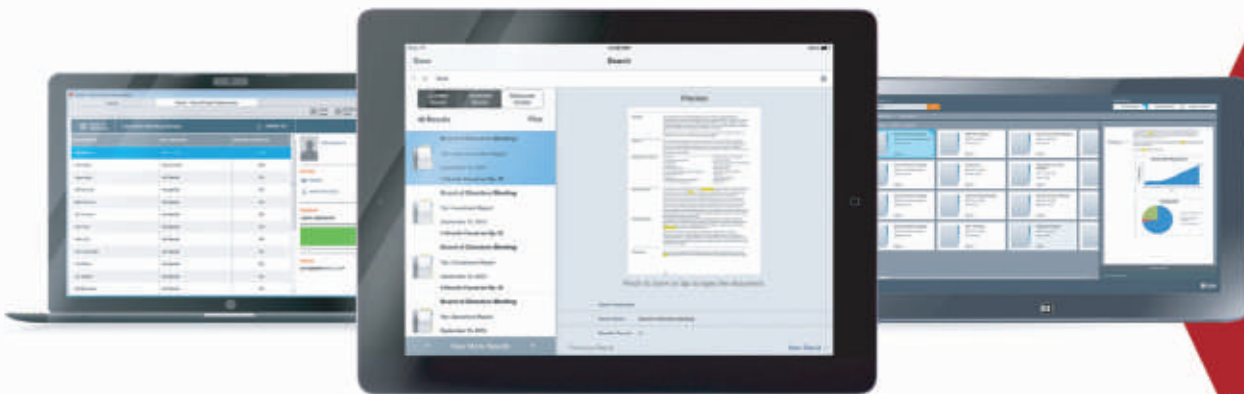




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## CHAIRMAN'S MESSAGE



*"Once you start working on something, don't be afraid of failure and don't abandon it. People who work sincerely are the happiest."*

Kautiliya (Arthashastra)

Dear Professional Colleagues,

As the year comes to an end and with the onset of winter and after all compliance work of the last financial year comes to an end its time to sit back and review the accomplishments of the past year, of us the professionals. Many times We often hear about professionalism, Is it something to do with the number of friends we make at work or is it an university degree or recognition that makes an individual a professional. While talking to various academicians, eminent persons, one of the best definition of the term professional that I have heard is "A professional is someone who has practised and studied, that he/she can be relied upon to do the right thing and say the right thing, automatically, confidently and spontaneously, while under the pressure of the moment and do it without conscious forethought or effort." With this humble submission I present to you, the December issue of ICSI EIRC Newsletter and I want to wish you in advance a Happy and Prosperous New Year

In the latest developments of the Institute, I am pleased to inform you that The Insolvency and Bankruptcy Board of India (IBBI) has granted

registration to 'ICSI Insolvency Professionals Agency' to act as Insolvency Professional Agency (IPA) under the IBBI (Insolvency Professional Agencies) Regulations, 2016. The registration certificate was awarded to ICSI by Union Finance and Corporate Affairs Minister Shri Arun Jaitley on 28 November, 2016 at New Delhi. To inform the members about the Insolvency code, we organized a discussion meeting on the code which was highly appreciated by all.

EIRC had also organised its **1st Regional Conference of Women Company Secretaries** on Saturday, 3rd December, 2016 at Hotel Taj Bengal, Kolkata. **H.E. Shri Tathagata Roy, Hon'ble Governor, Tripura** was the Chief Guest on this occasion. In his address he wished that CS profession flourishes with enhanced contribution of women in the welfare of the company and the country as a whole.

EIRC of ICSI had organised Full Day Seminar on "Company Secretary – A Perfect Professional" on Saturday, 17th December, 2016 at The Lalit Great Eastern Kolkata. This became a memorable day in the history of EIRC as **H.E. Shri Keshari Nath Tripathi, Hon'ble Governor, West Bengal** graced the occasion as Chief Guest. H.E. Shri Keshari Nath Tripathi, Hon'ble Governor, West Bengal addressing the seminar as the Chief Guest said that excellence, experience & professionalism ensures effective management and Individuals/organisations should strive for excellence by effectively managing their resources. He also said that the role of Company Secretary in the present times have gone beyond compliance and they should

try to add value to the organisation, thus becoming a perfect professional.

The EIRC also organized discussion sessions on **New Company Registration Form – SPICE and Corporate Social Responsibility**. The discussions was well co-ordinated by the participating members and was appreciated by all.

