



**CLASS: MBA 2<sup>ND</sup> SEM**

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**LEGAL AND BUSINESS ENVIRONMENT**  
*(Notes as per Punjab Technical University Syllabus)*

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## UNIT – II

# Membership in a Company

By definition, the term “*Member*” in relation to a company means, one who has agreed to become the member of the company by entering his name into the ‘*Register of Members*’. Every person who has agreed in writing to become a part of the company and also holds shares of the company is considered the ‘*Member of the Company*’ and is said to hold membership in a company. The name of the member of the company is entered as ‘*Beneficial owner in the record of depository*’.

In order to acquire the membership of the company, the following two elements must be presented:

### **An Agreement to become a member.**

Entry of the name of the person so agreeing, in the Register of members of the company.

The enlisted person should be in a capable of entering into a contract with the company. But a bearer of share warrant is not a member of the company. Finally, to become the registered member of the company the person should be satisfactory as an asset to the company.

### **Difference between Member & Shareholder**

MATTER	Member	Shareholder
Meaning	A person whose name is entered in the register of members of a company.	A person who owns the shares of the company.

<b>Definintion</b>	Companies Act, 2013 defines 'Member' under section 2(55)	Shareholder is not listed under the Companies Act, 2013
<b>Share Warranges</b>	The holder of the share warrant is not a member.	The holder of the share warrant is a Shareholder.
<b>Company</b>	Every company must have a minimum number of members.	The Company limited by shares can have shareholders
<b>Memorandum</b>	A person who signs the memorandum of association with the company becomes a member.	After signing the memorandum, a person can become a shareholder only if shares are allotted to him.

### Modes of Acquiring Membership

Acquiring a membership in a company requires many processes and modes. The following are the modes of acquiring membership in a company:

## Subscribing to MOA

- ✓ If a person agrees to sign the memorandum and pledge his presence on the board of members, he becomes the member of the company.
- ✓ Names of the people who have agreed to join the membership of the company should be entered in *Register of Members*.
- ✓ Along with the agreement, if they've agreed to share the company's shares they become the Shareholders of the Company.

## Agreement in Writing

- A person would become the member of the company if he '*agrees in writing*' and gets his name entered in the register of members of the company.
- A shareholder would also become a member of the company if he '*agrees in writing*', and by the following methods:
  - ✓ By transfer of shares
  - ✓ By transmission of shares
  - ✓ By Estoppels (Membership Without sufficient Cause).

## Holding Shares

A person becomes a member of the company if his name is entered as a beneficial owner of the records of the depository and also holds equity share capital of the company. In such cases, the person needn't apply '*in writing*' to become a member of the company.

## Removal of Membership

The term 'Cessation' means 'Termination'. Just as there's a process to add a member of the company, there's a process to terminate that member. Terminating a member of the company can result in removal from the '*Register of Members*'. The following are the modes of removing a member of the company:

## Transfer of Membership

- ✓ Here, the shares of a member are transferred to another person by the company in the name of the transferee.
- ✓ The name of the transferor is removed from the Register of Members.
- ✓ After transferring all the shares from the person to another person, the person is legally removed from the company.

### **Transmission of Membership**

On the death of a shareholder/member of the company, his/her legal heir or representative becomes a member.

### **Surrender of Membership**

A person is removed from the membership once he/she surrenders his shares, which requires '*Acceptance on part of Board*'.

### **Forefeiture of Membership**

On account of Loss or selling of a share, the member is terminated from the company.

### **Share Buy Back**

The person is terminated from the company if the company buys back its shares.

### **Liabilities of Members**

A '*Liability*' is a state of being legally responsible for something. This term is usually used in an organization to emphasize the responsibilities of a member of the company. The following are the liabilities of the member of a company:

- ✓ To make shares if he/she is allotted as per the Act.
- ✓ To pay call money or pay the due amount of shares.
- ✓ To abide by the decision of majority when they act '*bonafide*'.
- ✓ To contribute to the Asset of the company in case of winding up and when the shares are partly paid up.

## NEXT TOPIC

# Prospectus

### **Meaning of prospectus:**

Prospectus is one of the most important documents issued by the company. A person applies for the shares of the company on the basis of information supplied by the company through prospectus. While framing this document the company must ensure that all relevant facts, which are useful for decision making, are printed in the prospectus.

### **Prospectus - Definition**

A prospectus, as per s.2 (36), means “any document described or issued as prospectus and includes any notice, circular, advertisement or other document, inviting deposits from the public or inviting offers from the public for the subscription or purchase of, any shares in or debentures of a body corporate”. Thus, a prospectus is not merely an advertisement; it may be a circular or even a notice. A document shall be called a prospectus if it satisfies two things:

It invites subscriptions to shares or debentures or invites deposits

## Objectives of Prospectus

**Main objective of a prospectus are as follows:**

1. To bring to the notice of public that a new company has been formed
2. To preserve an authentic record of the terms of allotment on which the Public have been invited to buy its shares or debentures.
3. To secure that the Directors of the company accept responsibility statement in the prospectus.

## Types of Prospectus

**Different types of prospectus are as follows:**

### **1. Offer Document:**

It means prospectus in case of a Public issue or offer for sale and Letter of Offer in case of a right issue which is filed with Registrar of Companies (ROC) and Stock Exchanges. An offer document covers all the relevant information to help an investor to make his/her investment decision.

### **2. Draft Offer Document:**

It means the offer document in draft state. The draft offer documents are filed with SEBI at least 21 days prior to the filing of the Offer Document with ROC/SEs. The draft offer document is available on the SEBI website for public comments for a period of 21 days from the filing of the draft offer document with SEBI.

### **3. Red Herring Prospectus:**

It is a prospectus which does not have details of either price or number of shares being offered or the amount of issue. This means that in case price is not disclosed, the number of shares and the upper and lower price bands are disclosed.

### **4. Abridged Prospectus:**

It means the Memorandum as prescribed in Form 2A under sub-section (3) of Section 56 of the Companies Act, 1956. It contains the entire salient features of a

prospectus. It accompanies the application form of public issue.

### **5. Shelf Prospectus:**

Section 60A of the Companies Act, 1956 permits any financial institution or bank to file a shelf prospectus covering one or more issue of securities or class of securities specified in the prospectus with the Roc. The advantage of a shelf prospectus is that the issuing institution need not file a fresh prospectus at every stage of an offer within the validity of the shelf prospectus. Normally, the validity of the shelf prospectus is one year.

