

Compromises, Arrangements and Amalgamations

1. Introduction

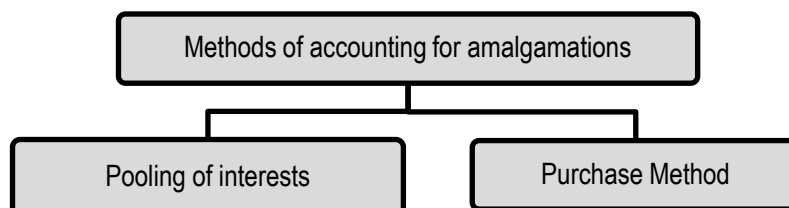
Mergers and acquisitions have always been a topic of corporate interest in the modern times. The complexity of the laws governing these modes of corporate restructuring makes them even more intriguing and mystifying.

Amalgamation

- Amalgamation means an amalgamation pursuant to the provisions of the Companies Act, 2013 or any other statute which may be applicable to companies and includes 'merger'.
- Transferor company means the company which is amalgamated into another company.
- Transferee company means the company into which a transferor company is amalgamated.

Types of Amalgamations

Amalgamations fall into two broad categories. In the first category are those amalgamations where there is a genuine pooling not merely of the assets and liabilities of the amalgamating companies but also of the shareholders' interests and of the businesses of these companies. These are known as Amalgamation in nature of merger. In the second category are those amalgamations which are in effect a mode by which one company acquires another company and, as a consequence, the shareholders of the company which is acquired normally do not continue to have a proportionate share in the equity of the combined company, or the business of the company which is acquired is not intended to be continued. Such amalgamations are amalgamations in the nature of 'purchase'.



Amalgamation in the Nature of Merger

Amalgamation in the nature of merger is an amalgamation which satisfies all the following conditions.

- (i) All the assets and liabilities of the transferor company become, after amalgamation, the assets and liabilities of the transferee company.
- (ii) Shareholders holding not less than 90% of the face value of the equity shares of the transferor company (other than the equity shares already held therein, immediately before the amalgamation, by the transferee company or its subsidiaries or their nominees) become equity shareholders of the transferee company by virtue of the amalgamation.
- (iii) The consideration for the amalgamation receivable by those equity shareholders of the transferor company who agree to become equity shareholders of the transferee company is discharged by the transferee company wholly by the issue of equity shares in the transferee company, except that cash may be paid in respect of any fractional shares.
- (iv) The business of the transferor company is intended to be carried on, after the amalgamation, by the transferee company.
- (v) No adjustment is intended to be made to the book values of the assets and liabilities of the transferor company when they are incorporated in the financial statements of the transferee company except to ensure uniformity of accounting policies.

Amalgamation in the Nature of Purchase

Amalgamation in the nature of purchase is an amalgamation which does not satisfy any one or more of the conditions specified above.

Methods of Accounting for Amalgamations

There are two main methods of accounting for amalgamations.

- the pooling of interests method and
- the purchase method.

Chapter XV (Section 230 to 240) of Companies Act, 2013 contains provisions on 'Compromises, Arrangements and Amalgamations', that covers compromise or arrangements, mergers and amalgamations, Corporate Debt Restructuring, demergers, fast track mergers for small companies/ holding subsidiary companies, cross border mergers, takeovers, amalgamation of companies in public interest etc. This chapter is a complete code in itself which contains provisions regarding all forms of compromises with creditors and arrangements with members. The procedural aspects involved such as format of application to be made to National Company Law Tribunal, form of notice and the procedural aspects involved with respect to the substantive law are covered under the Rules made under Chapter XV of the Act.

