

**Mergers, Demergers, Acquisitions, Takeover & Amalgamation of  
Companies Demystified**

**In the present era of economic growth, companies are seeking growth in no time; the cruel realities of business are shirking base of companies not having deep pockets. The big sharks are grabbing the opportunities to expand and grow at a fast pace in an attempt to outshine, compete and overtake the established business houses. The resultant takeovers, acquisitions, mergers, amalgamations and restructuring are providing ample opportunities to the professionals to prove their mettle. The finance professionals (Chartered Accountants) and other technical, legal and valuation experts are basking in the sun and making hay till it shines.**

Corporate Re-structuring/Re-engineering of companies entails a closer scrutiny of the company's past and present performance, the future outlook and examination of critical benefits by financial and technical experts, which may ensue to a merged or restructured entity. The changing times necessitate the corporates and their leaders to think differently. The question no longer is of survival but of growth, of enjoying benefits of larger scale, of cost reduction and of being

competitive. To grow through mergers and amalgamations is the most effortless way. The strategy to expand now-a-days include acquisitions and takeovers, which enable a well-established corporate to synergise and expand without any waiting period. Establishing a new business of the same or equivalent magnitude will only consume greater resources and time. The purpose of mergers, demergers, amalgamations, acquisitions and takeovers be varied ranging from eliminating or reducing competition, expansion and growth, achieving economies of scale, reduction of costs, ensuring regular supply of raw material etc.

### **Enactment History**

The Companies Act of 1913 contained only four sections relating to amalgamation. The present Act of 1956, which replaced the 1913 Act, contained sections 390 to 396A relating to arrangement, compromises, reconstruction and amalgamation. The power of merger lies with the High Court under section 392 and also with the Central Government under section 396A.

### **Meaning**

The terms merger and amalgamation have not been defined in the Companies Act, 1956 (hereinafter referred to as the Act) though this most voluminous piece of legislation contains 69 definitions in Section 2. The concept paper recently issued by the Ministry of Company Affairs, the fate of which is still unknown, contained 100 such

definitions but still stopped short of defining merger or amalgamation. The terms merger and amalgamation are synonyms and the term '*amalgamation*', as per Concise Oxford Dictionary, Tenth Edition, means, '*to combine or unite to form one organization or structure*'.

### **Provisions under the Companies Act, 1956**

The provisions relating to merger and amalgamation are contained in sections 390 to 396A in Chapter V of Part VI of the Act. Any proposal of amalgamation or merger begins with the process of due diligence, as the proposal for merger without due diligence is like entering a tunnel with darkness growing with each step. The due diligence process makes the journey see the light at the end of the tunnel – the light of wisdom to amalgamate or not.

The Act and the relevant rules pertaining to amalgamation are to be followed scrupulously. The provisions of the Act also deal with compromise or arrangement within or without amalgamation or merger. Presently, the High Court enjoys powers of sanctioning amalgamation matters under section 394 of the Act though it is a matter of time when this power will be exercised by National Company Law Tribunal, a forum where Chartered Accountants will be authorized to appear.

## **Role of Chartered Accountants**

The Chartered Accountants, being well-equipped with accounting knowledge, are at forefront in so far as planning and execution of corporate restructuring, merger, amalgamation, demerger, takeover and acquisitions is concerned. The role of Chartered Accountants, in any amalgamation case, cannot be undermined as without their uncanny insight within the financial maze, no due diligence, valuation, share exchange ratio etc. can take place.

## **Understanding mergers and amalgamations**

An attempt has been made in this handbook to present the provisions of the Companies Act, 1956 relating to arrangement, mergers and amalgamations in form of questions and answers for ease of understanding, insight and awareness.

- 1. Can a compromise or arrangement between company and creditors and company and members be made and whether it requires approval of the Court?**

Yes, compromise or arrangement can be made between a company and its creditors or any class of them and also between a company and its members or any class of them. Such a compromise or arrangement requires sanction of the court, which directs holding of meeting of creditors or members or

class of creditors or members, as the case may be. On agreement of creditors or members **present in majority representing three-fourth in value (both the conditions are concurrent and cumulative)** of creditors or members, the court may sanction any such compromise or arrangement.

**2. What are the powers vested in court in relation to amalgamation of two companies?**

The court enjoys vast powers in relation to grant of sanction for amalgamation of companies and can make provisions in the order, in respect of all or any of the following matters: -

- (i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;
- (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;

- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (iv) the dissolution, without winding up, of any transferor company;
- (v) the provisions to be made for any person who, within such time and in such manner as the tribunal directs, dissent from the compromise or arrangement; and
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

**3. Is it necessary for the Court to consider the report of the Registrar of Companies prior to grant of sanction?**

It is mandatory for the court to consider not only report of Registrar of Companies concerned but also the report of Official Liquidator prior to sanctioning the scheme of amalgamation. The Registrar of Companies & Official Liquidators have to make a report to the Court that the affairs of the company are not being conducted in a manner, prejudicial interest of their member or to public interest. However, in case of a demerger, which does not

result in dissolution of any company, the Court may not insist upon the report of the Official Liquidator.

**4. Is it possible to have the merger with retrospective effect?**

Yes, a merger can be made effective from a past date, i.e. it can be retrospective. However, effective date, which is too far in the past, can create problems and adverse implication for such a merger in the form of non-compliance of various laws cannot be ruled out. The merger/demerger from a retrospective date is possible provided both the companies existed on the said date.

**5. Can the merger be effective from a future date?**

There is no bar to have the effective date of amalgamation in future. Incidentally, majority of the mergers are effective from a future date.

**6. What is the difference between 'Effective Date' and the 'Appointed Date'?**

The 'Appointed Date' connotes the date of amalgamation i.e. the date from which the undertaking including assets and liabilities of the transferor company vest in transferee company. The

'Effective Date' signifies the completion of all the formalities of merger.

**7. Is it possible to have reduction of capital as part of the scheme of amalgamation?**

Yes, it is possible to include reduction of capital as part of the scheme of amalgamation provided the Articles of Association of the company authorize such reduction and special resolution to this effect is passed as contemplated under section 100 & 101 of the Act.

**8. In case reduction of capital is inherent in a scheme of amalgamation, is it necessary to obtain separate Court approval after following the laid down procedure?**

There have been numerous decided cases which indicate that separate petition under section 100 of the Act for reduction of capital need not be made if the same is covered as a part of scheme of amalgamation. The Courts have held that the provisions contained in section 391 are a complete code in itself. Thus, no separate petition is necessary for reduction of capital, which is a part of scheme of amalgamation. However, in the resolution in which the approval for scheme of amalgamation is sought must, in explicit terms, state that this approval is also for reduction of capital, being part of the scheme.



**9. Can there be a change in the Capital Structure during the pendency of the Merger Petition?**

Ordinarily, any change in capital structure other than the Authorised Capital will normally lead to some practical difficulties and is best to avoid it. In any case, the scheme of amalgamation also contains a provision relating to increase of issued, subscribed and paid-up capital.

**10. What is 'Reverse Merger'?**

'Reverse Merger' is a coined term generally used in those cases of mergers where a company having higher networth is merging into a company having networth lower than it.

**11. Do SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 are applicable to amalgamation or merger or demerger under the Act?**

No, in cases of amalgamation or merger or demerger under the Act, SEBI Takeover Regulations have no applicability as laid down in Regulation 3(1)(j) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

**12. Whether Transferor and Transferee companies have to make separate petitions for approval of scheme of amalgamation?**

It has been held in some cases that where the entire undertaking of the transferor company is transferred to the transferee company not affecting the rights of the creditor or members inter se and there is no reorganization of capital of the transferee company, there is no need for the transferee company to file a separate petition. In practice, however, a separate petition is generally preferred by the transferee company.

**13. Is it necessary to obtain approval of the Stock Exchanges prior to filing of amalgamation petition with the Court in case of listed companies?**

The only obligation of listed companies, as provided in clause 24 of the Listing Agreement, is to file any scheme/petition propose to be filed before any Court/Tribunal under sections 391, 394 & 101 of the Act with the stock exchange for approval at least one month before it is presented to the Court or Tribunal. The requirement is, therefore, to **file** the Scheme/Petition at least 30 days prior to filing it with the Court/Tribunal. It is not necessary to obtain **prior approval** of the stock exchange. The Courts have ruled that non-receipt of approval from stock exchange

does not bar the Courts to approve the amalgamation/merger as the approval of the stock exchanges is a mere procedural formality.

**14. How the approval of shareholders' and creditors' are obtained in cases of amalgamation/merger?**

The approval of shareholders' and creditors – secured and unsecured are obtained in meetings convened under the directions of the Court. The Court normally appoints a Chairperson and an alternate Chairperson for each such meeting. The application is made to the Court for directing convening of meetings and the Court can issue directions on any or all of the following matters: -

- a) Date, time and place of meetings;
- b) Appointment of chairperson for the meetings;
- c) Contents of notice and the manner of service of Notice;
- d) Determination of the class/classes of members and creditors whose meetings are to be held;
- e) Determination of quorum;

f) Any other matter as the court may deem fit.

**15. Is it possible to obtain dispensation of the meetings of shareholders or creditors?**

It is the discretion of the Court and generally where it is shown that creditors or members have given their consent to the scheme of amalgamation and their interest are not prejudicially affected, the Courts grant dispensation. The judicial discretion is exercised after careful considerations of the facts and circumstances of the case. A case in example could be grant of dispensation of shareholders' meeting in a company with few shareholders and all of them have given their consent in writing.

**16. Is voting by show of hands is allowed in meetings of creditors or members in which approval of the Scheme of Amalgamation is the only agenda item?**

The voting at Court convened meetings of members or creditors is to done through poll only. The voting by show of hands is not permissible.

**17. Is it necessary to pass a special resolution i.e. 3/4<sup>th</sup> majority for approval of scheme of amalgamation?**

Section 391(2) requires that the resolution approving the scheme of amalgamation should be passed by *majority in number representing 3/4<sup>th</sup> in value* of the creditors or members. Both the conditions are cumulative. However, conditions of *majority in number and representing 3/4<sup>th</sup> in value* is to be applied for members or creditors **present** in person or through proxies at the time of meeting.

**18. Whether meeting of Preference Shareholders is necessary?**

Section 391 refers to the meeting of shareholders without distinguishing between equity and preference shareholders. Therefore, it is necessary to call meetings of both equity and preference shareholders for seeking their approval.

**19. Can a Court refuse to call meetings?**

A Court does not act as a mere conduit pipe or a stamping authority. It is the duty of the Court to look upon the merits of the Scheme and its financial viability to ensure that the scheme is detrimental to the interests of the creditors or members or public interest. The Courts have laid down circumstances, which are considered by them before convening a meeting. Such circumstances include whether the scheme is made in good faith, it is fair and reasonable, it will yield to a smooth and satisfactory

working, it does not offend public or commercial morality amongst other considerations.

**20. Is it necessary for a listed company to obtain consent of members by postal ballot?**

Section 192A read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 makes it mandatory for listed companies to pass a resolution under section 391(2) through Postal Ballot. But the said provision is against the substantive law as laid down in Section 391(2). The words used in the said section, particularly, '*.....present and voting....*' indicate the necessity of holding a meeting. Further, since the Court can also dispense with the holding of such a meeting, the provision relating to Postal Ballot is rendered meaningless. In *re Wipro Limited (2001) 106 Comp Cases 541 (Kar)*, the Karnataka High Court held that the postal ballot is not necessary in case of amalgamations. The judgment of Karnataka High Court seems to be correct as the notification of postal ballot is not in tune with the Companies (Court) Rules, 1959.

**21. Is it necessary to submit report of Chairman to the Court?**

It is incumbent upon the Chairperson to submit report of proceedings of the meeting indicating –

- a) the number of persons present at the meeting;
- b) the number of persons voting in person and through proxy;
- c) the value of shares/indebted amount;
- d) the votes cast in favour of the resolution; and
- e) the votes cast against the resolution.

**22. How the share exchange ratio is decided?**

The share exchange ratio is derived or decided on the basis of valuation done by a Chartered Accountant. Considering the valuation report, share exchange ratio is arrived upon.

