

BEST ANSWER - CASE STUDY - JANUARY, 2026

Summary of the Case:

The petition sought NCLT approval of a scheme under Sections 230-232 to convert a company limited by shares into a company limited by guarantee without share capital. The RoC and RD objected, stating that the application was in fact a conversion under Section 18, for which no prescribed rules or forms exist, and that Section 230 or Section 66 cannot be used to bypass the statutory conversion mechanism. They further held that reduction of paid-up capital to zero is impermissible for a company limited by shares under Section 66 read with Section 4(1)(e). The petitioner argued that guarantee companies without share capital are permitted under the Act and that the scheme validly reorganized capital under Section 230(2)(b). It was also contended that post-conversion, shareholding requirements would not apply and the company would continue to have members as guarantee holders. The core dispute thus centered on whether Sections 230 and 66 could be invoked to achieve conversion in the absence of specific rules under Section 18.

Sr. No.	Question	Addressing of the Issues
1.	Whether a company limited by shares can be converted into a company limited by guarantee without share capital under the Companies Act, 2013, in absence of specific rules and prescribed forms?	<p>1. Provisions of the Law</p> <ul style="list-style-type: none"> • Section 18(1) permits a company of any class to convert itself into a company of another class by alteration of Memorandum and Articles. • Section 18(2) provides that conversion takes effect upon registration by the Registrar of Companies. • Sections 2(21) and 4(1)(d) recognize a company limited by guarantee, with or without share capital. • Section 4(1)(e) requires minimum one share only for a company having share capital. • Companies (Incorporation) Rules, 2014 prescribe procedures for: <ul style="list-style-type: none"> ◆ Conversion of unlimited company into limited company (Rule 37) ◆ Conversion of guarantee company into share company (Rule 39) <p>No rule or prescribed form exists for conversion of a company limited by shares into a company limited by guarantee, creating a procedural gap.</p> <p>2. Application</p> <p>Although procedural rules for such conversion are absent, Section 18 grants a substantive statutory right of conversion. The absence of rules does not amount to a statutory prohibition. The Supreme Court has consistently held that:</p> <ul style="list-style-type: none"> • Rajendra Prasad Gupta v. Prakash Chandra Mishra (SLP No. 984/2006) – <i>Procedure is presumed permissible unless expressly prohibited; prohibition cannot be presumed.</i> • Union of India v. Rakesh Kumar (2001) 4 SCC 309 – Executive instructions cannot amend statutory rules; they may only fill gaps where not inconsistent with law. • Shikshan Prasarak Mandal v. Ramesh Narayan (2016) and Mohan Lal v. Principal Secretary (2014) – Executive circulars or Office Memoranda do not bind courts in statutory interpretation. • Bengal Iron Corporation (1993) – Government clarifications are not binding on quasi-judicial authorities. • Subhash Ramkumar Bind v. State of Maharashtra – Administrative instructions cannot substitute statutory requirements. <p>Therefore, MCA or ROC objections based solely on absence of rules or administrative clarifications cannot override the substantive statutory right under Section 18.</p> <p>Hence, conversion is not prohibited by law, only procedurally unprescribed — and such procedural silence cannot defeat a substantive statutory right.</p> <p>3. NCLT Case Law : Azim Premji Trust Services Pvt. Ltd. <i>C.P.(CAA) No.52/BB/2022, NCLT Bengaluru, Order dated 04.09.2024</i></p> <p>Held:</p> <ul style="list-style-type: none"> • Section 18 expressly permits class conversion. • Absence of prescribed rules for share → guarantee conversion does not prohibit conversion.

	<ul style="list-style-type: none"> • Rule 39 providing reverse conversion does not bar opposite-direction conversion. • Tribunal sanctioned conversion through scheme and directed issue of fresh Certificate of Incorporation. <p>Result: Conversion from company limited by shares → company limited by guarantee without share capital is legally permissible, notwithstanding absence of procedural rules.</p>
2.	<p>Can Section 230 (Compromise/ Arrangement) be invoked as a mechanism to reorganize capital and effect conversion in this case?</p> <p>Is reduction of paid-up capital to zero permissible under Section 66 when the company is being converted into a guarantee company?</p> <p>1. Provisions of the Law</p> <ul style="list-style-type: none"> • Section 230(1) empowers NCLT to sanction compromises or arrangements with members or creditors. • Explanation to Section 230 states that “arrangement includes reorganisation of share capital”. • Section 18 governs conversion of company class. • Section 66 permits reduction of share capital by a company having share capital. • Section 4(1)(e) mandates minimum one share only for companies having share capital. • Section 2(21) and Section 4(1)(d) recognize guarantee companies without share capital. <p>2. Application</p> <p>(A) Use of Section 230</p> <p>Section 18 provides the substantive right of conversion but lacks procedural rules. Section 230, being a complete code for corporate restructuring, expressly includes reorganisation of share capital. Judicial principles confirm that:</p> <ul style="list-style-type: none"> • Vasant Investment Corporation Ltd. (CA 178/1978, Bombay HC) – A scheme involving alteration of Memorandum or restructuring of capital, even if ultra vires under existing Articles, can validly be sanctioned under scheme jurisdiction. • Q.H. Talbros Ltd. (P&H HC) and Re Savoy Hotels Ltd. (Chancery Division) – “Arrangement” has wide amplitude, covering composite corporate restructuring beyond mergers. <p>Therefore, conversion accompanied by reorganisation of capital falls within Section 230’s ambit. Section 230 does not bypass Section 18, but operationalises it where procedural machinery is absent.</p> <p>(B) Reduction of paid-up capital to zero</p> <p>Section 66 prohibits reduction of capital only while the company continues to be one having share capital. Upon conversion into a company limited by guarantee without share capital, the company ceases to fall under Section 4(1)(e). Hence, reduction to zero as a consequence of conversion is legally permissible.</p> <p>NCLT Case Law</p> <p>Azim Premji Trust Services Pvt. Ltd. (2024)</p> <p>Held:</p> <ul style="list-style-type: none"> • Conversion scheme falls within “arrangement” under Section 230. • Tribunal may sanction conversion through scheme where rules under Section 18 are absent. • Objection based on Section 66 and minimum shareholding rejected. • Reduction of paid-up capital to zero is permissible once company becomes guarantee company. <p>Protrans Supply Chain Management Pvt. Ltd.</p> <p><i>C.P.(CAA) 996/MB-II/2020, NCLT Mumbai, Order dated 20.09.2021</i></p> <p>Held:</p> <ul style="list-style-type: none"> • Conversion and reclassification of share capital constitute reorganisation of capital. • Such reorganisation validly forms part of a Scheme of Arrangement under Section 230. • Absence of express procedural provision does not bar Tribunal’s scheme jurisdiction.