Important aspects of this chapter are as follows:

- (i) This chapter provides the provisions which specifies the detailed disclosures to be made during the process of corporate restructuring. This requirement of extensive disclosures is to ensure transparency and allows stakeholders to take decisions.
- (ii) Introduction of voting by way of postal ballot, will ensure larger public participation.
- (iii) Introduction of concept of dispensation by providing a threshold for the dispensation of creditors meetings.
- (iv) This chapter also requires serving of notices to the various statutory authorities with regard to the scheme, arrangement or restructuring, so that participation of various regulators may assist the tribunal to take a informed decision.
- (v) Provision related to takeover of listed companies through the scheme of compromise or arrangement, emphasis on the pricing guidelines which the SEBI would prescribe ensuring uniformity in law.
- (vi) This chapter also provides of a provision which prohibits the maintenance of treasury stock. The practice of indirectly holding investments through intermediaries is now prohibited and cannot be structured by companies.
- (vii) Exit options to shareholders through pre-determined formula or valuation can be given on merger of listed company with an unlisted company.
- (viii) Statement certifying implementation of the scheme shall be given by Chartered Accountant or Company Secretary.
- (ix) The provision in this chapter are in compliance with the SEBI regulations and guidelines issued by RBI.
- (x) This chapter provides for Fast Track amalgamations between-
 - (i) 2/more small companies, or
 - (ii) Holding company and its wholly owned subsidiaries.
- (xi) Enables cross border amalgamations between Indian Companies and Foreign companies.
- (xii) Lays the mechanism under which the transferee company under a scheme or contract can acquire shares of dissenting shareholders.
- (xiii) Provides of exit method for minority shareholders, and promoters to have 100% promoter entity. So that balance between the interests of the promoters and minority shareholders may be maintained.
- (xiv) This chapter also provides the process of amalgamation of companies for public interest.
- (xv) Books and Papers of the amalgamating company/ the company in which shares have been acquired by another company shall not be disposed of on prior permission of the Central Government.
- (xvi) Liability of the officers of the transferor company on any offence committed under this Act shall be retrospective even after the merger, amalgamation or acquisition.

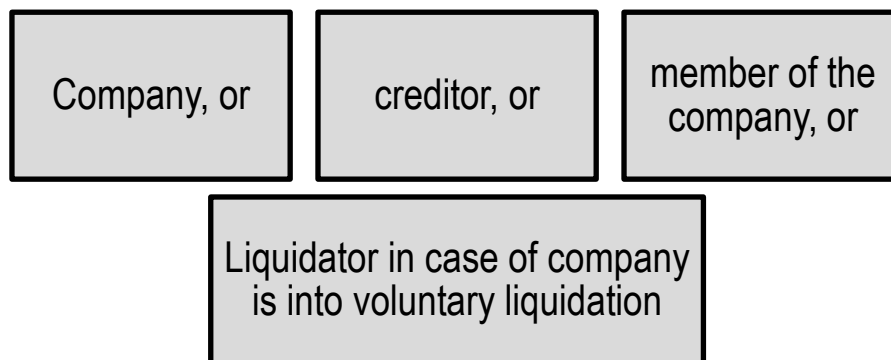
2. Power to Compromise or Make Arrangements with Creditors and Members [Section 230]

Section 230 of the Companies Act, 2013 contains the powers of the Tribunal on the filing of application for the compromise or arrangement. According to this section:

(1) **Power of Tribunal on an application filed for a compromise /arrangement [Sub-section 1)]:** Where a compromise or arrangement is proposed between—

- (a) a company and its creditors or any class of them; or
- (b) a company and its members or any class of them,

the Tribunal may, on the application of the-







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.

Explanation—For the purposes 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.

(2) **Disclosures by applicant [Sub-section (2)]:** The company or any other person, by whom an application is made, 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 seventy-five per cent. of the secured creditors in value, including—

- (i) a creditor's responsibility statement in the prescribed form;
 - (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.
- (3) **Notice of meeting conducted on order of Tribunal [Sub-section (3)]:** Where a meeting is proposed to be called in pursuance of an order of the Tribunal, 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,
-  Sectoral regulators u/s 230(5)

individually at the address registered with the company.