**23. Whether it is mandatory to obtain Chartered Accountants report or share exchange ratio can be derived without it?**

Though it is not mandatory to obtain CA report, it is important to arrive at share exchange ratio on the basis of such a report only as the Courts rely to a greater degree on such reports, being given by financial experts and the Courts are suspicious of genuineness of share exchange ratio which has been arrived at without such a report.

**24. Is there any Accounting Standard on 'Accounting for Amalgamations'**

The Institute of Chartered Accountants of India (ICAI) has issued AS-14 Accounting for Amalgamations which deal with accounting treatment and disclosure in case of Amalgamations.



**DUE DILLIGENCE IN MERGERS AND AMALGAMATIONS**

**Meaning of Due Dilligence**

Due Dilligence refers to the process of appraising, assessing and evaluating business risk with analysis of cost benefit which is involved in Merger & Amalgamation. It is like trying to find a switch to put on the light while entering a dark room. The decision to merge or amalgamate has to be based on considered opinion, which can be formed only after scanning of information and records available. Due Dilligence embraces the assessment process to judge the benefits vis-à-vis the troubles that will be faced in post merger scenario. The process of due diligence cannot be sidestepped in Mergers and Acquisitions.

**Due Dilligence vis-à-vis Audit**

Due Dilligence is a broader term than financial audit. In financial audit, the auditors are mainly concerned so far as the material accuracy of the financials and its presentation in the form of statements with a view to provide true and fair picture of entity's financials. The due diligence process goes beyond the books of account maintained by the

entity and involves analysis of actions of entity – assessment of problems faced by the entity, impact of legal cases, tax assessments, hidden liabilities etc. The due diligence process includes review of cash flows – past and future, status of tax assessments and its financial impact, valuation of assets, digging out hidden liabilities after an independent assessment, assessment of viability, review of technical feasibility, assessment and analysis of information technology security systems etc.

### **What is included in due diligence?**

Due Dilligence encompasses: –

1. Review of Commercial viability
2. Review of Financial liability
3. Review of Tax Assessments
4. Review of Legal cases
5. Review of Manpower Resources
6. Review of compliance of laws

### **Teamwork**

The due diligence process is a teamwork consisting of chartered accountants, lawyers, valuers having expertise in their own field. The assessment, review, analysis, scrutiny and examination under due diligence process involves specialization and application of mind which goes beyond fact finding exercise i.e. mere checking of records available. The Chartered Accountants play a major role in due diligence process and no meaningful due diligence would be complete without their participation.

### **Steps in Due Dilligence**

The team, which has been, assigned the task of due diligence follows the following steps: -

1. Identification of the purpose of Merger and Acquisition.
2. Review and Study of past Business operations.
3. Study of Information System within the organization.
4. Collection of Documents.
5. Assemblage of Key Information from Management and Independent sources.

6. Allocation of review responsibilities amongst team members.
7. Compilation of findings of team members.
8. Assessment of findings.
9. Preparation of due diligence report.

## Chapter – 3

### **Due Dilligence Checklist**

#### **Step 1 – Collection of Documents/Information from Management**

1. Memorandum & Articles of Association of the entity.
2. Financial Statements consisting of Balance Sheet, Profit & Loss Account, Schedules, Cash Flow Statement, Notes to Accounts, Auditor's Report and Director's Report for last 3 years or 5 years.
3. Projected Business and Income Scenario.
4. Foreign Collaboration Agreements.
5. Technical Collaboration Agreements.
6. Intellectual Property Rights – Copyrights, Patents & Trade Marks
7. Pending Litigation details with estimated financial liability
8. Licenses, quota rights etc.
9. Government Approvals including Environmental clearances
10. Correspondence with Government Authorities
11. Marketing Network Details with feasibility studies
12. Brand and Goodwill Valuation

13. Internal audit Reports
14. Tax Assessments and Tax Audit Reports for last 3 or 5 years
15. Loan Agreements and Charge Certificates
16. Corporate Guarantees given
17. Lease Agreements
18. Shareholding Details
19. Technical Feasibility Reports
20. Pending Contracts/Orders in hand
21. Internal Control Systems and Processes
22. Statement of Inventory for last 3 or 5 years
23. Dealership and franchisee Agreements
24. Employee Contracts
25. Payroll Liability
26. Status of Statutory Dues including Labour Dues
27. Titles and ownership of Property and Assets
28. Status of Contingent Liabilities
29. Sales and Purchase Agreements
30. Pricing Policy
31. MOU's and Shareholders' Agreements
32. Joint Venture Agreements

33. Subsidiary and Associate Company Details and financials
34. Warranty Agreements
35. Insurance Policies
36. Cenvat Credit on Capital Goods
37. ESOP's and Sweat Equity Shares
38. Segment Information
39. Information Technology Systems
40. IT Security Measures
41. Minutes of Board and Committee Meetings

## **Step 2 – Assemblage of Information from Independent Sources**

1. Industry Data
2. Independent Search of Title Deeds
3. Market Reports and Studies
4. Customer Reports
5. Product Feasibility Report
6. Past Litigation Record and Orders
7. Prosecution of Company and Directors for offences for non-compliance of laws

8. Procurement of certified copies of Financial Statements and other documents
9. Search Report for Charges and Mortgages
10. Credit Report from Bankers/Financial institutions

### **Step 3 – Review of Documents/Information**

1. Over valuation of Assets
2. Under Valuation of Liabilities
3. Hidden Liabilities
4. Product warranties/claims
5. Financial Liability arising out of Pending Litigation
6. Guarantees/Comfort Letters/Letters of Credit given
7. Statutory Dues Liability including Interest and Penalty
8. Non-recoverable Assets
9. Bad and Doubtful Debts
10. Likelihood of accrual of contingent liabilities
11. Over valuation of Intangible Assets
12. Technological Obsolescence
13. Tax liabilities in future



14. Status of Labour Management Agreements with reference to retrenchment
15. Slow-moving, Non-moving & Obsolete Inventory
16. Valuation Method of Inventory
17. Compliance of various Laws
18. Compliance of Accounting Standards
19. Intellectual property Restrictive Covenants
20. IT security measures
21. Identification of Items not disclosed
22. Correctness of financial figures
23. Quality of Management and Leadership
24. Research and Development Programmes
25. Market Reputation
26. Governance policies

**CHECLIST/STEPS FOR AMALGAMATION/MERGER**

<b>S. No.</b>	<b>STEPS</b>
1)	Due Diligence. System, Business, Tax, Financial & Legal Due Diligence
2)	Calling of Board meeting to appoint valuers , lawyers and consultants
3)	Notifying the Stock Exchange, if applicable, about Board Meeting for the proposed Amalgamation
4)	Determination of Share Exchange Ratio on the basis of Report of a Chartered Accountant.
5)	Approval of Scheme of Amalgamation
6)	Notification to Stock Exchanges, press releases, if applicable

7)	Intimation to Bankers, Financial Institutions and other secured creditors and obtain their consent
8)	Application to be filed to the Court for direction to convene the Extraordinary General Meeting of Shareholders, Creditors – Secured and Unsecured or to obtain dispensation.
9)	Drafting notice, form of proxy and approved by the Registrar of the Court or companies, if meetings not dispensed with
10)	Despatch of notices for holding the meeting to pass the resolution along with the explanatory statement as required under section 393(1)(a) of the Companies Act, 1956.
11)	Publication of advertisement in English & Local Language newspapers , as approved by the Court, regarding holding of the Meetings of Shareholders and Creditors.
12)	Filing of Report in the form of affidavit by the Chairpersons of the meetings with the Court.
13)	Holding of General Meeting to approve Merger or Amalgamation with requisite majority
14)	Passing of Resolution approving the Scheme of Amalgamation subject to High Court confirmation by both companies
15)	Filing of Resolutions with the registrar of companies within 30 days in Form No. 23.

16)	Filing of the petition with High Court for approval of the scheme within 7 days of filing of chairman's reports of meetings
17)	Notice to the official liquidator of the Transferor Company and from Registrar of Companies of Transferor and Transferee company(ies)
18)	Publication of advertisement as approved by the Court notifying the date of hearing fixed by the High Court regarding consideration of petition.
19)	Official Liquidator & Regional Director to submit reports – Follow-up required
20)	Hearing by the Court and prior to passing order allowing the scheme , to hear objections. Court may approve, with or without conditions.
21)	Filing of certified copy of Court's Order with the Registrar of Companies within 30 days in form No. 21.
22)	To carry out the scheme of amalgamation as approved by the High Court issuing notices, allotting shares, etc.
23)	Allotment of shares and to file Return of allotment with the Registrar of Companies in Form No. 2.

## Chapter – 5

### **Draft Resolution of the Board approving the Scheme of Amalgamation**

**“RESOLVED** pursuant to the provisions of sections 391 to 394 and other applicable provisions, if any, of the Companies Act, 1956 and subject to the approval of the members/creditors and approval by the High Court of Delhi at New Delhi, the Scheme of Amalgamation in terms of the draft produced at the meeting duly initialed by the Chairman for the purpose of identification, be and is hereby approved for amalgamation of the company with XYZ Limited with effect from 1<sup>st</sup> April, 2005 being the ‘Appointed Date’.”

**“RESOLVED FURTHER** that Mr. \_\_\_\_\_ and Mr. \_\_\_\_\_, Director of the company be and are hereby severally authorized to sign any application, affidavit, petition or any other document as may be required to be signed in connection with the approval of the Scheme. They are further authorized to do all such things, deeds and acts as may be deemed necessary and expedient in connection with the approval of the Scheme, for and on behalf of the company.”

**"RESOLVED FURTHER THAT** Mr. \_\_\_\_\_ and Mr. \_\_\_\_\_, Directors of the company be and are hereby authorised to appoint and engage any advocate or firm of advocates and solicitors to represent the company for approval of the Scheme."

### **Another Draft of Resolution for Approval of Scheme of Amalgamation**

**"RESOLVED THAT** pursuant to the provisions of sections 391 to 395 of the Companies Act, 1956, and other applicable provisions, if any, and subject to the requisite approval of the members and creditors including the financial institutions, banks and other being lenders of the company, as the case may be, accorded either by way of a resolution passed in duly convened meeting(s) or through a written consent/NOC or otherwise, and subject to the approval of the appropriate Hon'ble High Court, the proposed scheme of Amalgamation of \_\_\_\_\_ (hereinafter referred to as "the Transferor Company) with \_\_\_\_\_ (hereinafter referred to as "the Transferee Company) with all assets and liabilities, be and is hereby approved.

**"RESOLVED FURTHER** that the terms and conditions as set out in the draft Scheme of Amalgamation placed before the Board duly initiated by the Chairman for the purpose of identification and is hereby approved in specific."

**“RESOLVED FUTURE THAT** subject to the approval of the members and creditors of the Company, as the case may be, accorded either by way of a resolution passed in duly convened meeting(s) or through a written consent/NOC or otherwise, and subject to the approval of the Hon’ble High Court, the draft Scheme of Amalgamation as placed before the Board and initialed by the Chairman for the purpose of identification, with such alterations or modifications as may be expedient or necessary for satisfying the requirement or conditions imposed by the Central Government or the Hon’ble High Court.”

**“RESOLVED FURTHER THAT** pursuant to the provisions of sections 391 to 395 of the Companies Act, 1956, and the Companies (Court) Rules, 1959, and other applicable provisions, if any, necessary application(s) and petition(s) be moved before the appropriate Hon’ble High Court for seeking its directions as to convening, holding and conduction meeting(s) of the equity shareholders and creditors, as the case may be, appointment of chairman, issue and despatch of notices and advertisements and for such other directions as the Hon’ble High Court may deem fit and proper and for seeking its approval for the proposed Amalgamation and the proposed Scheme of Amalgamation.”

**“RESOLVED FURTHER THAT** NOC/Consent of members, secured and unsecured creditors of the Company, as the case may be, be obtained in writing and an application be moved before the appropriate Hon’ble High Court for seeking its directions to dispense with the requirement

of convening, holding and conducting separate meeting(s) of the equity shareholders and unsecured creditors of the Company, as the case may be, and on other connected matters.”

