DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER III

PROSPECTUS AND ALLOTMENT OF SECURITIES

Part I

Public Offer

Matters to be stated in the prospectus

3.1. For the purposes of clause (a) of sub-section (1) of section 26,

(1) pursuant to sub-clause (i), the names, addresses and contact details of ***

(2) pursuant to sub-clause (ii),

(a) dates of opening and closing of the issue shall be prominently disclosed

(b) a declaration shall be made by the Board or the Committee authorized thereof in the prospectus that the allotment letters shall be issued or application money shall be refunded within ***

(3) pursuant to sub-clause (iii),

(a) a statement shall be given by the Board of directors that all monies received out of the issue shall be transferred to a separate bank account maintained with a Scheduled Bank; and

(b) details of all utilized and unutilized monies out of the monies collected in the previous issue made by way of public offer shall be disclosed and continued to be disclosed in the balance sheet and till the time any part of the proceeds of such previous issue remains unutilized indicating the purpose for which such monies have been utilized, and the securities or other forms of financial assets in which such unutilized monies have been invested;

(4) pursuant to sub-clause (iv), following details of underwriting shall be disclosed in the prospectus ***

(5) pursuant to sub-clause (v), consent of such other persons namely ***

(6) pursuant to sub-clause (viii), the capital structure of the company and its evolution shall be presented in the following manner - *** But in any case, in addition to such disclosures, disclose the number and rates at which each of the allotments were made in the last two years prior to public offer separately indicating the allotments made for considerations other than case and the details of such considerations in each case;

(7) Pursuant to sub-clause (ix), such other particulars such as ***

(8) Pursuant to item (E) of sub-clause (xi), the information about (i) litigation outstanding against any promoter of the issuer on the date of issue of the prospectus, and (ii) any direction issued by any Government Ministry or Department, or statutory authority or body during last five years immediately preceding the year of issue of the prospectus against any promoter of the issuer, shall be disclosed in the following manner***

(9) Pursuant to sub-clause (xiii), details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company shall be disclosed in the following manner ***

(10) Pursuant to sub-clause (xiv), the sources of promoters contribution shall be disclosed in the following manner ***

(11) Pursuant to sub-clause (xiv), the sources of promoters contribution shall be disclosed in the following manner *** It shall be specified if such sources include proceeds out of the sale of shares of the company and shares of its subsidiary companies previously held by each of the promoters. The disclosure for sources of promoters contribution shall also include the particulars of name, address and the amount so raised as loan,

assistance etc , if any, by promoters for making such contributions and in case of own sources, complete details thereof.

(12) Related party transactions entered during last five years immediately preceding the year of issue of prospectus as well as transactions proposed to be entered with related parties in coming future years.

(13) Summary of qualifications/adverse remarks/suggestions of auditors in the last five years immediately preceding the year of issue of prospectus and on their impact on the financial statements and financial position of the company and the corrective steps taken and proposed to be taken by the company for each of the said qualifications/adverse remarks/suggestions

(14) Details of any inquiry, inspections or investigations initiated or conducted under the Companies Act or previous companies Act in the Last five years in the case of company or all of its subsidiaries .Also if there were any prosecutions filed, pending, fines imposed, compounding of offences in the last 5 years and if so section wise details thereof for the company and all of its subsidiaries.

(15) Details of any acts of frauds against the company and if so, the action taken by the company.

3.2. For the purposes of clause (b) of sub-section (1) of section 26,

(1) Pursuant to sub-clause (i), reports by the auditors with respect to profits and losses and assets and liabilities shall also include the rates of dividends, if any, paid by the issuer in respect of each class of shares for each of the five financial years immediately preceding the year of issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years; and

if 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, a statement of that fact accompanied by a statement of the accounts of the issuer in respect of that part of the said period up to a date not earlier than six months of the date of issue of the prospectus indicating the profit or loss for that period and assets and liabilities position as at the end of that period together with a certificate that such accounts have been examined and found correct. The said statement may indicate the nature of provision or adjustments made or which are yet to be made.

(2) Pursuant to sub-clause (ii) and its proviso, reports relating to profits and losses for each of the five financial years or where five financial years have not expired, for each of the financial year immediately preceding the financial year of the issue of the prospectus shall:

(a) if the company has no subsidiaries, so far as regards its profits and losses, deal separately with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the year of the issue of the prospectus; and

(b) if the company has subsidiaries, deal either -

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company; or

(iii) instead of dealing separately with the company s profits or losses, deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(c) The mode adopted at b above should be specified in the prospectus

(3) For the purposes of sub-clause (iii) and proviso thereof, reports made by the auditors in respect of the business of the company shall be stated in the prospectus in the manner provided in sub-rule(2).

3.3. For the purposes of clause (d) of sub-section (1) of section 26, the prospectus shall include the following matters and reports:

(1) If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly –

(a) in the purchase of any business; or

(b) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith; the company will become entitled to an interest as respects either the capital or profits and losses or both, in such business exceeding fifty per cent, thereof; a report made by chartered accountants (who shall be named in the prospectus) upon:

(i) the profits or losses of the business for each of the five financial years immediately preceding the date of the issue of the prospectus ; and

(ii) the assets and liabilities of the business as on the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus;

regarding the proceeds or any parts of proceeds of the issue in the purchase of any business or interest in business.

(c) In case of purchase or acquisition of any property including indirect acquisition of property for which advances have been paid to even third parties, the following disclosures shall be made-

(i) the names, addresses, descriptions and occupations ofthe vendors;

(ii) the amount paid or payable in cash, to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill;

(iii) the nature of the title or interest in such property proposed to be acquired by the company;

(iv) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(2)(a) If -

(i) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(ii) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company;

a report shall be made by Chartered Accountants (who shall be named in the prospectus) upon:

(A) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and

(B) the assets and liabilities of the other body corporate as on the last date to which its accounts were made up.

(b) The said report shall:

(i) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the issuer and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with for holders of other shares, if the issuer had at all material times held the shares to be acquired; and

(ii) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner as prescribed in sub-clause (2) above.

(3) Principal terms of loan and assets charged as security: Brief terms and conditions of the term loans including re-scheduling, prepayment, penalty, default, etc. In case of initial public offer, follow-on public offer, rights issue of any securities which are governed by the SEBI, following information shall be required to be disclosed in addition to the information as prescribed under these rules ***

(4) The aggregate number of specified securities purchased or sold by the promoter group and/or by the directors of the company which is a promoter of the issuer and/or by the directors of the issuer and their relatives (as defined in sub- section (69) of section 2) within six months immediately preceding the date of filing prospectus with the Registrar of Companies shall be disclosed.

(5) A fact sheet in the following format shall be included at the beginning of the prospectus ***

Variation in terms of contracts referred to in the prospectus or objects for which prospectus was issued

3.4. (1) For the purposes of sub-section (1) of section 27, where the company has raised money from public through prospectus and still has any unutilized amount out of the money so raised, it shall not vary the terms of contracts referred to in the prospectus or objects for which prospectus was issued except by passing a special resolution and the notice of the proposed special resolution shall contain the following particulars:-

(a) Original purpose/ object of the Issue;

(b) total money raised;

(c) money utilized for the said object of the company;

(d) Percentage of proposed objects achieved;

(e) unutilized amount out of the money so raised through prospectus,

(f) particulars of the proposed variation in the terms of contracts referred to in the prospectus or objects for which prospectus was issued;

(g) Reason for seeking variation and justification for such variation;

(h) estimated financial impact of the proposed variation on the earnings and cash flow of the company;

(i) Proposed time limit within which the proposed varied objects would be achieved

(j) Clause wise details as specified in rule 3.1(7) as was required with respect to the originally proposed objects of the issue

(k) Opportunity cost of financial loss to shareholders due to loss in time value of money vis a vis the original objects

(l) Risk factors pertaining to the new Objects

(m) other relevant information which is necessary for the members to take an informed decision on the proposed resolution;

(2) For the purposes of first proviso to sub-section (1) of section 27, the advertisement giving details of notice in respect of resolution for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued, shall be in Form No. 3.1.Such advertisement shall be published simultaneously with dispatch of Postal Ballot Notices to Shareholders.

(3) The notice shall also be placed on the web-site of the company, if any.

(4) Such variation to the proposed objects to the issue may be made not more than one time with respect to money raised in any particular public issue offer.

Offer of Sale by Members

3.5. (1) The provisions of Part I of Chapter III and rules made there under shall be applicable to offer of sale referred to in section 28 except the following-

(a) provisions relating to minimum subscription;

(b) provisions for minimum application value;

(c) provisions requiring any statement to be made by the Board of directors in respect of the utilization of money; and

(d) any other provision, information about which cannot be gathered by the offeror, with detailed justifications thereof, of not complying with such provisions

(2) In the case of offer for sale, the dividend for the entire year shall be payable to the transferees.

(3) The prospectus issued under section 28 shall disclose the name of the entity bearing the cost of making the offer for sale along with reasons.

Dematerialisation of securities

3.6. (a) For the purposes of section 29, the entire holding of the promoters of every public company making a public offer of any security shall be held only in dematerialised form:

Provided that the entire holding of the promoters in the securities of the company held in physical form up to the initial public offer shall be converted in dematerialized form before such issue and thereafter such promoter shareholding shall only be held in dematerialized form.

(b) Any issue of securities by a listed company should be made only in dematerialised form.

Shelf prospectus

3.7. For the purposes of sub-section (2) of section 31, the information memorandum shall be prepared in Form No. 3.2 and filed with the Registrar along with the fee as provided in Annexure B within one month prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Refund of Application Money

3.8. (1) For the purposes of sub-section (3) of section 39, if the stated minimum amount has not been subscribed and the sum payable on application is not received with the period specified therein, then the application money shall forthwith be repaid within a period of *** if any such money is not so repaid within such specified period, the directors of the company shall jointly and sever ally be liable to repay that money with interest at the rate of ***

(2) The application money to be refunded shall, either by way of cheque/ demand draft or any other banking channels, be credited only to the bank account of the subscriber.

Return of Allotment

3.9. For the purposes of sub-section (4) of section 39,

(i) Whenever a company having a share capital makes any allotment of its securities, the company shall, within thirty days thereafter, file with the Registrar a return of allotment in Form No.3.3, along with the fee as specified in Annexure B

(ii) There shall be attached to the Form No.3.3 a list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees. The list shall be certified by the signatory of the Form No. 3.3 to be complete and correct as per the records of the company.

(iii) In the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, there shall be attached to the Form No.3.3 the contract, being duly stamped, in writing constituting the title of the allottee to the allotment together with any contract of sale, or a contract for services or other consideration in respect of which that allotment was made.

(iv) Where a contract such as is mentioned in sub-rule (iii) is not reduced to writing, the company shall attach to the Form No.3.3 complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (2 of 1899), and the Registrar may, as a condition of filing the particulars, require that the stamp duty payable thereon be adjudicated under section 31 of the Indian Stamp Act, 1899.

(v) A report of a registered valuer in respect of valuation of the consideration other than cash shall also be attached along with the contract as mentioned in sub-rule (iii) and (iv).

(vi) In the case of issue of bonus shares, a copy of the resolution authorizing the issue of such shares shall be attached to the Form No. 3.3.

(vii) In case the shares have been issued in pursuance of clause (c) of sub-section (1) of section 62, there shall be attached to Form No.3.3, the valuation report of the registered valuer.

Payment of commission

3.10. For the purposes of sub-section (6) of section 40, a company may pay commission to any person in connection with the subscription or with the procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

(a) the payment of such commission should be authorized in the company s articles of association;

(b) the commission may be paid out of proceeds of the issue or profit or both;

(c) the rate of commission paid or agreed to be paid shall not exceed, in case of shares,*** percentage of the price at which the shares are issued or rate authorized by articles whichever is less and in case of debentures, shall not exceed two and a half per cent of the price at which the debentures are issued, or as specified in the company s articles, whichever is less.

(d) the prospectus of the company shall disclose the following:

(i) name of the underwriters;

(ii) the rate and amount of the commission payable to the underwriter; and

(iii) the number of the shares or debentures which is to be subscribed by the underwriter absolutely or conditionally.

(e) No commission shall be paid to any underwriter on shares or debentures which are not offered to the public for subscription.

(f) a copy of the contract for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Global Depository Receipts

3.11. (1) For the purposes of section 41, following rules shall apply to the issuance of Global Depository Receipts

Definitions – For the purposes of rule 3.11, unless the context otherwise requires, ___

(i) "Scheme" means the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof;

(ii) Words and expressions occurring in these rules shall bear the same meaning as in the Act and the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof.

(2) Eligibility to issue depository receipts

(a) A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of Foreign Exchange Management Rules and Regulations.

(b) The authorized share capital of the company shall be sufficient for the company to issue new shares underlying depository receipts at the time of conversion of such receipts.

(3) Conditions for issue of depository receipts

(a) The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorizing the company to do so.

(b) The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting or by postal ballot.

(c) Depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.

(d) The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.

(e) The company shall appoint a merchant banker or a practicing chartered accountant or a practicing cost accountant or a practicing company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practicing chartered accountant or practicing cost accountant or practicing company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company to be held immediately after closure of all formalities of the issue of depository receipts.

(4) Manner and form of depository receipts

(a) Depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.

(b) The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Government and / or Reserve Bank of India may specify from time to time.

(c) The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

(5) Voting rights

(a) A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.

(b) Until the conversion of depository rec eipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

(6) Proceeds of issue

The proceeds of issues shall either be brought back to India or deposited in an Indian Bank operating abroad or any foreign bank of repute having operations in India with an agreement that the foreign bank having operations in India shall take responsibilities for furnishing all the information which may be required.

(7) Non applicability of certain provisions of the Act

(1) The provisions of the Act and any rules issued thereunder insofar as they relate to public issue of shares or debentures shall not apply to issue of depository receipts abroad.

(2) The offer document, by whatever name called and if prepared for the issue of depository receipts, shall not be a prospectus or an offer document within the meaning of this Act and all the provisions as applicable to a prospectus or an offer document shall have no application to a depository receipts offer document.

(3) Notwithstanding anything contained under section 88 of the Act, until the redemption of depository receipts, the name of the overseas depository bank shall be entered in the Register of Members of the company.

Part II – Private Placement

3.12. (1) (a) For the purposes of sub-section (1) of section 42, a company may make an offer or invitation of securities through issue of a private placement offer letter in Form No. 3.4.

(b) A private placement offer letter shall be accompanied by an application form addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within thirty days of recording the names of such persons in accordance with sub-section (7) of section 42:

Provided that no person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not so received shall be treated as invalid.

(2) For the purposes of sub-section (2) of section 42, a company shall not make private placement unless:

(a) the proposed offer of securities or invitation to subscribe securities has been approved by the shareholders of the Company, by way of a Special Resolution, for each of the Offers/ Invitations;

(b) such offer or invitation shall be made to not more than two hundred persons in the aggregate in a financial year, excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62;

Provided that any allottee under such offer/invitation shall not transfer his/its securities to more than 20 persons during a quarter and the company shall not register any transfer which is not in conformity with this requirement.

(c) the number of such offers or invitations shall not exceed four in a financial year and not more than once in a calendar quarter with a minimum gap of sixty days between any two such offers or invitations; and

(d) the value of such offer or invitation shall be with an investment size of not less than fifty thousand rupees per person.

(e) the payment to be made on subscription of securities shall be made from the bank account of the person subscribing to such securities:

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application.

(3) For the purposes of sub-section (7) of section 42, the company shall maintain a complete record of private placement offers and acceptances of such offers in Form No. 3.5:

Provided that a copy of such record along with the private placement offer letter in Form No. 3.3 shall be filed with the Registrar with fee as provided in Annexure B and with the Securities and Exchange Board, where the company is listed, within a period of thirty days of circulation of the private placement offer letter.

(4) For the purposes of sub-section (9) of section 42, a return of allotment of securities under section 42 shall be filed with the Registrar in Form No. 3.3 and with the fee as provided in Annexure B along with a complete list of all security holders containing-

(i) full name, address, PAN No., and E-mail id of such security holders;

(ii) class of security held;

(iii) date of becoming security holder;

(iv) number of securities held; nominal value and amount paid up on such securities; and particulars of consideration received.

(5) The provisions of this rule shall not be applicable to any non-banking financial company which is registered with the Reserve Bank of India under RBI Act, 1934.

Foot note:* to be provided/include d after receipt of comments from SEBI.**

DRAFT RULES UNDER COMPANIES ACT, 2013

Chapter VII

Management and Administration

Register of members.

7.1. (1) For the purposes of clause (a) of sub-section (1) of section 88, every company shall, from the date of its registration, keep and maintain a register of its members in one or more books in Form No. 7.1.

(2) In the case of a company not having share capital, the register of members shall contain the following particulars in respect of each member -

(a) Name of the member; address (registered office address in case the member is a body corporate); e-mail address; Permanent Account Number or CIN; Unique Identification Number, if any; Father's/Mother's/Spouse's name; Occupation; Status; Nationality; in case member is a minor, name of the guardian and the date of birth of the member; name and address of nominee;

(b) Date of becoming member;

(c) Date of cessation;

(d) Amount of guarantee, if any;

(e) Instructions, if any, given by the member with regard to sending of notices etc.

Register of debenture holders or any other security holders.

7.2. For the purposes of clauses (b) and (c) of sub-section (1) of section 88, every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or security holders, as the case may be, for each type of debentures or other securities in one or more books in Form No.7.2.

Maintenance of the Register of members etc. under section 88.

7.3. For the purposes of sub-section (1) of section 88, every company shall maintain the registers under clauses (a), (b) and (c) in the following manner:-

(1) Entries in the registers maintained under section 88 shall be made simultaneously after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities, as the case may be.

(2) Such registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorizing the keeping of the register at any other place within the city, town or village in which the registered office is situate or any other place in India in which more than one-tenth of the total members entered in the register of members reside.

(3) If shares, debentures or other securities are held with a depository, the name, particulars of the depository and number of shares, debentures or other securities so held shall be entered in the respective register.

(4) Consequent upon any forfeiture, buy-back, reduction, sub-division, consolidation or cancellation of shares, issue of sweat equity shares or issue of duplicate or new share certificates or new debenture or other security certificates, entry shall be made simultaneously in the register of members or in the respective registers, as the case may be.

(5) If any change occurs in the status of a member or debenture holder or any other security holder whether due to death or insolvency or change of name or due to any other reason, entries thereof explaining the change shall be made in the respective register.

(6) If any rectification is made in the register maintained under section 88 by the company pursuant to any order passed by the competent authority under the Act, the necessary reference of such order shall be indicated in the respective register.

(7) If any order is passed by any judicial or revenue authority attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, the necessary reference of such order shall be indicated in the respective register.

Index of names to be included in Register.

7.4. (1) Every register maintained under sub-section (1) of section 88 shall include an index of the names entered in the respective registers. The index shall, in respect of each folio, contain sufficient indication to enable the entries relating to that folio in the register to be readily found.

(2) The company shall make the necessary entries in the index simultaneously with the allotment or transfer of any security in such Register.

Foreign register of members, debenture holders, other security holders or beneficial owners residing outside India.

7.5. (1) For the purpose of sub-section (4) of section 88, a company which has share capital or which has issued debentures or any other security may, if so authorized by its articles, keep in any country outside India a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners, resident in that country (in this rule called a "foreign register").

(2) The company shall, within thirty days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No. 7.3 along with the fee as provided in Annexure B where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within thirty days from the date of such change or discontinuance, as the case may be, file notice in Form No. 7.3 with the Registrar of such change or discontinuance.

(3) A foreign register shall be deemed to be part of the company s register (in this rule called the "principal register") of members or of debenture holders or of any other security holders or beneficial owners, as the case may be.

(4) The foreign register shall be maintained in the same format as the Principal Register.

(5) A foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, mutatis mutandis, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place wherein the foreign register is kept.

(6) If a foreign register is kept by a company in any country outside India, the decision of the Tribunal in regard to the rectification of the register shall be binding.

(7) The company shall -

(a) transmit to its registered office in India a copy of every entry in any foreign register within fifteen days after the entry is made; and

(b) keep at such office a duplicate register of every foreign register duly entered up from time to time.

(8) Every such duplicate register shall, for all the purposes of this Act, be deemed to be part of the principal register.

(9) Subject to the provisions of section 88 and the rules made thereunder, with respect to duplicate registers, the shares or as the case may be, debentures or any other security, registered in any foreign register shall be distinguished from the shares or as the case may be, debentures or any other security, registered in the principal register and in every other foreign register; and no transaction with respect to any shares or as the case may be, debentures or any other security, registered in a foreign register shall, during the continuance of that registration, be registered in any other register.

(10) The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company in the same part of the world or to the principal register.

Authentication.

7.6. (1) Entries in the registers maintained under section 88 and index included therein shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose, by appending his signature to each entry and mentioning the date of the board resolution authorizing the same.

(2) Entries in the foreign register shall be authenticated by the person authorized by the Board by appending his signature to each entry.

Declaration in respect of beneficial interest in any shares.

7.7. (1) For the purposes of sub-section (1) of section 89, a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter called "the registered owner"), shall file with the company, a declaration to that effect in Form No.7.4 in duplicate, within thirty days from the date on which his name is entered in the register of members of such company:

Provided that where any change occurs in the beneficial interest in such shares, the registered owner shall, within thirty days from the date of such change, make a declaration of such change to the company in Form No. 7.4 in duplicate.

(2) For the purposes of sub-section (2) of section 89, every person holding or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter called "the beneficial owner") shall file with the company, a declaration disclosing such interest in Form No. 7.5 in duplicate, within thirty days after acquiring such beneficial interest in the shares of the company:

Provided that where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within thirty days from the date of such change, make a declaration of such change to the company in Form No. 7.5 in duplicate.

(3) For the purposes of sub-section (6) of section 89, where any declaration under section 89 is received by the company, the company shall make a note of such declaration in the register of members and shall file, within thirty days from the date of receipt of declaration by it, a return in Form No. 7.6 with the Registrar in respect of such declaration with fees prescribed in Annexure B .

Closure of register of members/debenture holders/other security holders.