The CS Benevolent Fund which has been set up for members requiring financial support in times of distress. This fund is collective effort of help to those members. I appeal all of you to be part of this initiative and join the hand for helping our members.

The EIRC of ICSI would be organising the Full day Seminars on Company Secretary - "The Road Ahead" in January. I appeal to all of you to attend these programmes in large numbers and make them successful. On behalf of EIRC, I sincerely request you to send your suggestions and feedback from time to time on the activities of EIRC. I assure you, that we at EIRC would give importance to all your suggestions and consider them for implementation in the right perspective.

I would like to thank everybody for their continued support and feedback which have helped us to march ahead with quality professional development programs for members and students.

**CS Sandip Kumar Kejriwal**

Chairman



**List of Activities organised by EIRC from 1.12.2016 to 31.12.2016**

Date	Programme / Activity
02.12.2016	Campus Placement for Members & Student
3.12.2016	1 <sup>st</sup> Regional Conference of Women Company Secretaries
14.12.2016	Discussion Meeting on New Company Registration Form - SPICE
15.12.2016	Discussion Meeting on The Insolvency and Bankruptcy Code
15.12.2016	Investor Awareness Programme
16.12.2016	Discussion Meeting on Corporate Social Responsibility
16.12.2016	Meeting of General Observers and Exam Superintendent for December 2016 exam
17.12.2016	Full Day Seminar on “CS – A Perfect Professional”
27	Career Awareness Programmes were organised during this period

**List of Activities organised by Chapter under EIRC from 1.12.2016 to 31.12.2016**

<b>Bhubaneswar Chapter</b>	
09.12.2016	Seminar on “Career as a Company Secretary”
11.12.2016	ICSI-IBBI Joint National Seminar
11.12.2016	ICSI Press Conference
1 CAREER AWARENESS PROGRAMME were organized during this period.	
<b>Dhanbad Chapter</b>	
1 CAREER AWARENESS PROGRAMME were organized during this period.	
<b>Hooghly Chapter</b>	
11.12.2016	Full-Day Workshop on “Professional Opportunities under the Insolvency & Bankruptcy Code, 2016” & “Scope of Company Secretaries under Foreign Trade Policy 2015-2020” and “SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015”
18.12.2016	Half Day Workshop on “Preparation for Excellence in Examinations” and “Role of Professionals in New Regime of Compromise & Arrangement” and “Draft Secretarial Standard on Dividend & Board's Report”
18.12.2016	Half Day Workshop on “Start-up India & Funding” & “Taxation & Demonetization” and “TDS, Compliances & Management”
<b>Jamshedpur Chapter</b>	
17.12.2016	Group Discussion on Insolvency Law
<b>North-Eastern (Guwahati) Chapter</b>	
14.12.2016	Opening of 4th ICSI Study Centre at Unity College, Dimapur
15.12.2016	Opening of 5th ICSI Study Centre at Rajiv Gandhi University, Itanagar , Arunachal Pradesh
17.12.2016 & 18.12.2016	1st North Eastern Regional Conference (full day seminar)
20.12.2016	Opening of 6th ICSI Study Centre at Kharupetia College, Kharupetia
4 CAREER AWARENESS PROGRAMME were organized during this period.	
<b>Ranchi Chapter</b>	
06.12.2016 To 10.12.2016	3rd 5-days Skill Development Programme
17.12.2016	Inauguration of library for Members and Students
24.12.2016	Condolence meeting for Late Keshav Datt Pandey





Campus Placement for Members & Student on 02.12.2016



Glimpses of campus placement ; Representatives from different companies taking interview

1<sup>st</sup> Regional Conference of Women Company Secretaries on 03.12.2016



CS Shyam Agarwal, Vice-President, ICSI addressing, other on the dais (L to R) CS Sandip Kumar Kejriwal, Chairman , ICSI-EIRC, Shri Tathagata Roy, Hon'ble Governor of Tripura, CS Gautam Dugar, Secretary, ICSI-EIRC

Dignitaries felicitating Hon'ble Governor of Tripura

Speakers addressing(L to R) CS Anil Murarka, Past President,ICSI, Practicing Company Secretary, CS Savithri Parekh, Sr. Vice President (Legal & Secretarial), Pidilite Industries Ltd., Ms. Rina Sarkar, ACP, Women Grievance Cell, Kolkata Police CS Manoj Banthia, Past Chairman,ICSI-EIRC,Practicing Company Secretary, CS Pawan Agarwal(Dabawala), Renowned Motivational Speaker, Ms. Ruchika Gupta, Executive Director, Sanmarg Pvt. Ltd