**“RESOLVED FURTHER THAT** Mr. \_\_\_\_\_ Director Mr. \_\_\_\_\_, Director of the Company be and are hereby authorised, jointly and / or severally, to sign, file, submit or present necessary applications, petitions, supplementary applications/petitions, summons, deeds, documents, instruments, rejoinders, replies and to swear affidavits or execute bonds for the above mentioned scheme of amalgamation, appear (in person or through a representative) before the appropriate Hon’ble High Court, or at the offices of the appropriate Registrar of Companies, the Regional Director, Ministry of Corporate Affairs, \_\_\_\_\_ Region at \_\_\_\_\_ before any other authority or person in connection with the aforesaid Amalgamation, and to do any other act, deed or thing which may be ancillary or incident to the above mentioned matter or which may otherwise be required for the aforesaid purpose.”



**Draft Scheme of 'Demerger'**

**SCHEME OF ARRANGEMENT & DEMERGER**

**BETWEEN**

**ABC LIMITED**

**AND**

**XYZ LIMITED**

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**(Under Sections 391 to 394 read with Sections 100 to 103 of  
the Companies Act, 1956)**

**1. PREAMBLE:**

1.1 ABC LIMITED is a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at

\_\_\_\_\_.

1.2 ABC LIMITED has 2 main divisions, namely; (a) ABC Products Division with factory located at

\_\_\_\_\_and

(b) DEF Division with factory located at \_\_\_\_\_.

1.3 The (a) ABC Products Division is engaged in the business of manufacturing & trading in all kinds of \_\_\_\_\_; and (b) the DEF division is engaged in the business of manufacture, assembling and sale of all kinds of \_\_\_\_\_.

1.4 XYZ LIMITED is a company incorporated under the Companies Act, 1956 having its registered office at \_\_\_\_\_ and is engaged in the business of manufacture and sale of various kinds of \_\_\_\_\_.

1.5 As a measure of corporate restructuring, more efficient use of existing resources, operation on a broader scale, increasing efficiency in business operations and to realise the potential for further growth, ABC LIMITED has decided to demerge its DEF Division. The proposed demerger will enable ABC LIMITED to concentrate on its core business i.e. ABC Division and to combat fierce competition arising out of entry of global players. The demerger will provide a specialized DEF business to XYZ LIMITED, which in turn shall be able to chalk out growth plan thereby increasing profitability of the Division.

- 1.6 ABC LIMITED proposes by this Scheme of Arrangement to separate the DEF Division by demerging it to XYZ LIMITED and restructure the respective companies ABC LIMITED & XYZ LIMITED post demerger.
- 1.7 To give effect to the said proposal, the Scheme of Arrangement & Demerger is presented for approval of the Hon'ble High Court at Delhi.

## 2. **DEFINITIONS:**

In this Scheme unless repugnant to the meaning or context thereof, the following expressions shall have the following meaning: -

- A. ` **The Act** ' means the Companies Act, 1956.
- B. The "**Appointed Date**" means April 1, 2005, the date with effect from which the scheme of Arrangement & Demerger shall be applicable.
- C. "**Court**" means the Hon'ble High Court of Judicature at Delhi.

D. The ` **Effective Date** ' means the date by which last of the approvals specified in this Scheme shall have been obtained.

E. The ` **DEF Division** ' means the unit of ABC LIMITED at ..... (Delhi) and shall also include -

(i) all the assets whether moveable or immoveable, tangible or intangible including all rights , title , interest, covenant, undertakings, liabilities including continuing rights, title and interest in connection with the land and the buildings thereon whether leasehold or otherwise, plant and machinery whether leased or otherwise, together with all present and future liability including contingent liabilities and debts appertaining thereto, of the Transferor Company of all of which relate to the DEF Division, as more fully set out in the Schedule I hereof. In particular, the details of the material parcels of land are included in Schedule II hereof.

(ii) All permits, quotas, rights, industrial and other licences, branches, offices, depots and godowns, trade marks, trade names, know-how and other and other intellectual property, patents, copyrights, privileges and benefits of all contracts, agreements and all other rights including lease rights, licenses, powers and facilities of every kind, nature

and description whatsoever pertaining to the DEF Division as set out in Schedule III hereof.

(iii) All permanent employees of ABC LIMITED engaged in or in relation to DEF Division at the factory, branches or other offices;

(iv) All earnest moneys and/or security deposit paid by ABC LIMITED in connection with or relating to the DEF Division;

F. **“Record Date”** means the date to be fixed by the Board of Directors of ABC LIMITED for the purpose of determining the member of ABC LIMITED to whom the shares of XYZ LIMITED will be allotted pursuant to this Scheme.

G. **“Scheme”** means this scheme of Arrangement & Demerger in its present form submitted to the Court for sanction or with any modification(s) approved or imposed or directed by the Court.

H. **“ABC LIMITED’ or the Transferor Company”** means ABC LIMITED, incorporated under the Companies Act, 1956 having its registered \_\_\_\_\_ office \_\_\_\_\_ at

I. **“XYZ LIMITED” or the Transferee Company”** means XYZ LIMITED, the Transferee Company, incorporated under the

Companies Act, 1956, having its registered office at

\_\_\_\_\_.

**3. SHARE CAPITAL:**

(a) Existing Share Capital of ABC LIMITED.

(i) **Authorised Share Capital**                      **Rs.**                      **3,**  
**60,00,000.00**

36,00,000 equity shares of Rs. 10/- each

(ii) **Issued Share Capital**                      **Rs.3,23,80,140.00**

32,38,014 Equity Shares of Rs.10 each

(iii)      **Subscribed      and      paid      up      Capital**  
**Rs.3,17,07,750.00**

31,70,775 equity shares of Rs.10 each fully paid up

(b) Existing Share Capital of XYZ LIMITED

(i) **Authorised Share Capital**                      **Rs.....**

(ii) **Issued Share Capital**                      **Rs.....**

..... Equity Shares of Rs.10 each

(iii) **Subscribed and paid up Capital** Rs.....

..... Equity shares of Rs.10 each fully paid up.

#### **4. TRANSFER OF DEF DEVISION:**

- 4.1 The DEF Division of ABC LIMITED shall be Demerged and transferred to and vested in or be deemed to be transferred to and vested in XYZ LIMITED in accordance with Section 2(19AA) of the Income tax Act, 1961 and in the manner enumerated in ensuing paragraphs.
- 4.2 With effect from the Appointed Date, the DEF Division shall, without any further act or deed, be transferred to and vested in or be deemed to have been transferred to and vested in XYZ LIMITED for all the estate and interest of ABC LIMITED, subject to existing securities, charges and mortgages, if any subsisting thereon in favour of banks, financial institutions, as may be modified, re-adjusted, apportioned or re-allocated by them.
- 4.3 All debts, liabilities, contingent liabilities, duties and obligations of ABC LIMITED relating to the DEF Division as on the Appointed

Date whether provided for or not in the Books of Accounts of ABC LIMITED, whether disclosed or undisclosed in the Balance Sheet of ABC LIMITED shall, without any further act or deed, be the debts, liabilities, contingent liabilities, duties and obligation of XYZ LIMITED and XYZ LIMITED undertakes to meet, discharge and satisfy the same.

- 4.4 XYZ LIMITED undertakes to pay, discharge and satisfy all debts, liabilities, duties and obligations of ABC LIMITED relating to DEF Division as on the Appointed Date and all liabilities, debts, duties, obligations relating to the said division which may accrue or arise after the Appointed Date.
- 4.5 It is expressly clarified that with effect from the Appointed Date, all taxes, duties, excess payable by Transferor Company relating to the DEF Division and all or any refunds/ credit including MAT credit/ claims relating thereto shall be treated as the liability or refund/ credit including MAT credit/ claims, as the case may be, of Transferee Company.
- 4.6 Transferor Company shall permit Transferee Company to use its brand "PQR" and corporate logo as a part of its brand name and marketing / promotional material for products, namely \_\_\_ Assemblies, subject to such terms and conditions as may be agreed to between Transferor Company and Transferee Company.



## **5. CONTRACTS, DEEDS, BONDS AND OTHER INSTRUMENTS**

- 5.1 Subject to the other provisions contained in this Scheme all contracts, deeds, bonds, agreements and other instruments of whatever nature relating to the DEF Division to which ABC LIMITED is a party subsisting or having effect immediately before the arrangement shall remain in full force and effect against or in favour of XYZ LIMITED and may be enforced as fully and effectually as if instead of ABC LIMITED, XYZ LIMITED had been a party thereto.
- 5.2 With effect from the Appointed date, all permits, quotas, rights, industrial and other licences, branches, offices, depots and godowns, trade marks, trade names, know-how and other and other intellectual property, patents, copyrights, privileges and benefits of all contracts, agreements and all other rights including lease rights, licenses, powers and facilities of every kind, nature and description whatsoever pertaining to the DEF Division of ABC LIMITED to which ABC LIMITED is a party or to the benefit of which ABC LIMITED may be eligible and which are subsisting or having effect immediately before the Effective Date, shall be and remain in full force and effect in favour of or against XYZ LIMITED as the case may be, and may be enforced as fully and effectually as if, instead of ABC LIMITED, XYZ LIMITED had been a party or beneficiary or obligee thereto.

- 5.3 With effect from the Appointed Date, any statutory licenses, no objection certificates, permissions or approvals or consents required to carry on operations in the DEF Division of ABC LIMITED shall stand vested in or transferred to XYZ LIMITED without further act or deed, and shall be appropriately mutated by the statutory authorities concerned therewith in favour of XYZ LIMITED upon the vesting and transfer of DEF Division of ABC LIMITED pursuant to the scheme. The benefit of all statutory and regulatory permissions, factory licenses, environmental approvals and consents including the statutory licenses, permissions or approvals or consents required to carry on the operations of the DEF Division shall vest in and become available to XYZ LIMITED pursuant to the scheme.
- 5.4 The XYZ LIMITED, at any time after the coming into effect of this Scheme in accordance with the provisions hereof, if so required under any law or otherwise, will execute deeds of confirmation or other writings or arrangements with any party to any contract or arrangement in relation to the DEF Division of ABC LIMITED to which ABC LIMITED is a party in order to give formal effect to the above provisions. XYZ LIMITED shall, under the provisions of this Scheme, be deemed to be authorized to execute any such writings on behalf of ABC LIMITED and to carry out or perform all such formalities or compliances referred to above on part of ABC LIMITED.

**6. LEGAL PROCEEDINGS**

All legal or other proceedings including any suits, appeals, arbitrations, execution proceedings, references, review, revisions, writ petitions, if any, by or against DEF Division of ABC LIMITED under statute, whether pending on the Appointed Date or which may be instituted in future in respect of any matter arising before the Effective Date and relating to the DEF Division (including those relating to any property, right, power, liability, obligation or duties of ABC LIMITED in respect of the DEF Division ] shall be continued and enforced by or against XYZ LIMITED only. If proceedings are taken against ABC LIMITED, ABC LIMITED will defend the same as per advice of XYZ LIMITED at the cost of XYZ LIMITED and the latter will reimburse and indemnify ABC LIMITED against all liabilities and obligations incurred by ABC LIMITED in respect thereof.

**7. TRANSFEROR COMPANY'S STAFF, WORKMEN AND EMPLOYEES**

- (a) All permanent employees of ABC LIMITED engaged in the DEF Division at its factories, branches and other offices and elsewhere and who are in the employment of ABC LIMITED shall stand transferred to XYZ LIMITED with continuity of service and on the same terms and conditions on which they are engaged as

on the Effective Date by ABC LIMITED. XYZ LIMITED shall undertake to continue to abide by any of the Agreement/Settlement etc entered into by ABC LIMITED in respect of DEF Division with any Union/employees of DEF Division. XYZ LIMITED agree that the service of all such employees with ABC LIMITED upto the Appointed Date shall be taken into account for purposes of all retirement benefits for which they may be eligible in ABC LIMITED upto the Effective Date. XYZ LIMITED further agree that for the purpose of payment of any retrenchment compensation, gratuity and other terminal benefits such past services with ABC LIMITED shall also be taken into account and agrees and undertakes to pay the same as and when payable.