.**7.8.** (1) For the purposes of sub-section (1) of section 91, a company closing the register of members or the register of debenture holders or the register of other security holders shall give at least seven days previous notice or such lesser period and in such manner, as may be specified by Securities and Exchange Board, if such company is a listed company or intends to get its securities listed, by advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company.

(2) The provisions contained in sub-rule (1) shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members/debenture holders/other security holders.

ANNUAL RETURN.

7.9. (1) For the purposes of sub-section (1) of section 92, every company shall prepare its annual return in Form No. 7.7.

(2) For the purposes of sub-section (2) of section 92, the annual return, filed by a listed company or a company having paid-up share capital of five crore rupees or more and turnover of twenty five crore rupees or more, shall be certified by a Company Secretary in practice. The certificate shall be in Form No. 7.8.

Extract of annual return.

7.10. (1) For the purposes of sub-section (3) of section 92, the extract of the annual return to be attached with the Board's Report shall be in Form No. 7.9.

(2) For the purposes of sub-section (4) of section 92, a copy of the annual return shall be filed with the Registrar with such fee as provided in Annexure B .

Return of changes in shareholding position of promoters and top ten shareholders.

7.11. For the purposes of section 93, every listed company shall file with the Registrar, a return in Form No. 7.10 along with the fee as provided in Annexure B with respect to any change in the shareholding position of promoters and top ten shareholders of the company within fifteen days of such change.

Inspection etc. of registers, returns etc.

7.12. (1) The registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours by any member, debenture holder, other security holder or beneficial owner without payment of fee and by any other person on payment of such fee as may be specified in the articles of association of the company but not exceeding fifty rupees for each inspection.

(2) Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return on payment of such fee as may be specified in the articles of association of the company but not exceeding ten rupees for each page.

Preservation of register of members etc. and annual return.

7.13. For the purposes of sub-section (1) of section 94,

(1) the register of members along with the index shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose; and

(2) the register of debenture holders or any other security holders along with the index shall be preserved for a period of 15 years from the date of redemption of debentures or securities, as the case may be, and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose.

(3) Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing with the Registrar.

(4) The foreign register of members shall be preserved permanently unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register. Foreign register of debenture holders or any other security holders shall be preserved for a period of 15 years from the date of redemption of such debentures/ securities.

(5) The foreign register shall be kept in the custody of the person authorized by the Board for authentication of the entries made therein.

Copies of the registers and annual return

7.14 For the purposes of clause (b) of sub-section (3) of section 94, copies of the registers maintained under section 88 or entries therein and annual return filed under section 92 may be furnished to any member, debenture-holder, other security holder or beneficial owner of the company or any other person on payment of such fee as may be prescribed in the Articles of Association of the company but not exceeding rupees ten for each page.

Calling of Extraordinary general meeting by requisitionists.

7.15. (1) The requisitionists may call an extraordinary general meeting in accordance with sub-section (2) of section 100, by giving not less than twenty-one days' notice in writing or through electronic mode.

(2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.

(3) If the resolution is to be proposed as a special resolution, the notice shall be given as is required by sub-section (2) of section 114.

(4) The notice shall be signed by all the requisitionists or by a requisitionist duly authorized in writing by all other requisitionists on their behalf.

(5) No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists. The requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

(6) The notice of the meeting shall be given to those members whose names appear in the Register of members of the company as on the date on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.

(7) The requisitionists shall have a right to receive and the company concerned is bound to give a list of members together with their registered address on the expiry of the forty fifth day from the date of deposit of the requisition. The aforesaid list shall be sent as early as possible but not later than three days from the expiry of the forty fifth day.

(8) The Notice of the meeting shall be given under by ordinary post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

Notice of the meeting.

7.16. (1) For the purpose of sub-section (1) of section 101, a company may give notice through electronic mode.

Explanation: For the purpose of this rule, 'electronic mode' shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

(2) A notice may be sent through email as a text or as an attachment to email or as a notification providing electronic link/ Uniform Resource Locator (URL) for accessing such notice.

(3) (i) The email shall be addressed to the person entitled to receive such email as per the records of the company. The company shall provide an advance opportunity to the member to register his e-mail address and changes therein from time to time.

(ii) The subject line in e-mail shall state the name of the company, notice of the type of meeting and the date on which meeting is scheduled.

(iii) If notice is sent in the form of an attachment to e-mail, such attachment shall be in the Portable Document Format (PDF) or electronic documentation format together with a facility for recipient for downloading relevant version of the software for accessing such notice along with instructions for downloading such software and alternative contact details in case of inability of the recipient to open or read the attachment.

(iv) There shall be no difference in the text of the physical version of the notice and electronic version except in respect of mode of dispatch of notice.

(v) Sending of notice via e-mail shall be subject to such option being confirmed by the member and e-mail address being updated in writing at least 30 days prior to dispatch of notice. In such cases, the company shall not be under obligation to deliver physical copy of the notice unless specifically requested by the member in writing before the date of the meeting.

(vi) When notice or notifications of availability of notice are sent by e-mail, the company should ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent. A copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained by or on behalf of the company as 'proof of sending'.

(vii) The company's obligation shall be satisfied when it transmits the e-mail and the company will not be held responsible for a failure in transmission beyond its control. However the company shall, where it is aw are of the failure in delivery of the e-mail (and subsequent attempts do not rectify the situation), revert to sending physical copy of the notice at the member's registered addr ess within 72 hours of the original attempt.

(viii) If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, company shall not be in default for not delivering notice via e-mail.

(ix) Company may send e-mail through in-house facility or authorize any third party agency providing bulk e-mail facility.

(x) Notice made available on the electronic link/ URL has to be readable, and the recipient should be able to obtain and retain copies. The company shall give the complete URL/address of the website and full details of how to access the document/information.

(xi) The notice is taken to be 'sent' on the date the notification is sent. The notice must be available on the electronic link/ URL provided from the date of notification until the conclusion of the meeting. The failure to make notice available throughout the required period shall be disregarded if it is made available for part of that period and the failure is wholly attributable to circumstances that the company could not reasonably have prevented or avoided.

(4) The notice of the general meeting of the company shall be simultaneously placed on the website of the company and on the website as may be notified by the Central Government.

Proxies.

7.17. (1) For the purpose of third proviso to the sub-section (1) of section 105, a member of a company registered under section 8 shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

(2) No person shall act as proxy on behalf of members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying voting rights.

(3) For the purposes of sub-section (6) of section 105, the appointment of proxy shall be in the Form No. 7.11.

Voting through electronic means.

7.18.(1) For the purposes of section 108, every listed company or a company having five hundreds or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means.

(2) For the purposes of section 108, a member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system in accordance with the provisions of this rule.

Explanation.- I. For the purposes of this rule, 'voting by electronic means' or 'electronic voting system' means a 'secured system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security'.

II. 'Secured system' means computer hardware, software, and procedure that –

(a) are reasonably secure from unauthorized access and misuse;

(b) provide a reasonable level of reliability and correct operation;

(c) are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures.

III. "Cyber security" means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosures, disruption, modification or destruction.

(3) A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure:

Explanation- For the purposes of this rule, 'agency' means an agency approved by the Ministry of Corporate Affairs and appointed by a company for providing and supervising electronic platform for voting by electronic means.

Provided that the company may itself get registered with Ministry of Corporate Affairs for providing and supervising electronic platform for voting by electronic means. The Ministry may authorize the agency from the approved list.

(i) The notices of the meeting shall be sent to all the members/ auditors of accompany/directors/key managerial personal either, -

(a) by Registered Post or speed post with AD, or

(b) through electronic means like registered e-mail id etc,

in accordance with the provisions of section 101.

(ii) The notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members.

(iii) The notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means.

(iv) The notice shall clearly indicate the process and manner for voting by electronic means and time schedule including the time period during which the votes may be cast, address of places for casting votes duly sorted in order of name of states or union territories, where the members can cast their votes electronically.

(v) The company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, inter alia, the following matters:

(a) statement that the business may be transacted by electronic voting;

(b) the date of completion of sending of notices;

(c) the date and time of commencement of voting through electronic means;

(d) the date and time of end of voting through electronic means;

(e) the statement that voting shall not be allowed beyond the said date and time;

(f) website address of the company and agency, if any, where notice of the meeting is displayed; and

(g) contact details of the person responsible to address the grievances connected with the electronic voting.

(vi) E-voting shall remain open for not less than seven days and not more than ten days.

(vii) During the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically:

Provided that once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.

(viii) At the end of the voting period, the portal where votes are cast shall forthwith be blocked.

(ix)The Board of directors shall appoint one scrutinizer, who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the evoting process in a fair and transparent manner:

Provided that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

(x)The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

(xi)The scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman.

(xii) The scrutinizer shall maintain a register either manually or electronically to record the consent or otherwise, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

(xiii) The register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the register and other related papers to the company.

(xiv) The results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members.

(xv) Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

(xvi) Words and expressions used in this rule but not defined shall, unless the context otherwise requires, bear the meaning, if any, as assigned to them under the Act and Information Technology Act, 2000.

Manner in which the Chairman of meeting shall get the poll process scrutinised and report thereon.

7.19. (1) For the purpose of sub-section (5) of section 109 the Chairman of a meeting shall ensure that-

(a) The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.

(b) The Scrutinizers are provided with all the documents received by the Company pursuant to Section 105, 112 and 113.

(c) The Scrutinizers shall initial the Polling papers and distribute them to the members and proxies present at the meeting. In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. The Polling paper shall be in Form No. 7.12.

(d) The Scrutinizers shall keep a record of the polling papers issued.

(e) The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.

(f) The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.

(g) In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.

(h) The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.

(i) The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.

(j) Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.

(k) The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.

(l) The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.

(m) The Chairman shall declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

(2) The scrutinizer/s appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. 7.13. The report shall be signed by the scrutinizer / all the scrutinizers, in case there is more than one scrutinizer, and be submitted by them to the Chairman of the meeting within 7 days from the date the poll is taken.

Procedure to be followed for conducting business through postal ballot.

7.20. (1) For the purposes of section 110, where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot or by electronic means within a period of thirty days from the date of dispatch of the notice.

(2) The notice shall be sent by speed post or registered post acknowledgement due or by electronic means and shall include with the notice where it is sent by post, a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.

(3) An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters: ,

(a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;

(b) the date of completion of dispatch of notices;

(c) the date of commencement of voting;

(d) the date of end of voting;

(e) the statement that any postal ballot received from the member beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;

(f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and

(g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

(4) The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.

(5) The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

(6) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.

(7) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

(8) Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer. After the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.

(9) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof;,

(10) The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

(11) The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company who shall preserve such ballot papers and other related papers/register safely.

(12) The consent or otherwise received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.

(13) The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.

(14) The resolution shall be deemed to be passed on the date of declaration of its result.

(15) The provisions of Rule 7.18 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means.

(16) Pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot-

> (a) Alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
>
> (b) Alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
>
> (c) Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
>
> (d) Change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;

(e) Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;

(f) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;

(g) Buy-back of shares by a company under sub-section (1) of section 68;

(h) Election of a director under section 151 of the Act;

(i) Sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;

(j) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (3) of section 186;

Provided that One Person Company and other companies having members upto fifty are not required to transact any business through postal ballot.

Special Notice.

7.21. (1) For the purposes of section 115, a special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than one lakh rupees has been paid up on the date of the notice.

(2) Such notice shall be sent by members to the company not earlier than three months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

(3) The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting , exclusive of the day of dispatch of notice and day of the meeting , in the same manner as it gives notice of any general meetings.

(4) Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated. Such notice shall also be posted on the website, if any, of the Company. Such notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

Resolutions and agreements to be filed.

7.22. For the purposes of sub-section (1) of section 117, a copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in Form No. 7.14 along with the fee or additional fee as provided in Annexure- B .

Minutes of proceedings of general meeting, meeting of Board of Directors and other meetings and resolutions passed by postal ballot

7.23. (1) For the purposes of sub-section (1) of section 118,

(a) A distinct minute book shall be maintained for each type of meeting namely:

(i) general meetings of the members;

(ii) meetings of the creditors

(iii) meetings of the Board; and

(iv) Meetings of the committees of the Board.

Explanation: Resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting.

(b) In no case the minutes of proceedings of a meeting or a resolution passed by postal ballot shall be pasted to any such book.

(c) (i) Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.

(ii) In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.

Explanation: For the purpose of sub-section (1) of section 118, "kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot" shall mean "entered in the minutes book within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot and signed as prescribed in clause (d) hereafter"

(d) Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed –

(i) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the chairman of the next succeeding meeting;

(ii) in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

(iii) In case of every resolution passed by postal ballot, by the chairman of the Board within the aforesaid period of thirty days or in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

(e) Minute books of general meetings shall be kept at the registered office of the company. Minutes of the Board and committee meetings shall be kept at the registered Office or at such other place as may be approved by the Board.

(f) Minutes books shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as the members may decide by passing special resolution pursuant to requirement of section 88 read with section 94 of the Act.

Copy of minute book of general meeting.

7.24. For the purposes of sub-section (2) of section 119, any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of the company but not exceeding a sum of ten rupees for each page or part of any page.

Provided that a member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period of immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

Maintenance and inspection of document in electronic form.

7.25. (1) For the purposes of section 120, every listed company or a company having not less than one thousand share holders, debenture holders and other security holders, shall maintain its records, as required to be maintained under the Act or rules made there under, in electronic form.

(2) The records in electronic form shall be maintained in such manner as the Board of directors of the company may think fit, provided that -

(a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made there under;

(b) the information as required under the provisions of the Act or the rules made there under should be adequately recorded for future reference;

(c) the records must be capable of being readable, retrievable and reproducible in printed form;

(d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made there under;

(e) the records, once dated and signed digitally, shall not be capable of being edited or altered;

(f) the records shall be capable of being updated, according to the provisions of the Act or the rules made there under, and the date of updation shall be capable of being recorded on every updation;

Explanation: - For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made there under to be kept by a company.

Security of records maintained in electronic form

(3) (i) The Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

(ii) The person who is responsible for the maintenance and security of electronic records shall-

(a) provide adequate protection against unauthorized access, alteration or tampering of records;

(b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;

(c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;

(d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;

(e) ensure that the computer systems can discern invalid and altered records;

(f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;,

(g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

(h) ensure that records are kept in a non-rewriteable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;

(i) ensure that at least two backups, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;

(j) limit the access to the records to the managing director, company secretary or any other director or officer as may be authorized by the Board in this behalf;

(k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;

(l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and

(m) take necessary steps to ensure security, integrity and confidentiality of records.

Inspection and copies of records maintained in electronic form.

(4) Where a company maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be.

Penalty

(5) If any default is made in compliance with any of the provisions of this rule, the company and every officers or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

Report on Annual General Meeting.

7.26. (1) The report in pursuance of the provisions of sub-section (1) of section 121 shall be prepared in the following manner:

(a) A report under this section shall be prepared in addition to the minutes of the general meeting.

(b) The report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one.

(c) Such report shall contain the details in respect of the following:

(i) The day, date, hour and venue of the annual general meeting.

(ii) Confirmation with respect to appointment of Chairman of the meeting.

(iii) Number of members attending the meeting.

(iv) Confirmation of quorum.

(v) Confirmation with respect to compliance of the Act and the Rules made there under with respect to calling, convening and conducting the meeting.

(vi) Confirmation that the secretarial standards with respect to general meetings have been observed.

(vii) Business transacted at the meeting and result thereof.

(viii) Particulars with respect to any adjournment, postponement of meeting, change in venue and

(ix) any other points relevant for inclusion in the Report.

(d) Such Report shall contain fair and correct summary of the proceedings of the meeting.

(2) The copy of the report prepared in pursuance of sub-section (1) of section 121 and sub-rule (1), shall be filed with the Registrar within thirty days of the conclusion of the annual general meeting alongwith the fee or additional fee, as the case may be, as provided in Annexure B :

DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XIII

APPOINTMENT AND REMUNERATION

OF MANAGERIAL PERSONNEL

13.1 For the purposes of second proviso to sub-section (4) of section 196, a company shall file a return of appointment of a managing director, whole time director or manager with the Registrar in Form No. 13.1 along with such fee as specified in Annexure 'B'.

Sitting fees.

13.2 (1) For the purposes of first and second proviso to sub-section (5) of section 197, companies or class of companies may pay the following amount of fees to their directors for attending the meeting of its Board or committees thereof:

(2) The amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees One Lakh per meeting of the Board or committee thereof:

Provided that the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

Disclosure in Board's report.

(1) For the purposes of sub-section (12) of 197, every listed company shall disclose in the Board's report:

i. the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year ;
ii. Percentage increase in remuneration of each director and CEO in the financial year;
iii. Percentage increase in the median remuneration of employees in the financial year;
iv. Number of permanent employees on the rolls of company;
v. Explanation on the relationship between average increase in remuneration and company performance;

vi. Comparison of the remuneration of the Key Managerial Personnel against the performance of the company;

vii. The key parameters for any variable component of remuneration availed by the directors;

viii. The ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year.

ix. Affirmation that the remuneration is as per the remuneration policy of the company

Explanation I: For the purposes of this rule, median means the numerical value separating the higher half of a population from the lower half. The median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one. If there is an even number of observations, the median shall be the average of the two middle values.

Explanation II: For calculating median of salaries:-

- Arrange the salary data for all the employees (falling under one category) in ascending order. (Salary shall be inclusive of all perquisites and allowances calculated on the basis of cost to the company.)
- Count total number of employees.

    - **<u>If the number of employees is odd then</u>**, Median = Salary of nth employee where n = (total number of employees+1) / 2

Table : 1

	Salary (INR)
Employee 1	10,000
Employee 2	15,000
Employee 3	16,000
Employee 4	25,000

Employee 5	30,000

In the example shown under Table 1, number of employees is five, Median will be salary of 3rd employee [n=(5+1)/2=3]. Hence the median will be INR 16,000.

<u>If the number of employees is even</u> then, Median = Average of the salaries of nth and (n+1) th employee where n = total number of employees / 2

Table: 2

	Salary (INR)
Employee 1	10,000
Employee 2	15,000
Employee 3	16,000
Employee 4	25,000
Employee 5	30,000
Employee 6	35,000

In example, shown under Table 2, number of employees is six, Median will be average of salaries of 3rd and 4th employee [n=(6/2)=3 and (n+1)=(3+1)=4]. Hence the median will be INR 20,500 (average of INR 16,000 and INR 25,000).

(2) The board's report shall include a statement showing the name of every employee of the company who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

(3) Statement referred to in sub-rule (2) above shall also indicate -

(i) Designation of the employee;

(ii) Remuneration received;

(iii) Nature of employment, whether contractual or otherwise;

(iv) Qualifications and experience of the employee;

(v) Date of commencement of employment;

(vi) The age of such employee;

(vii) The last employment held by such employee before joining the company;

(viii) The percentage of equity shares held by the employee in the company within the meaning of sub-clause (iii) of sub-rule (2) above; and

(ix) Whether any such employee is a relative of any director or manager of the company and if so, name of such director.

Provided that particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, shall not be included in such statement of the Board's report but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports:

Provided further that such particulars shall be made available to any shareholder on a specific request made by him during the course of annual general meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders.

Applications to the Central Government.

13.4 For the purposes of item (e) of section 200, the Central Government or the company shall have regard to the following matters:

(1) Financial and operating performance of the company during the three preceding financial years.

(2) Relationship between remuneration and performance.

(3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company.

(4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.

(5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

13.5. (1) For the purposes of sub-section (1) of section 201, every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. 13.2. and shall be accompanied by fee as provided under Annexure 'B'.

(2) Companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial person in the event of no profit or inadequate profit beyond ceiling prescribed in section II, part II of Schedule V subject to complying with the following conditions:-

(i) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any and wild doing so record in writing clear reason and justification for payment of remuneration beyond the said limit;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;

(iii) Prior approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years;

(iv) A statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above, shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit.

Appointment of Key Managerial Personnel

13.6. For the purposes of sub-section (1) of section 203, every listed company and every other company having a paid-up share capital of five crore rupees or more shall have whole-time key managerial personnel.

SECRETARIAL AUDIT

13.7. (1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under:

(a) Every public company having a paid-up share capital of one hundred crore rupees or more.

(2) For the purposes of sub-section (1) of section 204, the format of the Secretarial Audit Report shall be in Form No.13.3.

Duties of Company Secretary

13.8. For the purposes of clause (c) of sub-section (1) of section 205, the duties of Company Secretary shall also include-

1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

2) to convene and attend Board, committee and general meetings, and maintain the minutes of these meetings;

3) To obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act.

4) To represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;

5) to assist the Board in the conduct of the affairs of the company;

6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and

7) to discharge such other duties as may be assigned by the Board from time to time.

8) Such other duties as have been prescribed under the Act and Rules.

DRAFT RULES UNDER COMPANIES ACT, 2013

Chapter XV

COMPROMISES, ARRANGEMENT AND AMALGAMATIONS

15.1 Application for order of a meeting

(1) An application along with a Notice of Admission supported by an affidavit in Form No. 15.1 under sub-section (1) of section 230 for an order of a meeting may be moved by a company or any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, for an order of a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, and such application shall be accompanied by documents mentioned therein.

(2) Upon the hearing of the application or any adjourned hearing thereof, the Tribunal shall, unless he thinks fit for any reason to dismiss the application, give such directions as he may think necessary in respect of the following matters:-

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

(b) fixing the time and place of such meeting or meetings;

(c) appointing a chairperson(s) for the meeting or meetings to be held, as the case may be;

(d) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting by proxy;

(e) determining the values of the creditors and/or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;

(f) notice to be given of the meeting or meetings and the advertisement of such notice;

(g) the time within which the chairman of the meeting is to report the result of the meeting to the Tribunal; and

(h) such other matters as the Tribunal may deem necessary.

(3) Where a petition for winding-up of the company or a petition under section 241 of chapter XVI of the Act, is pending, notice of the application shall also be given to the petitioner in such petition.

15.2 Disclosures in application made to the Tribunal for compromise or arrangement – Creditors Responsibility Statement.

For the purposes of sub-clause (i) of clause (c) of sub-section (2) of section 230, the creditor s responsibility statement in Form No. 15.2 shall be included in the scheme of corporate debt restructuring. This Form shall be signed by each of the consenting secured creditors.

