

Chapter 5 - Compromises, Arrangements and Amalgamations

As always, let's revise section numbers first

Sec No.	Name of the Section
230	Power to Compromise or Make Arrangements with Creditors and Members
231	Power of Tribunal to Enforce Compromise or Arrangement
232	Merger and Amalgamation of Companies
233	Merger or Amalgamation of Certain Companies
234	Merger or Amalgamation of Company with Foreign Company
235	Power to Acquire Shares of Shareholders Dissenting from Scheme/Contract approved by Majority
236	Purchase of Minority Shareholding
237	Power of Central Government to Provide for Amalgamation of Companies in Public interest
238	Registration of Offer of Schemes Involving Transfer of Shares
239	Preservation of Books and Papers of Amalgamated Companies
240	Liability of Officers in Respect of Offences Committed Prior to Merger, Amalgamation, etc.

Acronyms Used:

CAA	Compromise, Arrangement and Amalgamation
Crs.	Creditors
DH	Debenture Holders
ES	Equity Shares
M&A	Merger or Amalgamation
Mem.	Members
OG	Official Gazette
OL	Official Liquidator
PS	Preference Shares
SCA	Scheme of Compromise or Arrangement
SH	Shareholders
SMA	Scheme of Merger or Amalgamation



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Definitions

Compromise:

Peaceful and wilful settlement

of a dispute

by mutual adjustment and concession

Existence of dispute is a key for making compromise

Arrangement: There is no dispute, but arrangement **modifies rights**.

Section 230: Power to compromise or make arrangement with Crs. & Mem.

1. Where a SCA is proposed between:

- Co. and its creditors, or
- Co and its members

The Tribunal may on an application by:

Company

Creditors

Members

In case co. is wound up -
Liquidator

Order a **meeting** of the creditors or members to be - **Called, Held and Conducted**

For this section, arrangement includes Reorganisation of share capital (E.g., Consolidation/Division)

2. Applicant above shall **disclose** the following to the Tribunal:

- **Material Facts** related to co:
 - Latest financial position
 - Latest Auditor's Report
 - Pendency of any investigation/proceedings
- **Reduction** in share capital if any, included in SCA
- Any scheme of Corp. Debt Restructuring (CDR) **consented** by $\geq 75\%$ of SC in value including **[VSCAR]**:
 - Creditor **Responsibility** Statement in Form CAA-1
 - **Safeguards** for protection of other SC and UnSC
 - **Auditor's** report that funds required after CDR shall confirm to liquidity test based on estimated by BoD
 - A statement that co. proposed to adopt CDR **guidelines** specified by RBI
 - **Valuation** report of ALL assets by Registered Valuer

3. Where meeting of creditors/members is to be called, the notice of such meeting shall be:

- **All** the creditors **and** members **and** debenture holders
- Individually at **address registered** with company
- **Accompanied** with:
 - a statement disclosing **details** of the SCA
 - copy of **valuation** report and their **effect** on Crs, Mem.(promotor/otherwise), DH and KMPs
 - effect of SCA on **material interest of directors** or debenture trustees
- At least 30 days prior to meeting, such notice + other docs to be
 - Placed on **website** of co., and
 - If listed co, **SEBI** and **Stock Exchange's** website, and



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- Published in **Newspaper** (English and Vernacular)

4.

Notice shall provide for **voting** either:

- at the meeting in **person** or **proxy** or
- postal ballot** (within 1m) for **adoption** of SCA

Objections to SCA shall be made only by:

- Mem.** having $\geq 10\%$ of PUSC
- crs** having debts o/s $\geq 5\%$ of total

5. Notice + Docs to be sent to:

- CG
- Income Tax Auth
- RBI
- Registrar

- SEBI
- Resp. Stock Exch
- Off. Liquidator
- Comp. Commission of India

- Such other reg. likely to be affected by such SCA

And require them to make **representation**, if any, **within 30 days** from receipt of notice. Failing which - Presume no representation

6.