- (b) XYZ LIMITED undertakes that the existing Employees Welfare measures including funds, trusts and arrangement, organised and created by ABC LIMITED for its employees of DEF Division shall be continued for the benefit of such employees, including employees who may join XYZ LIMITED after the Appointed Date on the same terms and conditions and with effect from such day XYZ LIMITED shall make the necessary contributions for such employees taken over by XYZ LIMITED until XYZ LIMITED constitutes its own arrangements and obtains necessary approval for the same.

**8. CONDUCT OF BUSINESS BY TRANSFEROR COMPANY TILL EFFECTIVE DATE**

With effect from the Appointed Date and upto and including the Effective Date:

- (a) Transferor Company shall be deemed to have been carrying on and to be carrying on all business and activities relating to the DEF Division of Transferor Company for and on behalf of Transferee Company.
- (b) All income, expenditures including management costs, profits accruing to Transferor Company and all taxes thereof or losses arising or incurred by it relating to the DEF Division of Transferor Company shall, for all purposes, be treated as the income, expenditures, profits, taxes or losses, as the case may be, of Transferee Company.
- (c) ABC LIMITED hereby undertakes upto and including the Effective Date to carry on its business with proper prudence and without the prior written consent of XYZ LIMITED not to alienate, charge or otherwise deal with or dispose off the DEF Division or any part thereof (except in the usual course of business) or undertake substantial expansion of its existing business pertaining to the DEF Division.

**9. ISSUE OF SHARES BY THE TRANSFEREE COMPANY**

- a) Upon the Scheme being sanctioned by the Hon'ble High Court of Delhi and it becoming effective and the transfer of the DEF Division, becoming effective in terms of the Scheme, XYZ LIMITED shall without any further application or deed, issue at par and allot on proportionate basis to each member of ABC LIMITED, whose name is recorded in the Register of Members of SPML on the Record Date or his/her heirs, executors, administrators or the successors-in-title, as the case may be, \_\_\_\_\_ Equity shares of Rs. \_\_\_\_\_ each in XYZ LIMITED credited as fully paid-up in the ratio of \_\_\_\_\_ for every \_\_\_\_\_ fully paid-up equity shares of Rs. \_\_\_\_\_ each held by each such member of ABC LIMITED. The paid-up share capital of ABC LIMITED shall stand reduced to the extent of net value of assets (including reserves) and liabilities being transferred to XYZ LIMITED.
- b) The reduction of capital as mentioned above in this Scheme of Arrangement shall be effected as a part of this composite Scheme itself and not under a separate process in terms of Sections 100 to 103 of the Act as the same does not involve either diminishing of liabilities in respect of unpaid share capital or any paid up capital.

**10. DIVIDENDS, PROFITS, BONUS/RIGHTS SHARES**

10.1 ABC LIMITED shall not declare any dividend for the period commencing from and after April 1, 2005 without the written consent of the Transferee Company.

10.2 Subject to the provisions of the Scheme, the profits of the ABC LIMITED for the period beginning from April 1, 2005 shall belong to and be the profits of the Transferee Company and will be available to the Transferee Company for being disposed of in any manner, as it thinks fit, including declaration of dividend by the Transferee Company in respect of its financial year ending 31<sup>st</sup> March, 2005 or any year thereafter.

10.3 ABC LIMITED shall not issue or allot any Rights Shares or Bonus Shares, out of its Authorised or unissued Share Capital for the time being.

**11. TERM LOAN AND BANK BORROWINGS/FACILITIES:**

a) ABC LIMITED has obtained term loans and bank borrowings/facilities from banks and financial institutions in respect of the DEF Division against the security of the assets of the said division created as per the details given in the annexure hereto.

- b) Pursuant to the scheme, XYZ LIMITED agrees and undertakes to pay the said term loans and bank/borrowings/facilities with interest cost, charges and expenses as remain due upto the Transfer date, pertaining to the DEF Division vested in it under the scheme and comply with all terms and conditions on which such loans have been granted with such modification as the aid institution/banks may stipulate.
- c) The securities created by ABC LIMITED in favour of any of the financial institutions/banks as mentioned hereinabove for the amounts of their outstanding loans, borrowings/facilities on the movable and immovable properties of the DEF Division, will continue to be in full force and effect and shall remain binding on XYZ LIMITED for the amount of debt, liabilities, and obligations.
- d) All loans raised after the Appointed Date but before the Effective Date and used and liabilities incurred by ABC LIMITED after the Appointed Date but before the Effective Date for operations of the DEF Division shall be discharged by XYZ LIMITED.

## **12. APPLICATIONS TO HIGH COURT**

On the Scheme being agreed to by the requisite majorities of the members of ABC LIMITED and the members of XYZ LIMITED,



both ABC LIMITED as well as the XYZ LIMITED shall respectively with all reasonable dispatch, make applications / petitions to the Court for sanctioning this Scheme of Arrangement under Section 391 of the Act read with Section 100 to 103 and other applicable provisions of the Act for carrying this Scheme into effect. It is hereby clarified that submission of the Scheme to the Court and to any authorities for their respective approvals is without prejudice to all rights, interests, titles and defences ABC LIMITED and XYZ LIMITED has or may have under or pursuant to all applicable laws.

**13. MODIFICATIONS/AMENDMENTS TO THE SCHEME**

ABC LIMITED and XYZ LIMITED may in their full and absolute discretion, assent from time to time, on behalf of all persons concerned to any modifications or amendments to the Scheme or agree to any terms and / or conditions which the Court and / or any other authorities under law may deem fit to approve of or direct or impose or which may otherwise be considered necessary or desirable or appropriate by them in the best interest of the members for settling any questions or doubt or difficulty that may arise, whether by reason of any order of the Court or of any directive or orders of any other authorities or otherwise howsoever, arising out of, under or by virtue of this Scheme and for the implementation and / or carrying out of the Scheme, or in any matter connected therewith and to do all acts,

deeds, matters and things and take all such steps as may be necessary, desirable or expedient for putting the Scheme into effect. The aforesaid powers of ABC LIMITED and XYZ LIMITED may be exercised by their respective Boards, a committee or committees of the concerned Board or any Director authorized in that behalf by the concerned Board.

**14. SCHEME CONDITIONAL ON APPROVALS/SANCTIONS**

The Scheme is conditional upon and subject to the following approvals/permissions and the Arrangement shall be deemed to be completed on the Effective Date.

- a) The approval of the Scheme by the requisite majorities of such classes of persons of ABC LIMITED and XYZ LIMITED, as may be directed by the Court on the applications made for directions under Section 391 read with section 100 to 103 of the Act for calling meetings and necessary resolutions being passed under the Act.
- b) The sanctions of the Court of the Scheme of Arrangement under Sections 391 and 394 of the Act read with Section 100 to 103, in favour of ABC LIMITED & XYZ LIMITED and to the necessary Order or Orders under Sections 391, 392 and 394 of the Act.

- c) The approvals of public financial institutions, banks and creditors wherever necessary, under any contract entered into with them by ABC LIMITED and XYZ LIMITED.
- d) The Sanction or Approval under any law of the Central Government or any other agency, department or authorities concerned in respect of any of the matters in respect of which such sanction or approval is required.
- e) The Scheme shall be subject to such modifications as the Court while sanctioning such arrangement of ABC LIMITED with XYZ LIMITED may direct the Scheme once sanctioned will be binding on all concerned.
- f) Notwithstanding anything contained hereinabove, the Scheme shall also become effective in terms of and upon the fulfillment of requirements of any other law that may be brought into force in this behalf before the Scheme otherwise becomes effective as hereinbefore provided.

**15. EFFECT OF NON-RECEIPT OF APPROVALS/SANCTIONS**

In the event of any of the said sanctions and approvals referred to in clause 14 above not being obtained and / or the Scheme not being sanctioned by the Court and / or the order or orders not being passes as aforesaid, the Scheme of Arrangement shall

become null and void and shall stand revoked, cancelled and be of no effect and in that event no rights and liabilities whatsoever shall accrue to or be incurred by parties inter se, save and except in respect of any act or deed done prior thereto as is contemplated hereunder or as to any right, liability or obligation which has arisen or accrued pursuant thereto and which shall be governed and be preserved or worked out as is specifically provided in the Scheme or may otherwise arise in law. ABC LIMITED and XYZ LIMITED shall bear their own costs, charges and expenses in connection with the Scheme unless otherwise mutually agreed.

**16. EXPENSES CONNECTED WITH THE SCHEME**

- a) All costs, charges and expenses in connection with the Scheme and of carrying on or completing the terms and provisions of the Scheme including any incidental charges shall be borne and paid by ABC LIMITED and XYZ LIMITED in equal shares.
  
- b) In the event of non-fulfillment of any or all obligations under the Scheme, by either ABC LIMITED or XYZ LIMITED, the non-performance of which will put the other company under any obligation, such defaulting company will indemnify all costs / interests etc. to the other company, subject to a specific provision, if any, to the contrary under the Scheme.

- c) All costs, charges, taxes including duties, levies and all other expenses, including legal expenses, if any (save where expressly provided otherwise) of ABC LIMITED or XYZ LIMITED respectively in relation to or in connection with this Scheme including negotiation leading upto the Scheme and for carrying out and completing the terms and provisions of this Scheme and / or incidental to the completion of arrangement of ABC LIMITED in pursuance of this Scheme shall be borne and paid equally by ABC LIMITED and XYZ LIMITED.

**17. RESOLUTION OF DOUBTS/DIFFERENCES**

If any doubt or difference or issue shall arise between the parties hereto or any of their shareholders, creditors, employees and / or any other person as to the construction hereof or as to any account or apportionment to be taken or made of any asset or liability transferred under this Scheme or as to the accounting treatment thereof or as to anything else contained in or relating to or arising out of this Scheme, the same shall be decided by the mutual agreement between the Board of Directors of ABC LIMITED and XYZ LIMITED whose decision shall be final and binding on all concerned.

**Draft Scheme of 'Amalgamation'**

In this Scheme, unless inconsistent with the subject or context:

- (a) "The Transferor Company" means ABCD Limited an Existing Company under section 3 of the Companies Act, 1956, having its Registered Office at \_\_\_\_\_, in the State of \_\_\_\_\_.
- (b) "The Transferee Company" means WXYZ Limited, a Company incorporated under the Companies Act, 1956, having its Registered Office at \_\_\_\_\_, in the State of \_\_\_\_\_.
- (c) "The Act" means the Companies Act, 1956.
- (d) "The Appointed Date" or "The Transfer Date" means April 1, 2005.
- (e) "The Effective Date" means the date on which the last of the approvals hereinafter provided will have been obtained. However, for the purposes of Income Tax Act, the Effective Date shall be April 1, 2005, and for the purposes of allotment of

shares of Transferee Company, the Board of Directors of the Transferee Company may fix the date.

- (f) "The Scheme" means the Scheme of Amalgamation of ABCD Limited With WXYZ Limited as contained herein, or as sanctioned by the \_\_\_\_\_ High Court, with modifications, if any.
- (g) For the purpose of this Scheme, the Undertaking of the Transferor Company shall include all rights and privileges, powers and authorities, and all properties, movable and immovable, real or corporeal, incorporeal in possession or reversion, present or contingent, of whatsoever nature and wheresoever situated including in particular all licenses permits, quotas, approvals, rights, claims, leases, tenancy rights and liberties, patents, trade marks, and import quotas held by the Transferor Company or to which the Transferor Company is entitled, and all debts, liabilities and duties of the Transferor Company and all other obligations of whatsoever kinds including liabilities in respect of the employees of the Transferor Company agreed to be taken over by the Transferee Company, with regard to the payment of gratuity, pension benefits, provident fund or compensation in the event of voluntary retirement or retrenchment.

### **Share Capital**

**A. Transferor Company**

On March 31, 2005, the Authorised Share Capital of the Transferor Company is Rs. 1,00,00,000 (Rupees One Crore) divided into 1,000,000 equity shares of Rs. 10 each and Rs. 10,00,000 (Rupees Ten Lakhs) divided into 1,00,000 preference shares of Rs. 10 each. The issued Capital is Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) divided into \_\_\_\_\_ equity shares of Rs. 10 each and the subscribed and paid-up capital is Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) divided into \_\_\_\_\_ equity shares of Rs. 10 each.