Annexure with Notice: Notice of meeting shall be accompanied by a statement disclosing the

Annexure with Notice

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 as prescribed under *Rule 6 of the Companies (Compromises, arrangements and amalgamations) Rules, 2016*.

Advertisement of notice: Such notice and other documents shall also be placed on the website of the company, if any, and in case of a listed company, these documents shall be sent to the Securities and Exchange Board and stock exchange where the securities of the companies are listed, for placing on their website and shall also be published in newspapers in such manner as prescribed under Rule 7 of the *Companies (Compromises, arrangements and amalgamations) Rules, 2016*.

Time period for the receipt of the copies of the compromise or arrangement: 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 persons free of charge from the registered office of the company.

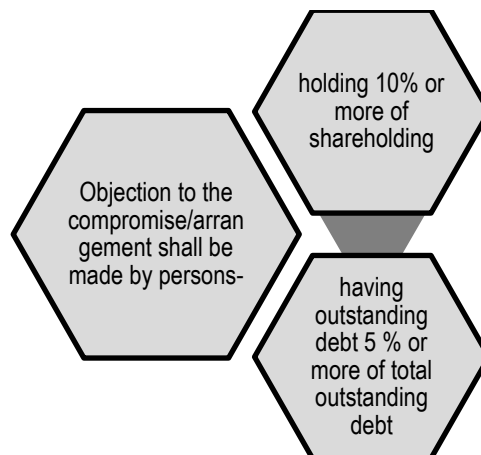
(4) **Notices to sectoral regulators to make representation, if likely to be affected by the compromise or arrangement [Sub-section (5)]:** A notice along with all the documents in such form as may be prescribed shall also be sent to-

- the Central Government,
- the income-tax authorities,
- the Reserve Bank of India,
- the Securities and Exchange Board,
- the Registrar,
- the respective stock exchanges,
- the Official Liquidator,
- the Competition Commission of India established under the Competition Act, 2002, if necessary,
- and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and

shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

- (5) **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. [Sub-section (9)]
- (6) **Vote to the adoption of the compromise or arrangement [Sub-section (4)]:** A notice shall provide that the persons to whom the notice is sent may vote in the meeting 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:

Provided that any objection to the compromise or arrangement shall be made only by persons holding not less than ten per cent of the shareholding or having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement.



- (7) **Binding order of Tribunal [Sub-section (6)]:** Where, at a meeting held, majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," and the contributories of the company.
- (8) **Particulars to be stated in the order [Sub-section (7)]:** An order made by the Tribunal, shall provide for all or any of the following matters, namely:—

- (a) **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;
- (b) the **protection of any class** of creditors;
- (c) 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;
- (d) if **the compromise or arrangement is agreed to by the creditors** under sub-section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction (BIFR) established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;
- (e) **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:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal 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.

- (9) **Filing of order of tribunal with registrar [Sub-section (8)]:** The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order.
- (10) **Exemption in relation to buy-back of securities [sub-section (10)]:** No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.
- ¹[(11) **Inclusion of takeover offer [Sub-section (11)]:** Any compromise or arrangement may include takeover offer made in such manner as may be prescribed:

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.
- (12) **Application to tribunal by aggrieved party [Sub-section (12)]:** An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.]

¹Sub-sections (11) and (12) are yet to be notified.

Explanation—For the removal of doubts, it is hereby declared that the 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.

Since reduction of share capital requires an application to Tribunal by company after passing Special Resolution and on confirmation by Tribunal, reduction of share capital gets effected. However, in the case of compromise under section 230 if that results into reduction of capital, compliance of section 66 is not required to be made separately in such cases.

3. Power of Tribunal to enforce compromise or arrangement [Section 231]

- (1) **Power of tribunal to enforce the order:** 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) **Winding up order by tribunal:** 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) **Retrospective effect of order:** 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.