At the meeting:
Majority of person representing **3/4th** in value agree to the SCA
 [~~Present and~~ voting]



Tribunal by order **sanctions** such scheme



SCA shall be **binding** on:
 Crs, Mem., Co., Liquidator and Contributories

Note - Where the scheme is required to be approved by members, Preference SH shall also be considered

7. Order of Tribunal **shall** provide for the following:

Where SCA includes **conversion** of PS in ES, option to PSH to obtain arrears of dividend in cash/equivalent ES

Protection of any class of **creditors**

If SCA results in **variation** of rights, effect u/s 48

If SCA is agreed by **Crs.**, any proceedings before BIFR shall abate

Other matters including **exit** offers to dissenting SH

No SCA shall be sanctioned by Tribunal unless **certificate** from **company's auditor** that proposed accounting treatment for SCA is in conformity with AS u/s 133

8. Order of Tribunal - File with **ROC** within **30 days**

9. Tribunal may **dispense** with calling of meeting of Crs. ~~and members~~ if $\geq 90\%$ of Crs in value agree and confirm to the SCA by affidavit.

10. No SCA in respect of **buy back** of sec. shall be sanction unless in compliance with Sec 68.

11. SCA may include **takeover** offer. In case of listed co., such takeover to comply with SEBI regulations

12. **Aggrieved** party - Make an application to Tribunal (not NCLAT)

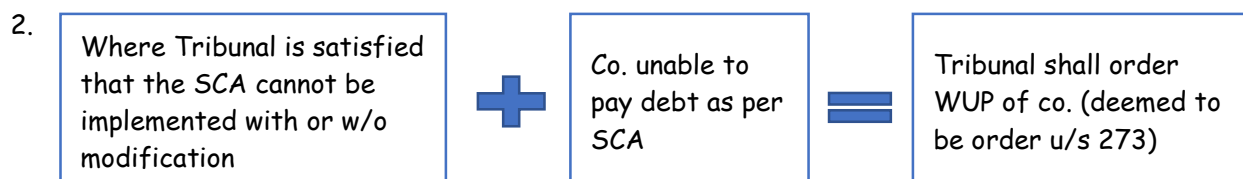
Sec 66 - N.A. to reduction in SC in pursuance of Tribunal's order



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Section 231: Power of Tribunal to enforce compromise or arrangement

1. Where tribunal sanctions SCA u/s 230, it shall have power to:
 - i. **Supervise** the implementation of such SCA
 - ii. Give such director or make such **modification** as may be necessary for proper **implementation**



Section 232: Merger and Amalgamation of Companies

1. Where an **application** u/s 230 is made to Tribunal and it is **shown** that the SCA is:
 - i. In connection with scheme of **reconstruction** involving merger/amalgamation, **and**
 - ii. Involves **transfer** of whole or part of undertaking, property or liabilities (**U/P/L**) of any co. (TOR co.) to another co. (TEE co.) or divided among two or more cos.

Tribunal shall **order** for **meeting** of Crs/Mem. to be called, held and conducted and provision of Sec **230(3) to (6)** shall apply mutatis mutandis.
2. Merging cos (TOR) to circulate the following for meeting of crs./mem. (in addition to Sec 230 (3)) **[TEVAR]**
 - a. Draft of proposed **Terms** drawn up and adopted by BoD
 - b. Confirmation that draft is filed with **Registrar**
 - c. Report (adopted by BoD)
 - o explaining **Effect** of SCA on SH (P/NP) or KMP
 - o laying out share exchange ratio and specify valuation difficulties
 - d. Expert's report regarding **Valuation**
 - e. Supplementary **A/C** statement if last annual accounts relates to FY ending 6m before the first meeting summoned for approving this SCA
3. Tribunal may by order sanction the SCA and **may** make provision for following matters **[DIL DENA LOD R]**:

