CHAPTER V – ARBITRATION, COMPROMISE, ARRANGEMENTS AND RECONSTRUCTION (S. 390 to 396A of the ACT)

S. 390 – INTEPRETATION OF SEC 391 AND 393 – Company means any company that is **LIABLE TO BE WOUND UP** under this Act. Arrangement INCLUDES a reorganization of the share capital of the company including CONSOLIDATION OF SHARES OF DIFFERENT CLASSES or DIVISION OF SHARES INTO SHARES OF DIFF CLASSES OR BOTH.

S. 391 – POWER TO COMPROMISE OR MAKE ARRANGEMENTS WITH CREDITORS AND MEMBERS – Where a Compromise or Arrangement is proposed between - A COMPANY AND ITS CREDITORS OR COMPANY AND ITS MEMBERS – THE TRIBUNAL - on the application of company or any creditor or member or liquidator (in case of company that is being wound up) - ORDER a meeting of creditors, class of creditors, members or class of members. (Note – The words used is "any". So even 1 member, creditor or class of them can apply to the TRIBUNAL for meeting)
Sub Sec(2) – IF – A MAJORITY IN NUMBER – ALSO HOLDING ¾ TH IN VALUE of creditors or classes of them or members or classes of members – Present and Voting (either in person or proxy) - AGREE TO A COMP OR ARRANGEMENT – IF SANCTIONED BY THE TRIBUNAL – Shall be binding on creditors, members, company and in case of company that is wound up on the Liquidators and Contributories of the company. **(Note - A meeting of company was convened for the above. Attended by 200 members holding 5, 00,000 shares in aggregate. 70 members holding 4, 00,000 shares voted for the scheme. Is the scheme approved by majority? Ans – Sec says Majority in Number and ¾ th in value. As 4 lac shares represent more than 3/4th in value that condition is satisfied. However majority in number condition is to be checked. 130 out of 200 did not approve. Only 70 approved. That does not represent majority. So majority for the approval of the scheme is not obtained)**

S. 392 – *POWER OF TRIBUNAL TO ENFORCE COMP AND ARRANG* – Where the Tribunal orders U/s 391, it has the power to supervise the carrying out of the Comp and Arrangement, and also propose some modifications to the scheme. Where the Tribunal is satisfied that scheme cannot be worked out, it can even order for **winding up of the company. (Deemed** to be an order U/s 433. S. 433 speaks about circumstances under which company may be wound up by the Tribunal)

S.393 – INFORMATION AS TO COMP OR ARRANGEMENT WITH CREDITORS AND MEMBERS - Where a meeting is held U/s 391 – Notice containing terms , effect any material interest of Directors, M/D or Managers have to be sent. It should also specify place, manner of obtaining copies etc.

S. 394 – PROVISION FOR FACILITATING RECONSTRUCTION AND AMALGAMATION OF COMPANIES – Where an application is made – and the arrangement is between 2 or more companies and under the scheme the whole or part of the undertaking is to be transferred, Tribunal may order for – i) Transfer of whole or part of the undertaking ii) allotment or appropriation of shares, debentures etc iii) continuation of any legal proceedings iv) dissolution without winding up etc. No scheme shall be sanctioned unless Tribunal has received a report from the Registrar that affairs of the company are not conducted in a prejudicial way to the interest of members or public.

IN THIS SECTION TRANSFEREE COMPANY MEANS AN INDIAN COMPANY. HOWEVER TRANSFEROR COMPANY CAN EVEN BE A FOREIGN COMPANY

S.394A **–** NOTICE TO BE GIVEN TO C/G FOR APPLICATION U/s 391 AND 394

S.395 – POWER AND DUTY TO ACQUIRE SHARES OF SHAREHOLDERS DISSENTING FROM SCHEME OR CONTRACT APPROVED BY MAJORITY – Where a Scheme for transfer of shares- has within **4** months of making of the offer - have been approved by majority representing **not less than 9/10th in VALUE** of shares whose transfer is involved - THE TRANSFEREE COMPANY - WITH A PERIOD OF **2 MONTHS FROM THE EXPIRY OF THE 4 MONTHS PERIOD** – give notice to the dissenting shareholder that it desires to acquire his shares – unless the dissenting shareholder makes an application within **1 month from the date on which notice was given –** Can acquire those shares .

Note the WORDINGS in the special situation - WHERE THE TRANSFEREE COMPANY **ALREADY** HOLDS GREATER THAN 1/10TH OF VALUE OF SHARES OF TRANSFEROR COMPANY**,** then the above provisions will apply only if –

a) TRANSFEREE COMPANY OFFERS THE SAME TERMS TO ALL HOLDERS OF THAT SHARES (I.e. Excluding the shares they hold in the Transferor Company)
b) HOLDERS WHO APPROVE THE SCHEME, **BESIDES HOLDING NOT LESS THAN 9/10TH IN VALUE, MUST BE 3/4TH IN NUMBER (** I.e. Excluding their own holding in the Transferee Company)

Also note the fact that Power to Compromise and make Arrangement need not be expressly spelt out in the MOA. It is a power given under the Statue. Absence of clause for amalgamation in MOA will **not** prevent a company from AMALGAMATING.

S.396 – POWER OF C/G TO PROVIDE FOR AMALGAMTION IN NATIONAL INTEREST

S.396A – PRESERVATION OF BOOKS AND PAPERS OF AMALGAMATED COMPANY - Shall not be disposed off without prior permission of C/G