15.3 Notice of meeting.

(1) The notice of the meeting pursuant to the order of the Tribunal to be given in the manner provided in sub section (3) of Section 230 shall be **in Form No. 15.3,** and shall be sent individually specifying therein, inter alia, the following --

(1) details of the order of the Tribunal directing the calling, convening and conducting of the meeting;

(a) Date of the Order

(b) Date, Time and Venue of the Meeting

(2) details of the company including:

(a) CIN / GLN of the company;

(b) name of the company;

(c) date of incorporation;

(d) status of the company (whether public/private/OPC);

(e) Registered Office address and E-mail id;

(f) object(s) as per the memorandum of association and main business carried on by the company;

(g) details of change of name, registered office and objects of the company in last five years;

(h) name of the stock exchanges where securities of the company are listed, if applicable;

(i) details of the capital structure of the company including authorized, issued, subscribed and paid up share capital; and

(j) details of the promoters, directors and key managerial personnel including name, address and designation and other particulars .

(3) if the scheme of compromise or arrangement relates to more than one company, the fact and details of any relationship subsisting between such companies including holding, subsidiary or of associate companies;

(4) the date of the board meeting at which the scheme was approved by the Board of directors including the name of the directors voted in favor of the resolution, voted against the resolution and not voted/ participated on such resolution;

(5) details of the scheme of compromise or arrangement including:

i. parties involved in such compromise or arrangement;

ii. in case of amalgamation or merger, appointed date, share exchange ratio and other consideration, if any;

iii. valuation report including basis of valuation and fairness opinion of the registered valuer, if any;

iv. details of capital/debt restructuring, if any;

v. rationale for the compromise or arrangement;

vi. benefits of the compromise or arrangement as perceived by the board of directors to the company, members, creditors and others;

vii. amount due to other unsecured Creditors and the security available to the creditors thereon

(6) disclosure of nature and extent of interest and effect of compromise or arrangement on such interest of:

(a) key managerial personnel;

(b) directors;

(c) promoters;

(d) non-promoter members;

(e) depositors;

(f) creditors;

(g) debenture holders;

(h) deposit and debenture trustee(s);

(i) promoters, directors, and key managerial personnel of holding company, subsidiary and associate companies;

(j) employees of the company stating clearly that the changes, if any, in the terms and conditions of employment are not detrimental to the interest of the employees;

(7) where there is no interest or there is no effect on such interest of any promoter, director or key managerial personnel, a statement to the effect that there is no interest or there is no effect of the scheme of compromise or arrangement on such interests of such persons;

(8) investigation proceedings, if any, pending against the company or against any promoter, director or key managerial personnel of such company;

(9) details of shareholding of directors, key managerial personnel and promoters of the company as on the date of making this statement and change in their shareholding in the last six months including the date on which and price at which change took place;

(10) details of any No-objection(s), approvals or sanctions, if already received from the concerned authorities for the compromise or arrangement;

(11) details of the availability of the following documents for obtaining extract from or for making copies of or for inspection by the members and creditors, namely:

(a) latest audited financial statements of the company including consolidated financial statements;

(b) copy of the order of Tribunal in pursuance of which the meeting is to be convened;

(c) copy of scheme of compromise or arrangement;

(d) contracts or agreements material to the compromise or arrangement; and

(e) such other information/documents as the Board/Management believes necessary and relevant for making decision for / against the scheme;

(12) declaration to the effect that the scheme is in the best interests of the employees, creditors, debenture holders, members particularly non-promoter members and minority shareholders of the company, as detailed in the scheme.

(13) status of approval(s) of regulatory or any other authority(ies), required, if any in connection with compromise or arrangement,.

(14) The notice shall provide for the information required under sub section (4) of section 230 of the Act.

Explanation- For the purposes of this rule, disclosure required to be made by a company shall be made in respect of all the companies which are the part of the compromise or arrangement.

(2) The notice shall be sent by the chairman appointed for the meeting, or, if the Tribunal so directs, by the company (or its liquidator), or any other person as the Tribunal may direct, by post, e-mail or any other mode as directed by the Tribunal to their last known addresses at least four weeks before the date fixed for the meeting.

15.4 Notice to Central Government, Regulatory Authorities etc.

(1) For the purposes of sub-section (5) of section 230, the notice of the meeting under sub-section (3) of section 230 and a copy of the scheme of compromise or arrangement shall be sent to such authorities as are mentioned in sub-section (5) of section 230 in Form 15.4.

(2) The notice to the above authorities shall be sent forthwith after the notice has been sent to the members or creditors of the company, either by hand delivery or by registered or speed post or by such electronic or other mode as prescribed in terms of section 20, i.e., service of documents.

(3) Representation, if any, under sub-section (5) of section 230 shall be made within a period of 30 days from the date of receipt of such notice, before the Tribunal failing which it shall be presumed that they have no representation to make on the proposal;

Provided that a copy of the representation, if any, shall be sent to the Chairperson of the meeting within the period of 30 days from the date of the receipt of such notice.

15.5 Advertisement of the notice of meeting:

The notice of the meeting shall be advertised in such newspapers and in such manner as the Tribunal may direct, not less than fourteen clear days before the date fixed for the meeting. The advertisement shall be in Form No. 15.5.

15.6 Copy of compromise or arrangement to be furnished by the company:

Every creditor or member entitled to attend the meeting shall be furnished by the company, free of charge and within one day of a requisition being made for the same, with a copy of the proposed compromise or arrangement together with a copy of the statement required to be furnished under the section 230 of Act, unless the same had been already furnished to such member or creditor.

15.7 Affidavit of service:

The chairperson appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit not less than seven days before the date fixed for the holding of the meeting or the holding of the first of the meetings, as the case may be, showing that the directions regarding the issue of notices and the advertisement have been duly complied with. In default thereof, the summons shall be posted before the Tribunal for such orders as he may think fit to make.

15.8 Right to convey consent or objections:

The consent or objections under sub-section (4) of section 230 may be conveyed in writing to the Chairperson of the meeting within a month from the date of the receipt of the notice.

15.9 Result of the meeting to be decided by poll:

The decisions of the meeting or meetings held in pursuance of the order of the Tribunal and the manner as prescribed in section 230 of the Act, on all resolutions shall be ascertained only by taking a poll while considering the representations of such authorities as per sub-section (5) thereof and the consents adopting the arrangement or compromise as received from the eligible persons.

15.10 Report of the result of the meeting:

The chairman of the meeting (or where there are separate meetings, the chairman of each meeting) shall, within the time fixed by the Tribunal, or where no time has been fixed, within seven days after the conclusion of the meeting, report the result thereof to the Tribunal. The report shall state accurately the number of creditors or class of creditors or the number of members or class of members, as the case may be, who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted. The report shall be in Form No. 15.6.

15.11 Offer of Takeover of a company other than a listed company as a result of compromise or arrangement.

(1) The takeover offer under sub-section (11) of section 230, whether by existing shareholder or not, at a price determined by registered valuer as approved by shareholders: Provided that where the company, being acquired is regulated under a special Act, approval of the regulatory body constituted or established under that Act as required under such act, shall also be obtained. **Explanation**- For the purposes of this rule, takeover means :-

a) acquisition of control of a company other than a listed company pursuant to a scheme of compromise or arrangement under section 230; or
b) acquisition of fifty percent or more of the total share capital of a company other than a listed company pursuant to a scheme of compromise or arrangement under section 230.

(2) The person making the takeover offer shall enter into Memorandum of understanding or an Agreement with the shareholders of the company being so acquired and such Memorandum or Agreement for takeover shall be annexed to the notice of the general meeting and shall, inter alia, contain-

(a) Name, address and details of the person making such takeover offer;
(b) shares/ voting rights already held by such person;
(c) proposed date of executing the transaction;
(d) total paid-up share capital of the company being acquired;
(e) total number and percentage of shares/ voting rights proposed to be acquired;
(f) price offered for the purchase of the shares;
(g) mode of payment of consideration (whether in cash or for consideration other than cash)
(h) objects and purpose of the acquisition of the shares;
(i) statement to the effect that the interest of the creditors, secured or unsecured, and of the employees will not

be adversely affected by the takeover;

(j) other terms and conditions of the offer.

(3) The takeover shall become effective only when it is approved by the company by passing a special resolution in the general meeting:

Provided that where any term loan is subsisting, prior approval of the concerned bank or public financial institution shall be obtained before passing such special resolution.

(4) The details of the offer, as are mentioned in the Memorandum of Understanding or Agreement for takeover forthwith after sending the notice of the meeting, be:

(a) sent to all the creditors, debenture holders, trustee(s) and deposit holders of the company;

(b) published at least once in English language in a leading English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situate; and

(c) placed on the website of the company, if any.

(5) If such takeover is being made by a listed company, a copy of such offer shall be sent to the Stock Exchanges and be placed on the website of the Company, if any.

(6) Where the shares/ voting rights are to be acquired for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company giving justification for the valuation. The valuation report shall be sent along with the notice of the said general meeting.

(7) The dissenting shareholders of the company being acquired shall be given an exit offer at a price determined by a registered valuer or at a price negotiated by both the parties to such takeover under sub-rule (1), whichever is higher.

(8) Notwithstanding anything, contained in sub-sections (1) to (9) of section 230, shall apply to takeover of an unlisted company if the conditions specified in this rule are complied with.

However, if any shareholder or any other stakeholder has any grievance with respect to such takeover offer, he may file his objections with the Tribunal in accordance with sub-section (12) of section 230.

15.12 Application under sub-section (12) of section 230.

(1) An application under sub-section (12) of section 230 shall be filed by an aggrieved party to the Tribunal in Form No. 15.7 specifying any grievances with respect to the takeover offer of companies other than listed companies and shall be accompanied by such documents as are mentioned therein.

(2) The petitioner shall at least 14 days before the date of hearing advertise the petition in accordance with rule 11 of National Company Law Tribunal Rules, 2013.

(3) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar on or before the date of hearing: Provided that the Tribunal may, if it thinks fit, permit, at any time even after the final hearing, any person to file objections after giving notice to the petitioner.

(4) Upon the hearing the petition or any adjourned hearing thereof, the Registrar may pass such an order, subject to such terms and conditions, as it thinks fit.

15.13 Petition for confirming compromise or arrangement:
Where the proposed compromise or arrangement is agreed to, with or without modification, as provided by section 231 and 232 with reference to section 230, the company, (or its official liquidator or company liquidator, as the case may be), shall, within seven days of the filing of the report by the chairperson, present a petition to the Tribunal for confirmation of the compromise or arrangement. The petition shall be in Form No. 15.8.

Where a compromise or arrangement is proposed for the purposes of or in connection with scheme for the reconstruction of any company or companies, or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 230 read with 232 of the Act.

Where the company fails to present the petition for confirmation of the Compromise or arrangement as aforesaid, it shall be open to any creditor or contributory, as the case may be, with the leave of the Tribunal, to present the petition and the company shall be liable for the cost thereof.

15.14 Date and notice of hearing:

The Tribunal shall fix a date for the hearing of the petition, and notice of the hearing shall be advertised in the same papers in which the notice of the meeting was advertised, or in such other papers as the Tribunal may direct, not less than 10 days before the date fixed for the hearing. The notice of the hearing of the petition shall also be served by the Tribunal to the representative of the objectors under sub-section (4) of section 230 and to the Central Government and other Authorities who have made representation under sub-section (5) of section 230.

15.15 Order on petition:

Where the Tribunal sanctions the compromise or arrangement, the order shall include such directions in regard to any matter and such modifications in the compromise or arrangement as the Tribunal may think fit to make for the proper working of the compromise or arrangement. The order shall direct that a certified copy of the same shall be filed with the Registrar of Companies within 14 days from the date of the order, or such other time as may be fixed by the Tribunal. The order shall be in Form No. 15.9, with such variations as may be necessary.

15.16 Application for directions under section 232:

Where 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 the matters involved cannot be dealt with or dealt with adequately on the petition for sanction of the compromise or arrangement, an application shall be made to the Tribunal under section 232 or section 230, by a notice of admission supported by an application for directions of the Tribunal as to the proceedings to be taken. Notice of the summons shall be given in such manner and to such persons as the Tribunal may direct.

15.17 Directions at hearing of application:

Upon the hearing of the summons or upon any adjourned hearing thereof, the Tribunal may make such order or give such directions as it may think fit, as to the proceedings to be taken for the purpose of reconstruction or amalgamation, as the case may be, including, where necessary, an inquiry as to the creditors of the transferor company and the securing of the debts and claims of any of the dissenting creditors in such manner as to the Tribunal may think just.

15.18 Order under section 232:

An order made under section 232 read with section 230 shall be in Form No. 15.10 with such variation as the circumstances may require.

15.19 Compromise or arrangement involving reduction of share capital:

Where a proposed compromise or arrangement involves a reduction of capital of the company, the procedure and requirements if any specifically prescribed by the Act and these rules relating to the reduction of share capital, shall be complied with, before the compromise or arrangement so far as it relates to reduction of share capital, is sanctioned.

15.20 Statement of compliance in mergers and amalgamations

For the purposes of sub-section (7) of section 232, every company in relation to which an order is made under sub-section (3) of section 232 shall until the completion of the scheme, file with the Registrar the statement in Form No. 15.11 along with such fee as provided in Annexure B within 30 days from the end of each financial year.

15.21 Report on working of compromise or arrangement:

At any time after the passing of the order sanctioning the compromise or arrangement, the Tribunal may, either on its own motion or on the application of any person interested, make an order directing the company, or, where the company is being wound-up, the liquidator or the Company Liquidator, to submit to the Tribunal within such time as the Tribunal may, fix, a report on the working of the said compromise or arrangement. On consideration of the report, the Tribunal may pass such orders or give such directions as it may think fit.

15.22 Liberty of the Tribunal:

At any time, if the Tribunal hearing the petition or application is of the opinion that the petition or application or evidence or information or statement is required to be filed in the form of Affidavit, the same may be ordered by the Tribunal in the manner as the Tribunal may think fit. The Tribunal may pass any direction(s) or order or dispense with any procedure prescribed by these rules in pursuance of the object of the provisions for implementation of the scheme of arrangement or compromise or restructuring or otherwise practicably. The Tribunal hearing the petition or application is at liberty to pass order staying the commencement of any suit or proceeding against the company under this Chapter of the Act, or under this part of the rules on a petition or an application filed by the applicant for implementation of the Scheme of arrangement or compromise or restructure or otherwise practicably.

15.23 Liberty to apply

(1) The company, or any creditor or member thereof, or in case of a company which is being wound-up, the liquidator, may, at any time after the passing of the order sanctioning the compromise or arrangement, apply to the Tribunal for the determination of any question relating to the working of the compromise or arrangement.

(2) The application shall in the first instance be posted before the Tribunal for directions as to the notices and the advertisement, if any, to be issued, as the Tribunal may direct.

(3) The Tribunal may, on such application, pass such orders and give such directions as it may think fit in regard to the matter, and may make such modifications in the compromise or arrangement as it may consider necessary for the proper working thereof, or pass such orders as it may think fit in the circumstances of the case.

15.24 Applicability of Rules to the Amalgamation of Sick Company

The Tribunal may order for amalgamation of a company with any other company on a joint petition or application made by one or more of the creditors or contributories or both of both the companies subject to such terms and conditions as may be imposed by the Tribunal if the Tribunal is satisfied that such amalgamation is economically and strategically viable for the amalgamated company and such resultant company will remain financially sound even after such amalgamation. While ordering so, the Tribunal may approve any scheme of restructuring of the loans after securing no objection from the respective creditors. The rules relating to amalgamation shall also be applicable to this kind of amalgamations.

15.25 Compromise or arrangement including Merger of certain companies.

(1) For the purposes of sub-section (1) of section 233, a company shall be deemed to be "wholly owned subsidiary" only if hundred per cent of share capital is held by the holding company except the shares held by the nominee or nominees to ensure that the number of members of subsidiary company is not reduced below the statutory limit as provided in section 187.

(2) For the purposes of clause (c) of sub-section (1) of section 233, the declaration of solvency shall be filed by the each of the companies involved in a scheme of compromise or arrangement involving merger in Form No. 15.12 along with such fee as provided in Annexure B before convening the meeting of members and creditors for approval of the scheme.

(3) For the purposes of clause (b) and (d) of sub-section (1) of section 233, the notice of the meeting to the members and creditors shall be accompanied by -

(a) a statement, as far as applicable, referred to in sub-section (3) of section 230;

(b) the declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233;

(c) a copy of the scheme.

(4)(a) For the purposes of sub-section (2) of section 233, the transferee company shall, within seven days after the conclusion of the meeting(s) of members or class of members or creditors or class of creditors, file in Form No. 15.13 a copy of the scheme as approved by the members and creditors, along with report of the result of each of the meetings with the Central Government, Registrar of Companies and the Official Liquidator, of the place where the registered office of the company is situated.

(b) Copy of the scheme in shall be filed with the Registrar of Companies along with the fee as provided in Annexure B through the MCA e-filing system.

(c) Copy of the scheme shall be filed with the Central Government and Official Liquidator, by sending them through hand delivery or registered or speed post or through electronic filing system as may be approved by the Central Government.

(5) Where no objection or comment is received to the scheme from the Registrar and Official Liquidator or where even after the receipt of objections or comments of Registrar and Official Liquidator, the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors the Central Government shall issue in Form No. 15.14, a confirmation order of such scheme of compromise, or arrangement.

(6) Where objections are received from the Registrar or Official Liquidator and the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in interest of creditors, it may file an application before the Tribunal within sixty days of the receipt of the scheme stating its objections or opinion and requesting that Tribunal may consider the scheme under section 232.

(7) For the purposes of sub-section (7) of section 233, the confirmation order of the scheme issued by the Central Government or Tribunal, shall be filed in Form No. 15.15 along with the fee as provided in Annexure B with the Registrars having jurisdiction over the transferee and transferor companies respectively.

15.26 Fees to be paid on revised capital.

For the purposes of sub-section (11) of section 233, the transferee company shall pay such fees as may be specified in Annexure B on the revised capital.

15.27 Notice to dissenting shareholders for acquiring the shares. For the purposes of sub-section (1) of section 235, the transferee company shall send a notice in Form No. 15.16 to the dissenting shareholder(s) of the transferor company, at the last intimated address of such shareholder, for acquiring the shares of such dissenting shareholders.

15.28 Determination of price for purchase of minority shareholding.

For the purposes of sub-section (2) of section 236, the registered valuer shall determine the price (hereinafter called as offer price) to be paid by the acquirer, person or group of persons referred to in sub-section (1) of section 236 for purchase of equity shares of the minority shareholders of the company, in accordance with the following rules:-

(1) In the case of a listed company,

(i) the offer price shall be determined in the manner as may be specified by the Securities and Exchange Board by making regulations in this behalf; and

(ii) the registered valuer shall also provide a proper valuation report/basis of valuation addressed to the Board of directors of the company giving justification for such valuation

2. In the case of an unlisted company and a private company,

(i) the offer price shall be determined after taking into account the following factors:-

(a) the highest price paid by the acquirer, person or group of persons for acquisition during last twelve months;

(b) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies; and

(ii) the registered valuer shall also provide a proper valuation report/basis of valuation addressed to the Board of directors of the company giving justification for such valuation.

15.29 Power of Central Government to provide for amalgamation of companies in public interest.

1.For the purposes of sub-section (3) of section 237, the Central Government may nominate an officer ………………………………… in the Ministry of Corporate Affairs.

2. For the purposes of sub-section (3) of section 237, the compensation to be paid to the member or creditor, including a debenture holder, of each of the transferor companies shall be assessed by an officer not below the rank of Junior Administrative Grade of Indian Corporate Law Services in the Ministry of Corporate Affairs or such other authority as may be decided by the Central Government.

15.30 Circular containing scheme of amalgamation or merger.

For the purposes of clause (a) of sub-section (1) of section 238, every circular containing the offer of scheme or contract involving transfer of shares or any class of shares and recommendation to the members of the transferor company by its directors to accept such offer, shall be accompanied by such information as set out in Form No. 15.17.

15.31 Compromise or arrangement includes demerger

(1) For the purpose of Chapter XV of the Act, demerger in relation to companies means transfer, pursuant to scheme of arrangement by a demerged company of its one or more undertakings to any resulting company in such a manner as provided in section 2(19AA) of the Income Tax Act, 1961, subject to fulfilling the conditions stipulated in that Act and the resulting company issues in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis.

(2) Till the Accounting Standards is notified for the purpose of demerger , the Accounting Treatment shall be in accordance with the conditions stipulated in section 2(19AA) of the Income Tax Act, 1961, and

(i) In the books of the demerged company :-

(a) Assets and liabilities shall be transferred at the same value appearing in its books of account, without considering any revaluation or writing off of assets carried out during the preceding two financial years; and

(b) The difference between the value of assets and liabilities shall be credited to capital reserve or debited to good will.

(ii) In the books of resulting company :-

(a) Assets and liabilities of demerged company transferred shall be recorded at the same value appearing in the books of account of the demerged company ;
(b) Shares issued shall be credited to the share capital account; and
(c) The excess or deficit, if any, remaining after recording the aforesaid entries shall be credited to capital reserve or debited to good will as the case may be.
Provided that a certificate by the company auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under section 133 of the Act and in this Rule.

15.32 Fee. – (1) Every memorandum of appeal shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted in the form of demand draft drawn in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi.
(2) The amount of fee payable in respect of every appeal made to the Appellate Tribunal against the order of the Tribunal shall be rupees ten thousand only.
(3) The Tribunal may, to advance the cause of justice and in suitable cases, waive payment of fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be, by an order for reasons to be recorded.
(4) The Central Government may review the fee under rule 4 after every three years and the fee may be amended by a notification.

15.33 – Save as otherwise provided in these rules, National Company Law Tribunal Rules, 2013, shall apply to the circumstances in which these rules do not specifically provide or elaborate in relation to any matter.

DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XVII

REGISTERED VALUERS

Definition

17.1 'Registered Valuer' means a person registered as a Valuer under Chapter XVII of the Act.

Registration as Valuers.