**B. Transferee Company**

On March 31, 2005, the Authorised Share Capital of the Transferee Company is Rs. 20,00,00,000 (Rupees Twenty Crores) divided into 2,00,00,000 equity shares of Rs. 10 each and \_\_\_\_\_ Preference Shares of Rs. \_\_\_\_\_ each. The issued capital is Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) divided into \_\_\_\_\_ equity shares of Rs. 10 each and the subscribed and paid-up capital is Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) divided into \_\_\_\_\_ equity shares of Rs. \_\_\_\_\_ each.



## **The Scheme of Amalgamation**

1. (a) The Undertaking of the Transferor Company and particularly the immovable property incapable of passing by manual delivery including licences, permits, quotas, incentives, subsidies, approvals, rights, claims, leases, tenancy rights, liberties, patents, trade marks and import quotas shall under the provisions of Sections 391 and 394 of the Act and pursuant to the Orders of \_\_\_\_\_ High Court without any further act or deed but subject to the charges affecting the same as on the Effective Date, shall be transferred to and vested in the Transferee Company so as to become the Undertaking and property of the Transferee Company from the Appointed Date. Provided, however, that such charge shall not extend over or be deemed to be extended over any of the assets of the Transferee Company already owned and held by the Transferee Company.
  
- (b) With effect from the Appointed Date, all debts, liabilities, duties and obligations of the Transferor Company (hereinafter referred to as "the said liabilities") shall, pursuant to the Order under Section 394 of the Companies Act, 1956, of \_\_\_\_\_ High Court and without further act or deed be transferred or deemed to be transferred to and vested in and assumed by the Transferee Company so as

to become the debts, liabilities, duties and obligations of the Transferee Company.

- (c) Upon this Scheme becoming effective, the items appearing as Reserves and Surplus in the books of the Transferor Company as at the Appointed Date shall become the corresponding reserves and surplus of the Transferee Company.
2. If any suit, appeal, or other proceedings of whatever nature (hereinafter called the "proceedings") by or against the Transferor Company be pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the Transfer of the undertaking of the Transferor Company or of anything contained in the Scheme, but the proceedings shall be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as they would or might have been continued, prosecuted or enforced by or against the Transferor Company if the Scheme had not been made.
3. The transfer of undertaking under Clause 1 hereof and the continuance of the proceedings by or against the Transferee Company under Clause 2 hereof, shall not affect any transactions or proceedings already concluded by the Transferor Company, in the ordinary course of business on or after the

Transfer Date to the end and intent that the Transferee company accepts and adopts on behalf of itself all acts, deeds and things done lawfully and executed by the Transferor Company in regard thereto as having been done or executed on behalf of the Transferee Company.

4. As from the Transfer Date, the Transferor Company shall be deemed to have carried on and to be carrying on its business for and on behalf of and on account of and in trust for the Transferee Company until such time that the amalgamation becomes effective in terms of the Scheme.
5. As from the Transfer Date, the Transferor Company shall carry on the business of the Transferor Company until the amalgamation becomes effective, with utmost prudence and shall not without concurrence of the Transferee Company alienate, charge or otherwise deal with the property or assets of the Transferor Company or any part thereof, except in the ordinary course of business.
6. With effect from the Transfer Date and up to and inclusive of the Effective Date, all the profits and incomes accruing or arising to the Transferor Company or expenditure and losses incurred or arising as the case may be by the Transferor Company shall, for all purposes, be treated and be deemed to be and accrue as

profits or income or expenditure or losses, as the case may be of the Transferee Company.

7. Subject to the other provisions contained in the Scheme, all lawful contracts, deeds, bonds, agreements and other instruments of whatever nature to which the Transferor Company is a party subsisting or having effect immediately before the amalgamation shall be in full force and effect against or in favour of the Transferee Company and may be enforced as fully and effectively as if instead of the Transferor Company, the Transferee Company had been a party thereto.
  
8. (a) All employees of the Transferor Company in the employment of the Transferor Company on the Effective Date, shall, as from the said date become the employees of the Transferee Company on the basis that their services have not been interrupted by the vesting of the undertaking of the Transferor Company in the Transferee Company under the Scheme and that the terms and conditions of service applicable to them immediately after the Effective Date will not be in any way less favourable to them, than those applicable to them immediately before the Effective Date.  
  
(b) As far as the Provident Fund, Gratuity Fund, Superannuation Fund or any other Special Fund created or

existing for the benefit of the employees of the Transferor Company are concerned, upon the Scheme becoming effective, the Transferee Company shall be substituted for the Transferor Company for all the purposes whatsoever related to the administration or operation of such Schemes or Funds or in relation to the obligation to make contributions to the said Funds in accordance with provisions of such Schemes or Funds according to the terms provided in the respective Trust Deeds or other documents. All the rights, duties, powers, and obligations of the Transferor Company in relation to such Schemes or Funds shall become those of the Transferee Company. The services of the employees of the Transferor Company will be treated as being continuous for the purposes of the aforesaid Schemes or Funds.

9. (a) Upon the Scheme become effective, in consideration of the transfer to and vesting of the undertaking of the Transferor Company in terms of the Scheme, the Transferee Company shall, with any application being made by the shareholders of the Transferor Company, issue and allot to the equity shareholders of the Transferor Company, equity shares in the Transferee Company in the proportion of 1 (one) share of the face value of Rs. 10 each of the Transferee Company, credited as fully paid up for every 25 (twenty five) fully paid up equity shares of the face value

of Rs. 10 each, held by the equity shareholders of the Transferor Company on such date as the Board of Directors of the Transferee Company may decide.

- (b) As a result of the issue and allotment of the share capital of the Transferor Company in the manner specified in sub-clause (a) to this Clause hereinabove, if any equity shareholder of the Transferor Company becomes entitled to any fraction of equity shares of the Transferee Company, no such fractional coupon shall be issued in respect of or representing such equity shares of the Transferee Company, but such fractional coupon shall be consolidated into whole equity shares and the Board of Directors of the Transferee Company, or a Committee thereof may allot any one or more of such consolidated shares to any nominee(s) as the Board of Directors or the Committee may in their absolute discretion deem fit for the purpose of holding and selling of such consolidated equity shares. Every such sale of the consolidated equity shares shall be at such price or prices as may be approved by the Board of Directors or the Committee and upon receipt of the purchase price in respect of such sale (provided the Board of Directors or the Committee approved the purchaser), the Board of Directors or the Committee shall allot the equity shares to the approved purchaser/s. the total net sale proceeds of such consolidated equity shares

(after defraying therefrom all costs, charges, and expenses of sale) shall be distributed and divided among those equity shareholders of the Transferor Company as would otherwise have been entitled to such fractions of the equity shares of the Transferee Company in proportion to their respective interest in such fractions.

(c) Equity shares so allotted by the Transferee Company to the shareholders of the Transferor Company will in all respects rank pari-passu with the existing equity shares of the Transferee Company for dividend, voting and other rights.

(d) Every shareholder of the Transferor Company shall surrender to the Transferee Company for cancellation, the relevant share certificate(s) held in the Transferor Company and thereupon the Transferee Company shall issue the certificate(s) for the shares in the Transferee Company he or she may be entitled to.

10. The \_\_\_\_\_ equity shares of Rs. \_\_\_\_\_ each, paid up, in the Transferor Company are held by the Transferee Company. The said \_\_\_\_\_ equity shares shall be transferred by the Transferee Company before the date of allotment of shares by it pursuant to Clause 9 hereof, to such party/parties as the Board of Directors of the Transferee Company may think fit.

11. Upon the Scheme becoming effective, the Main Objects of the Memorandum of Association of the Transferor Company shall form part of the Main Objects of the Memorandum of Association of the Transferee Company.
12. On the Scheme being agreed to by the requisite majorities of the members of the Transferor Company and of the members of the Transferee Company, the Transferor Company and the Transferee Company shall with reasonable despatch, apply to the High Court of Judicature at Mumbai for obtaining sanction to this Scheme of Amalgamation under Section 391 of the Act and for an Order or Orders under Section 394 of the Act for carrying this Scheme into effect and for dissolution of the Transferor Company without winding up as also any Order or Orders as may be necessary and appropriate under the Act.
13. The Scheme is conditional upon and subject to: -
  - (a) The Scheme being agreed to by the respective requisite majorities of the members of both the Companies as are referred to in clause 12 hereof and the requisite Order or Orders referred to in Clause 12 being obtained;
  - (b) Such other sanction and approvals as may be required by law in respect of the Scheme being obtained.



14. This Scheme, although to come into operation from the Appointed Date, shall not become effective until the date on which the certified copies of the Orders under Sections 391 and 394 of the Act shall be duly filed with the Registrar of Companies, Maharashtra State, Mumbai.
15. In the event of any of the approvals or conditions required to be obtained or fulfilled are not obtained or complied with on or before December 31, 2005, or within such further period or periods as may be agreed upon by and between the Transferor Company and the Transferee Company (through their respective Board of Directors) the Scheme shall become null and void and in that event no rights or liabilities whatsoever shall accrue to or be incurred inter se between the Transferor Company and the Transferee Company.
16. All costs, charges and expenses of the Transferor Company and the Transferee Company respectively in relation to or in connection with the negotiation leading up to this Scheme or carrying out and completing the terms and provisions of this Scheme shall be borne and paid by the Transferee Company.
17. For the purpose of giving effect to the Scheme, the Board of Directors of the Transferee Company or any Committee thereof, is authorized to give such directors as may be necessary or

desirable and to settle as they may deem fit, any question, doubt or difficulty that may arise in connection with or in the working of the Scheme including with regard to issue and allotment of Equity Shares under Clause 9 hereof, to the members of the Transferor Company and to do all acts, deeds and things necessary for carrying into effect the Scheme.

18. A copy of the order of the \_\_\_\_\_ High Court sanctioning the Scheme of Amalgamation shall be filed by the Transferor Company and the Transferee Company with Registrar of Companies, \_\_\_\_\_, within one month from the date the Order is received by the Transferor Company and the Transferee Company.

## **Chapter – 8**

### **Text of relevant sections of the Companies Act, 1956 in relation to Arrangement, Compromises, Amalgamation/Mergers**

#### **390. Interpretation of sections 391 and 393 - In sections 391 and 393 -**

- (a) the expression "company" means any company liable to be wound up under this Act;
- (b) the expression "arrangement" includes a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods; and
- (c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

#### **391. Power to compromise or make arrangements with creditors and members -**

- (1) Where a compromise or arrangement is proposed -
  - (a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

the Court may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, 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 Court directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under Act 65 of 1960, section 151, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company:

[Provided that no order sanctioning any compromise or arrangement shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, 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, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like].

- (3) An order made by the Court under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.
- (4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.
- (5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to

one hundred rupees for each copy in respect of which default is made.

- (6) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.
- (7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of the Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction.

**392. Power of Tribunal to enforce compromise and arrangement -**

- (1) Where the Tribunal makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it -
  - (a) shall have power to supervise the carrying out of the compromise or an 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 working of the compromise or arrangement.
- (2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.
- (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 the Companies (Second Amendment) Act, 2002 sanctioning a compromise or an arrangement.

**393. Information as to compromises or arrangements with creditors and members: -**

- (1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391 -
  - (a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect, and in particular, stating material interests of the directors, managing director or manager of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and
  - (b) in every notice calling the meeting which is given by the advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.
- (2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects



the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

- (3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.
- (4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company:

Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, manager or trustee for debenture holders, to

supply the necessary particulars as to his material interests.

- (5) Every director, managing director, or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matter relating to himself as may be necessary for the purposes of this section; and if he fails to do so, he shall be punishable with fine which may extend to five thousand rupees.