Full Day Seminar on "Company Secretary - A Perfect Professional" on 17.12.2016



CS Sandip Kumar Kejriwal, Chairman , ICSI-EIRC felicitating Shri Keshari Nath Tripathi, Hon'ble Governor of West Bengal

On the dais from (L to R) Shri Vivek Gupta, Hon'ble MP, Rajya Sabha , CS Sandip Kumar Kejriwal, Chairman , ICSI-EIRC, Shri Keshari Nath Tripathi, Hon'ble Governor of West Bengal, CS Santosh Kumar Agarwala, Council Member, ICSI,CS Gautam Dugar, Secretary, ICSI-EIRC



CA Madhukar N. Hiregange, Central Council Member, ICAI addressing

Shri Vivek Gupta, Hon'ble MP, Rajya Sabha addressing

CS Anil Murarka , Past President, Practicing Company Secretary addressing

CS Sumit Binani, Practicing Company Secretary addressing

CS Akash Sharma  
E-mail : akashsharmaw@gmail.com



## Special Courts under Companies Act, 2013

Section 435 to 438 and section 440 of the Companies Act, 2013 came into force on 18<sup>th</sup> day of May, 2016.

Section 435 to 438 and section 440 are new sections covered under chapter xxviii and provide for special courts to enable speedy trial of offences under the new Act of 2013 and matters related thereto. These special courts are to be established, presumably for speedy trial of offences under the 2013 Act. The erstwhile C.A, 1956 did not contain a separate chapter on special court. Section 621 to section 626 of the erstwhile Act dealt with "offences". Some of those sections have corresponding provisions in the new chapter XXVIII and have been referred at the appropriate places.

Section 435 of the 2013 Act provides for establishment of and constitution of special courts and manner of appointment as well as qualification of judges to be appointed to such special courts. "ONLY OFFENCE UNDER THE 2013 ACT CAN BE TRIED BY A SPECIAL COURT". It read as : (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. (3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

The word "established" is used for creation of new courts whereas the word "designated" contemplates that the special court are the criminal courts presided over by a Sessions Judge or an Additional Sessions Judge.

Section 2(29) of the 2013 Act defines the 'Courts' and Section 2(29)(iv) includes the Special Courts within its ambit.

### **HISTORICAL BACKGROUND:**

The concept of Special Court is not new. The earliest instance of the establishment of Special Courts was under West Bengal Special Court Act, 1950 which was struck down by the Hon'ble Supreme Court as violation of Article 14 because the procedure prescribed in the 1956 Act as substantially different and prejudiced to the accused than the procedure prescribed in the then Criminal Procedure Code, 1878. The Supreme Court observed where a rational relation between the establishment of Special Court and the object of impugned act is shown to exist, court shall uphold the constitutional validity of Special Courts. Thereafter, for a speedy trial of "Specific Offences", Special Courts have been created which have been challenged but only a few have been held unconstitutional. The law relating to creation of special courts and the impact of Article 14 has been elaborately discussed in Re special Courts bill, 1978. Creation of Special Court under the new 2013 Act is constitutionally valid.

### **CONSTITUTION OF SPECIAL COURTS AND QUALIFICATIONS PRESCRIBED FOR THE JUDGES :**

The Central Government with concurrence of the Chief Justice of the High Court within whose jurisdiction the Special Courts are to be established or designated shall appoint a single Judge who shall preside over a Special Court.

Anomalies: As per the language of section 435(3) it is clear that only a sitting Sessions or Additional Sessions Judge will be eligible for appointment but it is not so clear that the existing Sessions Judge/Add. Sessions Judge has to relinquish his post before his appointment as judge of a Special Court. Further, whether the appointed Judge will become an employee of Central Government after appointment by the Central Government?





