

Checklist for Application for Scheme on Compromises, Arrangements and Amalgamations

U/s 230 & 232 of Companies Act, 2013 read with The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

Central Government had issued a notification on 7th November, 2016 enforcing provisions of section 230-233, 235-240, 270-288 etc for the proceedings relating to arbitration, compromise, arrangements and reconstruction of companies which will get enforced w.e.f. 15th December, 2016. MCA vide notification dated 14th Dec, 2016 has issued rules i.e. The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. These rules will be effective from 15th December, 2016.

A. Following is the Process for Merger/ Demerger

1. Provisions of MoA

The **Memorandum & Articles of Association** should authorise the Board to effect such an arrangement, if not, than first alter the MoA and AoA by calling General Meeting and passing Special Resolution.

2. Draft Scheme

Prepare a draft scheme of demerger in consultation with all the interested parties. The scheme shall clearly indicate an **Appointed Date** from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the Appointed Date.

3. Board Meeting

Call Board Meeting to get an In principle approval from the Board of Directors and approve following resolutions

- a. Approve the draft scheme of amalgamation.
- b. Authorize filing of application to NCLT for directions to convene a general meeting.
- c. Authorize to file a Petition for confirmation of scheme by the NCLT.
- d. Appoint an **Independent Registered valuer** for valuing shares to determine the share exchange ratio.

4. Application to NCLT for order Directing to convene the meeting

Both the Demerged Company and Resulting Company must make an Application for order of a meeting to respective NCLT in **Form NCLT-1** with filing fees and accompanied by Notice of Admission in **Form NCLT-2** and copy of scheme of demerger along with an Affidavit in **Form NCLT-6** and prescribed fees. Affidavit must be sworn or affirmed before an advocate or notary.

Disclosures to the NCLT along with application:

- a. All material facts relating to the Company, such as the latest financial position of the Company, the latest auditor's report on the accounts of the Company and the pendency of any investigation or proceedings against the Company;
- b. Reduction of share capital of the Company, if any, included in the arrangement;
- c. Any scheme of corporate debt restructuring consented to by not less than 75 percent of the secured creditors in value.

Applicant shall also disclose to NCLT in the application the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme

Where more than one Company is involved in a scheme for which an application is being filed, such application may be filed as a **joint-application**.

5. Order of NCLT to convene a meeting

NCLT may order a meeting of the creditors or members or class of them, as the case may be, to be called, held and conducted in such manner as the NCLT directs as below:

- Determining class of creditors or members whose meeting should be held.
- Fixing the time and place of such meetings.
- Appointing a chairman & scrutinizer for the meeting or meetings to be held.
- Fixing the quorum and procedure to be followed.
- Notice to be given of the meeting and the advertisement of such notice.
- Time within which the Chairperson of the meeting is required to report the result of the meeting to the NCLT.
- Other matters as the Tribunal may deem necessary.

(Note: NCLT may dispense with calling of a meeting of creditor or class of creditors where such creditors or their class, having at least **90 % value**, agree and confirm, by way of affidavit to the scheme of demerger.)

6. Notice of Meeting

Notice of such meeting in **Form CAA.2** shall be sent to all the creditors or members or class of them and the debenture-holders of the Company, individually at the address registered with the Company accompanied by following:

- a. Copy of the scheme of demerger,
- b. Details of the order of NCLT,
- c. Explanatory statement disclosing details of demerger,

- d. Details of the Company,
- e. Relationship between such Companies who are parties to scheme of demerger,
- f. Date of the Board Meeting at which the scheme was approved including the name of Directors who voted in favour and who voted against the resolution and who did not vote or participate on such resolution,
- g. Copy of the valuation report, if any,
- h. Explanation oneffect of demerger on Creditors, KMP, Directors, Promoters, Non-promoter Members, Debenture-holders, Debenture Trustees, Employees, etc.
- i. Investigation or proceedings, if any, pending against the Company,
- j. Details of approvals, sanctions or no-objection(s), if any, from regulatory or any other governmental authorities required, received or pending for the proposed scheme of demerger,
- k. Details of the availability of the documents for obtaining extract from or for making or obtaining copies of or for inspection by the members and creditors,
- l. Statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, or where applicable, by voting through electronic means.

Notice should be sent by the Chairperson appointed for the meeting or if the Tribunal so directs, by the Company or any other person, by registered post or speed post or by courier or by email or by hand delivery or any other mode as directed by the Tribunal to their last known address at least **one month before the date fixed for the meeting**.

7. Advertisement of notice of the meeting.

The notice of the meeting shall be advertised in **Form No. CAA.2** in at least one **English newspaper** and in at least one **vernacular newspaper** having **wide circulation in the State** in which the registered office of the Company is situated, or such newspapers as may be directed by NCLT.

Advertisement shall indicate the time within which copies of the scheme of demerger shall be made available to the concerned persons free of charge from the registered office of the Company.

If separate meetings of classes of creditors or members are to be held, a **joint advertisement** for such meetings may be given.