17.2 (1) For the purposes of sub-section (1) of section 247, the Central Government or any authority, institution or agency, as may be notified by the Central Government, shall maintain a register to be called as the Register of Valuers in which there shall be registered the names, address and other details of the persons registered as valuers in pursuance of section 247.

(2) The following persons shall be eligible to apply for being registered as a valuer:

(a) a chartered accountant, company secretary or cost accountant who is in whole-time practice, or retired member of Indian Corporate Law Service or any person holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may recognise by an order;

Provided that such foreign qualification acquired by Indian citizen.

(b) a Merchant Banker registered with the Securities and Exchange Board of India, and who has in his employment person(s) having qualifications prescribed under (a) above to carry out valuation by such qualified persons;

(c) member of the Institute of Engineers and who is in whole-time practice;

(d) member of the Institute of Architects and who is in whole-time practice;

(e) A person or entity possessing necessary competence and qualification as may be notified by the Central Government from time to time.

Provided that persons referred to in (a), (c) and (d) and qualified person in (b) above shall have not less than five years continuous experience after acquiring membership of respective institutions.

Provided further that in the case of merchant banker the valuation report shall be signed by the qualified person.

Provided also that persons referred to in (a) and (b) shall be in respect of requirement for a "financial valuation" and the persons referred to in (c) and (d) shall be in respect of requirement for a "technical valuation" and a person or a firm or Limited Liability Partnership or merchant banker possessing both the qualifications may act in dual capacity.

Explanation: For the purposes of this rule, a person shall be deemed "to be in whole-time practice", when individually or in partnership or in limited liability partnership or in merchant banker with other persons in practice who are members of other professional bodies, he, in consideration of remuneration received or to be received:

(i) engages himself in the practice of valuation; or

(ii) offers to perform or performs services involving valuation of any assets with the object of arriving at financial value of the asset being valued; or

(iii) renders professional services or assistance in or about matters of principle or detail relating to valuation.

(3) An application for registration as valuer shall be made in Form No. 17.1 by individuals and firms and Form No. 17.2 by others, along with the fee as provided in Annexure 'B'.

Furnishing of Particulars in certain cases.

17.3 Where any person who is registered as a valuer under section 247 or who has made an application for registration as a valuer under that section is, at any time thereafter,—

(a) sentenced to a term of imprisonment for any offence; or

(b) found guilty of misconduct in his professional capacity by any association or institute or other body of which he is a member or with which he is registered;

he shall immediately after such conviction or finding, intimate the particulars thereof to the Central Government, institution or agency with which he is registered as a valuer and cease to act as valuer unless permitted by the Central Government, institute or agency with which he is registered as a valuer unless the order imposing penalty/sentence at rule 17.3 (a) and (b) has been stayed by competent authority.

Provided that in case valuer found guilty of professional misconduct or otherwise by the Institute which he is a member or by National Financial Reporting Authority or where the SEBI removed the registration of the merchant banker, such valuer shall cease to be the valuer automatically and their name shall be removed from the register of valuer unless such order has been stayed by the Competent Authority.

Provided further that any ongoing assignment of such valuer, who has ceased to be a valuer, shall be assigned to other valuer from the panel maintained by Central Government or any authority or institution to complete the assignment, if no stay is granted on such appeal, if any.

Removal and restoration of names of valuers from register.

17.4 (1) The Central Government or any authority, institution or agency, may remove by order the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit,—

(a) that his name has been entered in the register by error or on account of misrepresentation or suppression of a material fact; or

(b) that he has been convicted of any offence and sentenced to a term of imprisonment or has been guilty of misconduct in his professional capacity which, in the opinion of the Central Government or any authority, institution or agency, renders his name unfit to be kept in the register.

(2) The Central Government or any authority, institution or agency, may on application and on sufficient cause being shown and on being satisfied, restore in the register the name of any person removed there from.

(3) Without prejudice to the provisions of sub-rule (1) and (2), the Central Government or any authority, institution or agency, may review the performance of any registered valuer and order removal of the name of any person from the register of valuers where it is satisfied, after giving that person a reasonable opportunity of being heard and after such further inquiry, if any, as it thinks fit to make, that his performance is such that his name should not remain on the register of valuers.

(4) The Central Government or any authority, institution or agency may appoint one or more competent persons as enquiry officer(s) for conducting an enquiry under sub-rule (3) of this rule.

(5) (i) The officer(s) conducting an enquiry shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while make an enquiry, in respect of the following matters, namely:

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Receiving evidence on affidavit

(d) Issuing commissions for the examination of witnesses or documents;

(e) Requisitioning under the provisions of Section 123 or 124 of the Indian Evidence Act 1872, any public record or document or copy of such record or document from any office.

(ii) The officer(s) may also call upon such experts from the field of law, economics, business, finance, accountancy, international trade, management, technology or such other discipline as he deems necessary to assist him in conducting the enquiry.

Appeal

17.5 A registered valuer aggrieved by an order passed under rule 17.4 (1) (a) or 17.4 (3) may prefer an appeal in accordance with the procedure laid down in the respective Acts, regulations or bye-laws governing the respective professional. An appeal against the order of the Central Government shall be preferred to the Tribunal.

Methods of valuation.

17.6. For the purposes of clause (c) of sub-section (2) of section 247,

(i) Before adoption of the methods of valuation as detailed below, the registered valuer shall decide the approach to valuation based upon the purpose of valuation:

(a) Asset approach;

(b) Income approach;

(c) Market approach.

(ii) The valuer shall consider the following points while undertaking valuation:

(a) Nature of the business and the History of the Enterprise from its inception;

(b) Economic outlook in general and outlook of the specific industry in particular;

(c) Book value of the stock and the financial condition of the business;

(d) Earning capacity of the company;

(e) Dividend –paying capacity of the company;

(f) Goodwill or other intangible value;

(g) Sales of the stock and the size of the block of stock to be valued;

(h) Market prices of stock of corporations engaged in the same or a similar line of business;

(i) Contingent liabilities or substantial legal issues, within India or abroad, impacting the business;

(j) Nature of instrument proposed to be issued, and nature of transaction contemplated by the parties.

(iii) A registered valuer shall make a valuation of any asset as on valuation date, in accordance with any one or more of the following methods:

(a) Net asset value method representing the value of the business with reference to the asset base of the entity and the attached liabilities on the valuation date (represents the value of an entity's assets less the value of its liabilities);

(b) Market Price method: Under this method the current price at which the subject of valuation is bought or sold in the market between unrelated third parties is taken into account;

(c) Yield method / Profit Earning Capacity Value (PECV): Under this method the value is calculated by capitalizing the average of the after tax profits for the preceding three years (or such other period. Provided adequate justification is available for choosing another period) at capitalisation rates specified in the report

(d) Discounted Cash Flow Method (DCF): This method expresses the present value of the business as a function of its future cash earnings capacity. This methodology works on the premise that the value of a business is measured in terms of future cash flow streams, discounted to the present time at an appropriate discount rate. The value of the firm is arrived at by estimating the Free Cash Flows (FCF) to Firm and discounting the same with Weighted Average cost of capital (WACC). In case FCF to equity or FCF to debt is used, the appropriate denominator (required return to equity or debt, as the case may be) shall be used.

(e) Comparable Companies Multiples Methodology (CCM): This Method uses the valuation ratios of a publicly traded company and applies that ratio to the company being valued (after applying appropriate discount or premium, as the context may require). The valuation ratio typically expresses the valuation as a function of a measure of financial performance or book value (e.g. total revenue/revenue from operations, EBITDA, EBIT, EPS, operating cash flows, book value or other suitable parameter, with reasons being recorded for choosing each relevant parameter). Multiples used, if not derived from financial statements, can also be based on certain business performance parameters, provided that such valuation is deemed to be more appropriate than valuation based on financial parameters, in the facts of the case (for instance, price/subscriber for an internet portal)

(f) Comparable Transaction Multiples Method (CTM) which entails valuation on the basis of similar transactions among unrelated parties in the peer group companies.

(g) Price of Recent Investment method (PORI) which entails valuation on the basis of recent investment received in the company from an independent investor.

(h) Sum of the parts valuation (SOTP) – where each part of the business is valued according to method(s) appropriate to that business, and the results are summed up to obtain total value of the business

(i) Liquidation value - if the value is being calculated in a liquidation scenario

(j) Weighted Average Method – Under this method the weights are assigned to the values calculated under different valuation approaches.

(k) Any other method accepted or notified by the Reserve Bank of India, Securities and Exchange Board or Income Tax Authorities.

(l) Any other method(s) that the valuer may deem fit to adopt in the given circumstances of the case, provided that adequate justification for use of such method(s) (and not any of the methods above) must be included in the report.

(iv) A registered valuer shall make a valuation of any asset as on valuation date, in accordance with the applicable standards, if any, as may be stipulated for this purpose.

Explanation: For the purposes of this rule, 'valuation date' means the date on which the estimate of value is applicable. It may be different from the date of the valuation report or the date on which the investigations were undertaken or completed.

Contents of Valuation Report.

17.7 The report of valuation by a registered valuer shall be as near to and shall contain such information as set out in Form No. 17.3.

*****

DRAFT RULES UNDER COMPANIES ACT, 2013

CHAPTER XXI

PART I. – Companies authorized to register under this Act

21.1. (1) For the purposes of sub-section (2) of section 366, the provision of Chapter II relating to name availability and incorporation of a company shall be applicable mutatis mutandis except specifically exempted under section 371.

Provided that there shall be seven or more members who shall apply for availability of name and incorporation.

(2) A company after obtaining availability of name shall attach the documents and information to the Registrar along with Form 21.1. in the following manner:

(i) For registration as a company limited by shares:

(a) A list showing the names, addresses, and occupations of all persons named therein with details of shares held by them (including shares held as cash or other than cash separately) respectively, distinguishing, in cases where the shares are numbered, each share by its number ,who on a day, not being more than six clear days before the day of seeking registration, were partners of the Partnership Firm or Limited Liability Partnership;

(b) A list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN , residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;

(c) An affidavit from each of the persons proposed as the first directors, that he is not disqualified to be a director under sub section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) A list containing the names and addresses of the Partners of the Partnership Firm or Limited Liability Partnership Firm.

(e) a copy of any Act of Parliament or other Indian law, deed of partnership, Bye laws or other instrument constituting or regulating the company and duly verified in the manner provided in Rule 7;

(f) a statement spec ifying the following particulars:—

(i) the nominal share capital of the company and the number of shares into which it is divided;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof;

(g) Written consent or No Objection Certificate from all the secured creditors of the applicant.

(h) Written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for registration under this part.

(ii) For registration as a company limited by guarantee or as an unlimited company:

(a) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the company with proof of membership;

(b) A list showing the particulars of persons proposed as the first directors of the company, their names, including surnames or family names, the DIN, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;

(c) An affidavit from each of the first directors, that he is not disqualified to be a director under sub section (1) of section 164 and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

(d) A list containing the names and addresses of the Partners of the Partnership Firm or Limited Liability Partnership Firm

(e) a copy of any Act of Parliament or other Indian law, deed of partnership, bye-laws or other instrument constituting or regulating the company duly verified in the manner provided in Rule 7;

(f) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

(3) Statement of accounts of the company, prepared not later than six days preceding the date of seeking registration, certified by the Auditor of the “company” together with the Audited Financial Statements of the previous year, where applicable.

Provided that assets of the ‘company’ shall not be revalued for the purpose of vesting of its assets with the company as incorporated under this Act during immediately preceding one year or surplus out of the revaluation shall not be credited to the capital account.

(4) A certificate from a Company Secretary in Practice or Chartered Accountant or Cost Accountant certifying that the entity applying for registration under this Part has complied with all the provisions of the Stamp Act, to the extent applicable including in vesting of immovable properties.

(5) No objection certificate from the concerned Registrar of Firms or Registrar of Companies(LLP) for conversion into a company under the Companies Act, 2013;

(6) An affidavit, duly notarized, from all the members or partners providing that in the event of registration as a company under Part I of Chapter XXI of the Companies Act, 2013, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution as partnership firm or limited liability partnership.

(7) The list of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors of the company or Designated Partner of the Limited Liability Partnership or two partners of a partnership firm.

21.2. (1) For the purpose of clause (b) of section 374, every company seeking registration under Part I of Chapter XXI shall publish an advertisement about registration under this Part, seeking objections, if any. The said advertisement shall be in Form No. 21.2 and shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district;

(2) A copy of the notice, as published, shall be attached with Form 21.1. .

(3) The Registrar shall, after considering the application and the objections, if any, received by him within thirty days from the date of publication of notice, and after ensuring that the company has addressed the objections suitably decide whether the Registration should or should not be granted.

(4) If the Registrar decides that the applicant should be registered, he shall issue a certificate of incorporation in Form 2.12.

21.3. For the purpose of section 374(d), where a partnership firm or Limited Liability Partnership has obtained a certificate of registration under section 367, an intimation to this effect shall be given, within fifteen days of such registration, to the concerned Registrar of Firms or Registrar of Companies(LLP) under which it was originally registered, as the case may be, along with necessary documents or papers for its dissolution as partnership firm or limited liability partnership.

DRAFT RULE UNDER THE COMPANIES ACT 2013

CHAPTER XXVII

NATIONAL COMPANY LAW TRIBUNAL (SALARY, ALLOWANCES AND OTHER TERMS AND CONDITIONS OF SERVICE OF PRESIDENT AND OTHER MEMBERS) RULES 2013

In exercise of the powers conferred by section 414 read with sub-section (2) of section 469 of the Companies Act, 2013 , the Central Government hereby makes the following rules, namely: -

1. Short title and commencement. -

(1) These rules may be called the National Company Law Tribunal (Salary, Allowances and other Terms and Conditions of Service of President and other Members) Rules, 2013.

(2) They shall come int o force on the date of their publication in the Official Gazette.

2. Definitions. –

(1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Companies Act, 2013 (of 2013);

(b) "President" means the President of the Tribunal appointed under section 408 of the Act;

(c) "Tribunal " means the National Company Law Tribunal constituted under section 408 of the Act;

(2) Words and expressions used in these rules but not defined, shall have the same meanings respectively assigned to them in the Act.

3. Pay.

(1) The President shall be entitled to a monthly salary, and to such allowances and other benefits, as are admissible to a High Court judge. (High Court of the Headquarter station of the Tribunal)

(2) A Judicial Member shall be paid salary as under:

(a) When a serving or a retired Judge of the High Court, is appointed as a Judicial Member, he shall be entitled to a monthly salary, and to such allowances and other benefits, as are admissible to a serving Judge of the High Court of the Headquarter station of the Tribunal .

(b) When a serving or a retired District Judge, is appointed as Judicial Member, he shall be entitled to a monthly salary and to such allowances and other benefits as are admissible to a serving District Judge of the Headquarter station of the Tribunal.

(c) when an advocate of a Court is appointed as Judicial Member, he shall be entitled to a salary allowances and other benefits in Grade Pay of rupees twelve thousand in Pay Band-4 (rupees 37400-67000).

Provided that in case the retired Judge of the High Court or the retired District Judge , is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such member shall be reduced by the gross amount of pension or employers contribution to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent of gratuity), drawn or to be drawn by him.

(3) A Technical Member shall be entitled to a salary, allowances and other benefits in Grade Pay of rupees twelve thousand in Pay Band-4 (rupees 37400-67000).

Provided that the in the case of a retired member has been a member of the Indian corporate law service or Indian legal service and is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such member shall be reduced by the gross amount of pension or employers contribution to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent of gratuity), drawn or to be drawn by him.

Provided further that in case of serving member of Indian Corporate Law Service or serving member of Indian Legal Service, who have been appointed as Technical Member of the Tribunal, shall be entitled for all the service benefits till his superannuation. After the date of his supperannuation, his salary and other terms shall be in accordance with the terms of retired member and appointed as Technical Member as above.

4. Contributory Provident Fund. –

(1) The President and other Members shall be governed by the provisions of the Contributory Provident Fund Rules (India), 1962 and no option to subscribe under the General Provident Fund (Central Services) Rules, 1960 shall be avail able.

(2) No additional pension and gratuity shall be admissible for service rendered in the Tribunal .

5. Leave. –

(1) The President and every other Member shall be entitled to thirty days of Earned Leave for every year of service.

(2) The payment of leave salary during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.

(3) The President and every other Member shall be entitled to encashment of fifty per cent of Earned Leave standing to their credit at any time.

6. Leave Sanctioning Authority

In the case of the President, Chairperson of the National Company Law Appellate Tribunal, and in the case of the members, the President, shall be the leave sanctioning authority.

7. Travelling Allowances

The President and other Members of the Tribunal while on tour within India or on transfer (including the journey undertaken to join the Tribunal or on the completion of their tenure with the Tribunal to proceed to their home town) shall be entitled to the travelling allowance, daily allowance transportation of personal effects and other similar matters at the same rates as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of President and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

8. Official visits abroad. –

Official visits abroad by the President or Members shall be undertaken only in accordance with orders issued by the Central Government and they shall be entitled to draw such allowances in respect of such visits as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of President and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

9. Leave Travel Concession. –

The President and other Members of the Tribunal shall be entitled to Leave Travel Concession (LTC) at the same rates as applicable to officers of the Central Government in Apex Grade (rupees eighty thousand-fixed) in the case of President and Grade Pay of rupees twelve thousand in the Pay Band-4 (rupees 37400-67000) in the case of Members.

10. Facility for Medical Treatment.-

The President and other Members shall be entitled to medical treatment and hospital facilities as provided in the Central Government Health Scheme (CGHS) to a retired Government servant. At places where the said Scheme is not in operation, the President and other Members shall be entitled to the facilities as provided in the Central Service (Medical Attendance) Rules, 1944.

11. Applicability of rules:-

(1) When a serving Judge of the High Court is appointed as the President or Member of the National Company Law Tribunal, his terms and conditions of service shall be the same as were applicable to him prior to his appointment as the President or Member ;

Provided that in case of superannuation of President or Member as Judge before the expiry of his term as President or Member, his terms and conditions of service shall be the same as are applicable to a retired Judge of the High Court, under these rules, for remainder period of his term.

(2) Chairman, Vice-chairman and Members of the Company Law Board, who fulfill the qualifications and requirements provided under the Act shall continue to function as President or Members of the Tribunal only on the recommendations of the Chief Justice of India, in the case of the President, and on recommendation of Selection Committee, constituted under section 412 of the Act, in case of Members.

(3) When a person who is in Government Service or employed in any Public Sector Undertaking or any Authority including Autonomous Body of the Government covered under para (3) of this Rule, he shall be entitled for all the service benefits till his superannuation. After the date of his superannuation, his salary and other terms shall be in accordance with the terms of retired person who is appointed as Technical Member. In case a retired person is

appointed as a Member his salary and other terms would be governed in accordance with the terms of the retired person (i.e., after making necessary adjustments of post-retirement benefits).

12. Other Conditions of Service. –

Matters relating to the terms and conditions of service of the President or other Members with respect to which no express provision has been made in these rules, shall be referred by the Tribunal to the Central Government for its decision, and the decision of the Central Government thereon shall be final.

13. Oath of office and secrecy:-

(1) Every person appointed as the President shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

(2) Every person appointed as a member shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

14. Declaration of financial or other interest:-

Every person, on his appointment as the President or Member, as the case may be, shall give a declaration in Form III annexed to these rules, to the satisfaction of the Central Government, that he does not have any such financial or other interest as is likely to affect prejudicially his functions as President or Member, as the case may be.

15. Powers to relax:-

The Central Government shall have power to relax any provision of these rules with respect to any class or category of persons.

Form - I

(See rule 11)

Form of oath of office for President or Members of the National Company Law Tribunal

"I, ..., having been appointed as President or member of the National Company Law Tribunal do solemnly affirm

swear in the name of God

that I will faithfully and conscientiously discharge my duties as President or member to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will."

Signature: ....

Place: ....

Name: ....

Designation: ....

Date: ....

Form - II

(See rule 11)

Form of oath of secrecy for President or Members of the National Company Law Tribunal

"I, ..., having been appointed as President or member of the National Company law Appellate Tribunal

do solemnly affirm

swear in the name of God

that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as President or member of the said Tribunal except as may be required for the due discharge of my duties as President or member."

Signature: ....

Place: ....

Name: ....

Designation: ....

Date: ....

Form - III

(See rule 12)

Declaration against acquisition of any adverse financial or other interest

I, ..., having been appointed as the President or Member (cross out portion not applicable) of the National Company Law Tribunal, do solemnly affirm and declare that I do not have, nor shall have in future any financial or other interest which is likely to affect prejudicially my functioning as the President or Member (cross out portion not applicable), of the National Compa ny Law Tribunal.

Signature: ....

Place: ....

Name: ....

Designation: ....

Date: ....

DRAFT RULE UNDER THE COMPANIES ACT 2013

CHAPTER XXVII

NATIONAL COMPANY LAW TRIBUNAL RULES, 2013

In exercise of the powers conferred by section 469 read with section 408 of Companies Act, 2013 the Central Government hereby makes the following rules namely:-

Part I

Preliminary

Short title and Commencement –

1. (1) These rules shall be called the National Company Law Tribunal Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) The General Clauses Act, 1897 (10 of 1897) applies to the interpretation of these rules as it applies to the interpretations of a Central Act.

(4) The requirements with regard to any approval or proceeding etc of or before the Tribunal provided under any other rule made under the Act shall be in addition to the requirements provided under these rules.

(5) These rules shall also be applicable for the proceedings before the Tribunal in case of limited liability partnerships under LLP Act, 2008 or rules made thereunder and in case of any inconsistency between rules made under the LLP Act, 2008 and these rules, these rules shall apply.

Definitions

2. In these rules, unless the context or subject- matter otherwise requires,

(1) **"Act"** means the Companies Act, 2013.

(2) **"Address for service"** shall mean the address furnished by a party or his authorized representative at which service of summons, notices or other processes may be effected by these rules;

(3) **"Appellate Tribunal"** means the National Company Law Appellate Tribunal constituted under section 410 the Act;

(4) **"Applicant"** means a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Act:

Provided that in respect of the matters pertaining to "Revival and Rehabilitation of Sick Companies" under Chapter XIX of the Act, the term "Applicant" shall mean and include the following:

(a) 'secured creditor (s)' of a company representing 50% or more of its outstanding amount of debts, which the Company has failed to pay within 30 days of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditor as per the provisions contained in sub-section (1) of section 253 of the Act,

(b) the company, on failing to pay the debt to its secured creditors to the extent of 50% or more of its outstanding debts within 30 days of the receipt of notice of demand or to secure or compound it to the reasonable satisfaction of the secured creditor.