## **NEXT TOPIC**

### **Contents of Prospectus**

Section 56 lays down that the matters and reports stated in Schedule II to the Act must be included in a prospectus. The format of a prospectus is divided into three parts.

In the first part, brief particulars are to be given about matters mentioned below:

#### **a) General Information:**

Under this head, information is given about:

1. Name and address of registered office of the company.
2. Name (s) of stock exchange (s) where application for listing is made.
3. Declaration about refund of the issue, if minimum subscription of 90 per cent is not received within 90 days from closure of the issue.
4. Declaration about the issue of allotment letters/refunds within a period of 10 weeks and, interest in case of any delay in refund, at the prescribed rate, under
5. Date of opening of the issue.
6. Date of closing of the issue.
7. Name and address of auditors and lead managers
8. Whether rating from CRISIL or any rating agency has been obtained for the proposed Notes debentures/preference shares issue. If no rating has been obtained, this should be answered as 'No'. However, if 'Yes', the rating should be indicated.
9. Names and addresses of the underwriters and the amount underwritten by them



together with declaration by the Board of directors that the underwriters have sufficient resources to meet their respective obligations.

10. Consent of the Central Government about the present issue as also particulars of letter of intent/industrial license making clear in the statement that the Central Government does not undertake any responsibility for financial soundness or correctness of the statement(s).
11. Punishment if application for shares is made in a fictitious name.
12. Names and addresses of trustees of the debenture trust deed, in case of issue of debentures.

**b) Capital Structure of the Company:**

1. Authorized, issued, subscribed or paid-up capital.
2. Size of the present issue, giving separately reservation for preferential allotment to promoters and others.

**c) Terms of the Present Issue:**

1. Terms of Payment.
2. How to apply i.e., making use of the application form, on the basis of study of prospectus and mode of payment.
3. Any special tax benefits for the company and its shareholders.
4. Rights of the instrument holders, such as they will get dividends for the whole year or for the period of holding only

**d) Particulars of the Issue:**

1. Object(s) of the issue.
2. Project cost.
3. Means of Financing (including contribution of promoters).

**e) Company Management and Project:**

1. History and main objects and present business of the company, as also name and address of subsidiary, if any.
2. Promoters and their background.
3. Location of the project.

4. Collaborations, if any, with details of any performance guarantee or assistance in marketing.
5. Nature of the product(s) export possibilities, export guarantee.
6. Stock market data for shares/debentures of the company including high and low price in each of the last three years and, monthly high and low during the last six months, if applicable.
7. Names, addresses and occupation of managing directors, whole-time directors, other directors including nominee directors and manager, mentioning any directorship held in other company, in each case.
8. Plant and machinery, technology, process, etc.
9. Infrastructure facilities for raw materials and utility like water and electricity.
10. Schedule of implementation of the project and the progress made so far, giving relevant details like land acquisition, civil construction, installation of plant and machinery, trial production, date of commercial production, etc.
11. Approach to marketing and proposed marketing setup.
12. Future prospects, expected capacity utilization during the first three years from the date of commencement of commercial production, and the expected year from which the company would be earning cash profits and net profits.

**Part II of Schedule II requires the company to give detailed information. This part is further sub-divided into three parts viz., General Information, Financial Information and Statutory and Other Information.**

**General Information:**

1. It shall include information on matters like:
2. Consent of directors, auditors, solicitors, managers to the issue, registrars to the issue, bankers of the company, bankers to the issue and experts. If an expert's opinion was obtained, the same should be given.
3. Change, if any, in directors and auditors during the last 3 years and reasons therefore.
4. Procedure and time schedule for allotment and issue of certificates.
5. Names and addresses of company secretary, legal advisor, lead managers, co-managers, auditors and bankers to the issue and brokers to the issue.
6. Authority for the issue and details of resolution passed therefore.

**Financial Information: It includes:**

1. A report by the auditors of the company with respect to (a) its profits and losses (distinguishing items of non-recurring nature), and assets and liabilities, and (b) the rate of dividend paid by the company during the preceding five financial years. If, however, no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, the report shall contain a statement of that fact. If the company has subsidiaries, the report shall, in addition, deal with either the combined profits and losses and assets and liabilities of its subsidiaries or each of the subsidiaries, so far as they concern the members of the company.
2. A report by the accountants (who shall be qualified under the Act for the appointment as auditor of a company and who shall be named in the prospectus) on the profits and losses of the business for the preceding five financial years and on the assets and liabilities of the business on a date which shall not be more than 120 days before the date of the issue of the prospectus. This report is required to be given if the proceeds of the issue of the shares or debentures are to be applied directly in the purchase of any business.
3. A similar report on the accounts of a body corporate by an accountant (who shall be named in the prospectus) if the proceeds of the issue are to be applied in the purchase of shares of the body corporate so that, that body corporate becomes a subsidiary of the acquiring company.
4. Principal terms of loans, and assets charged as security.

2. **Statutory and Other Information:** It includes information about:

1. Minimum subscription.
2. Expenses of the issue i.e. fee payable to advisors, registrars to the issue, managers to the issue and trustees for the debenture holders.
3. Underwriting commission and brokerage.
4. Previous issue for cash.
5. Previous public or rights issue; if any, during the last five years, along-with prescribed particulars.
6. Issue of shares otherwise than for cash.
7. Commission or brokerage on previous issues.
8. Revaluation of assets, if any, during the last five years.

9. Material contracts and, time and place where such documents maybe inspected.
10. Debentures and redeemable preference shares or other instruments issued but, remaining outstanding on the date of the prospectus and terms of their issue.
11. Purchase of any property with prescribed details. (a) Details of directors, proposed directors, whole-time directors, their remuneration, appointment, remuneration and of manager or managing director, interests of directors, their borrowing powers and qualification shares. Any amount or benefit paid or given within the preceding two years or intended to be paid or given to any promoter or officer, and consideration for payment of giving the benefit. (b) Full particulars of the nature and extent of the interest, if any, of every director or promoter.
12. Restrictions, if any, on transfer and transmission of shares/debentures, and on their consolidation or splitting.
13. Outstanding litigations relating to financial matters or criminal proceedings against the company or directors under schedule XIII.
14. Any material development subsequent to the date of the latest balance sheet and its impact on performance and prospects of the company.
15. Management perception of risk factors (e.g. sensitivity to foreign exchange rate fluctuations, difficulty in availability of raw materials or in marketing of products, cost/time over-run, etc.).