8. Notice on website of the Company

The notice as above shall also be placed, not less than **30 days before the date fixed for the meeting**, on the **website of the Company** (if any) and in case of listed companies

also on the website of the SEBI and the recognized stock exchange where securities are listed.

9. Notice to statutory authorities

Notice in **Form CAA.3** along with copy of scheme, explanatory statement and other disclosures shall also be sent to the Central Government (RD), income-tax authorities, Reserve Bank of India, SEBI, ROC, the respective Stock Exchanges, Official Liquidator, Competition Commission of India, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the demerger and shall require that representations, if any, to be made by them shall be made to NCLT **within a period of 30 days from the date of receipt of such notice**, failing which, it shall be presumed that they have no representations to make on the proposals.

The notice to the above authorities shall be sent forthwith, after the notice is sent to the members or creditors of the Company, by registered post or by speed post or by courier or by hand delivery at the office of the authority.

10. Filing affidavit for compliance of notice and advertisement

The Chairperson appointed for the meeting of the Company or other person directed to issue the advertisement and notices of the meeting shall file an affidavit before the Tribunal **not less than 7 days before the date fixed for the meeting** or the date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

11. Voting

The person who receives the notice may **within one month from the date of receipt** of the notice vote in the meeting either in person or through proxy or postal ballot or through electronic means to the adoption of the scheme of demerger.

Voting by proxy shall be permitted, if 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**.

Provided that any objection to the arrangement shall be made only by persons holding not less than 10 % of the shareholding or having outstanding debt amounting to not less than 5 % of the total outstanding debt as per the latest audited financial statement.

12. General Meeting

In the meeting, **majority in number representing 3/4th in value** of the members or creditors or their class, as the case may be present either in person or by proxy or by postal ballot or by electronic voting should agree to the scheme.

13. Reporting of result

The report of the result of the meeting shall be in **Form No.CAA.4** and shall state accurately the number of creditors or members or class of them, as the case may be, who were present and who voted at the meeting either in person or by proxy, or through electronic means, their individual values and the way they voted.

The Chairperson of the meeting shall, within the time fixed by the Tribunal, or where no time has been fixed, **within 3 days after the conclusion of the meeting, submit a report to the Tribunal** on the result of the meeting in **Form No. CAA.4**

14. Petition for confirming demerger

If proposed demerger is agreed by the members or creditors, the Company shall, **within 7 days of the filing of the report by the Chairperson**, present a Petition to the Tribunal in **Form No. CAA.5** for sanction of scheme of demerger.

15. Date and notice of hearing

NCLT shall fix a date for the hearing of the petition, and notice of the hearing shall be **advertised in the same newspaper** in which the notice of the meeting was advertised or in such other newspaper as the Tribunal may direct, **not less than 10 days before the date fixed for the hearing in Form NCLT-3A.**

The notice of the hearing of the petition shall also be served by NCLT to the objectors or to their representatives and to the Central Government and other authorities who have made representation and have desired to be heard in their representation.

Every Party may appear either in person or through authorised representative, who shall make an appearance through filing Vakalatnama or Memorandum of Appearance in **Form No NCLT-12** representing the respective parties.

16. Order of NCLT sanctioning the demerger

Tribunal may sanction the demerger by issuing Order in **Form No. CAA. 6** and shall include such directions in regard to any matter or modifications in the demerger as the NCLT may think fit for the proper working of the arrangement.

The order shall direct that a certified copy of the same shall be filed with the **ROC** within **30 days from the date of the receipt of copy of the order**, or such other time as may be fixed by NCLT.

No demerger shall be sanctioned by NCLT unless a **certificate by the Company's auditor** has been filed with NCLT to the effect that the accounting treatment, if any, proposed in the scheme of demerger is in conformity with the accounting standards prescribed under section 133.

17. Filing of the order with the ROC

After the filing CTC of order with ROC in **Form INC 28**, within **30 days from the date of the receipt of copy of the order**, it shall become fully binding and effective.

Every Company in relation to which the order is made shall, until the completion of the scheme, file a statement in **Form No. CAA.8** every year within **210 days from the end of each financial year** with the ROC, duly **certified by a CA or CWA or CS in practice** indicating whether the scheme is being complied with in accordance with the orders of the NCLT or not.

An application for rectification of Final order can be filed within **2 years** in **Form No. NCLT-9**

In future, with any Memorandum of Association that may be issued by the Company, a copy of the order of the concerned NCLT must be annexed.

B. Forms Involved:

- NCLT-1 – Application (replacement of Judge summon)
- NCLT-2 - A notice of admission
- NCLT-6 - An affidavit (Affidavit supporting to application)
- CAA-2 - Notice and Advertisement of notice of the meeting of creditors or members
- CAA-3 - Notice to Central Government, Regulatory Authorities
- CAA-4 - Report of result of meeting by Chairperson
- CAA-5 - Petition to sanction compromise or arrangement
- CAA-6 - Order on petition
- CAA-7 - Order under section 232
- CAA-8 - Statement to be filed with Registrar of Companies