**394. Provisions for facilitating reconstruction and amalgamation of companies -**

- (1) Where an application is made to the Tribunal under section 391 for the sanctioning of a compromise or 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 any company or companies, 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 concerned in the scheme (in this section referred to as a "transferor company") is to be transferred to another

company (in this section referred to as the “transferee company”):

The Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters: -

- (i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;
- (ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;
- (iv) the dissolution, without winding up, of any transferor company;

- (v) the provisions to be made for any person who, within such time and in such manner as the tribunal directs, dissent from the compromise or arrangement; and
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest:

Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

- (2) 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 and vest in, and those liabilities, shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.
- (3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for Registration.

If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees.

- (4) In this section -
- (a) "Property" includes property, rights and power of every description; and "liabilities" includes duties of every description; and
- (b) "transferee company" does not include any company other than a company within the meaning of this

Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not.

**394A. Notice to be given to Central Government for applications**

**under section 391 and 394** - The Tribunal shall give notice of every application made to it under section 391 or 394 to the Central Government and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.

**395. Power and duty to acquire shares of shareholders dissenting from scheme or contract approved by majority**

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company (in this section referred to as "the transferee company"), has, within four months after the making of the offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee company or its subsidiary) the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner<sup>140</sup> to any dissenting shareholder, that it

desires to acquire his shares; and when such a notice is given, the transferee company shall, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given, the Court thinks fit to order otherwise, be entitled 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:

Provided that where shares in the transferor company of the same class as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of the values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless-

- (a) the transferee company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved; and
- (b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less

than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held at the date of the transfer by, or by a nominee for, the transferee company or its subsidiary comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then,-

(a) the transferee company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract, and

(b) any such holder may, within three months from the giving of the notice to him, require the transferee company to acquire the shares in question;

and where a shareholder gives notice under clause (b) with respect to any shares, the transferee company shall be



entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the Court on the application of either the transferee company or the shareholder thinks fit to order.

- (3) Where a notice has been given by the transferee company under subsection (1) and the Court has not, on application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee 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, by virtue of this section, that company is entitled to acquire; and<sup>141</sup>[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:]

Provided that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

- (4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and any such sums 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 sums or other considerations were respectively received.

- (4A) (a) The following provisions shall apply 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, namely: -

- (i) every such offer or every circular containing such offer or every recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information as may be prescribed<sup>143</sup>;

- (ii) 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;
- (iii) every circular containing or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered;
- (iv) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub-clause (i) or which sets out such information in a manner likely to give a false impression; and
- (v) an appeal shall lie to the Court against an order of the Registrar refusing to register any such circular.
- (b) Whoever issues a circular referred to in sub-clause (iii) of clause (a) which has not been registered, shall be punishable with fine which may extend to <sup>20A</sup>[five thousand rupees].]

(5) In this section

- (a) "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;

- (b) "transferor company" and "transferee company" shall have the same meaning as in section 394.
- (6) In relation to an offer made by the transferee company to shareholders of the transferor company before the commencement of this Act, this section shall have effect. -
- (a) with the substitution, 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 for, the transferee company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section;
  - (b) with the omission of sub-section (2);
  - (c) with the omission in sub-section (3) of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferee company" and of the proviso to that sub-section; and
  - (d) with the omission of clause (b) of sub-section (5).

### **396. Power of Central Government to provide for amalgamation of companies in national interest**

- (1) Where the Central Government is satisfied that it is essential in the <sup>144</sup>[public interest] that two or more companies should amalgamate, then, notwithstanding anything contained in section 394 and 395 but subject to the provisions of this section, 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, interest, authorities and privileges; and such liabilities, duties, and obligations; as may be specified in the order.
- (2) The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against may transferor company and may also contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.
- (3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as

he had in the company of which he was originally a member or creditor; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette.

The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Company Law Board and thereupon the assessment of the compensation shall be made by the Company Law Board.

- (4) 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;
  - (aa) the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been

preferred, the appeal has been finally disposed of;  
and

- (b) the central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of any 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.
- (5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

**396A. Preservation of books and papers of amalgamated company**

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 first-mentioned company or its amalgamation or the acquisition of its shares.



## **Chapter – 9**

### **Text Of Relevant Rules From The Companies (Court) Rules, 1959**

#### **Compromise or Arrangement under section 391 and 394**

##### **68. Summons for directions to convene a meeting**

An application under section 391(1) for an order convening a meeting of creditors and / or members or any class of them shall be by a Judge's summons supported by an affidavit. A copy of the proposed compromise or arrangement shall be annexed to the affidavit as an exhibit thereto. Save as provided in rule 68 hereunder, the summons shall be moved ex parte. The summons shall be in Form No. 33, and the affidavit in support thereof in Form No. 34.

##### **69. Service on company**

Where the company is not the applicant, a copy of the summons and of the affidavit shall be served on the company, or, where the company is being wound-up, on its liquidator, not less than 14 days before the date fixed for the hearing of the summons.

**70. Directions at hearing of summons**

Upon the hearing of the summons or any adjourned hearing thereof, the Judge shall, unless he thinks fit for any reason to dismiss the summons, give such directions as he may think necessary in respect of the following matters: -

- (1) determining the class or classes of creditors and/or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement;
- (2) fixing the time and place of such meeting or meetings;
- (3) appointing a Chairman or Chairmen for the meeting or meetings to be held, as the case may be;
- (4) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting by proxy;
- (5) determining the values of the creditors and / or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;
- (6) notice to be given of the meeting or meetings and the advertisement of such notice;

- (7) the time within which the Chairman of the meeting is to report to the Court the result of the meetings; and such other matters as the Court may deem necessary.

The order made on the summons shall be in Form No. 35 with such variations as may be necessary.

#### 71. **Proxies**

- (1) Voting by proxy shall be permitted, provided a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its registered office not later than 48 hours before the meeting.
- (2) Where a body corporate which is a member or creditor (including holder of debentures) of a company authorizes any person to act as its representative at the meeting of the members or creditors of the company, or of any class of them, as the case may be, a copy of the resolution of the Board of Directors or other governing body of such body corporate authorizing such person to act as its representative at the meeting, and certified to be a true copy by a director, the manager, the secretary, or other authorized officer of such body corporate, shall be lodged

with the company at its registered office not later than 48 hours before the meeting.

- (3) Rules 227 to 229 of these rules relating to proxies shall also apply to proxies lodged under this rule.

72. **Application for stay**

An application under sub-section (6) of section 391 for stay of the commencement or continuation of any suit or proceeding against the company may be moved by a Judge's summons ex parte, provided that where a petition for winding-up the company or a petition under section 397 or 398 is pending, notice of the application shall be given to the petitioner in such petition.

73. **Application to vacate or vary order of stay**

Where an order has been made staying the commencement or continuation of any suit or proceeding under sub-section (6) of section 391, any person aggrieved by such order may apply to the Court by a Judge's summons to vacate or vary such order. Notice of the application shall be given to the applicant at whose instance the order of stay was made and to such other persons as the Court may direct.

**74. Notice of meeting**

The notice of meeting to be given to the creditors and / or members, or to the creditors or members of any class, as the case may be, shall be in Form No. 36, and shall be sent to them individually by the Chairman appointed for the meeting, or, if the Court so directs, by the company (or its Liquidator), or any other person as the Court may direct, by post under certificate of posting to their last known address not less than 21 clear days before the date fixed for the meeting. It shall be accompanied by a copy of the proposed compromise or arrangement and of the statement required to be furnished under section 393, and a form of proxy in Form No. 37.

**75. Advertisement of the notice of meeting**

The notice of the meeting shall be advertised in such newspapers and in such manner as the Judge may direct, not less than 21 clear days before the date fixed for the meeting. The advertisement shall be in Form No. 38.

**76. Copy of compromise or arrangement to be furnished by the company**

Every creditor or member entitled to attend the meeting shall be furnished by the company, free of charge and within 24 hours of

a requisition being made for the same with a copy of the proposed compromise or arrangement together with a copy, of the statement required to be furnished under section 393, unless the same had been already furnished to such member or creditor.

77. **Affidavit of service** - The Chairman appointed for the meeting or the Company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit not less than 7 days before the date fixed for the holding of the meeting or the holding of the first of the meetings as the case may be, showing that the directions regarding the issue of notices and the advertisement have been duly complied with. In default thereof, the summons shall be posted before the Judge for such orders as he may think fit to make.

78. **Result of the meeting to be decided by poll**

The decisions of the meeting or meetings held in pursuance of the order made under rule 69 on all resolutions shall be ascertained only by taking a poll.

79. **Report of the result of the meeting**

The Chairman of the meeting, (or where there are separate meetings, the Chairman of each meeting) shall, within the time

fixed by the Judge, or where no time has been fixed, with seven days after conclusion of the meeting, report the result thereof to the Court. The report shall state accurately the number of creditors or class of creditors or the number of members or class of members, as the case may be, who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted. The report shall be in Form No. 39.

**80. Petition for confirming compromise or arrangement**

Where the proposed compromise or arrangement is agreed to, with or without modification, as provided by sub-section (2) of section 391, the company, (or its liquidator, as the case may be) shall within 7 days of the filing of the report by the Chairman, present a petition to the Court for confirmation of the compromise or arrangement. The petition shall be in Form No. 40.

Where a compromise or arrangement is proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies, or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 394.

Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or contributory as the case may be, with the leave of the Court, to present and the company shall be liable for the costs thereof.

Where no petition for confirmation of the compromise or arrangement is presented, or where the compromise or arrangement has not been approved by the requisite majority under section 391(2) and consequently no petition for confirmation could be presented, the report of the Chairman as to the result of the meeting made under the preceding rule shall be placed for consideration before the Judge for such orders as may be necessary.

**81. Date and notice of hearing**

The Court shall fix a date for the hearing of the petition, and notice of the hearing shall be advertised in the same papers in which the notice of the meeting was advertised, or in such other papers as the Court may direct, not less than 10 days before the date fixed for the hearing.

**82. Order on petition**



Where the Court sanctions the compromise or arrangement, the order shall include such directions in regard to any matter and such modifications in the compromise or arrangement as the Judge may think fit to make for the proper working of the compromise or arrangement. The order shall direct that a certified copy of the same shall be filed with the Registrar of Companies within 14 days from the date of the order, or such other time as may be fixed by the Court. The order shall be in Form No. 41, with such variations as may be necessary.

**83. Application for directions under section 394**

Where the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and the matters involved cannot be dealt with or dealt with adequately on the petition for sanction of the compromise or arrangement, an application shall be made to the Court under section 394, by a summons supported by affidavit, for directions of the Court as to the proceedings to be taken. Notice of the summons shall be given in such manner and to such persons as the Court may direct.

**84. Directions at hearing of applications**

Upon the hearing of the summons or upon any adjourned hearing thereof the Court may make such order or give such directions as it may think fit, as to the proceedings to be taken for the purpose of the 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 to the Court may seem just.

**85. Order under section 394**

An order made under section 394 shall be in Form No. 42 with such variation as the circumstances may require.

**86. Compromise or arrangement involving reduction of capital**

Where a proposed compromise or arrangement involves a reduction of capital of the company, the procedure prescribed by the Act and these Rules relating to the reduction of capital, and the requirement of the Act and these Rules in relation thereto, shall be complied with, before the compromise or arrangement so far as it relates to reduction of capital, is sanctioned.

**87. Report on working of compromise or arrangement**

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

**88. Liberty to apply**

- (1) The Company, or any creditor or member thereof, or in case of a company which is being wound-up, the liquidation, may, at any time after the passing of the order sanctioning the compromise or arrangement, apply to the Court 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 Court for directions as to the notices and the advertisement, if any to issue, as the Court may direct.
- (3) The Court 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.

**227. Minor not to be appointed proxy**

No person shall be appointed as a general or special proxy who is a minor.

**228. Filing in proxy where creditor or contributory is blind or incapable –**

The proxy of a creditor or a contributory blind or incapable of writing may be accepted if such creditor or a contributory has attached his signature or mark thereto in the presence of a witness who shall add to his signature, his description and address:

Provided that all insertions in the proxy are in the hand-writing of the witness and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the creditor or contributory before he attached his signature or mark.