**Part III of the Schedule gives explanations of certain terms and expressions used under Part-I and Part - II of the Schedule.**

It also requires a declaration that all relevant provisions of the Act and the guidelines issued by the government have been complied with and nothing has been stated in the prospectus that is contrary to the provisions of the Act. Further, in clause 19 it has been stated that a company which has not been in existence for five years, then the period of actual life shall be substituted for five years.

In any case, the articles of a company must be:

1. Printed
2. Divided into paragraphs, numbered consecutively.

Signed by subscribers to the memorandum in the presence of at least witness who shall at least the signatures. Also, Articles are to be stamped with requisite stamp and filed along

with the memorandum.

## Accounts and Audits:

**Section – 139: Appointment of Auditors** 139(1) Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its 6th annual general meeting and thereafter till the conclusion of every 6th meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed: Provided further that before such appointment is made, the written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor:

Provided also that the certificate shall also indicate whether the auditor satisfies the criteria provided in section 141: Provided also that the company shall, inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

**Explanation:** For the purposes of this Chapter, “appointment” includes reappointment. (2) No listed company or a company belonging to such class or classes of companies as may be prescribed shall appoint or re-appoint: (a) an individual as auditor for more than one term of 5 consecutive years; and (b) an audit firm as auditor for more than two terms of 5 consecutive years: Provided that: (i) an individual auditor who has completed his term under 139(2)(a) shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of his term;

(ii) an audit firm which has completed its term under 139(2)(b), shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of such term: Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of 5 years:

Provided also that every company, existing on or before the commencement of this Act which is required to comply with the provisions of this sub-section, shall comply with requirements of this section 139

(2) within a period which shall not be later than the date of the first annual general meeting of the company held, within the period specified under section 139(1) of section 96, after 3 years from the date of commencement of this Act. Provided also that, nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company

(3) Subject to the provisions of this Act, members of a company may resolve to provide that: (a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or (b) the audit shall be conducted by more than one auditor.

(4) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of section 139(2). Explanation: For the purposes of this Chapter, the word "firm" shall include a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008.

(5) Notwithstanding anything contained in section 139(1), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the CAG of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of 180 days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

(6) Notwithstanding anything contained in section 139(1), the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within 30 days from the date of registration of the company and in the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 90 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

(7) Notwithstanding anything contained in section 139(1) or (5), in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments, \*the first auditor shall be appointed by the CAG of India within 60 days from the date of registration of the company and in case the CAG of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next 30 days; and in the case of failure of the Board to appoint such auditor within the next 30 days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an eogm, who shall hold office till the conclusion of the 1st annual general meeting.

(8) Any casual vacancy in the office of an auditor shall: (i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the CAG of India, be filled by the Board of Directors within 30 days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting; (ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the CAG of India, be filled by the CAG of India within 30 days: Provided that in case the CAG of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

(9) Subject to the provisions of section 139(1) and the rules made thereunder, a retiring auditor may be re-appointed at an annual general meeting, if: (a) he is not disqualified for re-appointment; (b) he has not given the company a notice in writing of his unwillingness to be re-appointed; and (c) a special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

(10) Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

(11) Where a company is required to constitute an Audit Committee under section 177, all

appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

## **NEXT TOPIC**

### **Issue of Shares**

When a company wishes to issue shares to the public, there is a procedure and rules that it must follow as prescribed by the Companies Act 2013. The money to be paid by subscribers can even be collected by the company in installments if it wishes. Let us take a look at the steps and the procedure of issue of new shares.

### **Procedure of Issue of New Shares**

#### **1] Issue of Prospectus**

Before the issue of shares, comes the issue of the prospectus. The prospectus is like an invitation to the public to subscribe to shares of the company. A prospectus contains all the information of the company, its financial structure, previous year balance sheets and profit and Loss statements etc.

It also states the manner in which the capital collected will be spent. When inviting deposits from the public at large it is compulsory for a company to issue a prospectus or a document in lieu of a prospectus.

#### **2] Receiving Applications**

When the prospectus is issued, prospective investors can now apply for shares. They must fill out an application and deposit the requisite application money in the schedule bank mentioned in the prospectus. The application process can stay open a maximum of 120 days. If in these 120 days minimum subscription has not been reached, then this issue of shares will be cancelled. The application money must be refunded to the investors within 130 days since issuing of the prospectus.



### 3] Allotment of Shares

Once the minimum subscription has been reached, the shares can be allotted. Generally, there is always oversubscription of shares, so the allotment is done on pro-rata bases. Letters of Allotment are sent to those who have been allotted their shares. This results in a valid contract between the company and the applicant, who will now be a part owner of the company.

If any applications were rejected, letters of regret are sent to the applicants. After the allotment, the company can collect the share capital as it wishes, in one go or in instalments.

## LOAN AND INVESTMENTS:

### Companies Act, 2013

The Companies Act, 2013 (“Act”) regulates the provisions relating to grants of loans to directors of the company. Section 185 of the Act provides the conditions and restrictions of granting loans to the directors. Every company must follow the conditions laid down in this Section before granting loans or giving guarantee or security in connection with any loan. This Section also provides a penalty to the company, officer in default and the directors who grant loans in contravention to the conditions laid down in this Section.

### Loan To Directors

Section 185(1) of the Act states that a company cannot –

- Advance loan directly or indirectly,
- Advance loan which includes a loan represented by a book debt,
- Give guarantee or provide security with connection to any loan taken

to a director, director of its holding company, partner or relative of any director, or any firm in which a director is a relative or a partner. Thus, this Section prohibits granting loans to the directors or relatives or partners of the directors of the company.