<u>Gist</u>	<u>Detail</u>
<u>Date of Transfer</u>	Trf. of whole/part of U/P/L to TEE company on date as determined by parties unless Tribunal decides otherwise (reason in writing)
<u>Instruments</u>	Allotment by TEE co. of shares/debentures or other instrument as per SCA <u>Provided that</u> , TEE co. shall not, as a result of SCA, hold any shares in its own name or in the name of any trust and any such shares shall be cancelled;
<u>Legal proceeding</u>	Continuation by/against TEE co. of legal proceeding pending by/against TOR co.
<u>Dissolution</u>	Dissolution w/o WUP of TOR co.
<u>Dissenting</u>	Provisions to be made for person dissenting from such SCA
<u>Non Resident SH</u>	Where Share is held by NR as per FDI norms as per law, allotment of shares of TEE to such SH shall be in the manner specified in order
<u>Employees</u>	Trf. of the employees of TOR to TEE co.
<u>Listed</u>	Where TOR is listed and TEE is unlisted: <ol style="list-style-type: none"> 1. TEE shall remain unlisted unless it gets listed



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	2. If SH of listed co decides to opt out, prov. for payment of value of shares as per pre-determined price formula Provided that payment under this clause should not be < As specified under SEBI Regulation
Authorised SC	Fees paid by TOR on its ASC shall be available for set off by TEE co.
Other	Such incidental, consequential and supplemental matters

No SCA shall be sanctioned by Tribunal unless **certificate** from **company's auditor** that proposed accounting treatment for SCA is in conformity with AS u/s 133

4. If the sanctioned SCA provides for trf. of property free from any charge, such prop. shall be trf. **free of charge**.
5. Certified **copy** of order - **RoC** - Within 30 days
Failure to file with RoC - Co and OID - Penalty of Rs. 20,000 + Rs. 1,000/day upto Rs. 3 lakhs
6. Scheme to clearly indicate an **appointed date** for the SCA to become effective and such SCA shall be deemed to be effective from such date.
7. Co. to file **statement** with RoC → Every year until completion of scheme → **Certified** by CA/Cost Acc/CS showing **compliance** with the order of tribunal

Explanation - Property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

Section 233: Merger or Amalgamation of Certain Companies [Fast track mode of M&A of certain cos.]

1. Notwithstanding provision u/s 230 and 232, scheme of M&A between:

- Two or more **small** cos.
- Holding co. and its WOS co.
- Such other class of cos. as may be prescribed

Rule 25 of Companies (Compromise, Arrangement and Amalgamation) Rules, 2014) as amended in 2021: (not yet notified)

M&A between the following companies can be done u/s 233:

1. Two or more **start-up companies**
2. One or more **start up cos.** with one or more **small cos.**

may be entered into, subject to **all the following condition:**

1. Notice inviting objections/suggestion **within 30 days** to the proposed SMA is issued by TOR + TEE cos. to:
 - a. RoC and OL
 - b. Person affected by such scheme