(c) the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State Level Institution or a scheduled bank being an authority which has made a reference in respect of sick company to the Tribunal under sub-section (5) of section 253.

(5) **"Application"** means any application filed under the provisions of the Act, and also includes any written representation seeking interim orders before the Tribunal.

(6) **"Annexure"** means an Annexure to these rules;

(7) **"Authorised Representative"** means a person authorised in writing by a party to present his case before the Tribunal as the representative of such party as provided under section 432 of the Act;

(8) **"Bench"** means a Bench of the Tribunal constituted under section 419 of the Act.

(9) **"Body Corporate"** means the body corporate as defined in sub-section (11) of section 2 of the Act, and includes:

(i) a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(ii) a limited liability partnership incorporated outside India;

(10) **"Central Registry"** means the registry in which all the applications or petitions and documents are received electronically by the Registrar for allocation to the concerned Bench of the Tribunal for disposal;

(11) **"Certified"** means in relation to a copy as hereunder:

(a) Certified as provided in section 76 of the Indian Evidence Act, 1872; or

(b) Certified as provided in section 6 of Information Technology Act, 2000 ; or

(c) A copy of document as may be a downloaded version from e-registry under MCA 21 or any other similar authorized portals or Dedicated Portal Online as may be given name thereto by the Central Government in instance or a photo copy of original pertaining to any company registered with the Office of the Registrar of Companies of the concerned state; and

(d) A certified copy issued by the Registrar of Companies under the Act;

(12) **"Certified by Tribunal"** means in relation to a copy, certified to be a true copy issued by the Registry of the Tribunal or of a bench of the Tribunal under its hand and seal and as provided in Section 76 of the Indian Evidence Act, 1872;

(13) **"Certifying Authority"** means a person who has been granted a license to issue a Digital Signature Certificate under section 24 of the Information Technology Act, 2000 (21 of 2000);

(14) **"Chairperson", "Judicial Member", "Member", "President" and "Technical Member"** of the Tribunal or Appellate Tribunal shall have the same meanings as provided in section 407 of the Act;

(15) **"Court"** means the court as defined in sub-section (29) of section 2 of the Act;

(16) **"Dedicated Portal Online"** refers to an "Hyper Text Transfer Protocol" for the purpose of electronic transmission of documents to the Tribunal for hearing and disposal in pursuance of the provisions of the Act and includes MCA - 21 portal;

(17) **"Digital signature"** means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3 of the Information Technology Act, 2000 and includes a graphic image of a handwritten signature;

(18) **"Digital Signature Certificate"** means a Digital Signature Certificate issued under sub-section (4) of section 35 of the Information Technology Act, 2000;

(19) **"Document"** means summons , notice, requisition, a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or any other instrument in paper form or electronic form and other legal process, and registers, whether issued, sent or kept in pursuance of the Act and Rules made there under or any other Act or otherwise; but, does not include orders of the Tribunal;

(20) **“EDGAR (Electronic Data Gathering, Analysis and Retrieval) Filer Manual”** means the current version of the manual prepared by the Tribunal setting out the technical format requirements for an electronic filing of Application or other documents with the Tribunal;

(21) **"Electronic Format"** means the computerized format of a document prepared in accordance with Electronic Data Gathering, Analysis, and Retrieval (EDGAR);

(22) **"Electronic Filer"** means an Applicant who files Application or other documents with the Tribunal electronically;

(23) **“Electronic Filing”** is a process by which a filer files a document with the Registry of the Tribunal by means of an online computer transmission of the document in electronic form other than by means of fax or e-mail.

(24) **“Electronic order”** means a computerized, non-paper Tribunal order that a Member or Members of the Tribunal signs by applying his or her digitized signature to the order.

(25) **“Electronic service”** is a method of serving a document upon a party by electronically transmitting the document to that party’s e-mail address.

(26) **“Electronic Registry”** means an electronic repository or storage system which receives, stores, protects, preserves and retrieves an application or a Petition or any reply and rejoinder to the application, petition and other addendum to the pleadings in electronic form by the Tribunal;

(27) **“Fee”** means the amount payable in pursuance of the provisions of the Act, and these rules for any petition or application or interlocutory application or a document or for certified copy of document or order of the Tribunal or such other paper as may be specified in “Annexure -B” to these rules and includes any modifications as may be made thereto or any fee as prescribed for electronic filing of documents to the Tribunal by these rules;

(28) **“Filer”** means a person including an authorized representative of that person or any party to the proceedings who files any document with the Tribunal in relation to case filed under the Act, or any rules there under.

(29) **“Filed”** means filed in the office of the Registry of the Tribunal**;**

(30) **“Filing fees”** means the fees as applicable in terms of Annexure- Bin connection with the application filed;

(31) **“Form”** means a form specified in **Annexure –C**;

(32) **“Party”** means a person(s) who files a petition or an application before the Tribunal and includes a respondent(s), the Registrar of Companies or the Regional Director or Ministry of Corporate Affairs and any person who has a right under the Act, or the Reserve Bank of India Act 1934 (2 of 1934) to make suggestions or submissions or objections or file reply;

(33) **“Petition”** means a petition or an application or an Appeal or a Complaint in pursuance of which any proceeding is commenced before the Tribunal.

(34) **“Person(s) Interested”** means a shareholder, creditor or employee of a sick company, transferee company and other company concerned in relation to the term or context referred to in relevant provisions of the Act;

(35) **“Pleadings”** means and includes the original application, petitions, applications, reply, statements, counter claim, additional statement supplementing the original applications and reply statements including electronic form as prescribed by these rules and as may be permitted by the Tribunal;

(36) **"Pre-fill"** means the automated process of data input by the computer system from the database maintained in electronic registry of either the Tribunal or Ministry of Corporate Affairs;

(37) **“Prescribed”** means prescribed by these rules; and ‘prescribed charges’ and ‘prescribed fees’ mean charges or fees prescribed by these rules and where they are not so prescribed, prescribed by the rules of the Tribunal;

(38) **“Prescribed period”** means that the respective or relevant period to be reckoned as defined in the Limitation Act, 1963.

(39) **Reference"** means a reference within the meaning of Rule 108 of these Rules;

(40) “**Registrar of Companies”** includes Additional Registrar, Joint Registrar, Deputy Registrar or an Assistant Registrar.

(41) “**Registrar” i**n relation to the Tribunal, means the Registrar appointed to the Principal Bench and in relation to each of the Benches of the Tribunal shall mean an officer of the Central Government so appointed or designated as Registrar or in his absence such other officer of the Tribunal or Bench to whom the powers and functions of the Registrar be delegated.

(42) “**Registry”** means the Registry of the Tribunal or any of its Benches, as the case may be which keeps records of the applications and documents relating thereto;

(43) **“Reserve Bank”** means the Reserve Bank of India and includes its branches and agencies as defined in the Reserve Bank of India Act, 1934;

(44) **“The rules”** mean these rules and include the Rules of the Tribunal regulating the Electronic Filing of Documents and forms prescribed thereto.

(45) “**Sealed”** means sealed with the seal of the Tribunal.

(46) **“Secretary"** means Secretary to the Tribunal and in the absence of Secretary, such other officer of the Tribunal to whom the powers and functions of the Secretary be delegated.

(47) **“Service of Notice or Document”** includes the electronic service in addition to other modes of services.

(48) **“Secured Creditor”** means and includes bank or financial institution or any consortium or group of banks or financial institutions which have lent any money to the company and subject to the compliance with the relevant provisions of the Act includes the following-

(i) debenture trustee appointed by any bank or financial institution; or

(ii) securitization company or reconstruction company, whether acting as such or managing a trust set up by such securitization company or reconstruction company for the securitization or reconstruction, as the case may be; or

(iii) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;

(iv) any person in whose favour, a charge is created on any asset or assets of a company towards a security for the loan borrowed or secured or extended as a guarantee in whomsoever favour it may be on his behalf or other’s behalf either singularly or jointly in association with other.

(49) **“Sick Company”** means and includes a company, which has failed to pay the debt of its secured creditors within 30 days of the notice of demand or to secure or compound it to the reasonable satisfaction of the secured creditors as per section 253 of the Act;

(50) **“Transferred Application”or “Transferred Petition”** means proceedings which have been transferred to the Tribunal from High Court, or Company Law Board or any other court or Tribunal as provided in section 434 of the

Act, and shall also include the matters in respect of which the schemes for revival have been sanctioned as per the provisions of Sick Industrial Companies Act, 1985

(51) **"Tribunal"** means the National Company Law Tribunal constituted under section 408 of the Act, and includes its Benches;

(52) **"Words"** expressed in singular may be understood as plural or vice versa if the context so warrants. Likewise, 'He/his' may be referred to 'She/her' or vice versa. Petition may also be construed as application or appeal or complaint vice versa depending upon the reference which warrants so.

(53) **"Words and Expressions"** used and not defined in these rules but defined in the Act, Competition Act, 2002, the Recovery of Debts Due to Banks And Financial Institutions Act, 1993, the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Securities Contracts (Regulation) Act, 1956 the Securities and Exchange Board of India Act, 1992 the Depositories Act, 1996; Information Technology Act, 2000; and General Clauses Act, 1897, shall have the meanings respectively assigned to them in those Acts and rules made thereunder.

(54) Till the implementation of the E-filing system by the Tribunal the documents including petitions, applications etc may be filed physically;

PART II

GENERAL PROCEDURE

Powers to determine procedure in certain circumstances.

3. In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case.

4. Territorial Jurisdiction of the Tribunal and its Benches:

1. The National Company Law Tribunal shall have a principal Bench and such number of other Benches with territorial jurisdiction of each Bench as prescribed in **Annexure A**.

2. If an application or a petition is received or transmitted through electronic mode in the manner as provided in Part III of these rules by registry of a bench which does not have territorial jurisdiction to deal with the matter, the Registry

of the Bench shall return or retransmit the application or a petition to the applicant advising him to file it with the Bench having a proper jurisdiction.

3. Notwithstanding anything contained in sub-rule 2 the applicant may apply to the President and the President may thereupon for reason to be recorded direct a Bench other than the Bench before which an application or a petition has been filed to hear such application and issue such orders as may be necessary for the transfer of the application. The President of the Tribunal may delegate this power to any member of Bench(s).

5. Language of the Tribunal

1. The pleadings before the Tribunal may be conducted either in English or in Hindi and in case it is in some other Indian language, it shall be accompanied by a copy translated either in English or in Hindi attested by a translator and counter-signed by the party concerned.

2. All orders and judgements of the Tribunal may be either in English or Hindi.

6. Proceedings and Procedure for Filing Pleadings:

1. Every proceeding shall be dated and shall be instituted in the matter of the Act and in the matter of the company to which it relates. The contents shall be divided into separate paragraphs, neatly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form. Numbers and dates shall be expressed in figures and where dates given are not according to the English Calendar, the corresponding English dates shall also be given.

2. A petition or an application, including any reply or documents related thereto, to the Tribunal shall be filed to the Registry of the Tribunal or such Bench (s) having territorial jurisdiction thereto in respective forms as provided in **Annexure-C** as the case may be either by the applicant in person or by his duly authorized representative.

3. After introduction of the e-filing mode of petition or application, the Tribunal may after satisfying itself permit the applicant or the respondent or such other party to file a petition or an application referred to in sub-rules (1) and (2) in physical form i. e. by sending the same through registered post or speed post to the concerned registry. In such case, the concerned registry shall receive the application in physical form to scrutinize and scan the application and convert it into electronic file in the manner as practicable as the case may be and process the e-file as if it were an original application received in the regular procedure under sub-rule (1) or under Part III of these rules.

4. A petition or application sent by post under sub-rule (3) shall be deemed to have been filed to the Registry on the day on which it is received by the Tribunal.

5. The petition or application under sub-rule (2) or (3) shall be presented in triplicate or as may be decided by the Tribunal.

6. The Applicant shall get the notices endorsed from the Registry for the purpose of service on the respondent and shall file the affidavit of service in proof at least 3 days before the date fixed for hearing.

7. The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in **Form No. 4**.

8. Every petition or application shall be filed in eform as provided in **Form No. 1** with attachments thereto accompanied by **Form No. 2** and in case of an interlocutory application, the same shall be filed in **Form No. 1** accompanied by such attachments thereto along with **Form No. 3**. Interlocutory application shall be in **Form 3A.** Every petition or application including interlocutory application shall be verified by an affidavit in **Form No.6.** Notice to be issued by the Tribunal to the opposite party shall be in **Form 5**.

7. Documents to Accompany the Petition or Application:

(1) A petition or an application shall be accompanied by documents as prescribed in Annexure D and shall be as per the procedure for e-filing manual as may be issued by the Tribunal in such manner and as may be named by the Tribunal and shall be accompanied by an Index of Documents.

(2) Documents referred to in sub-rule (1) may be attested as True Copy by the party or the authorized representative and the documents shall be marked serially as Annexures A1, A2, A3 and so on.

(3) The petition or application shall be accompanied by a memorandum of appearance or a power of attorney or a duly executed Vakalatnama as specified in Rule 68.

8. Contents of petition - Every petition, other than an application filed under rule 107 shall set forth the name of the company, with its status, date of incorporation, the address of its registered office, authorized capital, paid-up share capital with division of different classes of shares and terms of issue, if any, in the case of preference shares, main objects in brief, for which the company was formed, present business activities of the company, latest audited accounts and auditors report and also latest financial position and shall also set forth concisely under distinct heads the grounds for such petition and the nature of relief(s) prayed for.

9. Contents of interlocutory application-An application filed subsequent to the filing of the petition applying for any interim order or direction shall, be in Form No. 3 A in Annexure C and shall be accompanied by an affidavit verifying the application in the manner laid down in sub-rule (8) of rule 6 i.e. in **Form 6**:

Provided that it shall not be necessary to present a separate application to seek an interim relief or direction, except for condonation of delay in filing the petition, if, in the original petition, the same is prayed for.

10. Scrutiny of Petition or Application(s):

(1) The Registrar shall receive, register the petition (s) or application (s) or otherwise as provided in the rules under this Part.

(2) The Registrar, or the officer authorised by him, shall endorse on every petition or application, the date on which it is presented or received through post if the Tribunal or such Bench has granted permission for filing such application (s) in physical form under sub-rule (3) of the rule 6 and sign the endorsement :-

(a) If, on scrutiny, the petition or application is found to be in order, it shall be registered and given a serial number.

(b) If the petition or application, on scrutiny, is found to be defective, the Registrar may allow the applicant to rectify the same within seven days from the date of intimation.

(c) If the applicant fails to rectify the defect within the time allowed under sub-rule (b), the Registrar may, by order and for reasons to be recorded in writing, decline to register the petition or application and inform the applicant accordingly within seven days from the time allowed.

(3) An appeal against the order passed under clause (c) of sub-rule (2) may be preferred by the person aggrieved within fifteen days from the date of such order to the President of the Principal Bench or any Member to whom the power is vested and at other places designated member of the Bench and such appeal shall be dealt with and disposed of in Chamber by the President or such Member whose decision thereon shall be final.

11. Advertisement detailing petition.

(1) Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in **Form No 3 B**, not less than fourteen days before the date fixed for hearing, at least oncein a vernacular newspaper in the principal vernacular language of the district in which

the registered office of the proposed company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

(2) Every such advertisement shall state:

(a) the date on which the application, petition/ reference was presented,

(b) the name and address of the applicant petitioner and his authorized representative, if any;

(c) the nature and substance of application, petition/ reference;

(d) the date fixed for hearing;

(e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition/ reference at the hearing shall send a notice of his intention to the petitioner or his authorized representative so as to reach him not later than two days previous to the day fixed for hearing.

(3) Where the advertisement is being given by the company, then the same shall also be placed on the website of the company, if any.

(4) An affidavit shall be filed to the Tribunal in, not less than 3 days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served:

Provided that such an affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.

(5) Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

(6) The Tribunal may, if it thinks fit, dispense with any advertisement required by this rule.

12. Maintenance of Cash Register:

(1) If any payment has been received by way of Indian postal orders or demand drafts or in cash by the Registry, the transaction shall be entered immediately by the Registration Clerk on their receipt side in a Cash Register kept for the purpose.

(2) On every next working day or the last working day of the week, the payments received during such day or week by way of Indian postal orders or demand drafts shall be transmitted by the Registration Clerk to the concerned official vested with the work pertaining to the Cashier who after scrutiny and verification shall acknowledge the receipt of all moneys in the Cash Register.

(3) The payments received in cash register shall be transmitted by the Registration Clerk to the official as per sub-rule (2) on each day, who after verification shall acknowledge the receipt of all moneys in the Cash Register.

(4) The official under sub-rule (2) and (3) shall deposit all payments received by way of Indian postal order or demand draft or cash in the Bank account of the Tribunal.

13. Notice in Form No. 5 to Opposite Party-

(1) The Tribunal shall issue notice in **Form No.5** to the respondent to show cause against the application on a date of hearing to be specified therein. Such notice in **Form No.5** shall be accompanied by a copy of the application.

(2) If the respondent does not appear on the date specified in the notice in **Form No.5** or appears and admits, the Tribunal shall forthwith proceed to dispose of the application.

(3) If the respondent contests thereto, it may file a reply along with copies of such documents on which it relies on or before the date of hearing and such reply and copies of documents shall form part of the record.

14. Service of Notices and Processes Issued by the Tribunal:

(1) Any notice or process to be issued by the Tribunal may be served in electronic form at the valid e-mail address as provided in the petition or application or in the reply.

(2) Such notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal :

(a) by hand delivery through a process server or respective authorized representative;

(b) by registered post or speed post with acknowledgment due or ;

(c) service by the party himself.

(3) Where a notice issued by the Tribunal is served by the party himself by "hand delivery", he shall file with the Registrar the acknowledgment together with an affidavit of service.

(4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

(5) A notice or process may also be served on an authorized representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorized to accept a notice or a process, and such service on the authorized representative shall be deemed to be a proper service.

(6) Where the Tribunal directs a service under sub-rule (4), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the registry of the Tribunal.

15. Filing of Affidavit

(1) The Tribunal may direct the parties to give evidence, if any, by affidavit.

(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary for just decision of the case, it may order cross-examination of any deponent either through Information and Communication Technology (ICT) facilities like video conferencing or otherwise as may be decided by the Tribunal.

(3) Every affidavit to be filed before the Tribunal shall be in **Form No.7.**

16. Production of additional evidence before the Bench.

(1) The parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector (s), appointed by the Central Government for the purpose of investigating the affairs of the concerned company (s), during investigation under Chapter XIV of the Act, but if the Bench requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector (s) so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence,

the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

(2) Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.

(3) If the document is directed to be produced or witness examined or evidence adduced before any authority, he or she shall comply with the direction of the Bench and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.

(4) Additional evidence/document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they may be afforded an opportunity to rebut the contents of the said additional evidence.

17. Filing of Reply and other Documents by the Respondents:

(1) Each respondent may file his reply to the petition or the application and copies of the documents with the registry as specified by the Tribunal. A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.

(2) In reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

(3) When the respondent admits the facts stated in the petition or application, the Tribunal may make order in this regard".

18. Filing of Rejoinder:

The applicant intending to file rejoinder to the written reply filed by the respondent may do so forthwith with a copy to respondent.

19. Power of the Bench to call for further information/evidence.

(1) The Bench may, before passing orders on the petition, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary -

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders on the petition.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant Acts.

(3) Where any party preferring / contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it can move an application for forensic examination. The Bench hearing the matter may send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records but if this request is refused, the Bench will give reasons thereof.

20. Plural remedies

A petition or an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

21. Admission and Denial of Documents:

The Tribunal may, before framing issues ascertain from parties or their authorised representatives whether they admit or deny documents accompanying the petition or the application or reply, if any, and shall record such admission and denial.

22. Marking of Documents:

The documents filed by the applicant shall be marked as 'A' series and the documents filed by the respondent shall be marked as "R" series and the Tribunal exhibits shall be marked as 'T' series".

23. Summary dismissal of petition or application:

The Tribunal may, after considering the petition or application, summarily dismiss the application, if for reasons to be recorded, the Tribunal is of opinion that there are not sufficient grounds for proceeding therewith.

24. Hearing of petition or applications:

(1) The Tribunal shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

(2) Where at any stage prior to the hearing of the petition or application the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary the others arrayed as opposite parties in the petition or the application or otherwise may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interest of the justice.

25. Rights of a party to appear before the Bench.

(1) Every party may appear before a Bench in person or through an authorized representative.

(2) A party may, in writing, authorize an Advocate or a Company Secretary in practice or a Chartered Accountant in practice or Cost Accountant in practice, to function as a representative of such party. A company may appoint and authorise its directors or company secretary or CFO or CEO or manager all under the Act to appear, in its behalf, in any proceedings before the Bench. The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate. The Company Liquidator shall make his appearance in person.

(3) The officer authorized by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator should be an officer not below the rank of officers of Senior Time Scale. In the case of the Company Secretary in practice or chartered accountants in practice or cost accountant in practice should have post qualification experience of five years.

(4) The authorized representative except officer'(s) of Central Government or the Regional Director or the Registrar of Companies shall not be allowed to represent the party unless such power of attorney or Vakalatnama or memorandum of appearances as mentioned in rule 69 is filed before the Bench before commencement of the proceedings.

(5) During any proceedings before the Tribunal, it may for the purpose of its knowledge, may call upon the Registrar of Companies to submit information on the affairs of the company only on the basis of information available in the MCA 21 portal. Reasons for such directions shall be recorded in writing.

26 . Oath to the witness:

The Tribunal Officer or the Tribunal Commissioner as appointed by the Tribunal, as the case may be, shall administer the following oath to a witness:-

"I do swear in the name of God that what I shall state shall be truth and nothing but the truth."