### Loan To Any Interested Person Of A Director

A company may advance loans including any loan represented by a book debt or give

**guarantee** or provide security in connection with any loan taken to any person in whom any of the directors of the company is interested. Section 185(2) allows a company to give loans to any person/entity in whom any of the directors are interested in subject to certain conditions:

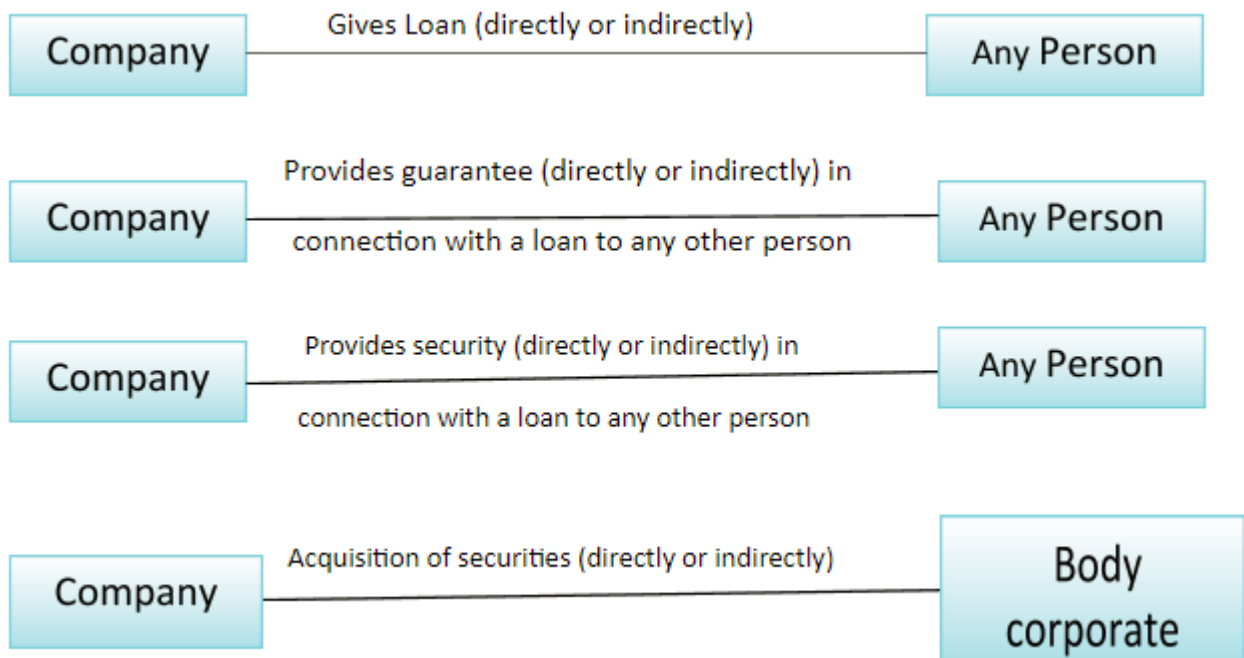
- ✓ The conditions which are to be fulfilled for advancing loans or providing guarantee or security to the person in whom the director is interested
- ✓ A special resolution in general meeting is to be passed and that the borrowing company utilises the loans granted for its principal business activities

### **Section 186 Of The Companies Act, 2013**

Section 186 of the Companies Act, 2013 provides for the **loans and investments** that can be made by a company. It states that a company can make investments through more than two layers of investment companies.

Section 186 of the Companies Act, 2013 also states that a company cannot directly or indirectly:

- Give loan to any person or body person,
- Give any security or provide a guarantee in connection with a loan to any other person or body corporate,
- and acquire by way of purchase, subscription or otherwise, the securities of any other body corporate
- Exceeding 60% of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.



## Legal requirements

### Requirement No. 1: Approval of Board

1. The approval of the Board is required in all cases irrespective of the amount of loan, investment, guarantee or security.
2. The approval of the Board shall be obtained by means of a unanimous resolution passed at a Board meeting with the consent of all the directors present at the meeting.
3. Resolution by circulation or resolution of the committee of directors is not sufficient.

### Requirement No.2: Approval of the members by passing Special Resolution

1. When the aggregate of the loan, investment, guarantee or security already made together with the loan, investment, guarantee or security proposed to be made exceeds the limit specified u/s 186(2), prior approval by means of a special resolution is necessary.

#### 2. Limit u/s 186(2) is *higher of* –

- 60% of (paid-up share capital + free reserves + securities premium) or
- 100% of (free reserves + securities premium).

The contents of the Special resolution shall contain the total amount up to which the Board is authorized to make loans, guarantee, investment or security. 4. No approval by way of SR is required, where –

- The loan is given by a company to its Wholly Owned Subsidiary [WOS] or joint

venture company [JVC], or

- The guarantee is given or security is provided by a company to its WOS or JVC.
- Where the acquisition of securities of its wholly owned subsidiary is made by a holding company, by way of subscription or otherwise.

### **Requirement No.3: Approval of public financial institution [PFI]**

1. The company shall obtain the prior approval of PFI from which it has taken a term loan.
2. Approval of PFI is not required if –
  - The aggregate of loans, guarantee, investments or security already made together with the loan, investment, guarantee or security proposed to be made does not exceed the limit given.
  - There is no default in repayment of loan installments or interest to PFI as per the terms and conditions of such term loan.

### **Requirement No.4: Rate of interest**

The rate of interest chargeable should be more than the prevailing yield of Government Security closest to the period of the loan.

### **Requirement No.5: No subsisting default with respect to deposits**

1. A company which has defaulted in repayment of any deposits accepted by it or in payment of interest on deposits, shall not make any loan, guarantee, investments or security till such default is subsisting.
2. In other words, where a company fails to repay the deposits or interest thereon on the due date, it may make loan, guarantee, investments or security only after the default has been made good.

### **Requirement No.6: Disclosures in financial statements**

1. The company shall disclose to the members in the financial statement –
  - The full particulars of any loans given, investments made, guarantee or security provided, and
  - The purpose for which the loan or guarantee or security is proposed to be utilized by the recipient.

## **NEXT TOPIC**

## DEPOSITE AND CHARGES:

**MEANING** : Deposits means when a company are generally acquiring funds from the members or the public in the form of loan or any other form as may be prescribed, but does not include certain classes of transactions. Companies aim to secure finance by different cost-effective methods to suit their financial requirements. The legal definition of deposit are provided under Section 2 (31) of Companies Act and Rule 2(1)(v)

### Definition Of Deposit.:

Applicable provisions: Sections 73 to 76 of the Companies Act, 2013 read with The Companies (Acceptance of Deposits) Rule, 2014.

**Applicability:** Company can accept deposits from members and public after complying, the provisions, which are mentioned under this Chapter i.e. “Acceptance of Deposits by Companies”

However, following companies does not cover under the chapter:

1. Banking Company
2. Non Banking Financial Companies as per the RBI Act 1934
3. Any other company notified by the Central Government in consultation with the RBI.