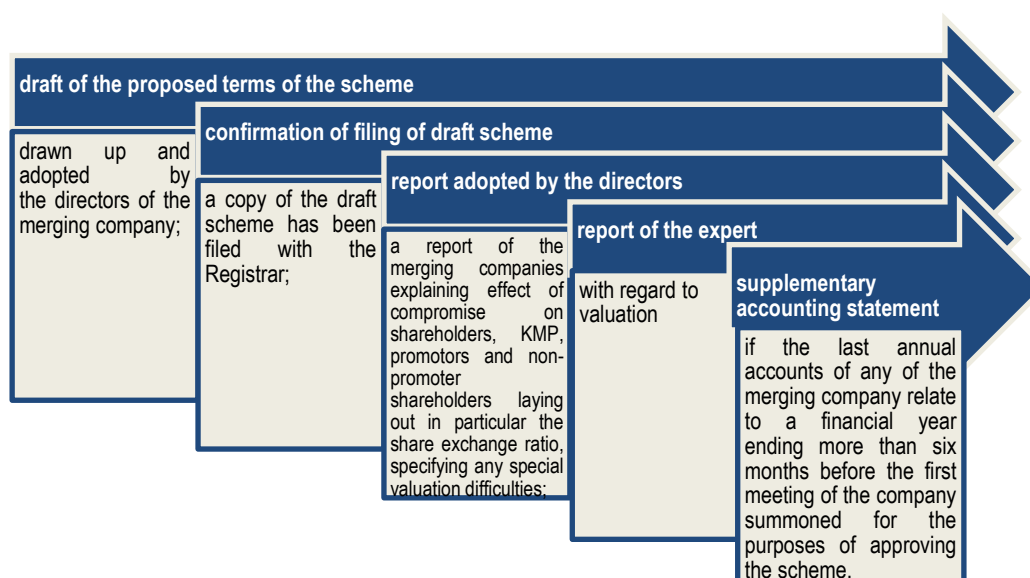
4. Merger and Amalgamation of Companies [Section 232]

- (1) **Filing of an application for purpose of reconstruction or companies involving merger/ amalgamation or transfer of undertaking, property etc.:** 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*.

- (2) **Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed :** Where an order has been made by the Tribunal as above, merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—



- (a) the **draft of the proposed terms of the scheme** drawn up and adopted by the directors of the merging company;
- (b) **confirmation that a copy of the draft scheme has been filed** with the Registrar;
- (c) a **report adopted by the directors of the merging companies** explaining effect of compromise on each class of shareholders, key managerial personnel, promoters

and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

- (d) **the report of the expert** with regard to valuation, if any;
 - (e) a **supplementary accounting statement** if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.
- (3) **Order of tribunal on the agreement of compromise or arrangement:** The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—



- (a) **the transfer to the transferee company** of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;
- (b) **the allotment or appropriation by the transferee company** of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or

arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

- (c) **the continuation by or against the transferee company of any legal proceedings** pending by or against any transferor company on the date of transfer;
- (d) **dissolution, without winding-up**, of any transferor company;
- (e) **the provision to be made for any persons who**, within such time and in such manner as the Tribunal directs, **dissent from the compromise or arrangement**;
- (f) **where share capital is held by any non-resident shareholder** under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;
- (g) **the transfer of the employees of the transferor company** to the transferee company;
- (h) **where the transferor company is a listed company and the transferee company is an unlisted company,—**

- (A) the transferee company shall remain an unlisted company until it becomes a listed company;
- (B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

- (i) **where the transferor company is dissolved**, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and
- (j) such **incidental, consequential and supplemental matters** as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless **a certificate by the company's auditor has been filed with the Tribunal** 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.

- (4) **Effect of an order of tribunal:** Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to

the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

- (5) **Filing of certified copy of order with registrar:** Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.
- (6) **Effective date specified in scheme:** The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.
- (7) **Filing of duly certified statement of compliance of scheme with registrar:** Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed 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.
- (8) **In case of contravention:** If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation— For the purposes of this section,—

- (i) **in a scheme involving a merger**, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;
- (ii) **references to merging companies** are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;
- (iii) **a scheme involves a division**, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and
- (iv) **property includes** assets, rights and interests of every description and liabilities include debts and obligations of every description.

5. Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority [Section 235]

(1) Basic requirements as to acquisition of shares:

- The scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has been approved by the holders of not less than 9/10th in value of the shares whose transfer is involved.
- The approval from 9/10th shareholders in value shall be received within four months after making of an offer in that behalf by the transferee company.
- The shares already held at the date of the offer by Transferee Company, or by a nominee of the transferee company or its subsidiary companies shall not be counted for this purpose.
- The transferee company shall express his desire to acquire the remaining shares of dissenting shareholders within two months after the expiry of the said four months and shall give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares

(2) Order of Tribunal to acquire shares of dissenting shareholders: Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(3) Application by dissenting shareholders:

- (i) Where a notice has been given by the transferee company **on an application made by the dissenting shareholder** and the Tribunal has not, made an order to the contrary i.e. order made in favour of the company- the transferee company shall, on the expiry of one month from the date on which the notice has been given, or,
- (ii) if an application to the Tribunal by the dissenting shareholder is then pending, - Nothing is required to be done.
- (iii) after that **application has been disposed of-**

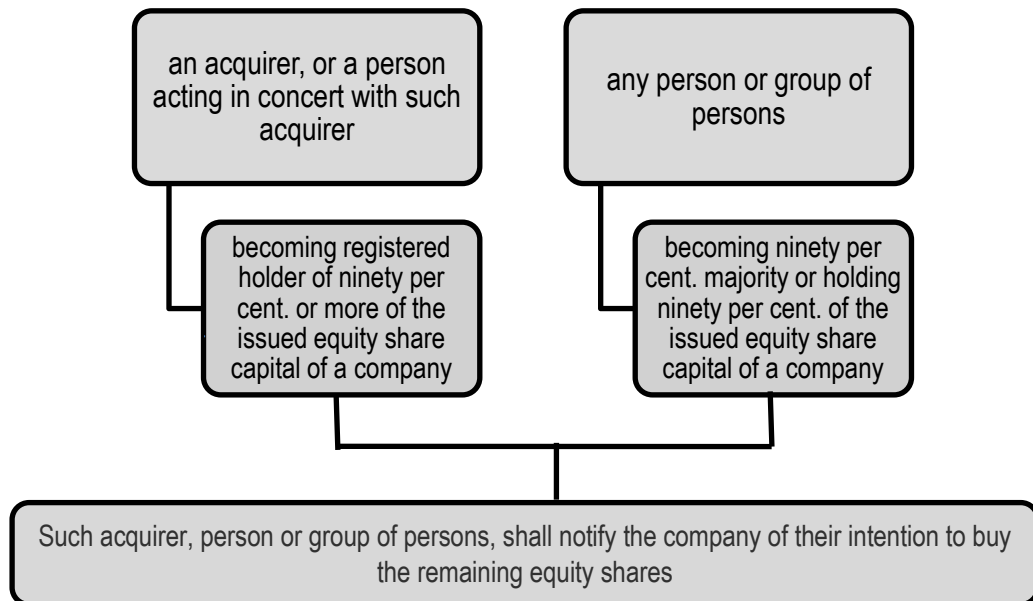
shall send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company- the amount or other

consideration representing the price payable by the transferee company for the shares which that company is entitled to acquire.

- (iv) The **transferor company shall—**
 - (a) thereupon register the transferee company as the holder of those shares; and
 - (b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.
- (4) **Separate Bank account for disbursement to entitled shareholders:** Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.
- (5) **Scheme/contract made before the commencement of Act:** In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—
 - (a) in sub-section (1), for the words “the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,” the words “the shares affected” shall be substituted; and
 - (b) in sub-section (3), the words “together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company” shall be omitted.