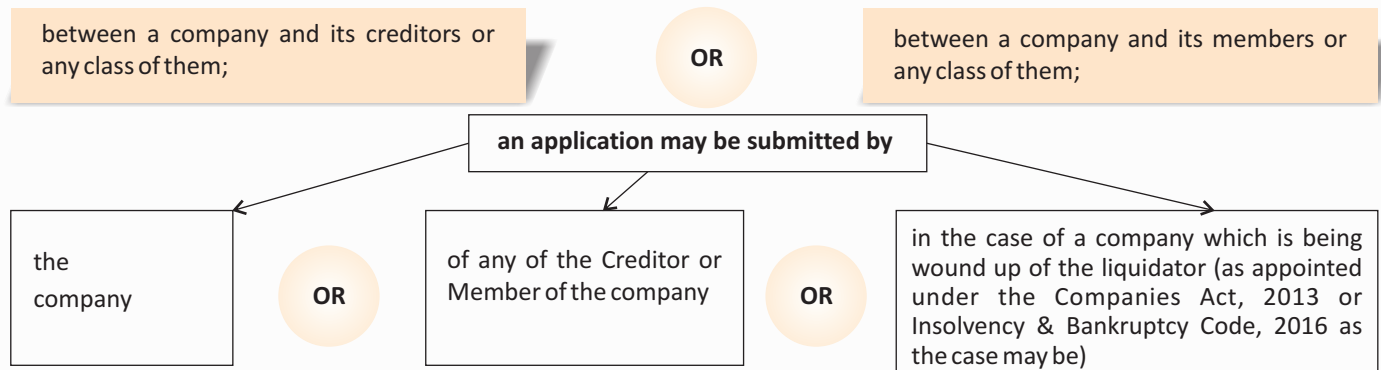
CS Mohan Ram Goenka  
E-mail : goenkamohan@hotmail.com

## COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) RULES, 2016 - AT A GLANCE

NOTIFIED W.E.F 15<sup>TH</sup> DECEMBER, 2016

SECTION 230(1) OF THE COMPANIES ACT, 2013

PROVIDES THAT WHERE A COMPROMISE OR ARRANGEMENT IS PROPOSED



**RULE 3 -- Application to be submitted in Form No. NCLT-1 (as per annexure-a-Form Formats of National Company Law Tribunal Rules, 2016) along with the followings:-**

- ★ A notice of admission in Form No. NCLT – 2;
- ★ An Affidavit in Form No. NCLT-6;
- ★ A Copy of the Scheme of Compromise or Arrangement, which should include disclosures as per Section 230(2) as stated below-
  - \*\*The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—
  - [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;
  - [b] reduction of share capital of the company, if any, included in the compromise or arrangement;
  - [c] any scheme of corporate debt restructuring consented to by not less than 75% of the secured creditors in value, including—
    - (i) a creditor's responsibility statement in the Form No. CAA.1 as per Rule 4;
    - (ii) safeguards for the protection of other secured and unsecured creditors;
    - (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;
    - (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
    - (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.
- ★ Fees of Rs. 5000 as prescribed in the Companies (Compromises, Arrangements And Amalgamations) Rules, 2016.

**POINTS TO BE REMEMBERED ALSO**

Where more than one Company is involved then it should be filed as Joint Application.

**If the Company is not the applicant—**  
A copy of the NCLT -2 and NCLT -6 shall be served on the Company not less than 14 days before the date fixed for hearing.  
OR  
**Where the Company is being wound-up—**  
A copy of the NCLT -2 and NCLT -6 shall be served on it's Liquidator not less than 14 days before the date fixed for hearing.

**AS PER RULE – 5 -- Decision of the Tribunal or direction to be given at hearing of the application:-**

Upon hearing the application, the Tribunal shall, unless it thinks fit for any reason to dismiss the application, shall give such directions as it may think necessary in respect of the following matters-

- ★ 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; [as per Section 230(9) 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.]

**If meeting of the class or classes of creditors or of members is to be held then Tribunal will be:-**

- ★ fixing the time and place of the meeting or meetings;
- ★ 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;
- ★ fixing the quorum and the 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;  
\*\*“voting through electronic means” shall take place mutatis mutandis in accordance with the Procedure as specified in Rule 20 of Companies (Management and Administration) Rules, 2014
- ★ determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;  
notice to be given of the meeting or meetings and the advertisement of such notice;
- ★ notice to be given to sectoral regulators or authorities as required under Section 230(5);
- ★ the time within which the Chairperson of the meeting is required to report the result of the meeting to the Tribunal; and
- ★ such other matters as the Tribunal may deem necessary.

**As per Rule – 6 – Notice of the Meeting**

Notice to be given of the meeting in Form No. CAA.2 as per Section 230(3) shall be accompanied by a copy of the Scheme of Compromise or arrangement and a statement disclosing the details as per Rule 6(3) if such details is not mentioned in the Scheme and shall be sent to the Creditors and Members.