### What is Eligible Company?

Eligible Company, means a Public Company having Net Worth of **not less than 100Cr** or more or **a Turnover of not less than 500Cr** or more and which has obtained the prior consent of the company in general meeting by means of a Special Resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits;

Provided that an eligible company, which is accepting deposits within the limits specified under section 180(1)(c) may accept deposits by means of an ordinary resolution.

**Time period** : No company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposit:

Provided that a company can accept, renew such deposit for repayment earlier than 6 months subject to the conditions that:

- ✓ Such deposit, shall not exceed 10% of the aggregate of [Paid-up share capital, free Reserves and securities premium account] of the company,
- ✓ Such deposits are not repayable earlier than 3 months from the date of acceptance or renewal.

**MEANING OF CHARGES** – The Companies Act, 2013 defines a Charge as an interest or lien created on the assets or property of a Company or any of its undertaking as security and includes a mortgage U/s 2(16). In the earlier Act of 1956, the word “Mortgage” was not mentioned.

#### **TYPES OF CHARGES :-**

1. **Fixed Charge**: A charge which is identifiable with specific and clear asset/property at the time of creation of charge. The Company cannot transfer such identified and defined property unless the charge holder (creditor) is paid off his dues.
2. **Floating Charge**: It covers the floating and circulating nature of properties of a company, like sundry debtors, stock in trade etc. The nature of the property charged may change from time to time. The floating charge crystallizes into fixed charge if the Company crystallizes or the undertaking ceases to be a going concern. Source-

**Crystallization of Floating Charge** This conversion of floating charge into a fixed charge is usually called Crystallization of floating charge. Such an event happens under the following circumstances:

- ✓ The debtor is unable to pay off the debts.

- ✓ The business couldn't be carried out when the creditor/debenture Holder takes action against the debtor for not repaying the debts and in all such circumstances which are listed out under the relevant provisions of the Companies Act, 2013.
- ✓ Company goes into liquidation Company cease to carry on its business On the happening of any event as specified in deed of agreement.

**3.) NEED FOR CREATING CHARGE:** Almost all the large and small companies depend upon share capital and borrowed capital for financing their projects. Borrowed capital may consist of funds raised by issuing debentures, which may be secured or unsecured, or by obtaining financial assistance from financial institution or banks. The financial institutions/banks do not lend their monies unless they are sure that their funds are safe and they would be repaid as per agreed repayment schedule along with payment of interest. In order to secure their loans they resort to creating right in the assets and properties of the borrowing companies, which is known as a charge on assets. This is done by executing loan agreements, hypothecation agreements, mortgage deeds and other similar documents, which the borrowing company is required to execute in favour of the lending institutions/ banks etc.

**4.) DUTY TO REGISTER CHARGE:** Section 77(1) provides that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India.

To register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in such **Form CHG-1 (for other than debentures) or Form CHG-9 (for debentures including rectification)**, on payment of such fees and in such manner as may be prescribed in the Rules, with the Registrar within 30 days of its creation.

**Provided that the Registrar may, on an application by the company, allow such registration to be made by two ways:-**

- A.) If the charge is created before the Ordinance – within 300 days – If not registered, to be completed within 6 months from the date of Ordinance on paying fee
- B.) If the charge is created after the Ordinance– within 60 days. If not registered – ROC may grant another 60 days on application on payment of advalorem fee

## **NEXT TOPIC**

### **CORPORATE MEETING**

#### **Meaning and Definition of Company Meeting:**

The word “meeting” is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business.

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

#### **Some important definitions of meeting are given below:**

In the case of Sharp vs. Dawes (1971), the meeting is defined as “An assembly of people for a lawful purpose” or “the coming together of at least two persons for any lawful purpose.”

According to P.K. Ghosh “Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting.”

According to K. Kishore, “A concurrence or coming together of at least a quorum of members by previous notice or mutual agreement for transaction business for a common interest is meeting.”

From the above definitions of meeting, it can be concluded that meeting is the congregation of several persons in a particular place for the purpose of discussing some important matters and expressing their opinion on the questions raised.

#### **Characteristics of a Company Meeting:**

**The characteristics of a company meeting are as follows:**



1. Two or more persons (who are the members of the Company) must be present at the meeting.
2. The assembly of persons must be for discussion and transaction of some lawful business.
3. A previous notice would be given for convening a meeting.
4. The meeting must be held at a particular place, date and time.
5. The meeting must be held as per provisions/rules of Companies Act.

### **One-Man Meeting:**

To Convene a meeting, two or more persons must be present. A meeting cannot be constituted by one person. However, there are certain circumstances where one person can constitute a valid They are as follows:-

#### **1. Meeting Convened by Central Government:**

Where the Central Government calls an annual general meeting under Sec. 167 of the Act, it may direct that one member of the company present in person or by proxy shall constitute the meeting.

#### **2. Absence of Quorum in an Adjourned Meeting:**

By quorum we mean the minimum number of the members who must be present at a meeting as required by the rules. In the absence of quorum the proceedings of the company cannot be started.

If the quorum does not complete within half an hour of the prescribed time, meeting will be adjourned to the same time, place and date in the next week. If at the adjourned meeting also the quorum does not complete, the members present shall be quorum and attending members (even if one member is present) may be allowed to come to a decision and pass resolutions. It means one member present in person shall constitute a valid meeting.

#### **3. Meeting Convened by Company Law Board:**

Where the Company Law Board calls a meeting under Sec. 186 of the Act (other than an annual general meeting), it may direct that one member present in person or proxy shall be deemed to constitute a valid meeting.

#### **4. Class Meeting of Shareholders:**

Where one person held all the shares of a particular class, that member alone was held to constitute a valid meeting of that class of shareholders,

#### **5. Meeting of One-Man Committee of Board of Directors:**

As per Rule 77 of 'Table A', the board of directors may delegate their works to a Committee which may have only one member. When the meeting of such Committee will be held, only one member will be present and he alone will constitute a valid meeting.

#### **Kinds of Company Meetings:**

**The meetings of a company may be classified into the following categories:**

##### **1. Meetings of shareholders:**

- I. Statutory meeting;
- II. Annual general meeting (AGM)
- III. Extra ordinary general meeting;
- IV. Class meetings.