27. Action on Application for Applicant's Default:

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the petition or the application and restore the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened except by way of review.

28. Ex-parte Hearing and Disposal of petition or Application

(1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion adjourn the hearing or hear and decide the petition or the application ex-parte in exercise of the powers conferred on it in clause (f) of sub-section 2 of section 424 of the Act.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit in exercise of powers conferred on it under clause (g) of sub-section (2) of section 424 of the Act, and shall appoint a day for proceeding with the petition or application :

Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.

29. Procedure and Powers of Tribunal :

(1) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil court under the Code of Civil Procedure, 1908, while trying suit, in terms of section 424 of the Act, in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of document;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections123 and 124 of the Indian Evidence Act 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed by the Central Government.

(2) For the purposes of clause (h) of sub-section (2) of section 424 of the Act, the Tribunal shall for the purpose of discharging its functions under the Act exercise the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters:-

(a) granting stay or order status quo;

(b) ordering injunction or cease and desist;

(c) appointing commissioner (s) for the purpose under the Act;

(d) exercising limited power to review its decision to the extent of correcting clerical or arithmetical mistakes or any accidental slip or omission as provided in rule 189 of these rules;

(e) passing such order or orders as it may deem fit and proper in the interest of justice.

30. Power to Pass Order :

The Tribunal may, after giving the parties to any proceeding before it a reasonable opportunity of being heard pass such orders therein as it thinks fit as provided in section 424 of the Act. The Tribunal shall send a copy of every order passed to the parties concerned.

31. Power of Contempt:

The Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as a High Court has and may exercise, for the purpose, the powers under the provisions of the Contempt of Courts Act, 1971 which shall have the affect subject to the modifications as prescribed in section 425 of the Act.

32. Power to Regulate the Procedure:

In exercise of the powers conferred on it under sub-section (1) of section 424 of the Act, the Tribunal may regulate its own procedure for the purpose of discharging its functions under the Act.

33. Summoning of Witnesses and Method of Recording Evidence-

(1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.

(2) The Tribunal shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds and such memorandum shall form part of the record ;

Provided that if the Tribunal is prevented from making such memorandum, it shall record the reasons of its inability to do so and shall cause such memorandum to be made in writing from its dictation and shall sign the same, and such memorandum shall form part of the record.

(3) Where summons are issued by the Tribunal under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar.

34. Documents not to form part of records

Unless duly permitted by the Tribunal, the following documents shall not form part of the records of the case-

(a) written statement or reply filed after the expiry of time granted for the purpose;

(b) rejoinder filed without leave of the Tribunal or after the expiry of time granted;

(c) additional pleading filed in any manner whatsoever without leave of the Tribunal or filed after expiry of time granted; and

(d) documents not submitted in time or not tendered into evidence.

35. Power to Issue Commission:

Any Bench of the Tribunal may issue a commission for the examination or interrogatories or otherwise of any person who is unable to attend the Tribunal for any justifiable reason or for any other purpose as may be required for the disposal of the case.

36. Procedure in Connected Cases:

(1) Where two or more petitions or applications pending before a Tribunal arise out of the same facts and any issue involved is common to two or more such petitions or applications, such petitions or applications may so far as the evidence bearing on such issue is concerned, be heard simultaneously and a common order may be passed.

(2) Where action is taken under sub-rule (1), the evidence bearing on the common issue or issues shall be recorded on the record of one petition or application and the Tribunal shall certify under its hand on the records of any such other petition or application, the extent to which evidence so recorded applies to such other case and the fact that the parties to such other case had the opportunity of being present, and, if they were present for cross-examining the witnesses.

37. Calendar of Transferred Cases:

Each Bench shall draw up a calendar for the hearing of transferred cases in such manner as the President may, by general or special order transfer such cases toits Benches with a direction to hear and decide the cases according to the calendar.

38. Substitution of Legal Representatives-

(1) Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor,

administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.

(2) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representative (s) of the deceased party may apply within ninety days of the date of such death for being brought on record.

(3) Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased at any time before disposing the appeal on merits.

39. Assessors or Valuers-

(1) In any enquiry into a claim, the Tribunal may call in the aid of assessors, not exceeding two in number, who possess any technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal.

(2) An assessor or valuer shall perform such functions as the Tribunal may direct.

(3) The remuneration, if any, to be paid to an assessor or valuer shall in every case be determined by the Tribunal and be paid by it in the manner as may be specified by the Tribunal.

40. Pleadings before the Tribunal

No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

41. Adjournment of Hearing:

If the Tribunal finds that a petition or an application cannot be taken up for hearing on a given date at the request of either of the parties or both or on its own, it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing in the open court:

Provided that no such adjournment shall be granted more than three times to a party during the proceedings before the Tribunal except in circumstances which are beyond the control of the concerned party:

Provided further that all the documents shall be filed by the parties along with pleadings and no adjournment shall be granted for filing documents at a later stage except in circumstances which are beyond the control of the concerned party, but before concluding the arguments.

42. Costs:

The Tribunal may, in its discretion, pass such order (s) in respect of costs incidental to any proceedings before it, as it may deem fit.

43. Decision of the Tribunal:

The Tribunal shall decide every petition or application as expeditiously as possible on perusal of documents, affidavits and other evidence, if any, and after hearing such oral arguments as may be advanced with reference to section 422 of the Act.

44. Order to be passed and signed-

(1) The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.

(2) An order made by the Tribunal shall be executable by the Tribunal as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908, so far as may be, shall apply as they apply in respect of decree of a civil court as provided in terms of sub-section (3) of section 424 of the Act.

(3) Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.

(4) Orders shall be pronounced in the sitting of the Tribunal by the President or in case of the temporary absence of the President, the Member so authorized.

(5) The orders of the Tribunal, as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the President may lay down.

(6) A certified copy of every order passed by the Tribunal shall be communicated to the parties.

(7) The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

(8) Any order made by the Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction as per sub-section (3) of section 424 of the Act:-

(a) In the case of an order against a company, the registered office of the company is situate; or

(b) In the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(9) Notwithstanding anything stated in these rules, the Tribunal may transmit order made by it to any court for enforcement on application made by either of the parties to the order or suomotu subject to sub-rule 8 (a) and (b) above.

(10) Every order or judgement or notice shall bear the seal of the Tribunal.

45. Application for Execution:

For execution of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in **Form No. 8** as provided in **Annexure C**.

46. Issue of Process of Execution-

(1) On receipt of an application under rule 44, the Tribunal shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908.

(2) The Tribunal shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such Form as provided in the Code of Civil Procedure, 1908, as the case may be.

47. Review of decision-

(1) The Tribunal may at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record amend any order passed by it, and shall make such amendment suomotu, or if the mistake is brought to its notice by the parties in terms of sub-section (2) of section 420:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under the Act.

(2) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed or from which appeal is allowed, but has not been preferred and who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply in **Form No. 9** of these rules for review of a final order not being an interlocutory order, to the Tribunal.

(3) Where it appears to the Tribunal that there is not sufficient ground for a review, it shall reject the petition or application.

(4) Where Tribunal is of the opinion that the petition or application for review should be granted, it shall grant the same:

Provided that no such petition or application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for.

48. Compliance of orders of the Bench.

Every Bench shall have power to direct the parties concerned to file an affidavit of compliance of its order or such other documents in the manner specified in its order.

49. Effect of non-compliance.

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Bench is of the view that such failure has resulted in miscarriage of justice.

50. Procedure for imposition of penalty under the Act.

(1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings of the Bench, has been given a show cause notice and reasonable opportunity to represent his or her or its case before the Bench or any officer authorized in this behalf.

(2) In case the Bench decides to issue show cause notice to any person or company or a party to the proceedings, as the case may be, under sub-rule (1), the Registrar/Registry shall issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Bench shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.

51. Empanelment of special authorized representatives by the Tribunal.

(1) The Tribunal may draw up a panel of legal practitioners or company secretaries in practice or chartered accountant in practice or cost accountant in practice to assist in proceedings before the Tribunal or Appellate Tribunal.

(2) The President may call upon any of the persons from panel under sub-rule (1) for assistance in the proceedings before the Bench, if so required.

(3) The remuneration payable and other allowances and compensation admissible to such persons shall be specified in consultation with the Tribunal.

52. Publication of orders-

Any order of the Tribunal deemed by it to be fit for publication in any authoritative report either in physical or electronic form or both or other media may be released for such publication on such terms and conditions as the President or Member concerned may specify by general or special order.

53. Certified copy of the order and inspection of documents or records-

(1) If the applicant or the respondent to any proceeding requires a copy of any order passed by the Tribunal, the same shall be supplied to him on payment of fees as specified in **Annexure -B** within four working days from the date of the receipt of the petition or application for the said purpose and on urgent basis within two working days from the receipt of the petition or application for the said purpose.

(2) The parties to any case or their authorized representative may be allowed to inspect the record of the case on making a petition or an application in writing to the Registrar and on payment of fee as specified in **Annexure -B**.

(3) For the purpose of inspection of any physical documents or records or getting clarification of any query relevant thereto from the Registry, by the parties to the proceedings or their respective authorized representatives or such other person shall be allowed on payment of fee as may be specified in **Annexure-B** during the working hours of the Registry as may be decided by the President.

54. Orders or directions by the Tribunalnd inherent powers of Tribunal-

The Tribunal may pass such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of Justice.Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to give such directions or pass such oders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

55. Registration of Authorized Representative's clerks-

(1) No clerk employed by an authorised representative shall act as such before the Tribunal or be permitted to have access to the records and obtain copies of the orders of a Bench of the Tribunal in which the Authorised Representative ordinarily appears, unless his name is entered in the Register of Clerks maintained by the said Bench. Such clerk shall be known as a "Registered Clerk".

(2) An authorised representative desirous of registering his clerk shall make a petition or an application to the Registrar in **Form 10**. On such application being allowed by the Registrar, his name shall be entered in the Register of clerks.

(3) An identity card shall be issued to a Registered Clerk of the Authorised Representative on payment of fee as specified under **Annexure –B** by way of Indian postal order or demand draft drawn in favour of the Registrar.

56. Working Hours of the Tribunal:

Except on Saturdays, Sundays and other public holidays, the office of the Tribunal shall, subject to any order made by the President, remain open from 9-30 a.m. to 6-00 p.m.

57. Sitting hours of the Tribunal:

The sitting hours of the Tribunal shall ordinarily be from 10-30 a.m. to 1-15 p.m. and 2-15 p.m. to 4-30 p.m. subject to any general or special order made by the President or Members orany Member concerned with the prior approval of the President.

58. Seal and emblem:

The official seal and the emblem of the Tribunal shall be such as the Central Government may specify.

59. Sittings of the Tribunal outside the Headquarters:

The Tribunal and any of the Benches may hold its sittings at its Headquarters or at any other place as it may find convenient for better transaction or conduct of the business as may be decided by the Tribunal.

60. Headquarters of the Tribunal:

The Tribunal shall have its Headquarters at New Delhi.

61. Preservation of Record :

All necessary documents and records relating to petitions or applications dealt with by the Tribunal shall be stored or maintained as provided in these rules and other physical records kept in a record room shall be preserved for a period of three years after the passing of the final order.

62. Inherent powers of the Tribunal:

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

63. Monthly progress report of Tribunal:

The Tribunal shall furnish every month to the Central Government the information with regard to institution, disposal and pendency of applications or petitions and other information relating to the functioning of the Tribunal and its Benches.

64. Maintenance of Order Sheets:

The Registrar shall attach to every petition or application an order sheet in the e-form or in physical mode as may be prepared to suit to the proceedings of the Tribunal.

65. Maintenance of Tribunal Diary:

The Tribunal Officer shall maintain a Tribunal diary in format specified by the Registry for recording the proceedings of the Tribunal for each working day with respect to all petitions or applications listed in the daily cause list either manually or electronically as provided hereto.

66. Preparation and publication of daily cause list:

The Tribunal Officer shall on each working day prepare for the next working day, the cause list in the prescribed format as prepared by the Registry and such format should uniformly be followed by the respective registries of the Benches and such cause list shall also be displayed at conspicuous place in the premises of the Tribunal either by affixing a copy of the same on the Notice Board of the Tribunal and by making publication in the website of the Tribunal forthwith.

67. Retention, Preservation and Destruction of Records:

(1) The Record Keeper or any other officer so designated shall be responsible for the records consigned to the Record Room. He shall scrutinize the records received by him within three days and prepare an index.

(2) On the expiry of the period for preservation of the records specified under rule 61, the Registrar shall weed out the record.

68. Dress for President and Members and for the Authorised Representatives and for the parties in person:

(1) For President and Members:The dress of the President shall be white or striped or black pant with black coat over white shirt and band or buttoned- up black coat and band. The dress for the other members of the Tribunal shall be white or striped or black trousers with black coat over white shirt and black tie or buttoned coat. In the case of a female President or a Member, the dress shall be black coat over a white saree.

(2) For Authorized Representatives:Every authorized representative as provided in section 432 of the Act, other than a relative or regular employee of the party shall appear before the Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned–up coat over a pant or national dress that is a long buttoned-up coat on dhoti or churidarpyjama, and a female, in a coat over white or any other sober colouredsaree or in any other sober dress.

(3) For Parties in Person :Parties appearing in person before the Tribunal shall be properly dressed.

69. Memorandum of Appearance:

The Authorized Representatives shall make an appearance through the filing of Memorandum of Appearance or a power of attorney in **Form No. 12** representing the respective parties to the proceedings. In case of legal practioner/ advocate, he may make appearance by filing Vakalatnama.

70. Applicability of General Procedure under this Part:

The above rules under General Procedure shall be in addition to the rules provided specifically under Parts herein in respect of the various categories of matters arising before the Tribunal

71. Registers of petitions and applications.

(1) There shall be kept in the office of the Bench two separate registers, one for the petitions and other for the applications filed before the Bench.

(2) In every register, referred to in sub-rule (1), there shall be entered the following particulars, namely -

(a) the serial number of the petition or application and in addition, in the case of an application, the serial number of the petition to which it relates;

(b) the date of presentation or receipt of the petition or application;

(c) the name of the company to which the matter relates;

(d) the name and address of the petitioner or applicant;

(e) the names and addresses of the other parties to the petition or application and the names and addresses of the authorised representatives of the parties, if any

(f) the provision of law under which the petition or application is made;

(g) the nature of the relief (s) which have been sought;

(h) the date of disposal of the petition or application;

(i) the nature of the order made by the Bench;

(j) the date when the formal order is drawn up and communicated to the parties;

(k) remarks, if any.

(3) Separate registers shall be opened for each year and each register of petitions shall be preserved permanently and each register of application shall be preserved for a period of eight years.

72. Fees.

(1) In respect of the several matters mentioned in Annexure D, there shall be paid fees as prescribed in Annexure B of these rules:

Provided that no fee shall be payable or shall be liable to be collected on a petition or application filed or referenceetc made by the Registrar of Companies, Regional Director or by any officer on behalf of the Central Government:

(2) In respect of every interlocutory application there shall be paid fees as prescribed in Annexure B of these rules:

Provided that no fee shall be payable or shall be liable to be collected on an application filed by the Registrar of Companies, Regional Director or by an officer on behalf of the Central Government.

(3) In respect of a petition or application filed or references made etc before the Principal Bench or the Bench of the Tribunal, fees payable under these rules shall be paid by means of a bank draft drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/Kolkata/Chennai /Mumbai as the case may be or by electronic mode.

PART-III

E-filing of appl ications, petitions etc

73. Purpose

These rules govern the electronic filing and service of Tribunal documents, by any method other than fax filing and they are made in consonance with the provisions provided in the Act regarding electronic filing so as to supplement thereto to enable the filer to upload documents electronically through the Electronic filing service providers as may be notified by the Central Government.

74. Effect on Existing Acts and Rules

Notwithstanding anything contained in any other Act for the time being in force concerning the filing of electronic documents, these rules shall be in addition to the provisions of the Act, and Information Technology Act, 2000 and such other analogous rules made thereunder but not in derogation thereto. In case of any conflict or contrast with any other provisions of the Act or other Acts or respective rules as prescribed for electronic filing, then these rules shall prevail.

75. Electronic Filing Wholly Compulsory or Mandatory unless Ordered by Tribunal

(a) Except as provided by sub-rule (b) below, the electronic filing and serving of Tribunal documents is mandatory and compulsory.

(b) Upon the motion of a party and for cause shown, the Tribunal may order the parties in a particular case to manually file and serve Tribunal documents, which are otherwise permitted to be electronically filed in a manner as may be directed by the Tribunal.

(c) The rules made under this Part for electronic filing shall come into force on the date as may be notified by the Central Government in the Official Gazette.

76. Power to Exempt from Electronic Filing of Documents:

(1) Notwithstanding anything contained in these rules, the Central Government may grant exemption from filing documents electronically either wholly or partly or put on hold the implementation of the rules of this Part completely and such other related provisions in these rules until a period or thereafter until such extended period as may be specified by way of notification in the OfficialGazette.

(2) Save as otherwise provided in these rules, in case such exemption has been granted, the documents required to be filed electronically shall manually be filed and wherever appearing, the relevant rules stipulating electronic or e filing in these rules may be understood for manual filing only.

77. Registry:

This part of these rules applies only to the filing of documents with the Registry. This part of these rules do not apply to the filing of documents directly with a Member or Members of the Tribunal if the respective persons or entity has been directed to file any document before the Bench directly.

78. Documents Containing Signatures

(a) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath shall be electronically filed only as a scanned image.

(b) Where a filer has electronically filed a scanned image under this rule, the Tribunal may require the filer to properly file the document in a physical form with the Registry. The Registry may allow such documents for the inspection.

79. "DEDICATED PORTAL ONLINE"

(a) "Dedicated Portal Online" is a Portal as defined in sub-rule (16) of rule 2 through which all the parties or Central or State Government agencies and local government's bodies may electronically send and receive documents to or from the Tribunal and make required payments.

(b) To electronically file documents, filers must follow registration and such procedures as outlined by "Dedicated Portal" or otherwise as prescribed by the Central Government.

(c) Filers do not electronically file documents directly with the Registry. Rather, filers indirectly file a document with the Registry by electronically transmitting the document to "Dedicated Portal Online" which then electronically transmits the document to the Registry. A filer filing or serving a document must have a valid account with Dedicated Portal Online.

(d) Consistent with standards promulgated by the Central Government in coordination with such other authority or committee on Information Technology, the Dedicated Portal Online, will specify the permissible formats for documents that will be electronically filed and electronically served.

(e) Filers who electronically file documents will pay the filing fees to the Registry indirectly through the "Dedicated Portal Online" by a method set forth by "Dedicated Portal Online."

80. Signatures

(a) Upon completion of the initial registration procedures, each filer will be issued a confidential and unique electronic identifier. Each filer must use his or her identifier in order to electronically file documents. Use of the identifier to electronically file documents constitutes a "digital signature" on the particular document.

(b) The attachment of a digital signature on an electronically filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by relevant provisions of the Act, or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of fulfilling all the requirements provided under the Act, or "Dedicated Portal" online or such other Machine Mode Project as designed, developed and maintained by the Ministry of Corporate Affairs or the

Central Government for the purpose under these rules or Information Technology Act, 2000 or such other amended Acts or relevant rules as provided from time to time, unless otherwise designated. The digital signature on any document filed is deemed to be the signature of the Attorney or the Authorised Representative, whose name appears first in the signature block of the document for the said purpose.

(c) A digital signature on an electronically-filed document is deemed to constitute a signature by the filer for the purpose of authorizing the payment of document filing fees.

81. Time Document Filing

(a) A filer may electronically transmit a document to **"Dedicated Portal Online"** 24 hours in a day and every day of the year, except during brief periods of Central Government approved scheduled maintenance which will occur on any fixed day as informed at the respective website.

(b) Upon sending an electronically filed document with the Registry by a filer, the filer is deemed to have delivered the document to the Registry and, subject to sub rule (e), the document is deemed to be filed.

(c) As soon as possible but not later than three working days after receiving a document from "Dedicated Portal Online", the Registry shall examine the document for acceptance or if not, to decide otherwise.

(d) If the document is accepted for filing, the Registry shall note the date and time of filing which, with the exception of sub-rule (e) below, shall be the date and time that the filer transmitted the document. The Registry shall inform through "Dedicated Portal Online" its action within 3 working days.

(e) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, documents that serve to commence the proceedings will not be deemed to have been filed on any holiday when the document is electronically transmitted to the **"Dedicated Portal Online"** or the Registry on holiday. Such documents will be deemed to have been filed on the succeeding working day of the Tribunal.

82. Filing Deadlines Not Altered

The electronic filing of a document does not alter any filing deadlines.

83. Multiple Documents

(a) Except as provided by sub-rule (b) below, a filer may include only one document in an electronic transmission to Dedicated Portal Online.

(b) A filer may electronically transmit a document to Dedicated Portal Online that includes another document as an attachment (e.g., a motion or a proceeding to which is attached a brief in support thereto)

84. Official Document

(a) The Registry's file for a particular case may contain a combination of electronically-filed documents and physically filed documents.

(b) The Registry may maintain and make available electronically-filed documents in any manner allowed by law.

85. E-mail Address Required

In addition to the information required in a pleading by the Act, or rules, a filer must provide a valid e-mail address on any electronically filed document.

86. Document Format

(a) Electronic Format or Electronically-filed documents must be computer-formatted document prepared in accordance with the EDGAR Filer Manual as specified by the Tribunal. Electronically-filed documents must also be formatted for printing on 8 ½-inch by 11-inch paper or in such manner as may be specified by the Tribunal.

(b) In addition to compliance with para (a), an electronically-filed pleading shall comply with band width etc as may be specified by Central Government from time to time for filing through the Dedicated Portal Online.

87. Electronic Service of Documents Permissible

(a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in the Act as well as in these rules, a filer may serve documents upon another party in the case by electronically transmitting the document to that party at the party's provided email address. Service in such a manner is known as 'Electronic service," and is permissible in the circumstances unless the Tribunal has ordered the parties to serve the documents otherwise.

(b) By virtue of electronically filing a document or serving a document or by agreeing to accept service, a filer additionally agrees to provide information regarding any change in his or her e-mail address to Dedicated Portal Online, the Registry, and all parties in the case.