The Notice shall be sent

- ☞ by the Chairperson appointed for the meeting  
or
- ☞ The tribunal so directs  
or
- ☞ By the Company  
or
- ☞ It's Liquidator  
or
- ☞ Any other person the Tribunal may direct

By registered post (date count after expiration of 48hrs after dispatch) or by speed post or by courier or by e-mail or by hand delivery or any other mode as directed by Tribunal to their last known address not less than 1 month before the date fixed for the meeting.



A copy of the Scheme of Compromise or arrangement shall include the following matters otherwise have to provide a statement disclosing the details as per Rule 6(3):-

- ★ **The details of the order of the tribunal directing the calling, convening and conducting of the meeting-**
  - The date of the order;
  - Date, time and venue of the meeting.
- ★ **Details of the company including-**
  - Corporate Identification Number (CIN) or Global Location Number (GLN) of the company;
  - Permanent Account Number;
  - Name of the company;
  - Date of incorporation;
  - Type of the company (whether Public / Private / One Person Company);
  - Registered office address and email address;
  - Summary of main object as per the memorandum of association; and main business carried on by the company;
  - Details of change of name, registered office and objects of the company during the last five years;
  - Name of the stock exchange(s) where securities of the company are listed, if applicable;
  - Details of the capital structure of the company including authorized, issued, subscribed and paid up share capital; and
  - Names of the promoters and directors along with their address;
- ★ If the scheme of compromise or arrangement relates to **more than one company**, the **fact and details of any relationship** subsisting between such companies who are parties to such scheme of compromise or arrangement **including holding, subsidiary or of associate companies**;
- ★ The **date of the board meeting** at which the scheme was approved by the board of directors including the **name of directors voted in favor** of the resolution, who **voted against** the resolution and who **did not vote or participate on such resolution**;
- ★ **Explanatory statement disclosing details of the scheme of compromise or arrangement including-**
  - **parties involved** in such compromise or arrangement;
  - in case of amalgamation or merger, **appointed date, effective date, share exchange ratio** (if applicable) and other considerations, if any;
  - summary of **valuation report** (if applicable) including basis of valuation and fairness opinion of the **Registered Valuer**, if any, and the declaration that the valuation report is available for inspection at the registered office of the company
  - \*\*\*\*(till the registration of persons as valuers is prescribed under Section 247 of the Act, the valuation report shall be made by an independent merchant banker who is registered with SEBI or an independent Chartered Accountant in practice having a minimum experience of 10 years);
  - details of **capital or debt restructuring**, if any;
  - **rationale** for the compromise or arrangement;
  - **benefits** of the compromise or arrangement as perceived by the Board of Directors to the company, members, creditors and others, as applicable;
  - **amount due to unsecured creditors**.
- ★ **Disclosure about effect of compromise or arrangement on-**
  - Key Managerial Personnel;
  - Directors;
  - Promoters;
  - Non-Promoter Members;
  - Depositors;
  - Debenture Holders;
  - Deposit Trustee and Debenture Trustee;
  - Employees of the Company

- ★ Disclosure about effect of compromise or arrangement on **material interests** of directors, Key Managerial Personnel and debenture trustee;
- ★ **Investigation or proceedings**, if any, **pending against** the company under the Act;
- ★ Details of the availability of the following documents for obtaining extract from or for making or obtaining copies of or for inspection by the members and creditors, namely-
  - **latest audited financial statements** of the company including **consolidated** financial statements;
  - **copy of the order of Tribunal** in pursuance of which the **meeting is to be convened or has been dispensed with**;
  - **copy of scheme of compromise or arrangement**;
  - **contracts or arrangements material** to the compromise or arrangement;
  - **the certificate issued by Auditor of the company to the effect that the accounting treatment**, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013; and
  - such other **information or documents as the Board** or Management believes necessary and relevant for making decision for or against the scheme;
- ★ Details of **approvals, sanctions or no-objection(s), if any from regulatory or any other governmental** authorities required, received or pending for the proposed scheme of compromise or arrangement;
- ★ 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, or where applicable by voting through electronic means.