##### **2. Meetings of directors:**

1. Meetings of board of directors;
2. Meetings of directors;
3. Meetings of creditors.
4. Meetings of debenture-holders.

##### **1. Meetings of Shareholders:**

The shareholders are the real owners of the company, but due to certain limitations they cannot take part in the management of the company. They leave this to their representatives called the directors. For controlling the board of directors and their activities 'shareholders' 'meetings' are held from time to time. Meeting of shareholders can be classified as under.

### **I. Statutory Meeting:**

Every public company having share capital must convene a general meeting of shareholders within a period of not less than one month and not more than six months after the date on which it is authorised to commence its business. This is the first meeting of the shareholders of the company and it is held once in the whole life of the company.

#### **The following companies need not to hold statutory meeting:**

- (i) Private company.
- (ii) Company limited by Guarantee having no share capital.
- (iii) Unlimited liability company.
- (iv) A public company which was registered as a private company earlier.
- (v) A company which has been deemed as a public company under Sec. 43 A.

#### **Notice of the Meeting:**

The directors are required to send a notice of the meeting to all the members of the company at least 21 days before the date of the meeting stating that it is the 'statutory meeting' of the company. If the notice convening this meeting does not name it as the "Statutory Meeting" it will not amount to compliance with the provisions of this section.

#### **Objects of Statutory Meeting:**

The statutory meeting is held to inform the shareholders about matters relating to incorporation, allotment of share, the details of the contracts concluded by the company, etc. According to Stephenson, "Statutory

Meeting is convened in order to afford the shareholders an opportunity for seeing what degree of success has attained the floatation of the company and in order that any special matters requiring their approval may be laid before them.”

### **Statutory Report:**

The directors are required to prepare and send a report called the ‘Statutory Report’ to every member of the company at least 21 days before the date of the meeting. If the report is sent later it shall be deemed to have been duly forwarded if it is so agreed to by a unanimous vote of the members entitled to attend and vote at the meeting [Sec. 165 (2)]. A copy of this report should be sent to the Registrar.

### **Certification of Report:**

The statutory report must be certified as correct by not less than two directors; one of whom shall be the managing director, if any. The auditors of company then shall certify it as correct regarding the shares allotted, cash received in respect of such shares and the receipts and payment of the company. [Sec. 165(4)]

A certified copy of the statutory report shall be filed with the registrar for registration immediately after the same has been sent to the members of the company. [Sec. 165(5)]

### **Procedure at the Meeting:**

At the commencement of the meeting the Board shall place a list showing the name, addresses and occupation of the members of the company and the number of the shares held by them. During the continuance of the meeting the list shall remain open for inspection by members.

The members present at the meeting may discuss any matter relating to the formation of the company or arising out of statutory report, whether previous notice has been given or not. The meeting cannot pass a resolution on any item or on a subject unless notice has been given according to the provisions of the Act.

### **Effect of Non-compliance:**

(i) If default is made in complying with the provisions of Section 165, every director or other officer of the company who is in default will be liable to a fine which may extend to Rs. 500.

(ii) If the statutory meeting is not held or the statutory report is not filed as per the provisions of Companies Act, the company may be compulsorily wound up under the orders of court. [Sec. 43(6)]

The court may, however, give direction for the statutory report to be filed or a meeting to be held as the case may be and refuse to order the winding up of the company. [Sec. 443(3)]

## **II. Annual General Meeting (AGM):**

It is a meeting of shareholders which is held once in a year. The object of holding this meeting is to review the progress and prospects of the company and elect its office-bearers for the coming year.

### **Holding of the Meeting:**

The first annual general meeting of the company is held within 18 months of its incorporation. After holding such meeting it is not necessary to hold any other annual general meeting in the year of its incorporation and in the next year.

Subsequent annual general meeting must be held by the company each year within six months of the closing of the financial year. In the interval between any two annual general meetings must not be more than fifteen months. The registrar is empowered to extend the time upto a period of three months except in the case of first annual general meeting.

### **Notice:**

The Board of Directors has to call Annual General Meeting giving 21 days notice to all the members entitled to attend the meeting. However, such a meeting may be called with shorter notice, if it is agreed to by all the members to vote in the meeting.

Certified copies of Profit and Loss Account and Balance Sheet, Directors'

Report and Auditor's Report should also be forwarded to the members at least 21 days before the holding of the meeting of the company. Considering the importance of annual general meeting to shareholders it has been held that the directors must call the meeting even though the accounts are not ready or the company is not functioning.

### **Effect of Non-Compliance:**

(i) If default is made in holding the annual general meeting in accordance with the above provisions, the Central Government may on the application of any member of the company, call or direct for the calling of the meeting and give such directions for this purpose as it thinks proper. The directions may include that one member of the company present in person or by proxy shall be deemed to constitute the meeting. (Sec. 167)

(ii) If default is made in holding a meeting of the company in accordance with the above provisions, the company and its every officer who is in default shall be punishable with a fine which may extend to five hundred and in case of continued defaults, with a further fine which may extend to Rs. 250 for every day during which such default continues,

### **(i) Routine Business:**

(a) Adoption of Annual Accounts, Directors' Report and Auditors' Report.

(b) To declare the dividend.

(c) To elect the directors in place of those retiring by

rotation. (d) To appoint auditors and fix their remuneration.

### **(ii) Special Business:**

(a) To increase Authorised Capital.

(b) To alter the Articles of Association, etc.

### III. Extraordinary General Meeting:

Extraordinary meeting is a general meeting which is held between two Annual General Meetings. Extraordinary General Meeting is Called to discuss any particular matter of urgent importance to the company. This meeting is called for the consideration of any specific subject, decision of which cannot be postponed to the next Annual General Meeting.

**This meeting may also be called to discuss the following:**

- (i) Alteration of any clause of Memorandum of Association; or
- (ii) Changes in the Articles of Association; or
- (iii) Scheme of the reduction of share capital etc.

The Extraordinary General Meeting may be called by the Directors or may be convened by the Shareholders if the Board of Directors does not arrange for it despite their requisition to call it.

Directors may call the Extraordinary General Meeting in accordance with the procedure laid down in the Articles of Association of the company.

Shareholders holding at least one-tenth of the paid-up share capital of the company can make a requisition to the Board of Directors to convene such a meeting.