*Explanation—*For the purposes of this section, “**dissenting shareholder**” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

6. Purchase of Minority Shareholding [Section 236]



(1) **Notify to company for purchase of minority shareholding:**

- In the event of an acquirer, or a person acting in concert with such acquirer - becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or
- in the event of any person or group of persons- becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company,

by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

(2) **Offer of equity shares to minority shareholders by acquirer, person or group of persons:** The acquirer, person or group of persons shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with Rule 27.

(3) **Offer to majority shareholder to purchase the minority equity shareholding:** The minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with Rule 27.

- (4) **Deposit of amount in separate bank account:** The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by the transferor company for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days:

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

- (5) **Role of Transferor Company to act as a transfer agent in the event of purchase:** In the event of a purchase under this section, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.
- (6) **Transferor company to issue shares:** In the absence of a physical delivery of shares by the shareholders within the time specified by the company,
- the share certificates shall be deemed to be cancelled, and
 - the transferor company shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law, and
 - make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.
- (7) **Right of shareholders to make an offer for sale of minority equity shareholding:** In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for-
- any shareholder or shareholders who have died or ceased to exist, or
 - whose heirs, successors, administrators or assignees have not been brought on record by transmission,

the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.

- (8) **Sharing of additional compensation:** Where the shares of minority shareholders have been acquired in pursuance of this section, and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement,-

the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis.

Explanation—For the purposes of this section, the expressions “acquirer” and “person acting in concert” shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

Example: The issued equity share capital of ABC Limited is INR 50 Crores and 90% of such issued capital has been acquired by the XYZ Limited as a part of Amalgamation. In remaining minority shareholding of INR 5 crores, INR 4 crores has been held by Person “A”. Hence, if he negotiate with the company with price higher then the decided under the scheme. The extra amount / compensation received by person “A” shall be allocated to all minority shareholders on pro rata basis.

- (9) **Determination of price for purchase of minority shareholders:** Rule 27 prescribes that the Registered valuer shall determine the 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 prescribed rules.
- (10) **On failure of acquisition of shares:** When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—
- (a) the shares of the company of the residual minority equity shareholder had been delisted; and
 - (b) the period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed.

7. Power of Central Government to Provide for Amalgamation of Companies in Public Interest [Section 237]

- (1) **Central Government may by order provide for amalgamation in the public interest:** Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.
- (2) **Continuation by or against the transferee company of any legal proceedings:** The order may also provide for the continuation by or against the transferee company of any

legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

- (3) **Same Interest Rights or Compensation:** Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.
- (4) **Appeal by aggrieved person on assessment of compensation:** Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.
- (5) **Requirements for passing of an order:** No order shall be made under this section unless—
 - (a) a copy of the proposed order has been sent in draft to each of the companies concerned;
 - (b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and
 - (c) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.
- (6) **Copies to be presented to parliament:** The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

8. Registration of offer of Schemes involving transfer of shares [Section 238]

- (1) **Registration of circular/ offer involving transfer of shares:** In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—

- (a) **every circular containing such offer and recommendation** to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as prescribed in Rule 28;
- (b) **every such offer** shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and
- (c) **every such circular shall be presented to the Registrar** for registration and no such circular shall be issued until it is so registered:

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

- (2) **Appeal against the order of the registrar:** An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).
- (3) **In case of failure of registration:** The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