**As per Rule – 7: Advertisement of Notice of the Meeting**

- the **advertisement** of such notice in the **Form No.CAA.2** at least in one **English Newspaper** and in at least in **one vernacular newspaper** having wide circulation in State in which the Registered Office of the Company is situated;

OR

such newspapers as may be directed by Tribunal;

- That notice shall also be placed on the Website of the Company (if any) at not less than 30 days before the date fixed for meeting;
- In case of Listed Company the notice shall be place on the Website of the SEBI and recognized Stock Exchanges where the Shares of the Company is listed.

\*\*Provided that if the meeting of the Creditors or members are to be held separately then joint advertisement may be given.

**As per Rule – 8 : Notice to Statutory Authorities and Representation by them**

Notice shall be sent forthwith after the notice is sent to the members or creditors in Form No. CAA.3 accompanied by a copy of the Scheme of Compromise or arrangement and a statement disclosing the details as per Rule 6(3) if such details is not mentioned in the Scheme

- ★ Central Government, the Registrar of Companies, the income-tax authorities in all cases
- ★ the Reserve Bank of India, the Securities and Exchange Board, the Competition Commission of India [established under sub-section (1)of section 7 of the Competition Act, 2002], and the respective stock exchanges
- ★ to sectoral regulators or authorities as required by Tribunal.

\*\*By registered post or by speed post or by courier or by hand delivery at the Office of the Authority.

\*\*\* If the Authorities referred to under sub-rule (1) desire to make any representation under Section 230(5), the same shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case no representation is received within 30 days by the Tribunal, it shall be presumed that authorities have no representations to make on the proposed scheme of the Compromise or Arrangement.





#### **As per Rule – 9 : Voting**

★ The Member or the Creditor may vote within one month from the date of the notice:

- Voting may be done by person / through Proxy (shall Follow Rule 10) / through Postal Ballot / through Electronic means.

\*\*Shareholding shall mean the shareholding of the members

\*\*Creditor should not be based on the outstanding more than 6 months old so it should be based on the latest 6 months outstanding

#### **As per Rule – 11 : Copy of Compromise or Arrangement to be furnished by the Company**

Every Member or Creditor entitled to attend the meeting shall be furnished by the Company, free of charge within one day on a requisition being made for the same with a copy of the Scheme of Compromise or arrangement and a statement disclosing the details as per Rule 6(3) if such details is not mentioned in the Scheme.

#### **As per Rule – 12 : Affidavit of Service**

The Chairman or any other person who has appointed by the Tribunal shall file an affidavit before the Tribunal at not less than 7 days before the date fixed for the meeting or the date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

#### **As per Rule – 13 : Result of the meeting to be decided by voting**

Result of the Meeting shall be in Form No. CAA.4 and shall state accurately the number of the creditors or class of creditors or the number of the members or class of members as the case may be with appropriate list of present, voting and voting in which manner (Voting may be done by person / through Proxy (shall Follow Rule 10) / through Postal Ballot / through Electronic means).

#### **As per Rule – 14 : Report of the Result of the meeting by Chairperson**

The chairperson of the meeting (or where there are separate meetings, the chairperson of each meeting) shall submit the Report to the Tribunal within prescribed time as specified by Tribunal or within 3 days of the conclusion of the meeting.

#### **As per Rule – 15 : Petition for confirming Compromise or Arrangement**

Where the Scheme of Compromise or arrangement is agreed by the Members or the Creditors or by both or by Company (or its Liquidator) with or without modification by their voting in person or by proxy or by postal ballot (majority of persons representing three-fourths in value), then the Chairman shall present a Petition in Form No.CAA.5 before the Tribunal for sanction of the Scheme within 7 days of the filling of the report by the Chairperson and shall pray for the appropriate order wherever needed under Section 230 read with Section 232 of the Companies Act, 2013.

\*\*If fails to present by company then the Member or the Creditor can pray for leave and shall be liable for the Cost thereof.

#### **As per Rule – 16 : Date and Notice of Hearing**

Then the Tribunal shall fix a date for the hearing of the Petition which shall be advertised in the same newspaper as where the notice of the meeting was published (Form No.CAA.2 at least in one English Newspaper and in at least in one vernacular newspaper having wide circulation in State in which the Registered Office of the Company is situated)

OR

such newspapers as may be directed by Tribunal

\*\*\*not less than 10 days before the date fixed for hearing

The Notice shall be served by the Tribunal to the

**Objectors** / their representatives under **Section 230(4)**

\*\*Provided 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.

and CG and other authorities who have made the representation in Rule 8 and have desired to be heard in their representation.