**229. Proxy of person not acquainted with English**

The proxy of a creditor or contributory who does not know English may be accepted if it is executed in the manner prescribed in the last preceding rule and the witness certifies that it was explained to the creditor or contributory in the language known to him, and gives the creditor's or contributory's name in English below the signature.

**FORM No. 31**

(See rule 65)

[Heading as in Form No. 1]

Company Petition No..... of 20.....

A. B. & Co. Ltd. – Petitioner

**Form of minute**

The capital of A. B. & Co., Ltd. is henceforth Rs..... divided into ..... shares of Rs.....each, reduced from Rs..... divided into ..... shares of Rs..... each. At the date of the registration of this minute, ..... shares numbered ..... etc., have been issued and are deemed to be fully paid [and the remaining ..... shares are unissued].

[Note.—1. The words 'and reduced' are to be added only where the order so directs.]

2. If all the shares of a class are not issued, the minute should state the serial numbers of the issued shares. Partly paid shares should also be distinguished by their serial numbers and the amounts paid thereon should be stated. The serial numbers of shares with calls in arrears and of forfeited shares should also be stated.

**Relevant Forms Under the Companies (Court) Rules, 1959**

**FORM No. 32**

(See rule 65)

[Heading as in Form No. 1]

Company Petition No ..... of 20.....

A. B. & Co. Ltd. – Petitioner

**Notice of registration of order and minute**

Notice is hereby given that the order of the High Court at ..... (or the district court of .....) dated the ..... 19....., confirming the reduction of the capital of the above-named company from Rs..... divided into ..... shares of Rs..... each, to Rs..... divided into ..... shares of Rs..... each and the minute approved by the court showing, with respect to the share capital of the above company as altered, the several particulars required by the above Act, were registered by the Registrar of Companies on the ..... day of ..... 19.....

Dated .....

(Sd.) .....

Advocate for the Company



**FORM No. 33**

(See rule 67)

[Heading as in Form No. 1]

Company Application No ..... of 19.....

..... Applicant(s)

**Summons for directions to convene a meeting under section  
391**

Let all parties concerned attend the Judge in Chambers on .....  
(day), the ..... day of ..... 19..... at ..... o'clock in the  
..... noon on the hearing of an application of the above named  
company (or of the applicant(s) above-named) for an order that a  
meeting (or separate meetings) be held at ..... of [here enter the  
creditors or class of creditors e.g., debenture holders other secured  
creditors, unsecured creditors, etc., or the members or class of  
members e.g., preference shareholders, equity shareholders, etc. of  
which class or classes, the meetings have to be held] of the above  
company, for the purpose of considering, and if thought fit, approving,  
with or without modification, a scheme of compromise or arrangement  
proposed to be made between the company and the said [here

mention the creditors or class of creditors or members, or the class of members] of the said company.

And that directions may be given as to the method of convening, holding, and conducting the said meeting(s) and as the notices and advertisements to be issued.

And that a Chairman (or Chairmen) may be appointed of the said meeting(s), who shall report the result thereof to the Court.

Advocate for the applicant(s)

Registrar

The affidavit of ..... will be used in support of the summons.

[Note.—Where the company is not the applicant, the summons should be served on the company, or where it is being wound-up, on its liquidator].

**FORM No. 33**

(See rule 67)

[Heading as in Form No. 1]

Company Application No ..... of 20.....

..... Applicant(s)

**Summons for directions to convene a meeting under section  
391**

Let all parties concerned attend the Judge in Chambers on .....  
(day), the ..... day of ..... 19..... at ..... o'clock in the  
..... noon on the hearing of an application of the above named  
company (or of the applicant(s) above-named) for an order that a  
meeting (or separate meetings) be held at ..... of [here enter the  
creditors or class of creditors e.g., debenture holders other secured  
creditors, unsecured creditors, etc., or the members or class of  
members e.g., preference shareholders, equity shareholders, etc. of  
which class or classes, the meetings have to be held] of the above  
company, for the purpose of considering, and if thought fit, approving,  
with or without modification, a scheme of compromise or arrangement

proposed to be made between the company and the said [here mention the creditors or class of creditors or members, or the class of members] of the said company.

And that directions may be given as to the method of convening, holding, and conducting the said meeting(s) and as the notices and advertisements to be issued.

And that a Chairman (or Chairmen) may be appointed of the said meeting(s), who shall report the result thereof to the Court.

Advocate for the applicant(s)

Registrar

The affidavit of ..... will be used in support of the summons.

[Note.—Where the company is not the applicant, the summons should be served on the company, or where it is being wound-up, on its liquidator].

**FORM No. 34**

(See rule 67)

[Heading as in Form No. 1]

Company Application No ..... of 19.....

..... Applicant(s)

**Affidavit in support of summons**

I, ..... Of etc., solemnly affirm and say as follows:—

1. I am the managing director / secretary/a director/ ...../of the said company, (or an auditor of the said company authorised by the directors to make this affidavit, or liquidator of the said company in liquidation).

[where the application is not by the company or its liquidator, but by a member or creditor the above paragraph should be suitably altered].

2. The company was incorporated on ..... 19..... The document now produced and shown to me is printed copy of the memorandum and articles of association of the said company, and also contains copies of all the special resolutions which have been passed and are now in force.
3. The registered office of the company is situate at .....

4. The capital of the company is rs..... Divided into ..... [here set out the classes of shares issued and the amounts paid up on each share].
5. The objects of the company are set out in the memorandum of association annexed hereto. They are briefly (here set out the main objects in brief).
6. The company commenced the business of ..... (e.g. Hides and skins. Etc.,) and has been carrying on the same since .....
7. [here set out in separate paragraphs the circumstances that have necessitated the proposed compromise or arrangement, the objects sought to be achieved by it, the terms of the compromise or arrangement, and the effect, if any, of the compromise or arrangement on the material interests of the directors, managing director, <sup>2</sup>[\*\*\*] or the manager of the company, and were the compromise or arrangement affects the interests of the debentures holders, its effect on the material interests of the trustees of the debenture trust deed. A copy of the proposed compromise or arrangement should be marked as an exhibit and annexed to the affidavit.]
8. [here set out the class of creditors or members with whom the compromise or arrangement is to be made; where the arrangement is between the company and its members, it should

be stated whether any creditors or class of creditors are likely to be affected by it].

9. It is necessary that a meeting (or meetings) of the creditors/members (if the meeting is to be only of a class of creditors or a class of members, it should be so stated) should be called to consider and approve the proposed compromise or arrangement.
10. It is suggested that the meeting (or meetings) may be held at the premises of the registered office of the company or at such other place as may be determined by the court, and on such date(s) and at such time(s) as this court may direct; and that a chairman may be appointed for the meeting (or for each of the meetings) to be held.
11. It is suggested that notice of the proposed compromise or arrangement and of the meeting may be published once in (here set out the newspapers) and in such manner as the court may direct.
12. It is prayed that necessary directions may be given as to the issue and publication of notices and the convening, holding and conducting of the meeting(s) proposed above.

Solemnly affirmed, etc.

(sd.) X. Y .....

Before me

(sd.) .....

Commissioner for oaths



**FORM NO. 35**

(SEE RULE 69)

[HEADING AS IN FORM NO. 1]

COMPANY APPLICATION NO ..... OF 19 .....

..... APPLICANT(S)

BEFORE THE HON'BLE MR. JUSTICE .....

DATED .....

**Order on summons for directions**

Upon the application of the above-named company\* (or, the applicant(s) above named) by summons dated the ..... day of ..... 19..... , upon hearing Shri ..... advocate for the company [Or (where the company is not the applicant) upon hearing the advocate for the applicant(s) and the advocate for the Company], and upon reading the affidavit of ..... filed the ..... day of ..... 19..... , and the exhibits therein referred to (Exhibit ..... being a copy of the proposed compromise or arrangement).

IT IS ORDERED:

That a meeting (or, separate meeting as hereinafter set out) of (here set out the class or classes of creditors and /or members of whom the

meeting or meetings have to be held), of above company shall be convened and held at ..... on ..... (day), the ..... day of ..... 19....., at ..... o'clock in the ..... noon, for the purpose of considering, and if thought fit, approving, with or without modifications, the compromise or arrangement proposed to be made between the said company and (here set out the class or classes of creditors or members as the case may be) of the said company.

[Note.—If separate meetings of different classes of creditors and/or members are to be held, state the date, time and place of each of such meetings as fixed by the Judge, in separate paragraphs.]

That at least 21 clear days before the day appointed for the meeting (or the first of the meetings, an advertisement convening the same and stating that copies of the said compromise or arrangement and of the statement required to be furnished pursuant to section 393 and forms of proxy can be obtained free of charge at the registered office of the company or at the office of its advocate, be inserted once in the ..... Gazette and once in each of (here set out the newspaper or newspapers).

That, in addition, at least 21 clear days before the meeting (or the first of the meetings) to be held as aforesaid, a notice convening the said meeting at the place and time aforesaid, together with a copy of the said compromise or arrangement, a copy of the statement required to be sent under section 393, and the prescribed Form of proxy, shall be sent by pre-paid letter post under Certificate of posting addressed to

each of (here mention the class or classes of creditors or members whose meeting or meetings are to be held) at their respective registered or last known addresses.

That the advocate for the company above-named do, within 3 days from this date file in court the form of the advertisement, the notice and the statement to accompany the notice, and the same shall be settled by the Registrar of this Court.

That Shri ....., and failing him, Shri ....., shall be the Chairman of the meeting to be held on ..... as aforesaid.

That the Chairman appointed for the meeting do issue the advertisement and send out the notices of the meeting (s) referred to above.

That the quorum for the said meeting(s) shall be .....

That voting by proxy be permitted, provided that a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting, is filed with the company at its registered office at ..... not later than 48 hours before the meeting.

That the value of each member or creditor shall be in accordance with books of the company, and, where the entries in the books are

disputed, the Chairman shall determine the value for purposes of the meeting.

And it is further ordered that the chairman do report to this Court the result of the said meeting within .....days of the conclusion of the meeting and the said report shall be verified by his affidavit.

Dated this ..... day of ..... 19.....

(By the Court)

Registrar

Note.—Where separate meetings are to be held, the provisions should be repeated in respect of each of such meetings.

Note.—Where the Court directs the company or its Liquidator or any other person to issue the advertisement and notices, suitable alteration should be made.

\*Where the application is by a liquidator of the company substitute the words 'liquidator of the above company in liquidation' for the word 'company' wherever necessary.

**FORM No. 36**

(See rule 73)

[Heading as in Form No. 1]

Company Application No ..... of 19.....

..... Applicant(s)

**Notice convening meeting**

To

.....

.....

Take notice that by an order made on ..... 19....., the Court has directed that a meeting of (here mention the class of creditors or members of whom the meeting is to be held) of the company be held at ..... on the ..... day of ..... 19....., at .....o'clock, for the purpose of considering, and if thought fit, approving, with or without modification, the compromise or arrangement proposed to be made between the said company and (here mention the class of creditors or members with whom the compromise or arrangement is to be made) of the company.

Take further notice that in pursuance of the said order, a meeting of (here mention the class of creditors or members of whom the meeting

is to be held) of the company will be held at ..... on .....  
(Day), the ..... day of ..... 19....., when you are requested to  
attend.

Take further notice that you may attend and vote at the said meeting  
in person or by proxy, provided that a proxy in the prescribed form,  
duly signed by you, is deposited at the registered office of the  
company at ..... not later than 48 hours before the meeting.

This court has appointed Shri ..... , and failing him, Shri  
....., to be the Chairman of the said meeting.

A copy each of the compromise or arrangement, the statement under  
section 393 and a form of proxy is enclosed.

Dated this ..... day of ..... 19.....

Chairman appointed for the meeting

(or as the case may be).

[Note.—All alterations made in the form of the proxy should be  
initialled.]

**FORM No. 37**

(See rule 73)

[Heading as in Form No. 1]

Company Application No ..... of 19.....

