

Board Meeting

At first, the company shall convene a board meeting where it is resolved to amalgamate with another company.

Application to Tribunal

The company shall then make an application in Form no. NCLT-1 to the [National Company Law Tribunal](#) of relevant territorial jurisdiction. The application shall be accompanied by

- (i) A notice of admission in Form No. NCLT-2
- (ii) An affidavit in Form No. NCLT-6
- (iii) A copy of scheme of compromise or arrangement, which should include the following disclosures—
 - (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 amalgamation;
 - (c) Any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including—
 - (1) A creditor's responsibility statement in Form No. CAA. 1;
 - (2) Safeguards for the protection of other secured and unsecured creditors;
 - (3) Report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board
 - (4) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and
 - (5) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.
- (iv) Fee as prescribed in the Schedule of Fees

Apart from the above the applicant shall also disclose to the tribunal, the basis on which each class of members or creditors has been identified for the approval of the scheme.

It shall be noted that the two companies may at their discretion make a joint application. The Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct.

It shall essentially give directions pertaining to the following matters:-

- (a) Determining the class or classes of creditors or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement;

- (b) Fixing the time and place of the meeting or meetings;
- (c) Appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;
- (d) Fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronic means;
- (e) Determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;
- (f) Notice to be given of the meeting or meetings and the advertisement of such notice;
- (g) notice to be given to sectoral regulators or authorities as required under sub-section (5) of section 230;
- (h) The time within which the chairperson of the meeting is required to report the result of the meeting to the Tribunal; and
- (i) Such other matters as the Tribunal may deem necessary.

Notice Of The Meeting

Notice of the meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, in Form No. CAA.2.

The notice shall be sent by the Chairperson appointed for the meeting, or, if the Tribunal so directs, by the company or any other person as the Tribunal may direct, 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.

The notice of the meeting to the creditors and members shall be accompanied by a copy of the scheme of compromise or arrangement and a statement disclosing the following details of the compromise or arrangement, if such details are not already included in the said scheme:-

(i) Details of the order of the Tribunal directing the calling, convening and conducting of the meeting:

- (a) Date of the Order;
- (b) Date, time and venue of the meeting.

(ii) Details of the company including:

- (a) Corporate Identification Number (CIN) or Global Location Number (GLN) of the company;
- (b) Permanent Account Number (PAN);
- (c) Name of the company;

- (d) Date of incorporation;
 - (e) Type of the company (whether public or private or one-person company);
 - (f) Registered office address and e-mail address;
 - (g) Summary of main object as per the memorandum of association; and main business carried on by the company;
 - (h) Details of change of name, registered office and objects of the company during the last five years;
 - (i) name of the stock exchange (s) where securities of the company are listed, if applicable;
 - (j) Details of the capital structure of the company including authorised, issued, subscribed and paid up share capital; an
 - (k) Names of the promoters and directors along with their addresses.
- (iii) the date of the board meeting at which the scheme was approved by the board of directors including the name of the directors who voted in favour of the resolution, who voted against the resolution and who did not vote or participate on such resolution;
- (iv) Explanatory statement disclosing details of the scheme of compromise or arrangement including:-
- (a) Parties involved in such compromise or arrangement;
 - (b) Appointed date, effective date, share exchange ratio (if applicable) and other considerations, if any
 - (c) summary of valuation report (if applicable) including basis of valuation and fairness opinion of the registered valuer, if any, and the declaration that the valuation report is available for inspection at the registered office of the company;
 - (d) Details of capital or debt restructuring, if any;
 - (e) Rationale for the compromise or arrangement;
 - (f) Benefits of the compromise or arrangement as perceived by the Board of directors to the company, members, creditors and others (as applicable);
 - (g) Amount due to unsecured creditors.
- (v) disclosure about the effect of the compromise or arrangement on:
- (a) key managerial personnel;
 - (b) directors;
 - (c) promoters;
 - (d) non-promoter members;
 - (e) Depositors;

- (f) Creditors;
- (g) Debenture holders;
- (h) Deposit trustee and debenture trustee;
- (i) Employees of the company;
- (vi) Disclosure about effect of compromise or arrangement on material interests of directors, Key Managerial Personnel (KMP) and debenture trustee.
- (vii) Investigation or proceedings, if any, pending against the company under the Act.
- (viii) Details of the availability of the following documents for obtaining extract from or for making or obtaining copies of or for inspection by the members and creditors, namely:
 - (a) Latest audited financial statements of the company including consolidated financial statements;
 - (b) Copy of the order of Tribunal in pursuance of which the meeting is to be convened;
 - (c) Copy of scheme of compromise or arrangement;
 - (d) Contracts or agreements material to the compromise or arrangement;
 - (e) the certificate issued by Auditor of the company to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013; and
 - (f) Such other information or documents as the Board or Management believes necessary and relevant for making decision for or against the scheme;
 - (ix) 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 compromise or arrangement.
 - (x) A 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.

Advertisement

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. A copy of the notice shall also be placed, not less than thirty days before the date fixed for the meeting, on the website of the company .

It may be noted that the two companies may give a joint advertisement.

Notice To Statutory Authorities

The aforesaid notice along with a copy of the scheme of compromise or arrangement, the explanatory statement and the aforementioned disclosures, shall also be sent to the

Central Government, the income-tax authorities, the Reserve Bank of India, the Registrar of Companies, the Official Liquidator, the Competition Commission of India and such other sectoral regulators or authorities which are likely to be affected by the amalgamation in form CAA-3.

If the authorities stated above desire to make any representation, the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies

Affidavit Of Service.—

The Chairperson appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit before the Tribunal not less than seven 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.

Convene Meeting

The next step is to convene a meeting of members, creditors or a class of them to accord sanction to the scheme. The scheme is said to be approved in the meeting where majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to it.

Following are some important points in this regard:

(1) The voting at the meeting shall take place by poll or by voting through electronic means.

(2) Report of the result of the meeting—

The Chairperson of the meeting shall, within the time fixed by the Tribunal, or where no time has been fixed, within three days after the conclusion of the meeting, submit a report to the Tribunal on the result of the meeting in Form No. CAA.4. It 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, and where applicable, who voted through electronic means, their individual values and the way they voted.

Petition for confirming compromise or arrangement—

The company (or its liquidator), shall, within seven days of the filing of the report by the Chairperson, present a petition to the Tribunal in Form No. CAA.5 for sanction of the scheme of amalgamation. In case of the company's failure, it shall be open to any creditor or member as the case may be, with the leave of the Tribunal, to present the petition and the company shall be liable for the cost thereof.

Date and notice of hearing—

(1) The Tribunal 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 ten days before the date fixed for the hearing.

(2) The notice of the hearing of the petition shall also be served by the Tribunal to the objectors or to their representatives under sub-section (4) of section 230 of the Act and to the Central Government and other authorities who have made representation under rule 8 and have desired to be heard in their representation.

Order On Petition—

(1) Where the Tribunal sanctions the compromise or arrangement, the order shall include such directions in regard to any matter or such modifications in the compromise or arrangement as the Tribunal may think fit to make for the proper working of the compromise or arrangement.

It shall be in Form No. CAA. 6, with such variations as may be necessary.

The company shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

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.

The company shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.