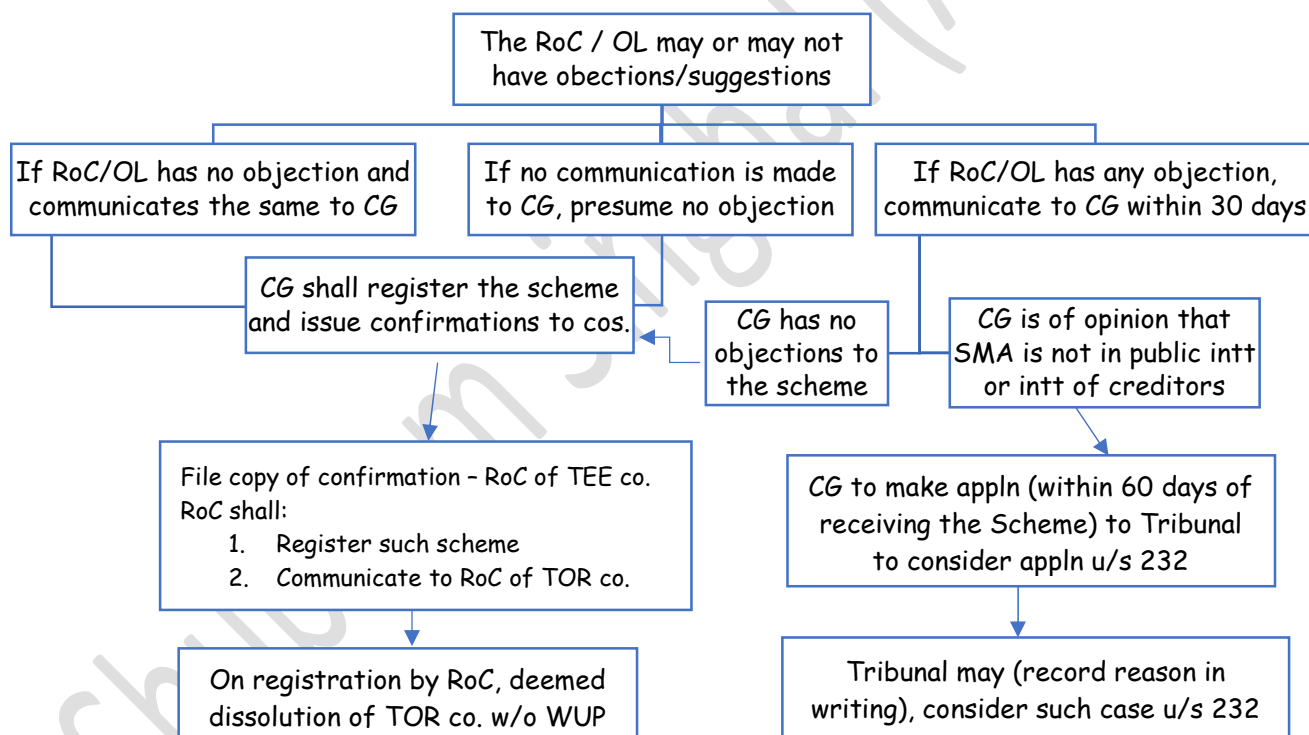


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2. Obj./Suggestions received are to be **considered in GM** of respective cos. and scheme is **approved by members** at GM holding $\geq 90\%$ of total no. of shares
3. Each of the co. involved in merger files "**Declaration of Solvency**" with concerned RoC
4. SMA approved by Crs - **Majority** representing **9/10th in value** of respective co.
Approval of crs. can be:
 - a. Either in a **meeting** (notice for meeting - 21 days)
 - b. Or approval in **writing**

Note - All the above steps have to be complied by all the companies involved independently. After the above steps, the necessary steps have to be taken only by TEE co. (as TOR co. is assumed to be dissolved)

2. TEE co - File a **copy** of approved scheme with
 - CG
 - Registrar
 - Official Liquidator
3. On receipt of the above copy of scheme:



4. Effects of registration of scheme by RoC **[NCLT]**:
 - a. **Trf.** of properties or liabilities of TOR co. to TEE co.
 - b. **Charges** on the property of ToR co. applicable and enforceable on Tee Co. (Tribunal not involved so can't free up property from charges as u/s 232)
 - c. **Legal** proceeding by/against ToR co. to be continued by/against Tee co.
 - d. Unpaid amount to **dissenting** SH or creditors shall become liability of Tee co. (**No** bolte hue SH/Crs)
- TEE co. shall not, as a result of SCA, hold any **shares** in its **own name** or in the name of any **trust** and any such shares shall be **cancelled**;



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5. TEE co. shall file an **application** with the **RoC** along with **Revised ASC** and pay fees due on revised capital. Fees paid by TOR on its ASC shall be available for **set off** by TEE co.

A company covered under this section **may use the provisions of section 232** for the approval of any scheme for merger or amalgamation.

Note - The provisions given for fast track merger in the section 233 are in the optional nature and not a compulsion to the company. If a company wants to make application for merger as per section 232, it can do so.