..... Applicant(s)

**Form of proxy**

I, the undersigned [an unsecured creditor], of the above company hereby appoint C.D., of etc., and failing him X. Y., of etc, as my proxy, to act for me at the meeting of [unsecured creditors] to be held at ..... on the ..... day of ..... 19..... , at ..... o'clock in the ..... noon, for the purpose of considering and, If thought fit, approving, with or without modification, a compromise or arrangement proposed to be made between the said company and its unsecured creditors] and at such meeting and any adjournment thereof, to vote for me, and in my name ..... [here, if 'for', insert 'for'; if 'against', insert 'against', and in the latter case, strike out the words below after 'compromise or arrangement'] the said compromise or arrangement either with or without modification as my proxy may approve.

[strike out what is not necessary]

Dated this ..... day of ..... 19.....

Signature .....

Address .....

**FORM No. 38**

(See rule 74)

[Heading as in Form No. 1]

Company Application No ..... of 19.....

..... Applicant(s)

**Notice convening meeting of creditors/shareholders, etc.**

Notice is hereby given that by an order dated the ..... 19..... the court has directed a meeting (or, separate meetings) to be held of [here mention 'debenture holders', or 'first debenture holders' or 'second debentures holders' or 'unsecured creditors' or 'secured creditors' or 'preference shareholders' or 'equity shareholders' as the case may be whose meeting or meetings have to be held] of the said company for the purpose of considering, and, if thought fit, approving with or without modification, the compromise or arrangement proposed to be made between the said company and (here mention the class of creditors or members with whom the compromise or arrangement is to be made') of the company aforesaid.

In pursuance of the said order and as directed therein, further notice is hereby given that a meeting of (here set out the class of creditors or members whose meeting has to be held) of the said company will be held at ..... on (day), the ..... day of ..... 19....., at ..... o'clock in the ..... noon at which time and place the said



(here mention the class of creditor or members) are requested to attend.

[Where separate meetings of classes of creditors or members are to be held, set them out separately with the place, date and time of the meeting in each case.]

Copies of the said compromise or arrangement, and of the statement under section 393 can be had free of charge at the registered office of the company or at the office of its advocate Shri ..... at .....

Persons entitled to attend and vote at the meeting ( or respective meetings) may vote in person or by proxy, provided that all proxies in the prescribed form are deposited at the registered office of the company at ..... not later than 48 hours before the meeting.

Forms of proxy can be had at the registered office of the Company.

The Court has appointed Shri ..... and failing him, Shri ....., as Chairman of the said meeting (or several meetings). The above-mentioned compromise or arrangement, if approved by the meeting, will be subject to the subsequent approval of the Court.

Dated this ..... day of ..... 19.....

Chairman appointed for the meeting  
(or as the case may be)

**FORM No. 39**

(See rule 78)

[Heading as in Form No. 1]

Company Application No ..... of 19 .....

..... Applicant(s)

**Report by Chairman**

I, E.F., the person appointed by this Hon'ble Court to act as Chairman of the meeting of [the debenture holders or first debenture holders or second debenture holders or unsecured creditors or secured creditors or preference shareholders or equity shareholders] of the above-named company, summoned by notice served individually upon them and by advertisement dated the ..... day of ..... 19..... and held on the ..... day of ..... 19..... at....., do hereby report to this Hon'ble Court as follows:-

1. The said meeting was attended either personally or by proxy by (here state the number of creditors or the class of creditors or the number of members or the class of members as the case may be, who attended the meeting), of the said company entitled together to ..... (here mention the total value of the debts, or debentures, where the meeting was of creditors, and the total number and value of the shares, where the meeting was of members, of those who attended the meeting).

2. The compromise or arrangement was read out and explained by me to the meeting and the question submitted to the said meeting was whether the (here state the class of creditors or members, as the case may be) of the said company approved of the compromise or arrangement submitted to the meeting and agreed thereto.

3. The said meeting was unanimously of the opinion that the compromise or arrangement should be approved\* and agreed to/or the result of the voting upon the said question as follows:—

The under-mentioned [here mention the class of creditors or members who attended the meeting] voted in favour of the proposed compromise or arrangement being adopted and carried into effect:—

Name of creditor (or member)	Address	Value of debt (or No. of preference or equity shares held)	Number of votes
1.			
2.			
3.			
etc.			

The under-mentioned [Here mention the class of creditors or members who attended the meeting] voted against the proposed compromise or arrangement being adopted and carried into effect: —

Name of creditor (or member)	Address	Value of debt (or No. of preference or equity shares held)	Number of votes
1.			
2.			
3.			

Dated this ..... day of ..... 19.....

(Sd.) E.F. ....

Chairman.

\* If the compromise or arrangement was approved with modifications, it should be so stated and the modifications made should be set out, and also the particulars of the voting on the modifications.

**FORM No. 40**

(See rule 79)

[Heading as in Form No. 1]

Company Petition No ..... of 19.....

connected with

Company Application No. .... of 19.....

A. B. & Co. [Ltd.] in liquidation, by its liquidator\*

..... ) Petitioner

**Petition to sanction compromise or arrangement**

The petition of A. B. & Co. [Lid]., (\*in liquidation, by its liquidator) the petitioner above-named is as follows:—

1. The object of this petition is to obtain sanction of the Court to compromise or arrangement whereby (here set out the nature of the compromise or arrangement).
2. The company was incorporated under the ..... Act ..... with a nominal capital of Rs..... divided into ..... shares of Rs..... each, of which ..... shares were issued and Rs..... was paid up on each share issued.
3. The objects for which the company was formed are as set in the company's memorandum of association. They are in brief (Set out the principal objects).

4. [Here set out the nature of the business carried on by the company, its financial position and the circumstances that necessitated the compromise or arrangement and the benefits sought to be achieved by the compromise or arrangement and its effect].
5. The compromise or arrangement was in the following terms :-  
  
[Here set out the terms of the compromise or arrangement].
6. By an order made in the above matter on ..... 19....., the petitioner was directed to convene a meeting of [Here set out the class of creditors or members of whom the meeting was to be held] of the company for the purpose of considering and, if thought fit, approving, with or without modifications, the said compromise or arrangement, and the said order directed that E. F., or failing him, X. Y., should act as Chairman of the said meeting and should report the result thereof to this Court.
7. Notice of the meeting was sent individually to the [Here mention the class of creditors or members to whom the notice was sent] as required by the order together with a copy of the compromise or arrangement and of the statement required by section 393 and a form of proxy. The notice of the meeting was also advertised as directed by the said order in (here set out the newspapers).

8. On the ..... 19....., a meeting of (here mention the class of creditors or members whose meeting was convened) of the company duly convened in accordance with the said order, was held at ..... and the said E. F., acted as the chairman of the meeting.
9. The said E. F., has reported the result of the meeting to this Hon'ble Court.
10. The said meeting was attended by (here set out the number of the class of creditors or members, as the case may be, who attended the meeting either in person or by proxy), and the total value of their [here mention debts, debentures or shares, as the case may be is Rs ..... [In the case of shares, the total number and value of the shares should be mentioned. The said compromise or arrangement was read and explained by the said E. F., to the meeting and it was resolved unanimously [or by a majority of ..... votes against ..... votes] as follows:—  
  
[Here set out the resolution as passed]
11. The sanctioning of the compromise or arrangement will be for the benefit of the company.
12. Notice of this petition need not be served on any person.

The petitioner therefore prays:



- (1) That the said compromise or arrangement may be sanctioned by the Court so as to be binding on all the [here set out the class of creditors or members of the company on whom the compromise or arrangement is to be binding] of the said company and on the said company.
- (2) Or, such other order may be made in the premises as to the Court shall seem fit.

Verification, etc.

Petitioner

[Note.—The affidavit in support should verify the petition and prove any matters not proved in any prior affidavit, such as advertisement, holding of meetings, posting of notices, copies of compromise or arrangement and proxies, etc., and should exhibit the report of the Chairman and verify the same.]

Note.—If the company is being wound-up, say so.

Note.—If any modifications were made in the compromise or arrangement at the meeting they should be set out in separate paragraph.

\* To be inserted where the company is being wound-up.

**FORM No. 41**

(See rule 81 )

[Heading as in Form No. 1]

Company Petition No ..... of 19.....

connected with

Company Application No ..... of 19.....

A. B. & Co., [Ltd.] (\*in liquidation, by its liquidator )  
petitioner

Before the Hon'ble Mr. Justice .....

Dated .....

**Order on petition**

The above petition coming on for hearing on ..... upon reading the said petition, the order dated ..... where by the said company (or, liquidator of' the said company), was ordered to convene a meeting (or separate meetings) of the creditors/ debenture holders/preference shareholders/equity shareholders of the above company for the purpose of considering, and if thought fit, approving with or without modification, the compromise or arrangement proposed to be made between the said company and ..... and annexed to the affidavit

of ..... filed the ..... day of' ..... 19....., the ..... Gazette dated ..... and the (here mention the newspaper) dated ..... each containing the advertisement of the said notice convening the said meeting (s) directed to be held by the said order dated ..... 19....., the affidavit of ..... filed the ..... day of ..... 19....., showing the publication and despatch of the notices convening the said meeting(s), the report(s) of the Chairman/Chairmen of the said meeting(s) (respectively) dated ..... as to the result of the said meeting(s), (and upon hearing Shri ..... advocate for ..... etc.) and it appearing from the report(s) that the proposed compromise and arrangement has been approved\*\* ..... (here state whether unanimously or by a majority of not less than three-fourths in value of the creditors or class of creditors or members or class of members as the case may be, present and voting in person or by proxy).

This Court doth hereby sanction the compromise or arrangement set forth in para ..... of the petition herein and in the Schedule hereto, and doth hereby declare the same to be binding on ..... (here enter the class of creditors or members on whom it is to be binding) of the above-named company and also on the said company (and its liquidator\*)

And this Court doth further order:—

[Here enter any directions given or modifications made by the Court regarding the carrying out of the compromise or arrangement.]

That the parties to the compromise or arrangement or other persons interested shall be at liberty to apply to this Court for any directions that may be necessary in regard to the working of the compromise or arrangement, and

That the said company [or the liquidator of the said company] do file with the Registrar of Companies a certified copy of this order within 14 days from this date.

**Schedule**

Scheme of compromise or arrangement as sanctioned by the Court.

Dated this ..... day of ..... 19.....

(By the Court)

Registrar

\* To be inserted where the company is being wound-up.

\*\* Where the compromise or arrangement has been approved with modifications, it should be so stated.



**FORM No. 42**

(See rule 84)

[Heading as in Form No. 1]

Company Petition No ..... of 19.....

\*Application No ..... of 19.....

..... Applicant

Before the Hon'ble Mr. Justice .....

Dated .....

**Order under section 394**

Upon the above petition [and application] coming on for further hearing on ....., upon reading, etc., and upon hearing, etc.

This Court Doth Order

- (1) That all the property, rights and powers of the transferor company specified in the first, second and third parts of the Schedule hereto and all the other property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 394(2) of the Companies Act, 19...56, be transferred to and vest in the transferee company for all the estate and interest of the transferor company therein but subject to nevertheless to all charges now affecting the same [other

- than (here set out any charges which by virtue of the compromise or arrangement are to cease to have effect)]; and
- (2) That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 394(2) of the Companies Act, 1956, be transferred to and become the liabilities and duties of the transferee company; and
  - (3) That all proceedings now pending by or against the transferor company be continued by or against the transferee company; and
  - (4) That the transferee company do without further application allot to such members of the transferor company as have not given such notice of dissent as is required by clause ..... of the compromise or arrangement herein the shares in the transferee company to which they are entitled under the said compromise or arrangement; and
  - (5) That the transferor company do within 14 days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the transferor company shall be dissolved\*\* and the Registrar of Companies shall place all documents relating to the transferor company and registered with him on the file kept by him in relation to the transferee

company and the files relating to the said two companies shall be consolidated accordingly; and

- (6) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

### **Schedule**

#### Part I

(Insert a short description of the freehold property of the transferor company)

#### Part II

(Insert a short description of the leasehold property of the transferor company)

#### Part III

(Insert short description of all stocks, shares, debentures and other charges in action of the transferor company)

Dated this ..... day of ..... 19.....

(By the Court)



Registrar

\* To be inserted where an application is made.

\*\* Where the Court directs that the transferor company should be dissolved from any other date, the clause should be altered accordingly.