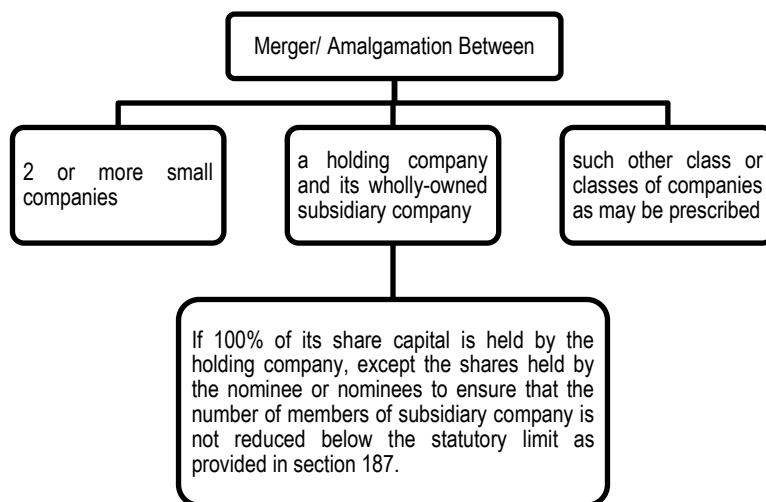
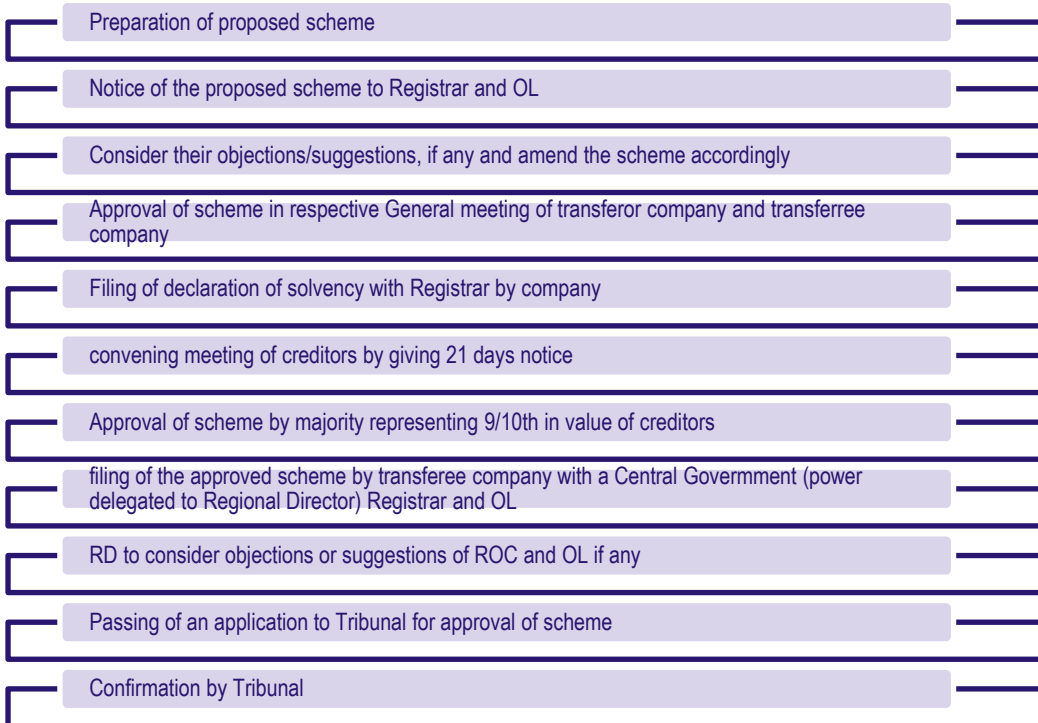
9. Preservation of Books and Papers of Amalgamated Companies [Section 239]

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

10. Liability of Officers in Respect of Offences Committed Prior to Merger, Amalgamation, etc. [Section 240]

Retrospective effect of liability: Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

11. Fast Track Mode of Merger or Amalgamation of Certain Companies [Section 233]



- (1) **Companies who may enter into scheme of merger or amalgamation:** A scheme of merger or amalgamation may be entered into between 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 given in *Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016*, subject to the following, namely:—

- (a) a **notice of the proposed scheme inviting objections or suggestions**, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
 - (b) the **objections and suggestions received are considered by the companies** in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;
 - (c) each of the companies involved in the merger files a **declaration of solvency**, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
 - (d) the **scheme is approved by majority** representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.
- (2) **Filing of copy of scheme with the Central Government, Registrar and the Official Liquidator:** The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.
- (3) **On the receipt of the scheme** if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.
- If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days.
- If no such communication is made, it shall be presumed that he has no objection to the scheme.
- (4) **Filing of application by Central government with Tribunal:** If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal **within a period of sixty days of the receipt of the scheme**, stating its objections and requesting that the Tribunal may consider the scheme under section 232.