If due to any reason it is impracticable to hold extraordinary general meeting the Company Law Board may order to call such meeting either on its own initiative or on the application of any director or any member of the company who are entitled to vote at the meeting.

Section 186 of the Companies Act empowers the Company Law Board to call only extraordinary general meeting and not the annual general meeting of the company. If no such meeting is convened within 21 days of their requisition, shareholders may themselves convene the meeting within 3 months from the date of their requisition.

A notice of 21 days has to be given to members indicating the nature and particulars of the resolutions to be discussed. The special resolutions passed at Extraordinary General Meeting have to be filed with the Registrar within 15 days.

## **IV. Class Meetings:**

When the meeting of a particular class of shareholders takes place such as preference shareholder meeting, it is known as class meeting. Such a meeting can be attended only by that class of shareholders. The articles define the procedure for calling such meeting. Such a meeting is called for the alteration in the rights and privileges of the shareholders and for the purpose of conversion of one class of shares into another.

### **2. Meetings of Directors:**

#### **I. Meetings of Board of Directors:**

##### **At Least One Meeting in Every Three Months:**

The directors of a company exercise most of their powers in a joint meeting called the meeting of the Board.

**In the case of every company, a meeting of the Board of Directors must be held:**

- (i) At least once in every three months, and
- (ii) At least four such meetings shall be held in every year. [Sec. 285]

In other words, no three months should pass without directors' meeting being held, and no year should expire without at least four directors' meetings having been held in it.

The object of this section is to ensure that the Board meetings are held at reasonably frequent intervals so that the directors may be in touch with the management of the affairs of the company.

However, the Central Government is empowered to relax the rule with regard to any class of companies (Section 285). The object of this provision is to save smaller companies having insufficient business to be transacted at Board meetings from unnecessary hardships and expenditure involved in holding them.

##### **Notice of the Meeting:**



Notice Of every meeting of the Board of Directors must be given in writing to every director in India and at his usual address in India to every other director who is outside India for the time being (Sec. 286). A director has no power to waive his right of notice. Notice must be given to a director, even if he has stated that he will be unable to attend the meeting.

There is no need to send notice, if the articles provide for meetings to be held at regular intervals' e.g., monthly, the time and place being fixed. Also, if all the directors should meet casually, and are willing to hold a meeting, the meeting can be held notwithstanding the absence of notice.

Unless the articles of the company provide a definite period of notice, a reasonable notice must be given of the Board meeting. What is a reasonable notice will depend on any particular case. If a proper notice is not given the proceedings are invalid unless all the directors are present at the meeting.

The notice should mention the place, time and date of the meeting. The day must be a working day and the time should be during business hours unless agreed otherwise by all the directors. It is not necessary to state in the notice the business to be transacted, unless the articles of the company or the Act so require.

### **Agenda:**

The term 'agenda' means things to be done. In the present context it is a statement of the business to be transacted at a meeting. It also sets out the order in which the business is to be dealt with. Though the Companies Act does not make it obligatory on the secretary to send an agenda or to incorporate the same in the notice of Board Meeting, yet by convention it necessarily accompanies the notice calling the meeting.

When the agenda is enclosed with the notice each director gives due consideration to the proposed business and comes with necessary preparations for discussion in the meeting.

### **Quorum:**

There must be a proper quorum for every meeting. The quorum for Board Meeting should be at least two directors or one-third of total strength of the Board of Directors, whichever is more subject to a minimum of two directors. While determining the total strength, the vacancies are not counted.

Again the directors who are interested in any of the resolutions to be passed at the Board Meeting shall not be counted for the purpose of quorum of that resolution. If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of directors, then the remaining directors who are not interested will be the quorum for that item, provided their number is not less than two [Sec. 283].

If the meeting of the Board could not be held for want of quorum then unless the articles otherwise provide the meeting shall automatically stand adjourned till the same day in the next week and at the same time and place.

Where that day happens to be a public holiday then the meeting stands adjourned to the next succeeding day, at the same time and place. If a meeting could not be held for want of a quorum, it shall all right be counted towards the minimum number of meetings which must be held in every year under Sec. 285. [Sec. 288]

### **Board meetings are called for the following business:**

- (i) To issue shares and debentures.
- (ii) To make calls on shares.
- (iii) To forfeit the share
- (iv) To transfer, the shares.
- (v) To fix the rate of dividend.
- (vi) To take loan in addition to debentures.
- (vii) To invest the wealth of the company.
- (viii) To think over the difficulties of the company.
- (ix) To determine the policies of the company.

### **II. Meetings of the Committees of Directors:**

The Board of Directors may form certain committees and delegate some of its

powers to them. These committees should consist of only directors. The delegation of powers to such committees is to be authorised by the Articles of Association and should be subject to the provisions of the Companies Act.

In a large company routine matters like Allotment, Transfer, Finance are handled by sub-committees of the Board of Directors. The meetings of such committees are held in the same way as those of Board Meetings.

### **3. Meetings of Creditors:**

The meetings of creditors are called when the company proposes to make a scheme for arrangement with its creditors.

Section, 391 to 393 of the Companies Act not only give powers to the company to compromise with the creditors but also lay down the procedure of doing so.

### **4. Meetings of Debenture Holders:**

Meetings of the debenture holders are held according to the conditions contained in the debenture trust deed.

These meetings are called from time to time where the interests of debenture holders are involved at the time of reconstruction, reorganisation, amalgamation or winding up of the company.

The rules and regulations entered in trust deed relate to the notice of the meeting, appointment of a Chairman of the meeting, passing the resolutions, quorum of the meeting and the writing and signing of minutes.

### **Proxy:**

Any member, entitled to attend and vote in a meeting, can appoint another person to attend and vote on his behalf. The person appointed is called the Proxy. The appointment of a Proxy must be made by a written instruction signed by the appointer and deposited with the company, not more than 48 hours before the meeting.

A Proxy is not entitled to speak in the meeting and vote only in a poll unless the articles provide otherwise. A Proxy need not be a member of the company. A member of a private company cannot appoint more than one

Proxy to attend on the same occasion, unless the articles otherwise provide. A body corporate which is a member of a company can appoint a representative or proxy, by resolution of the Board. The President of India or the Governor of a State, if he is a member of a company, may appoint any person to act as his representative in a meeting.

### **Method of Voting:**

Resolutions are to be voted upon, in the first instance, by show of hands. The Chairman's declaration of the results of voting by show of hands is conclusive.