**As per Rule – 17 : Order on Petition**

- ★ The Certified copy of the Order under Section 230 shall be in Form No. CAA.6 issued by Tribunal and it should be filed with the Registrar of Companies.

**As per Rule – 20 : Order under section 232 of the Act.**

An order made under section 232 read with section 230 of the Act shall be in Form No.CAA.7 with such variation as the circumstances may require.

**\*\* As per Rule 21 and Section 232(7):-**

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in the Form No. CAA.8 and within 210 days from the end of the financial year with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

- ★ where the Tribunal sanctions the compromise or arrangement, the order shall provide for all or any of the following matters as per Section 230 (7) of the Act, namely-
  - ✓ where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
  - ✓ the protection of any class of creditors;
  - ✓ if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of Section 48;
  - ✓ if the compromise or arrangement is agreed to by the creditors under any proceedings before BIFR shall abate;
  - ✓ such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement.

**SECTION 231 OF THE COMPANIES ACT, 2013**

- (1) Where the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it—
  - (a) shall have power to supervise the implementation of the compromise or arrangement; and
  - (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.
- (2) If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.
- (3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

**As per Rule – 18 : Application for direction under Section 232 of the Act**

Where the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies an application shall be made under Section 232 in the Form No. NCLT – 1 along with notice of admission in Form No. NCLT – 2 before the Tribunal and Form No. NCLT – 2 shall be given to such persons also when the Tribunal may direct.

**SECTION 232 OF THE COMPANIES ACT, 2013**

- (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—
  - (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies;and



- (b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the **Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members**, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

#### **As per Rule – 19 – Direction at hearing of Application**

Upon the hearing of the notice of admission given under rule 18 or upon any adjourned hearing thereof, the Tribunal may make such order or give such directions as it may think fit, as to the proceedings to be taken for the purpose of reconstruction or amalgamation, as the case may be, including, where necessary, an inquiry as to the creditors of the transferor company and the securing of the debts and claims of any of the dissenting creditors in such manner as the Tribunal may think just and appropriate.

#### **As per Rule – 22 – Report on working of compromise or arrangement**

At any time after issuing an order sanctioning the compromise or arrangement, the Tribunal may, either on its own motion or on the application of any interested person, make an order directing the company or where the company is being wound-up, its liquidator, to submit to the Tribunal within such time as the Tribunal may fix, a report on the working of the said compromise or arrangement and on consideration of the report, the Tribunal may pass such orders or give such directions as it may think fit.

#### **As per Rule – 23 : Liberty to apply**

- (1) The company, or any creditor or member thereof, or in case of a company which is being wound-up, its liquidator, may, at any time after the passing of the order sanctioning the compromise or arrangement, apply to the Tribunal for the determination of any question relating to the working of the compromise or arrangement.
- (2) The application shall in the first instance be posted before the Tribunal for directions as to the notices and the advertisement, if any, to be issued, as the Tribunal may direct.
- (3) The Tribunal may, on such application, pass such orders and give such directions as it may think fit in regard to the matter, and may make such modifications in the compromise or arrangement as it may consider necessary for the proper working thereof, or pass such orders as it may think fit in the circumstances of the case.

#### **As per Rule – 24 : Liberty of the Tribunal**

- (1) At any time during the proceedings, if the Tribunal hearing a petition or application under these Rules is of the opinion that the petition or application or evidence or information or statement is required to be filed in the form of affidavit, the same may be ordered by the Tribunal in the manner as the Tribunal may think fit.
- (2) The Tribunal may pass any direction(s) or order or dispense with any procedure prescribed by these rules in pursuance of the object of the provisions for implementation of the scheme of arrangement or compromise or restructuring or otherwise practicable except on those matters specifically provided in the Act.

#### **As per Rule 25 : Merger or Amalgamation of certain companies (Merger or Amalgamation of two or more small companies or between a holding company and its wholly owned subsidiary company or such other class or classes of companies as may be prescribed under 233 of the Act (Fast Track Merger)**

- (1) The notice of the proposed scheme, under clause (a) of subsection (1) of section 233 of the Act, to invite objections or suggestions if any, within 30 days from the Registrar and Official Liquidator or persons affected by the scheme shall be in **Form No. CAA.9**.
- (2) For the purposes of clause (c) of sub-section (1) of section 233 of the Act the **declaration of solvency shall be filed by each of the companies involved in the scheme of merger or amalgamation in Form No. CAA.10** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, **before convening the meeting of members and creditors for approval of the scheme**.
- (3) For the purposes of clause (b) and (d) of sub-section (1) of section 233 of the Act, the notice (period of clear 21 days) of the meeting to the members and creditors shall be accompanied by -
  - [a] a statement, as far as applicable, referred to in sub-section (3) of section 230 of the Act read with sub-rule (3) of rule 6 hereof;