- (5) **Passing of an order of Tribunal:** On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:

Provided that if the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.

- (6) **Communication of an order to registrar:** A copy of the order confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.
- (7) The registration of the scheme, shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.
- (8) **Effect of Registration of Scheme:** The registration of the scheme shall have the following effects, namely:—

- transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company
- the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;
- legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and
- where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

- (9) **Effect of merger and amalgamation on transferee:** A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.
- (10) **Filing of an application by transferee company with the Registrar:** The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital:

Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against

the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.

(11) **Applicability of the provisions:** The provisions of this section shall *mutatis mutandis* apply to-

- a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230, or
- division or transfer of a company referred to clause (b) of subsection (1) of section 232.

(12) The Central Government may provide for the merger or amalgamation of companies in such manner as may be prescribed.

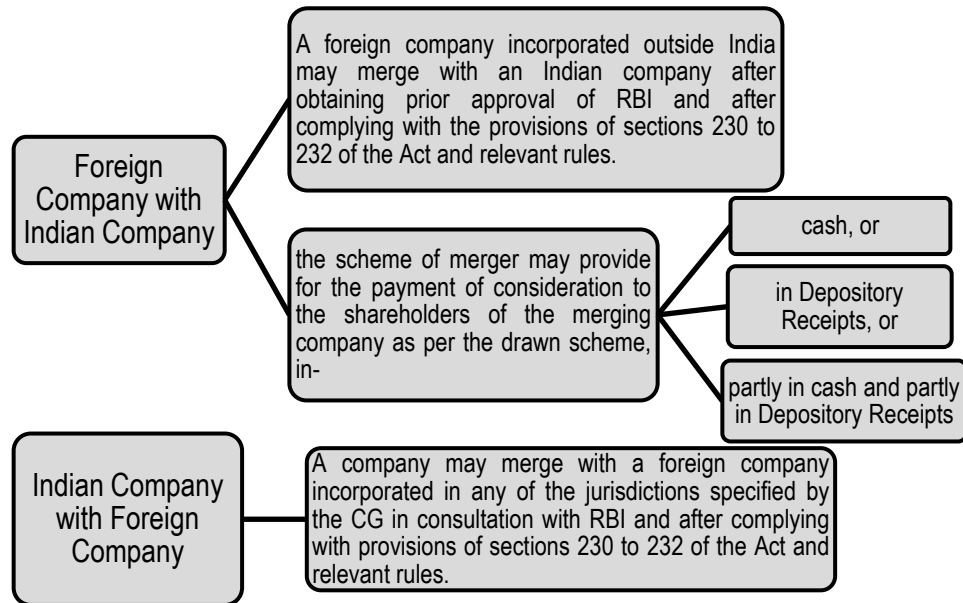
(13) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

(14) According to sub-rule (8) of Rule 25, it is clarified that with respect to schemes of arrangements 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.

12. Merger or Amalgamation of Company with Foreign Company [Section 234]

The provisions given in this section is also known as provision related to cross border merger.

The expression “**foreign company**” means any company or body corporate incorporated outside India whether having a place of business in India or not.



RELEVANT AMENDMENTS

1. Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017

The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015. Following are the amendments:

The word "Tribunal" wherever it occurs in sections 230 to 232, the words "Central Government" shall be substituted.

2. Amendments through the Companies (Amendment) Act, 2017

Relevant sections	Amendment	Status
Amendment of section 236.	In section 236 of the principal Act, in sub-sections (4), (5) and (6), for the words, "transferor company", wherever they occur, the words "company whose shares are being transferred" shall be substituted.	Notified till 30 th April, 2018.