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CHAPTER XV
COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

201. (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 ofthem,

the 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 woundup, 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 Tribunal directs.

Explanation.—For the purposes of this sub-section, arrangement includes a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

COMMENTS-
Just think on the words in highlighted in the red colour. As per the existing laws Consolidation and division of shares in lower value (conversion of a share of Rs 10 each into a share of Rs 1 each) is very simple pass an ordinary resolution and file form 5. Now it will be needed an approval from Tribunal because it is treated as compromise and arrangements.
Once it is said and felt that new bill is based on the principle of self governance and freedom. At least this Explanation is a backward step.
Even the new Bill prohibits issue of shares with differential voting rights. So many Companies have issued such kind of shares. Now after the implementation of the new bill whether they have to seek Tribunal order to get an order to comply the Provision of a clause of similar act under the same act?

Merger and amalgamation of companies.

203. (1) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—

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(f) Approval of the draft of the proposed terms ***by an ordinary resolution*** of the transferor company or, as the case may be, each of the transferor companies in the case of merger by formation by a new company.

Power to compromise or make arrangements with creditors and members.

201. (2) The company or any other person, by whom an application is made under sub-section (1) shall disclose to the Tribunal by affidavit—

(c) any scheme of corporate debt restructuring consented to by ***not less than seventy-five per cent. of the secured creditors in value***,

COMMENTS-

If Company is going for a merger then it required an Ordinary Resolution and for a debt restructuring Special resolution. Why?

“the 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 woundup, 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 Tribunal directs.”

COMMENTS-

It seems that a big Compromise and arrangement may be possible without calling a meeting of all members with an order of Tribunal only. Why?

Merger or amalgamation of certain companies.

204. (6) On receipt of an application from the Registrar or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 203, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit:

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Provided that if the Registrar or the Official Liquidator does not have any objections to the scheme or they do not file any application under this section before the Tribunal, it shall be deemed that they have no objection to the scheme.

204 (7) ***A copy of the order under sub-section (6) shall be communicated to the Registrar and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies.***

COMMENTS-

The time period within which Registrar will issue a confirmation letter must be specified. Think a situation where time period of 90 days elapsed and no communication has received from Registrar then what will happen? Company assumes its matter is end but ROC Records will not tell the same story, it will create a confusing situation and practical difficulties.(Subsection 9(c) states that "legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company;" who will face the proceedings in such a situation")

204 (10) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fee due on revised capital:
Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.

COMMENTS-

How the calculation will be done? How much fee will be set off is not clear?

In our existing law a good thing is that the order of Court is required to be included in the MOA/AOA.It provides protection to all parties and make a confidence that because a company cant go against the MOA/AOA so it cant violate the order of Court and condition of Merger. In new Bill it is not found.

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Purchase of minority shareholding. 207. (1)

COMMENTS-

In this Section the Whole procedure does not have any certification from professional, disclosure to Government and involvement of an independent monitoring body (Like merchant banker who give a due diligence certificate). We can seek a big scope by asking a Due diligence report for Company Secretary regarding offer, disclosure, role of directors and whole transaction.

207 (5) In the event of a purchase under this section, whether wholly or partially, the transferor company shall act as a transfer agent for receiving and paying the price to the minority shareholders and as an agent for taking delivery of the shares and delivering such shares to the majority, as the case may be.

COMMENTS-

The Basic principle of justice is that "NO BODY CAN BE JUDGE IN OWN CASE".

How a Company can do it and why a minority shareholder will rely on Company Personal where majority share holders are involved.
Now situation should be so that an independent professional who have wide knowledge of Corporate Compliance management and well versed with Company Law must be involved to look after the same.

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CHAPTER XVI

PREVENTION OF OPPRESSION AND MISMANAGEMENT

Application to Tribunal for relief in cases of oppression, etc.

212. (1) Any member of a company who complains that—

a. the affairs of the company have been or are being conducted in a manner prejudicial to ***public interest*** or in a manner prejudicial or oppressive to him or any other member or members; or

COMMENTS-

The word "public interest" is very wide and covers all things related to the world. (Attack on Iraq by US was also declared in public interest. They have Black listed some companies even Indian like BHEL & HAL).
Think if a foreign person will come and file the same to on the ground that this is not in the public interest in his own country.

Word should be substituted by NATIONAL INTEREST OF INDIA.

CLASS ACTION

Clause 216 (e) to restrain the company from doing an act which is contrary to the provisions of this Act or ***any other law for the time being in force;***

COMMENTS-

Just interpret this line what meaning it derives.
Simply any law of any part of the world whether they are applicable on the company or not; and to whom it is to be filed none other than a quasi judicial body have prime responsibility of looking the matter of Companies Act and the other act even in India. How and who can give such an unconstitutional power to NCLT.

(Gentle man if this is the highly glamorized class action (basically even in US used as a profit earning tool by law firm from defaulter companies) then at least I as a CS in employment will think ten times before joining the Company. Might be a person will come from the forest of East Africa give a single rupee and file a Class action to my Company what I will do and what NCLT members will do. Both will go to an EAST AFRICAN LAW COLLEGE TO UNDERSTAND THE LAW AND AFTER 3 years LLB will give their decision.)

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Further issue of share capital.

56. (1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered —

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the share capital paid up on those shares by circulating an offer for sale subject to such terms and conditions relating to the time within which the offer has to be accepted, the renunciation of such offer and such other matters as may be prescribed;

(b) to employees under a scheme of employees' stock option, subject to such conditions as may be prescribed; or

(c) if it is authorised by a special resolution, to persons other than those mentioned in clause (a) or clause (b), either for cash or for a consideration, if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

(2) Nothing in this section shall apply to the increase of the subscribed capital of a public company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company:

Provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.

(3) Notwithstanding anything contained in sub-section (2), where any debentures have been issued, or loan has been obtained from any Government, by a

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company, and if that Government considers it necessary in the public interest so to do, it may, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even if terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion:

> Provided that where the terms and conditions of such conversion are not acceptable to the company, it may, within sixty days from the date of communication of such order, appeal to the Tribunal which shall after hearing the company and the Government pass such order as it deems fit.

(4) In determining the terms and conditions of conversion under sub-section (3), the Government shall have due regard to the financial position of the company, the terms of issue of debentures or loans, as the case may be, the rate of interest payable on such debentures or loans and such other matters as it may consider necessary.

(5) Where the Government has, by an order made under sub-section (3), directed that any debenture or loan or any part thereof shall be converted into shares in a company and where no appeal has been preferred to the Tribunal under sub-section (3) or where such appeal has been dismissed, the memorandum of such company shall, where such order has the effect of increasing the authorised share capital of the company, stand altered and the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted in to.

COMMENTS-

Also think on clause 56 which prohibits preferential allotment of shares to existing shareholders. Why?

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