(c) A party who electronically files a document may not be necessarily required to electronically serve documents upon other parties unless the Tribunal has ordered the parties to electronically serve documents.

(d) A filer may electronically serve a document in instances where the document is physically filed as well as in instances where the document is electronically filed.

88. Completion of Service and Date of Service

(a) Electronic service shall be complete upon transmission of the document by the filer to the party at the party's e-mail address.

(b) Except as provided by sub-rule (c) below, the date of service shall be the date on which the electronic service is complete.

(c) When electronic service is complete after office hours (recipient's time), then the date of service shall be deemed to be the next day which is not a public holiday.

89. Time for Action after service

Whenever a party has the right or is required to do some act within a prescribed period of time after service of a document upon the party and that document is electronically served, then three days shall be added to the prescribed period of time unless the Tribunal orders otherwise.

90. Certification of Service

(a) Documents to be electronically served upon another party shall be served before the time or at the same time that the document is filed.

(b) A filer who electronically serves a document upon another party shall make a written certification of such service that shall accompany the document when that document is filed. The written certification shall include, in addition to any other requirements imposed by the Act, or in these rules, the following:

(i) the filer's e-mail address or telecopier (facsimile machine) number;

(ii) the recipient's e-mail address;

(iii) the date and time of electronic service; and

(iv) a statement that the document was electronically served and that the electronic transmission was reported as complete.

91. Tribunals Authorized to Make Electronic Orders

(a) The President or a member or members or any Presiding Officer, as the case may be in an instance, may electronically sign an order by applying his or her digitized signature to the order.

(b) Upon electronically signing an order as stated in para (a) above, the President or a member or one of the members or any Presiding Officer who has or have heard the case and passed the order, shall electronically forward the order to the Registry who shall treat the electronic order as the official copy of the order. The Registry shall print the electronic order and treat the printed order as the official copy of the order.

(c) The Registry may electronically scan a physical form of the Tribunal order. The scanned Tribunal order may then serve as the official copy of the Tribunal order. The Registry is not required to electronically scan physical copies of the orders of the Tribunal in order to create official electronic Tribunal orders. Electronic scanning of physical copies of the Tribunal orders is at the option of the Registry.

92. Viewing of Electronically-filed Documents

(a) The Registry shall ensure that all the records of the Tribunal, except those made confidential or privileged by law or statute, may be viewed in same format by all persons free of cost or for such fee as may be specified by the Tribunal.

(b) Independent of the Dedicated Portal Online system and the requirement of viewing access described in sub-rule (a), the Registry may choose to provide for both filers and the general public to electronically view documents or Tribunal orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or Tribunal orders that have been electronically filed or scanned subject to such fee as may be prescribed by the Central Government and such collection of fee.

(c) Nothing in this rule allows for the viewing of documents or Tribunal orders, in any form, that are legally confidential or otherwise restricted by relevant Act or order.

PART IV

President and Members' salaries & Allowances and other Terms and Conditions of Service

93. Salary, Allowances, and other Terms and Conditions of Service of President and Members:

The Salary, Allowances, and other Terms and Conditions of Service of President and Members shall be in the manner as may be prescribed by the Central Government in exercise of the power**s** provided under section 414 of the Act.

94. Powers of the President:

In addition to the General Powers provided in the Act, and in these rules elsewhere, the President shall exercise the following powers:

a. Preside over the consideration of cases by the Tribunal;
b. Direct the Registry of the Tribunal in the performance of its functions;
c. Prepare an annual report on the activities of the Tribunal;
d. Perform the functions entrusted to the President under these Rules; and
e. Such other powers as may be relevant to carry out his duties as Head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members , Registrar, Secretary and other staff of the Tribunal;
f. Transfer case(s) from one Bench to other Bench of the Tribunal when the circumstances so warrant.

PART V

Procedure relating to issuance of orders and disposal of cases

95. Matters relating to the Judgements or Orders of the Tribunal:

(1) Once the final text of the judgement has been approved and adopted, the judgement shall be signed and dated by the President or the concerned members or member and the Registrar and shall contain the names of the members who have taken part in decision;

(2) Any member differing as to the grounds upon which the judgement was based or some of its conclusions, or dissenting from the judgement, may append a separate or dissenting opinion. In case the members who have heard

the case are equally divided in passing the order or judgement, then the President shall constitute a Bench as referred in sub-section (5) of section 419 of the Act.

96. Amicus Curiae

The Tribunal may, at its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to the Tribunal as Amicus Curiae on any point or points or legal issues as the case may be as assigned to such Amicus Curiae. The Tribunal may permit an Amicus Curiae to have access to the pleadings of the parties. The Tribunal shall enable the parties to submit timely observations on an amicus brief. The Tribunal shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the Amicus Curiae has been sought, to bear such expenses or fee as may be ordered by the Tribunal. The judgement and any appended opinions shall be transmitted to the parties and to Amicus Curiae.

97. Recusal

1. For the purpose of maintaining the high standards and integrity of the Tribunal, the President or a Member of the Tribunal shall recuse himself
    a. In cases involving persons with whom the President or the Member has a personal, familial or professional relationship;
    b. In cases concerning which the President or the Member has previously been called upon in another capacity, including as advisor, representative, expert or witness ; or
    c. If there exist other circumstances such as to make the President or the Member's participation seem inappropriate.
2. Any member recusing himself shall immediately inform the President of the Tribunal or in the case of the President, the next senior member thereto.

PART-VI

Functions of the Registry, Secretary and General Procedures

98. Appointment of Staff to the Registry:

In exercise of the powers provided in section 418 of the Act, the Central Government in consultation with the Tribunal shall provide the Tribunal the staff including the Registrar, Secretary and such other officers for the purpose of exercising the powers and discharging the functions of the Tribunal as the case may be.

99. Powers, Functions and Duties of the Registrar:

(1) In addition to the functions and duties as assigned to the Registry in Part II and elsewhere in these rules, the Registrar at the Principal Bench, and at other Benches, the officer so designated to function as Registrar shall have all the powers, functions and duties of the Registrar and the Registrar or such officer as designated as Registrar at the Benches shall be head of the Registry and the staff working in the Registry shall work under his general superintendence and control of the Registrar or such other officiating Registrar at the Benches. The Registrar shall work under the general superintendence and control of the President at the Principal Bench whereas the officiating Registrar at other benches shall work under the senior most member of the respective Benches of the Tribunal. Under the authority of the President, the Registrar of the Tribunal shall:

(a) Receive and register petitions, appeals, applications, interlocutory and all other miscellaneous applications relating to such petitions appeals or applications, institution proceedings and related documentation of the case;

(b) Be responsible for transmitting all documents and making all notifications required in connection with cases before the Tribunal and represent the matters pertaining to this Tribunal before any other forum as may be decided by the President;

(c) Make for each case a dossier which shall record all actions taken in connection with the case, the dates thereof, and the dates on which any document or notification forming part of the procedure is received or dispatched from his office;

(d) Attend hearings, meetings and deliberations of the Tribunal;

(e) Keep the minutes of these hearings and meetings of the members as instructed by the President;

(f) Upon the transmittal of a petition or an application to the Tribunal, unless the President decides otherwise, circulate within the Tribunal a notice summarizing the issues raised in the petition or application, without disclosing the name of the applicant, in order to inform the Members of the Tribunal of proceedings pending before the Tribunal; in respect of category matters as the President so instructs the Registrar;

(g) Expeditiously perform the functions entrusted to him by the rules of procedure and carry out tasks as assigned by the President; and

(h) Have the custody of the records of the Tribunal and shall perform such other functions as are assigned to him under these rules or from time to time by the President or the Member:

Provided that no record or document filed in any case or matter shall be allowed to be taken out of the custody of the Tribunal without the leave of the Tribunal.

(2) Without prejudice to the foregoing sub-rule (1), the Registrar shall have the following powers and duties, subject to the general or special order of the President or Member, namely:

(i) subject to the direction of the respective Benches, to fix the date of hearings and to issue notices therefore;

(ii) to direct any formal amendment of records;

(iii) to order to grant or transmit the documents to the parties of the proceedings;

(iv) to grant leave to inspect or view the records of the Tribunal;

(v) to dispose of all matters relating to the service of notices or other processes, applications for the issue of fresh notices and for extending the time for filing such applications and to grant time not exceeding 30 days for filing reply or rejoinder, if any, and to place the matter before the Bench for appropriate orders after the expiry of the aforesaid period;

(vi) to requisition for transfer of any records of such suit, claim or other legal proceeding as are transferred to the Tribunal from any Court, Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction or Company Law Board or any other court or authority;

(vii) to receive and dispose of applications for substitution, except where the substitution would involve setting aside an order of abatement;

(viii) to receive and dispose of applications by parties for return of documents.

(ix) to supply to the Central Government the information in the prescribed Form;

(x) to dismiss the petition or application for default in case the applicant or his authorized representative does not appear before him on the date fixed for hearing of the case regarding the defects raised by the Registry;

(xi) to dismiss the petition or application in case the applicant fails to serve the opposite party with the notice; and

(xii) to restore the petition or application, if he is satisfied that there are sufficient reasons for non-appearance or for not serving the opposite party.

(3) The official seal shall be kept in the custody of the Registrar.

(4) Subject to any general or special direction by the President, the seal of the Tribunal shall not be affixed to any order, decree or judgement or summons or other process save under the authority in writing of the Registrar in case of physical form or in case of e-form as prescribed in Part III of these rules.

(5) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

(6) The Registrar ofeach Bench shall make out, every month a brief summary of the important decisions given by that bench during the previous month and send it to the Registrar of the Principal Bench who shall after suitable editing, circulate it to all the Benches of the Tribunal in the country and the Central Government for their information.

Presentation and scrutiny of petitions or applications:

100. In case of the scrutiny of the petitions or applications as provided in the rules in Part II and elsewhere in these rules, if any person is aggrieved with the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within 15 days of the making of such order to the President of the Principal Bench and at other places to the designated member of the Bench whose decision thereon shall be final.

Duties, Functions and Powers of the Secretary:

101 . The post of the Secretary shall be at the Principal Bench, New Delhi. He shall discharge his duties, function and exercise his powers under the general superintendence and control of the President of the Tribunal. His main function is to co-ordinate with the Principal Bench and the Benches and act as a liaison officer between the Tribunal and the concerned Ministry having administrative jurisdiction over the Tribunal. He shall in addition to the work assigned to him by the President from time to time, have the following functions, duties and powers:

i. In charge of the long term projects and initiatives of the Tribunal;

ii. Supervise the Human Resources;

iii. Budgetary allocations and Financial Management;

iv. Tribunal operations;

v. Tribunal facilities and Administrative Services;

vi. Supervise the Public Grievances Mechanism;

vii. Coordinate with the Authorised Representatives and other Professionals;

viii. Information and Communication Technology (ICT) facilities;

ix. Communication services;

x. Public affairs and Public safety provisions in the Tribunal Premises;

xi. Supervision of Library and Research;

xii. Administrative Matters pertaining to the Benches and liaisoning between the President and the other Benches as well as providing support to the other benches under the directions of the President;

xiii. Attend and execute such directions given by the President and discharge such other functions and duties as may be assigned to him.

xiv. Attend the petitions or applications received for empanelment of the professionals including mediators/conciliators.

Part VII

102. Matters earlier dealt by the Company Law Board

(i) Notwithstanding any other provision of law or rule of Court or Tribunal to the contrary, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act, dealing with the Tribunal have been given effect, or the Company Law Board has been abolished in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective benches of the Tribunal exercising respective territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred:

Provided that the Tribunal shall consider any action taken under the said rules be deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings , except in a case where the order is reserved by the Company Law Board or its Bench. In such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:

Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice.

(ii) It shall be lawful for the President or such member (s) to whom the powers are so delegated, to provide that matters falling under all other sections of the Act, shall be dealt with by such benches consisting one or more members as may be constituted in exercising of such power as enshrined in the Act,

Provided that matters pending before the Principal Bench and Additional Principal Bench of the Company Law Board as on the date of constitution of Tribunal as stated supra shall continue and be disposed of by a bench consisting of not less than two members of the Tribunal having territorial jurisdiction

(iii) It shall be lawful for the Tribunal to dispose of any case transferred to it wherever the Tribunal decides that further continuance of such application or petition transferred before the Tribunal shall be a redundant exercise or an unnecessary proceeding on account of changes which have taken place in the Act either upon an application filed by either of the parties to the proceedings or suo motu.

(iv) A fresh petition or an application may also be filed in the prescribed form as provided in the Annexure-C corresponding to those provisions of the sections of Act, if both the parties thereto so consent unanimously with the approval of the Tribunal while withdrawing the proceedings as already continued before the Company Law Board and serve a copy of the petition on the parties thereto including the Ministry of Corporate Affairs, Regional Director, Registrar of Companies, Official Liquidator or Serious Fraud Investigation Office, as the case may be, as provided in the Act, in the manner as provided under Part II. Upon an application to the Tribunal if the permission is granted to file a petition or an application in physical form, then the same shall be filed accompanied with the documents or papers to be attached thereto as required to prove the cas e subject to the provisions of the Act, and rules hereto. The same procedure shall also apply to other parties to application or petition for filing reply or counter thereto.

(v) Notwithstanding the above and subject to section 434 of the Act, the Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases.

103. Matters earlier dealt by the District Court or High Court

(i) All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.

(ii) Subject to section 434 of the Act, Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases.

104. Matter earlier dealt by BIFR

Any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

105. Petition or Application under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934):

(i) Provisions of these rules shall apply, mutatis mutandis, to the application or petition made under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934) or under such other analogous provision of the other Act(s). Similarly, these rules shall extend to the petitions or applications filed under various provisions of the existing Acts before the Company Law Board.

Explanation:- For the purpose of the said provisions, wherever the words “Company Law Board” or “Board”, are mentioned, the same shall be treated as if such provision or word is addressing or referring to “Tribunal”.

106. Reference to the Tribunal:

Any reference to the Tribunal by the Registrar of Companies under second proviso to sub-section (1) of section 252, section 441 of the Act, or any reference to the Tribunal by the Central Government under proviso to sub-section (5) of section 140, 221, sub-section (2) of section 224, sub-section (5) of section 224, sub-section (5) of section 233, sub-section (2) of section 241 of the Act, or any reference by a company under clause (c) of sub-section (4) of section 22A of the Securities Contracts (Regulations) Act, 1956 shall be made by way of a petition or application in **Form No. 9** in Annexure C and shall be accompanied by documents mentioned in Annexure-D.

PART VIII

SPECIAL PROVISIONS RELATING TO CERTAIN SPECIFIC MATTERS

107. Application under sub- section (7) of section 7.

1. Application under sub-section (7)shall be filed to the tribunal filed in form 1 and shall be accompanied such documents as are mentioned in Annexure –D
2. Every application filed under sub rule (1) shall also set out the following particulars.
   a. Name of the company and other details including date of incorporation, name and address of the subscribers, promoters and first directors.
   b. The details of false or incorrect information or representation or material facts or information suppressed.
   c. details of such documents in or declaration filed or made for incorporating such company,
   d. involvement of promoters, subscribers and first directors in committing fraud during the course of incorporation;
3. Tribunal may pass such orders, as it may think fit in accordance with clauses (a), (b), (c), (d) and (e) of sub-section (7) of section 7.
4. Before making any such order under sub-section(7) of section 7 Tribunal shall give reasonable opportunity to the companyof being heard in the matter, and shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

108. Petition under section 14.

(1) A petition under second provision to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, not less than three months from the date of passing of special resolution, be filed to the Tribunal in **Form No. 1** and shall be accompanied with such documents as are mentioned in Annexure D.

(2) Every petition filed under sub-rule (1) shall set out the following particulars:

(a) the date of the Board meeting at which the proposal for alteration of memorandum was approved;

(b) the date of the general meeting at which the proposed alteration was approved;

(c) state at which the registered office of the company was situated;

(d) State number of members in the company, number of members attended the meeting and number of members of voted for and against.

(e) reason for conversion into a private company effect of such conversion on shareholders, creditors, debenture holders and other related parties.

(f) state listed or unlisted public company.

(g) state the nature of the company that is a company limited by shares, a company limited by guarantee(having share capital or not having share capital) and unlimited company

(h) state whether a company registered under section 8 of the Act.

(3) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of petition by not more than two months, setting forth the following details:

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities;

(c) in respect of any contingent or unascertained debt or any such claim admissible to proof in winding up of the company, the value, so far as can be justly estimated of such debt or claim:

Provided that the petitioner company shall file an affidavit, signed by the company secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge.

(4) A duly authenticated copy of such list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(5) The company shall at least 14 days before the date of hearing

(a) advertise the petition in accordance with rule 11;

(b) serve, by registered post with acknowledgement due, individual notice (s), in **Form No. 3 B** to the effect set out in sub-rule (a) above on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:

(6) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of companies on or before the date of hearing:

(7) While passing an order, the Tribunal may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid complying with the provisions of the Act, disallow the conversion.

109. Application to Cancel Variation of Rights under sub-section (2) of Section 48.

(1) Where an application to cancel a variation of the rights attaching to any class of shares is made on behalf of the shareholders of that class entitled to apply for cancellation under sub-section (2) of section 48 by the letter of authority signed by the shareholders so entitled, authorizing the applicant or applicants to present the application on their behalf, shall be annexed to the application, and the names and addresses of all the said shareholders, the number of shares held by each of them,aggregate number of such shares held and percentage of the issue shares of that classshall be set out in the schedule to the application.

(2) The application in **Form No. 1** shall be accompanied by documents mentioned in Annexure D and shall set out;

(a) the particulars of registration

(b) the capital structure, the different classes of shares into which the share capital of the company is divided and the rights attached to each class of shares

(c) the provisions of the memorandum or articles authorizing the variation of the rights attached to the various classes of shares

(d) the total number of shares of the class whose rights have been varied

(e) the nature of the variation made, and so far as may have been ascertained by the applicants, the number of shareholders of the class who gave their consent to the variation or voted in favor of the resolution for variation and the number of shares held by them,

(f) the number of shareholders who did not consent to the variation or who voted against the resolution, and the number of shares held by them,

(g) the date or dates on which the consent was given or the resolution was passed,

(h) the reasons for opposing the variation.

(3) The applicant shall at least 14 days before the date of the filing of the petition advertise the application in accordance with rule 11.

(4) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Registrar of companies and Regional Director on or before the date of hearing:

(5) On any such application, the Tribunal, after hearing the applicant and any other person as appears to it to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall if not so satisfied, confirm the variation:

Provided that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.

(6) The decision of the Tribunal on any such application shall be final.

110. Petition under sub-section (3) of section 55

(1) The petition in **Form No. 1** shall be accompanied by documents mentioned in Annexure D and shall set out:

(a) the particulars of registration

(b) the capital structure, the different classes of shares into which the share capital of the company is divided;

(c) the provisions of the memorandum or articles authorizing the issue of preference shares;

(d) the total number of preference shares issued;

(e) Details of such preference shares which are not redeemed or unable to pay dividend.

(f) Terms and conditions of issue of such existing preference shares.

(g) The total number of such preference shares (unredeemed) and number of holders consented for with value of such preference shares and percentage of holders who have consented for.

(h) The date or dates on which the consent was given or the resolution was passed.

(2) On any such petition, the Tribunal, after hearing the petitioner and any other person as appears to it to be interested in the petition, may, if it is satisfied, having regard to all the circumstances of the case may approve for issue of further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of unredeemable preference shares.

Provided that the Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares;

Provided further that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.

(3) The decision of the Tribunal on any such petition shall be final.

111. Form of application or petitionfor reduction of share capital under section 66 and Notice of Admission for directions:

(1) An application to confirm a reduction of the share capital of a company shall be in **Form No. 13**, and shall be accompanied by a notice of admission for directions in **Form No.14**. Such application shall be accompanied by documents mentioned in Annexure D.

(2) The application filed under sub-rule (1) shall set out the following particulars:

(a) existing capital structure of the company;

(b) proposed capital structure after the reduction;

(c) terms and conditions of the reduction of share capital indicating clearly whether the reduction of share capital involves diminution of any liability in respect or unpaid share capital or the payment to any shareholder of any paid-up share capital and whether the company has creditors or any class of them entitled to object;

(d) provisions of the articles of association of the company authorizing such reduction of capital;

(e) date of passing of special resolution by the members in the general meeting of the company;

(f) the number of members present and voting at such meeting and number of shares/ voting power held by them;

(g) the number of members who voted in favour of the resolution for reduction of capital and the number of shares/ voting power held by them;

(h) the number of members who voted against the resolution and the number of shares/ voting power held by them;

(i) reasons for such reduction of share capital.

112. Procedure on hearing of Notice of Admission:

Upon the hearing of the notice of admission and after giving notice to the Central Government, Registrar of companies and to the Securities and Exchange Board, in the case of listed companies, or in the case of non banking financial companies to the Reserve Bank of India and the creditors of the company, if the Tribunal is satisfied that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and does not think fit to direct that the procedure prescribed in section 66 shall apply, it shall fix a date for hearing of the application and give such directions as it may think fit as to the advertisement of the application. The application shall be posted for hearing on the date fixed, and upon the hearing thereof, the Tribunal may confirm the reduction on such terms and conditions as he may think fit.

113. Directions at the hearing of Notice of Admission:

Where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital and, in any other case, if the Tribunal thinks fit to direct that the procedure prescribed in section 66 of the Act shall apply, the Tribunal may, upon the hearing of the notice of admission or upon any adjourned hearing thereof, or upon the hearing of any subsequent application, give such directions as it may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say:

(a) the proceedings to be taken for settling the list of creditors entitled to object, including the dispensing with the observance of the provisions of said section 66 as regards any class or classes of creditors ;

(b) fixing the date with reference to which the list of such creditors is to be made out,

(c) the publications of notices ; and

(d) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

The order made upon the notice of admission under this rule shall be in **Form No. 15** with such variations as the circumstances may require

114. List of Creditors:

The company shall, within the time allowed by the Tribunal, file a list in **Form No. 16** made out by an officer of the company competent to make the same, containing the names and addresses of the creditors of the company to whom the enquiry extends as on the date fixed by the Tribunal under the last preceding rule, and the respective amounts due to them in respect of debts, claims or liabilities to which the enquiry extends or in case of any such debt payable on a contingency or not ascertained, or any such claim admissible to proof in a winding-up of the company, the value, so far as can be justly estimated, of such debt, or claim.