- [b] the declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in **Form N. CAA.10**;
- [c] a copy of the scheme.
- (4) [a] For the purposes of sub-section (2) of section 233 of the Act, the transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors or class of creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings in **Form No. CAA.11 within 7 days of the conclusion of the meeting of members and / or creditors** with the Central Government, along with the fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.
- [b] Copy of the scheme shall also be filed, along with **Form No. CAA. 11** with -
- (i) the Registrar of Companies in **Form No. GNL-1** along with fees provided under the Companies (Registration Offices and Fees) Rules, 2014; and
  - (ii) the Official Liquidator through hand delivery or by registered post or speed post.
- (5) Where no objection or suggestion is received to the scheme from the Registrar of Companies and Official Liquidator or where the objection or suggestion of Registrar and Official Liquidator is deemed to be not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, the Central Government shall issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12**.
- (6) Where objections or suggestions are received from the Registrar of Companies or Official Liquidator and the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may file an application before the Tribunal in **Form No. CAA.13** within sixty days of the receipt of the scheme stating its objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act.
- \*\*Application shall be filed within 60 days of the receipt of the Scheme.**
- (7) The confirmation order of the scheme issued by the Central Government or Tribunal under sub-section (7) of section 233 of the Act, shall be filed, within 30 days of the receipt of the order of confirmation, in **Form INC-28** along with the fees as provided under Companies (Registration Offices and Fees) Rules, 2014 with the Registrar of Companies having jurisdiction over the transferee and transferor companies respectively.
- (8) For the purpose of this rule, it is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the Act, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the Act has not been met.
- 26. Notice to dissenting shareholders for acquiring the shares.—**
- For the purposes of sub-section (1) of section 235 of the Act, the transferee company shall send a notice to the dissenting shareholder(s) of the transferor company, in **Form No. CAA.14** at the last intimated address of such shareholder, for acquiring the shares of such dissenting shareholders.
- 27. Determination of price for purchase of minority shareholding.—**
- For the purposes of sub-section (2) of section 236 of the Act, the registered valuer shall determine the price (hereinafter called as offer price) to be paid by the acquirer, person or group of persons referred to in sub-section (1) of section 236 of the Act for purchase of equity shares of the minority shareholders of the company, in accordance with the following rules:-
- (1) In the case of a listed company,-
    - (i) the offer price shall be determined in the manner as may be specified by the Securities and Exchange Board of India under the relevant regulations framed by it, as may be applicable; and
    - (ii) the registered valuer shall also provide a valuation report on the basis of valuation addressed to the Board of directors of the company giving justification for such valuation.



- (2) In the case of an unlisted company and a private company,
- (i) the offer price shall be determined after taking into account the following factors:-
    - [a] the highest price paid by the acquirer, person or group of persons for acquisition during last twelve months;
    - [b] the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies;and
  - (ii) the registered valuer shall also provide a valuation report on the basis of valuation addressed to the board of directors of the company giving justification for such valuation.
- 28. Circular containing scheme of amalgamation or merger. —**
- (1) For the purposes of clause (a) of sub-section (1) of section 238 of the Act, every circular containing the offer of scheme or contract involving transfer of shares or any class of shares and recommendation to the members of the transferor company by its directors to accept such offer, shall be accompanied by such information as set out in **Form No. CAA.15**.
  - (2) The circular shall be presented to the Registrar for registration.
- 29. Appeal under sub-section (2) of section 238 of the Act. —** Any aggrieved party may file an appeal against the order of the Registrar of Companies refusing to register any circular under sub-section (2) of section 238 of the Act and the said appeal shall be in the **Form No. NCLT.9** (appended in the National Company Law Tribunal Rules, 2016) supported with an affidavit in the **Form No. NCLT.6** (appended in the National Company Law Tribunal Rules, 2016).
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#### OBITUARY

With profound grief and sorrow, we regret to inform the sad demise of CS Saurav Maloo (A39427)

May the almighty give sufficient fortitude to the bereaved family members to withstand the irreparable loss.

May the departed soul rest in peace.

#### Disclaimer

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