Section 234: Merger or Amalgamation of Company with Foreign Company

Unless otherwise specified in any other law, the provision of this chap shall mutatis mutandis apply to M&A between:

Co. incorporated under this Act



Co. incorporate in such countries as may be notified by CG from time to time

Provided that **CG + RBI** may make **Rules** in connection with M&A under this section

A foreign co. may merge with a co. registered under this Act or vice versa subject to following:

1. Prior **approval** of RBI
2. T&C of Scheme to provide for **payment** of consideration to SH in Cash / Depository receipt or partly both

Author's note - For this section, foreign co. doesn't mean the foreign company as defined u/s 2(42) of the Act. It means any co. / BC incorporated outside India whether having a place of business in India or not.

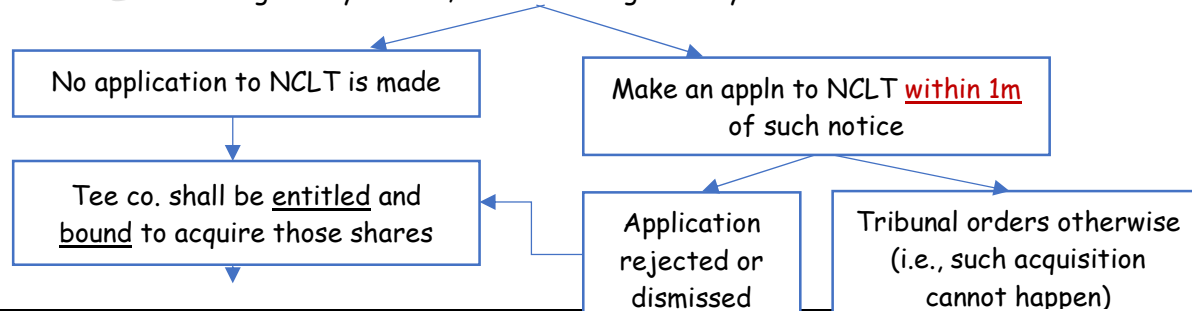
Section 235: Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority [Imagine ToR co to be Vodafone and Tee co. to be Jio i.e., Jio wants to take over Vi]

1. Offer to dissenting SH

- Where a **scheme/contract involving transfer** of shares in ToR co. to Tee co.
- has been **approved** by shareholder* > = 9/10th of value **within 4 months** of offer by Tee Co.
- Tee. co. **may, within 2m** after expiry of said 4m
- Give **NOTICE** to dissenting SH that it desires to acquire his shares.

*Shareholders other than shares held by nominee of Tee co./subsidiary co.

2. Where above notice is given by Tee co, the dissenting SH may:



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On the same terms as applicable
to shares of approving SHs

↓
Hold

3. Manner of acquisition of shares of dissenting SHs:

Tee co. shall forward the following to Tor co.:

- Copy of the **notice** (sent to dissenting SH)
- Instrument** of trf. to be executed by person appointed by ToR co. **on behalf of dissenting SH**
- Pay**/trf. the amount representing price payable by the Tee co. to dissenting SHs.

On receipt of above, the ToR co. shall:

- Register** Tee co. as holder of those shares
- Within 1m** of registration, inform dissenting SH of such registration and receipt of consideration

4. **Sum** received by the ToR co shall be:

- Paid into a **separate** bank account
- Held by the co. in **trust** of dissenting SHs
- Disbursed** to entitled SH **within 60 days**

Now please go and read Sec 238 and then come back to 236

Section 236: Purchase of minority shareholding

In this summary notes, for this section, ToR co. means Co. whose shares are being transferred.

1. In the event of:

An acquirer becoming holder of
> = **90% of Issued ESC**, or

Any person becoming **90% majority** or holding > = **90% of Issued ESC**, by virtue of amalgamation, share exchange, conversion, etc.

Such acquirer/person shall **notify the co. (not minority)** of their intention to buy remaining ES

2. The acquirer/person shall **offer** the **minority** shareholders for buying their ES at a **price** determined on valuation by **Registered Valuer** as per the Rules

Note - There was no requirement of RV u/s 235

3. Suo moto offer by minority SHs - Without prejudice to above provisions, minority SHs may offer to the majority SHs to purchase the minority ESH of the co. at price determined in accordance with Rules.

