

Companies Act, 1956

Chapter 5 - Arbitrations, Compromises, Arrangements and Reconstructions

[Rep. by the Companies (Amendment) Act, 1960 (65 of 1960), Section 150(w.e.f. 28-12-1960).]

Section 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.

Section 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 [1](#)[Tribunal] 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 [1](#)[Tribunal] 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 [2](#) [under the rules made under section 643], by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the [1](#)[Tribunal], 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:

[3](#) [Provided that no order sanctioning any compromise or arrangement shall be made by the [1](#) [Tribunal] unless the [1](#)[Tribunal] 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 351, and the like.]

(3) An order made by the [1](#)[Tribunal] 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 [4](#) [one hundred rupees] for each copy in respect of which default is made.

(6) The [1](#)[Tribunal] 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 [1](#)[Tribunal] thinks fit, until the application is finally disposed of.

[5](#) [***]

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1. Substituted by Act 11 of 2003, section 39, for "Court".
 2. Inserted by Act 65 of 1960, Section 151 (w.e.f. 28-12-1960).
 3. Added by Act 31 of 1965, Section 48 (w.e.f 15-10-1965).
 4. Substituted by Act 53 of 2000, Section 174, for "ten rupees" (w.e.f. 13-12-2000).
 5. Sub-section (7) omitted by Act 11 of 2003, section 39.

Section 392 - Power of Tribunal to enforce compromise and arrangement

[1](#) [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 (Amendment) Act, 2001 sanctioning a compromise or an arrangement.]

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1. Substituted by Act 11 of 2003, section 40, for section 392 (See Annexe).

Section 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 any material interests of the directors, managing director 1 [***] 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 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 2 [fifty thousand rupees] ; and for the purpose of (his 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, 1 [***] manager or trustee for debenture holders, to supply the necessary particulars as to his material interests.

(5) Every director, managing director, 1 [***] or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matters 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 3 [five thousand rupees].

1. The words "managing agent, secretaries and treasurers," omitted by Act 53 of 2000, Section 175 (w.e.f. 13-12-2000).

2. Substituted by Act 53 of 2000, Section 175, for "five thousand rupees" (w.e.f. 13-12-2000).

3. Substituted by Act 53 of 2000, Section 175, for "five hundred rupees" (w.e.f. 13-12-2000).

Section 394 - Provisions for facilitating reconstruction and amalgamation of companies

(1) Where an application is made to the 1 [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 1 [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 1 [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 provision to be made for any persons who, within such time and in such manner as the 1 [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:

2 [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 1 [Tribunal] unless the 1 [Tribunal] has received a report from the 3 [***] 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 1 [Tribunal] unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the 1 [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 properly 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 4 [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 5 [five hundred rupees] .

(4) In this section -

- (a) "property" includes property rights and powers 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.

1. Substituted by Act 11 of 2003, Section 41, for "Court".

2. Added by Act 31 of 1965, Section 49 (w.e.f. 15-10-1965).

3. The words "the Company Law Board or" omitted by Act 11 of 2003, Section 41.

4. Substituted by Act 31 of 1965, Section 62 and Schedule, for "fourteen" (w.e.f. 15-10-1965).

5. Substituted by Act 53 of 2000, Section 176, for "fifty rupees" (w.e.f. 13-12-2000).

Section 394A - Notice to be given to Central Government for applications under sections 391 and 394

1[394A. Notice to be given to Central Government for applications under sections 391 and 394. -

The²[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.]

1. Inserted by Act 31 of 1965, Section 50 (w.e.f. 15-10-1965).

2. Substituted by Act 11 of 2003, Section 42, for "Court".

Section 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 mat 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 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 the¹[Tribunal] 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 t ransferee 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 the¹[Tribunal] 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 sub-section (1) and the¹[Tribunal] has not, on an 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 the¹[Tribunal] 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; and²[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 consideration were respectively received.

³[(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;

(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 the¹[Tribunal] 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 to⁴[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).

1.Substituted by Act 11 of 2003, Section 42, for "Court".

2.Substituted by Act 31 of 1965, Section 51, for certain words (w.e.f. 15-10-1965).

3.Inserted by Act 31 of 1965, Section 51 (w.e.f. 15-10-1965).

4.Substituted by Act 53 of 2000, Section 177, for "five hundred rupees" (w.e.f. 13-12-2000).

Section 396 - Power of Central Government to provide for amalgamation of companies in public interest

396. Power of Central Government to provide for amalgamation of companies in 1 [public interest] . -

(1) Where the Central Government is satisfied that it is essential in the 1 [public interest] that two or more companies should amalgamate, then, notwithstanding anything contained in sections 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, interests, authorities and privileges; and with such liabilities, duties, and obligations; as may be specified in the order.

(2) 2 [The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any 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 3 [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.

4 [(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 5 [Tribunal] and thereupon the assessment of the compensation shall be made by the 5 [Tribunal].]

(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; [6](#)
[***]

[4](#) [(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.

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1. Substituted by Act 65 of 1960, Section 152, for "national interest" (w.e.f. 28-12-1960)
 2. Substituted by Act 35 of 1985, Section 3 for "The order aforesaid may" (w.e.f. 24-5-1985).
 3. Substituted by Act 35 of 1985, Section 3 for "as may be prescribed" (w.e.f. 24-5-1985).
 4. Inserted by Act 35 of 1985, Section 3 (w.e.f. 24-5-1985).
 5. Substituted by Act 11 of 2003, Section 43, for "Company Law Board".
 6. The words "and" omitted by Act 35 of 1985, Section 3 (w.e.f. 24-5-1985).
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Section 396A - Preservation of books and papers of amalgamated company

[1](#)[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.]

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1. Inserted by Act 31 of 1965, Section 52 (w.e.f. 15-10-1965).
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