#### **A poll is to be taken:**

- (i) If the Chairman so directs;
- (ii) In all cases, if it is demanded by members holding at least 1/10th of the voting power or paid-up capital;
- (iii) In the case of public companies if it is demanded by at least 5 members present and entitled to vote; and
- (iv) In the case of private companies if it is demanded by any one member if not more than 7 members are present and by 2 members if more than 7 members are present.

A poll on a resolution for adjournment or for the appointment of a Chairman is to be taken immediately. In other cases it is to be taken when the Chairman decides, but it must be within 48 hours of the demand for poll.

A poll is to be taken in the manner decided by the Chairman. The usual method is to ask each member to record his decision on ballot papers provided for the purpose. The Chairman shall appoint two scrutinizers to scrutinize the ballot papers.

## NEXT TOPIC

# **Reconstruction And Amalgamation:**

### **Introduction:**

The change of business dynamics demands the business organizations not only to keep up their internal strategies but also require them to devise inorganic business strategies that helps in growth, utilization of resources and meeting expectations of shareholders.

Reconstruction and amalgamation are one of these techniques which aims at changing the structure of the company to increase the value of the business.

### **Meaning of Reconstruction:**

Reconstruction, in law, is the transfer of a company's (or several companies') business to a new company. The old company will get into liquidation, and shareholders will agree to take shares of equivalent value in the new company.

### **Meaning of Amalgamation:**

Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or amalgamated company. In other words, property, assets, liabilities of one or more companies is taken over by another or are absorbed by and transferred to an existing company or a new company.

### **Comparison Between Reconstruction And Amalgamation:**

Amalgamation is the process where two different business entities join together for the purpose of making a totally new business entity to sustain in the market by absorbing the other company. This process can also be referred as reconstruction as there is a new formation of completely new entity.

The procedure of Reconstruction generates when a particular company transfers the undertaking as well as the property to an absolutely new company and its shareholders. The

objective of reconstruction is to re-organize the total amount of the capital.

### **Provisions:**

The Companies Act for the first time explains the term and the procedure for merger and amalgamation. Section 232 of the Companies Act 2013 is a facilitating provision similar to section 394 of the previous Companies Act, 1956.

Section 232 facilitates and discusses clearly the procedure when two or more than two companies merge or amalgamate. It states that where an application is made to the Tribunal for the sanctioning of a compromise or an arrangement and it is shown to the Tribunal:

- a) that the compromise or arrangement has been proposed for the purposes of reconstruction of the company or companies involving merger or the amalgamation; and
- b) that under the scheme, the whole or any part of the undertaking, property or liabilities of the transferor company is required to be transferred to the transferee company. On receiving such application, the Tribunal may order a meeting of the creditors or members or their classes separately, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct.

The Tribunal, after being satisfied that all the statutory requirements have been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:

- (a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;
- (b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person. As a result of compromise or arrangement, a transferee company shall not hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its

subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company, the transferee company shall remain an unlisted company until it becomes a listed company;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorized capital shall be set-off against any fees payable by the transferee company on its authorized capital subsequent to the amalgamation; and

(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out.”

Thus, from the appointed date which the Tribunal sanctions, the assets, liabilities and shareholders of the transferor company stands to be transferred to the transferee company.

### **Conclusion:**

Therefore, the word amalgamation and reconstruction are two sides of the same coin. In

practice as well both are guided by the same provisions of companies act as given under section 232.

**COMPROMISE** Compromise is an amicable agreement between the parties in which they make mutual concessions in order to solve the differences between them.

Arrangement is the process by which the share capital of the company is reorganised either by consolidation or division of the shares, or doing both. Arrangement is a set and compromise is a subset of arrangement.

## **NEXT TOPIC**

### **COMPROMISE AND ARRANGEMENT**

Compromise is a narrower set of things, whereas Arrangement is a larger set of things. As per Section 230 of the Companies Act, 2013, Compromises and Arrangements can take place between:

- a. a company and its creditors/any class of them, or
- b. a company and its members/any class of them

As per the said act, the application for the Compromises and Arrangements can be filed before the tribunal, i.e, NCLT by any of the following people:

Company In case more than one company is involved, joint application can be filed at the discretion of the company.

- ✓ Creditor
- ✓ Members
- ✓ Liquidator (in case of winding up)

On the basis of the application received by the Tribunal by Company/Creditors/Members/Liquidator, it orders a meeting of the class involved. The class meeting of separate class is called. Clubbing of the classes is not allowed. Only if a separate or a different type of compromise is offered to a subclass of a class, then separate meeting for the subclass of a class is allowed.



Once the scheme of arrangement is finalised and accepted by different class of people it goes to the tribunal then the tribunal looks into it. After which the Tribunal has to act in supervisory capacity and then the scheme. In case an arrangement regarding de-mergers has been finalised, it will be binding on all the creditor, irrespective of whether they agreed or not.

Before sanctioning the scheme, the tribunal has to check if the statutory provisions have been complied with. It has to be satisfied that the company has submitted to the tribunal the following information by means of an affidavit:

1. All material facts relating to the company's financial status, audit reports, pending investigations if any
2. Reduction of share capital included in the compromise/arrangement
3. Any scheme of re-structuring which has a consent of 75% of secured creditors n value
4. A statement, if the company proposes to adopt any debt restructuring guidelines as per RBI
5. Valuation report of properties both tangible and intangible by a registered valuer.

The tribunal further needs to check if all the class have been fairly represented. Moreover as was laid out in the case of *Miheer H Mafatal v. Mafatal Industries (1997)*, the tribunal needs to make sure that the scheme is fair and reasonable. This case lays out the various points according to which the tribunal checks the scheme.

**POWERS OF TRIBUNAL** The tribunal has wide powers when it comes to Compromise or Arrangements.

1. It has the power to modify or supervise the carrying out of Compromise or Arrangements.
2. It has the power to delete certain approved clauses, if it is important in its opinion to do so.
3. It has power to order for winding up of the company.
4. However, when the majority does not sanction the scheme, the tribunal cannot sanction it.
5. It has the power to recall the meeting, if it receives the information that the correct facts

were not provided.

6. It has the power to order for repayment of dues of creditors or depositors.

7. It has the power to recall its ex-pate passed order, if the intervene or proves that the order passed u/s 230 was illegal or passed under misconception.