4. The majority SHs shall **deposit** an **amount** = Value of shares to be acquired:

- In a **separate** bank account
- Operated** by Co. (TOR) for **at least 1 year** for payment to minority
- Amount to be **disbursed** to entitled SHs **within 60 days**
Provided that - Such **disbursement** shall **continue for 1 year** if:
 - For some reason, disbursement had not been made within 60 days, or
 - Disbursement made but SH fails to receive or claim such amount (E.g., cheque deposit karna bhul gaya)



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5. ToR co. to act as "Transfer Agent"
i.e., Receive and Pay - Price ; Taking and making - Delivery of shares
6. If physical shares not delivered to ToR co. within time specified:
 - such share certificates deemed to be cancelled
 - co. shall be authorized to issue shares in lieu thereof
 - and make payment to minority on such cancellation
7. Where any of the minority shareholder is dead or ceases to exist and their heir, successors or assignees have not been brought on record - The right of such shareholders to make offer for sale shall continue to be available for 3 years from date of minority acq. by majority.
8. Where the shares of minority SHs have been acquired under this section and as on or prior to the date of transfer following such acquisition, the SHs holding > = 75% minority ESH negotiate on a higher price for any transfer of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, the majority shareholders (majority of minority) shall share the additional compensation so received by them with such minority shareholders on a pro rata basis
[Explained in class. Refer revision video for understanding]

Sec 237: Power of Central Government to Provide for Amalgamation of Companies in Public Interest

1. Amalgamation order by CG:
 - Where CG is satisfied that, it is essential in public interest
 - To amalgamate two or more cos.
 - It may be notification in OG
 - Order for amalgamation of such cos. into single co. and specify rights and liabilities of such single co.
2. Such order may provide for:
 - Continuation by/against Tee co. of any legal proceedings by/against ToR co.
 - Such other provision as may be necessary to give effect to amalgamation
3. Every mem/crs. (incl. DH) of ToR co. to have same interest/rights in TEE Co.
In case if the interest/rights in TEE co. is less than interest/rights in ToR co., he shall be entitled to compensation which shall be assessed by prescribed authority and published in OG and such compensation shall be paid to concerned crs/mem. by TEE co.
4. Person aggrieved by above assessment of compensation may make an appeal to Tribunal within 30 days of publication thereof in OG. Thereupon, Tribunal shall make assessment.
5. No order for amalgamation shall be made unless:
 - a. Copy of draft orders sent to each concerned co.
[Concerned Co. to file objections or suggestion within period specified by CG (not < 2m)]
 - b. Time for preferring appeal u/ss 4 has expired or where appeal is preferred, such appeal is disposed



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c. CG has **considered** and **made modification** to draft order (discretion of CG) in light of objections or suggestions by concerned co.

6. **Copies** of **order** under this section to be laid before each **HOP**

Sec 238: Registration of Offer of Schemes Involving Transfer of Shares

In relation to every offer of scheme involving trf. of shares u/s 235,

- Every **circular** containing such **offer** and **recommendation** by **directors** of ToR co. to accept such offer shall be accompanied by prescribed info.
- Every such circulars shall contain a **statement** showing the necessary steps that TEE co. has taken to ensure necessary **cash** shall be avl.
- Every such circular shall be registered with **Registrar** prior to issuing it.

Note - **Registrar** may, for reasons recorded in writing, **refuse** to register such circulars if information is missing or info. set out in a manner false impression

If Registrar refuses to register - **Appeal can be filed with Tribunal**

If circular issued w/o such registration - Director **penalty** of Rs. 1 lakh

Sec 239: Preservation of Books and Papers of Amalgamated Companies

The B&P of amalgamated co. (dissolved co.) shall not be disposed off w/o **prior permission of CG**

Before granting such permission, **CG** shall **appoint** a person to **examine B&P** to ascertain whether they contain evidence of:

- **Commission of offence** in connection with:
 - **Promotion**/formation or management of affairs of co.
 - **Amalgamation** or acq. of shares

Sec 240: Liability of Officers in Respect of Offences Committed Prior to Merger, Amalgamation, etc.

Shall continue to be liable after such merger/amalgamation



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