115. Affidavit verifying list of Creditors:

Such list shall be verified by an affidavit made by an officer of the company competent to make the same, who, in such affidavit, shall state his belief that the list verified by such affidavit is correct, that the estimated values, as given in the list, of the debts payable on a contingency or not ascertained, or of any claims admissible to proof in a winding-up, are just and proper estimates of the values of such debts and claims respectively, and that there was not, at the date fixed by the Tribunal under rule 134, any debt, claim or liability which if that date were commencement of the winding-up of the company, would be admissible in proof against the company, except the debts, claims and liabilities set forth in such list as filed under rule 136 and any debts, claims or liabilities to which the enquiry does not extend, and shall state the source of his knowledge or information and the grounds of his belief regarding the matters deposed to in such affidavit. Such affidavit shall be in **Form No. 17**, with such variations as the circumstances of the case may require.

116. Inspection of list of creditors:

Copies of such list shall be kept at the registered office of the company and at the office of the authorised representative of the company, and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees fifty for inspection and for taking extracts on payment of the sum of rupees ten per page to the company.

117. Notice to Creditors:

(i) The company shall, within seven days after the filing of the list of creditors referred to in rule 136 or such further or other time as the Tribunal may allow, send to each creditor whose name is entered in the said list, a notice of presentation of the application and of the said list, stating the amount of the proposed reduction of capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time, as fixed by the Tribunal, within which if he claims to be entitled to be entered on such list as a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his authorised representative if any, to the authorised representative of the company.

(ii) Such notice shall be in **Form No. 18** and shall, unless the Tribunal in the manner as prescribed under Part II of these rules or otherwise directs in the manner to each creditor at his last known address or place of abode:

Provided that where his address is not known to the company, the Tribunal may direct notice to be given to such creditor in such manner as the Tribunal may think fit.

118. Advertisement of the petition or application and list of creditors:

(i) Notice of the presentation of the application and of the list of creditors under rule 114 read with rule 115, shall, within seven days after the filing of the said list or such further or other times as the Tribunal may allow, be advertised by the company in such manner as the Tribunal shall direct.

(ii) Such notice shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company who are not entered but claim to be entitled to be entered on the said list, must send in their names and addresses and the particulars of the debts or claims and the names and addresses of their authorised representatives, if any, to the authorised representative of the company. Such notice shall be in **Form No.19**.

119. Affidavit for Proof of Service:

The company shall, as soon as may be, file an affidavit proving the dispatch and publication of the notices referred to in rules 138 and 139. Such affidavit shall be in**Form No. 20**.

120 . Statement by company as to the result of rules 117 and 118:

(i) The company shall within the time fixed by the Tribunal, file a statement signed and verified by the authorised representative of the company stating the result of the notices mentioned in rules 117 and 118 respectively and verifying a list containing the names and addresses of the persons, if any, who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively and the amounts of such debts or claims.

(ii) Such statement shall be accompanied by an affidavit made by a competent officer or officers of the company who shall, in such list, distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly or as to any and what part thereof, disputed by the company, and which (if any) of such debts and claims are alleged by the company to be wholly, or as to any and what part thereof not included in the enquiry.

(iii) Such affidavit shall also state which of the persons, who are entered in the list as creditors and which of the persons, who have sent in particulars of their debts or claims in pursuance of such notices as aforesaid, have been paid or have consented to the proposed reduction. Such statement shall be in **Form No. 21**.

121. Procedure where claim is not admitted, and proof of debt:

(i) If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or if any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company is willing to set apart and appropriate in such manner as the Tribunal shall direct, the full amount of such debt or claim, the company shall, if the Tribunal thinks fit so to direct, sent to the creditor a notice in **Form No. 22** that he is required to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claim or such part thereof as is not admitted by the company on the day fixed by the Tribunal.

(ii) Such notice shall be served not less than four clear days before the date fixed by the Tribunal.

(iii) A proof of debt by a creditor shall be in **Form No. 23**. Where the creditor is for good reason personally unable to make the affidavit, his authorised agent may make the same.

122. Costs of Proof:

The costs of proof of a debt or claim or any enquiry under the preceding rules shall be at the discretion of the Tribunal.

123. Certificate by the Tribunal as to Creditors:

The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the authorised representative of the company and signed by the Tribunal. Such certificate shall -

(1) specify the debts or claims (if any) which have been disallowed ;

(2) distinguish (a) the debts or claims, the full amount of which the company is willing to set apart and appropriate ; (b) the debts or claims (if any) the amount of which has been fixed by enquiry and adjudication in the manner provided by section 66 and these rules ; and (c) the debts or claims (if any) the full amount of which the company does not admit or is not willing to set apart and appropriate or the amount of which has not been fixed by enquiry and adjudication as aforesaid ; and

(3) show (a) which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them ; and (b) the total amount of the debts or claim the payment of which has been secured in the manner provided by section 66 and the persons to or by whom the same are due or claimed.

The said certificate shall also state which creditors have under rule 119 come in and sought to establish their title to be entered on the list and whether such claims have been allowed or not, but it shall not be necessary to make in such certificate any further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the enquiry does not extend or to show therein the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

124. Hearing of the petition or application:

After the expiry of not less than fourteen days from the filing of the certificate mentioned in the preceding rule, the application shall be set down for hearing. Notice of the date fixed for the hearing of the application shall be advertised within such time and in such newspaper or newspapers as the Tribunal may direct and shall be in **Form No. 24**.

125. Who may Appear and Oppose:

Any creditor included in the certificate whose debt or claim has not, before the hearing of the application, been discharged or determined or been secured in the manner provided in section 66 and who has not before the hearing consented in writing to the proposed reduction of share capital may, if he thinks fit, upon giving two clear days' notice to the authorised representative for the company of his intention to do so, appear at the hearing of the application and oppose it. The costs of his appearance shall be in the discretion of the Tribunal.

126. Directions at Hearing:

(1) At the hearing of the application the Tribunal may, if he thinks fit, give such directions as may seem proper with reference to securing in the manner mentioned in section 66, the debts or claims of any creditors who do not consent to the proposed reduction, and the further hearing of the application may be adjourned to enable the company to comply with such directions.

(2) Upon the hearing of the petition or application, if the Tribunal is satisfied that the proposed reduction does not involve either diminution or liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital, it shall

(a) fix a date for hearing of the application; and

(b) give such directions as to the advertisement of the application, as it may think fit.

(3) Upon the hearing of the petition or application or upon any adjourned hearing thereof or upon the hearing of any subsequent application, if the Tribunal is satisfied that the proposed reduction involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then

(a) the Tribunal shall require the company to file, within such time as allowed by the Tribunal, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than two months, setting forth the following details:

(i) the names and address of every creditor and debenture holder of the company;

(ii) the nature and respective amounts due to them in respect of debts, claims or liabilities;

(iii) in respect of any contingent or unascertained debt or any such claim admissible to proof in a winding up of the company, the value, so far as can be justly estimated of such debt or claim:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge.

(b) A duly authenticated copy of such list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(c) Any person claiming that his name shall be entered in the list of creditors or objects to the amount of debt payable to him according to such list, shall deliver or cause to be delivered by registered post, the objections supported by an affidavit, to the Registrar and shall also serve a copy of the objections on the applicant-company at its registered office.

(d) If the applicant-company contends that:

(i) the person filing any objection is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or

(ii) any debt or claim, the particulars of which are so sent in, shall not be admitted by it, either in full or in part,

then, and in every such case, unless the company is willing to set apart and appropriate in such manner as the Tribunal directs, the Tribunal may direct such person to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claims or such part thereof as is not admitted by the company on the day fixed by the Tribunal.

(e) The Tribunal may give such directions as he may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say:

(i) the proceedings to be taken for settling the list of creditors entitled to object;

(ii) the publications of notices; and

(iii) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

127. Order on the application :

Where the Tribunal makes an order confirming a reduction, such order shall include directions -

(a) as to the manner in which, the times at which and the newspaper or newspapers in which, notice of the registration of the order and of minute as approved by the Tribunal shall be published,

(b) as to the period commencing on or after the date of the order, during which the words 'and reduced' shall be added to the name of the company as the last words thereof, in case the Court thinks fit to direct under section 66 that the words shall be so added, and

(c) as to the publication, if the Tribunal so directs, of the reasons for reduction or the causes that led to it or such other information in relation thereto as the Tribunal may require to be published under section 66.

128. Minutes:

Unless the form of the minute has been approved by the Tribunal at the time of making the order confirming the reduction, the company shall, within seven days from the date of the said order, file for the approval of the Tribunal a draft of the minute containing the particulars required by section 66, and shall take an appointment for approval of the same. The authorised representative for the company shall attend when the minutes comes up before the Tribunal for approval.

The order confirming the reduction of capital and approving the minute shall be in **Form No.25** with such variations as may be necessary.

129. Advertisement of Reasons for Reduction of Share Capital:

Where the Tribunal makes an order directing the company to publish the reasons for the reduction or such other information in regard thereto as the Tribunal may direct, unless the form of the statement to be published has been approved by the Tribunal at the time of making the order, the company shall, within seven days of the order, file, for the approval of Tribunal, a draft of the statement and shall take an appointment for approval of the same. The authorised representative of the company shall attend when the statement comes up for approval before the Tribunal. The statement as approved shall be published in the same newspapers in which notice of the registration of the order and the minute has been directed to be published.

130. Form of Minute and Notice of Registration:

The Minute may be in **Form No.26** and the Notice of Registration of the order and the minute shall be in **Form No. 27**.

131. Petition under sections 58 & 59.

(1) The petition against the refusal for registration of transfer or transmission of securities under section 58 or for rectification of Register of members under section 59 shall be made to the Tribunal by way of a petition in **Form No. 1** and shall be accompanied by such documents as are mentioned in Annexure D:

Provided that a copy of such petition shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal.

(2) The petitioner shall at least 14 days before the date of hearing advertise the petition in accordance with rule 11.

(3) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies and Regional Director on or before the date of hearing:

(4) The Tribunal may, while dealing with a petition under section 58 or 59, at its discretion, make-

(a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(5) On any petition under section 59, the Tribunal may-

(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.

(6) The decision of the tribunal on any such petition shall be final.

132. Application under proviso to clause (b) of sub-section (1) of section 61.

(1) An application for obtaining the approval of the Tribunal for the consolidation and division of all or any of its share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders shall be filed in **Form No. 1** and shall be accompanied with such documents as are mentioned in Annexure D.

(2) The application shall, inter alia, set forth the following:

(a) provision of articles authorizing such consolidation or division;
(b) existing capital structure of the company;
(c) new capital structure of the company after the consolidation or division;
(d) class of shares being consolidated or divided;
(e) face value of shares pre and post consolidation or division;
(f) justification for such consolidation or division.

(3) The company shall at least 14 days before the date of hearing.

(a) advertise the petition in accordance with rule 11; and
(b) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Central Government, Registrar of Companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:

(4) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central government Registrar of Companies and

Securities Exchange Board of India, in the case of listed companies and to regulated body, if the company is regulated under any Special Act on or before the date of hearing:

(5) Upon hearing the application or any adjourned hearing thereof, the Tribunal may pass such order, subject to such terms and conditions, as thinks fit.

133. Application under sections 71 (10), section 73(4) or section 76(2) read with section 73(4), section 74(2), section 76(2) read with section 74(2)

(1) Where a company fails to redeem the debentures or repay the deposits or any part thereof or any interest thereon, an application under sub-section (10) of section 71 or under sub-section (4) of section 73 of the Act orsection 45QA of the Reserve Bank of India Act, 1934 (2 of 1934), shall be filed to the Tribunal, in **Form No. 11** in duplicate and shall be accompanied by such documents as are mentioned in Annexure D, by -

(a) in case of debentures, all or any of the debenture holders(s) concerned, or debenture trustee; or
(b) in case of deposits, all or any of the depositor(s) concerned, or where the deposits are secured, by the deposit trustee.

(2) There shall be attached to the application, a list of depositors or debenture holders, as the case may be, setting forth the following details in respect of every such depositor or debenture holder:

(a) Full name, age, father's/ mother's/ spouse's name, occupation and full residential address
(b) Fixed deposit receipt number or debenture certificate number, as the case may be.
(c) Date of maturity;
(d) Amount due to such person by the company;
(e) Amount already paid by the company, if any;
(f) Total amount due as on the date on the application:

Provided that where the company is the applicant, it shall file an affidavit stating the list of depositor(s) or debenture holder (s), as the case may be, is correct, and that the estimated value as given in the list of the amount payable to such depositors or debenture holders are proper estimates of the values of such debts and claims.

(3) The Tribunal shall pass an appropriate order within a period of sixty days from the date of receipt of application under sub-rule (1):

Provided that the Tribunal shall, before making any order under this rule, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(4) The Tribunal may, if it is satisfied, on the application filed under sub-rule (1), that it is necessary so to do, to safeguard the interests of the company, the debenture holder(s) or the depositor(s), as the case may be, or in the public interest, direct, by order, the company to make repayment of such deposit or debenture or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that while passing such an order, the Tribunal shall consider the financial condition of the company, the amount or deposit or debenture or part thereof and the interest payable thereon.

(5) Where a company failed to repay the deposits under section 76 or part there of or any interest there on in accordance with sub-section (3) or sub-section(4) of sub-section 73 or sub-section (2) of section 74 and in accordance with the above rules the provisions of section 75 shall be applicable.

(6) (a) the application under section 74(2) and 76(2) read with section 74(2) shall be in Form 1 and shall accompanied with the documents as per Annexure D.

(b) A copy of the application made under :

(i) section 74(2) shall be served on the Regional Director and the Registrar of Companies before the date of hearing;

(ii) section 76(2) read with section 74(2) shall be served on the Regional Director and the Registrar of Companies before the date of hearing.

(c) The Registrar of Companies in consultation with Regional Director shall submit before the Tribunal, the report on the affairs of the company within thirty days from the date of the receipt of the application and Tribunal may consider such observations made by the Registrar of Companies before passing an order.

134. Application under section 97 for calling or obtaining a direction to call annual general meeting.

(1) An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company. Such application shall be made in **Form No. 1** and shall be accompanied by the documents specified in Annexure D.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

135. Application for obtaining an order for calling of general meeting (other than Annual General Meeting) under section 98

(1) An application under section 98 for obtaining an order for calling of a general meeting (other than Annual General Meeting) shall be made by any director or member of the company who would be entitled to vote at the meeting. Such application shall be made in **Form No. 1** and shall be accompanied by the documents specified in Annexure D.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

136. Petition or application under section 130.

(1) A petition or application under sub-section (1) of section 130 for obtaining an order of re-opening of books of account and recasting of financial statement of a company shall be filed to the Tribunal in **Form No. 1** and shall be accompanied by such documents as are mentioned in Annexure D.

(2) The petition or application shall, inter alia, set forth the following particulars:

(a) financial year or period to which such accounts relates;
(b) the name and contact details of the officer of the company responsible for making and maintaining such books of accounts and financial statement;
(c) where such accounts are audited, the name and contact details of the auditor who audited such accounts;
(d) brief particulars of the fraud or mismanagement casting a doubt on the reliability of financial statement;
(e) circumstances that made the company to derive to the conclusion that the accounts were prepared in a fraudulent manner or the affairs of the company were mis-managed during the relevant period;
(f) financial impact of such fraud or mis-management.

(3) The company shall at least 14 days before the date of hearing:

(a) advertise the petition in accordance with rule 11;
(b) serve, by registered post with acknowledgement due, individual notice(s) , in **Form No. 3 B** to the effect set out in sub-rule (a) above on each debenture holder and creditor of the company; and
(c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of Companies, the Income-tax authorities and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:

(4) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies, Central Government, the

Income- tax authorities and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act on or before the date of hearing:

(5) Where no objection has been received from any of the parties, who have been duly served, the Registrar of Tribunal or Bench as the case may be may put up the petition for orders without hearing.

(6) Upon the hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit:

137. Petition or application under section 252.

(1) A petition or application under sub-section (1) of section 252, filed to the Tribunal in Form No. 9 to restore the name of a company in the register of companies shall be served on the Registrar and on such other persons as the Tribunal may direct, not less than 14 days before the date fixed for hearing of the petition.

(2) The petitioner or applicant shall at least 14 days before the date of hearing advertise the petition in accordance with rule 11.

(3) Upon hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit.

(4) Where the Tribunal makes an order restoring the name of such company to the register of companies, the order shall direct that :-

(a) the petitioner to deliver to the Registrar of Companies a certified copy thereof within 30 days from the date of the order;
(b) on such delivery, the Registrar of Companies do, in his official name, advertise the order in the Official Gazette; and
(c) the petitioners do pay to the of Registrar of Companies his costs of, and occasioned by, the petition, unless for any special reasons the Tribunal orders otherwise.

(5) If the Registrar of Companies is satisfied that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file a petition or an application before the Tribunal under second proviso to sub-section (1) of section 252 seeking restoration of name of such company. The petition or

application hereto shall be near to **Form No. 9**. Upon hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit.

PART IX

MISCELLANEOUS

138. Enlargement of Time:

Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.

139. Saving of Inherent Powers of the Tribunal:

Nothing in these rules or otherwise affect the inherent powers of the Tribunal to make such order or pass such direction as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

140. Amendment of Order:

Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of review.

141. General Power to Amend:

The Tribunal may, at any time, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

142. Tribunal to be deemed to be a Court for Certain Purposes:

The Tribunal shall be deemed to be a court for all purposes including for the purpose of prosecution or punishment of a person who willfully disobeys any direction or order of the Tribunal.

143. Preparation of paper book.

The (Registrar/Registry), if it so deemed fit, may call upon the parties to prepare a paper book after completion of the pleadings.

144. Power to Dispense with the Requirements of the Rules:

Every Bench of the Tribunal shall have power for reasons to be recorded inwriting, to dispense with the requirements of any of these rules, subject tosuch terms and conditions as may be specified.

145. Punishment

(a) Saved as other provided in the Act, if any person intentionally gives false evidence upon an examination on oath of Solomon affirmation he shall be punishable with imprisonment for a term which shall not be less than three years but which may extent to seven years and with fine which may extent to ten lakhs of rupees in accordance with section 449 of the Act.

(b) If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person, notwithstanding any other liability or action, shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continu es in accordance with section 450 of the Act.

****

DRAFT FROMS I.R.O DRAFT RULES FOR CHAPTER XXVII OF THE COMPANIES ACT, 2013

FORM NO. 1

[See rule 6(8)]

[HEADING AS IN FORM NO. 4]

Columns required for electronic filing of Original Application / Reply / Rejoinder / Interlocutory Application or filing of additional documents under directions of the Bench

********(Note: This form shall be subject to such modifications if any as may be made by the Service Provider for Electronic filing in consultation w ith the MCA)**

S.No.	**Particulars**				
1.	State whether the filing is for Original Application (OA) or Reply or Rejoinder or IA	**O.A.**	**REPLY**	**REJOINDER**	**DOCUMENT**
		Click whichever is applicable			
2.	If filing is for Reply / Rejoinder/IA or some other additional documents, kindly state the OA Number.				
3.	If OA, please provide the following details	**(In case of providing DIN or CIN number, you may prefill the columns**			
	DIN / CIN NUMBER				
	Name of the Petitioner				
	Father's Name.				
	Date of Birth				
	e-mail id				
	Mobile Number				
4.	**Details of Respondents**				
	DIN / CIN NUMBER				
	Name of the Petitioner				
	Father's Name.				
	Date of Birth				
	e-mail id				
	Mobile Number				
5.	**ATTACHMENTS**				
6.	**DECLARATION**				
7.	**DATE OF SIGNING**				
8.	**DIGITAL SIGNATURE**				
9.	**APPROVAL OF DOCUMENT BY REGISTRAR**				

*****

FORM No. 2

[See rule 6(8)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

_________________ BENCH : ________________

NOTICE OF ADMISSION

Date: ____________________

From: ________________________________*(Insert name of party filing the Admission)*

To : The Registrar,
NCLT (_________ Bench).

...Applicant.

- Vs-

...Respondent.

The Party named above requests that the Tribunal grant the following relief:

____
(Insert the relief or order sought)

In terms of ____
(Insert the section of the Act, or the Rules/Regulation, that provides for the order or relief sought)

For the following reasons:

(Insert a concise statement of the circumstances, and the particulars of the request)

____

____

____

____

____

____

____

In support of this Application, the applicant has attached an affidavit setting out the facts on which the Applicant relies.

Name and Title of person signing on behalf of Applicant:

Authorised Signature and Address:

____

____

Tel No.
Fax No.
e-mail:

This form is prescribed under Rule ____ under NCLT Rules, 2013.

For rehabilitation	:	**Rehab. Petition No.**
For TransferredMatters from the CLB/BIFR/AIFR/HHC	:	**Transfer Petition (CLB/BIFR/AIFR/HHC) No. (CP.No.OR ....)**
For Other matters	:	**Company Petition No.**

*****

FORM No. 3
[See rule 6(8)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
__________________ BENCH AT: _________________

NOTICE OF MOTION

Date: _____________________

From: _________________________________*(Insert name of party filing the Motion)*

To : The National Company Law Tribunal

Concerning:

(Name and file number of matter being considered by the National Company Law Tribunal)

Name:____
File No:____

The Party named above requests that the Tribunal grant the following relief:
____

(Insert the relief or order sought)

In terms of ____
(Insert the section of the Act, or the Rules/Regulation, that provides for the order or relief sought)

For the following reasons:

(Insert a concise statement of the circumstances, and the particulars of the request)

____

____

____

____

____

____

____

In support of this Application, the applicant has attached an affidavit setting out the facts on which the Applicant relies.

Name and Title of person signing on behalf of Applicant:

Authorised Signature and Address:

____

____

Tel No.
Fax No.
e-mail:

This form is prescribed under Rule ____ under NCLT Rules, 2013.

For rehabilitation	:	**Rehab. Petition No.**
For TransferredMatters from the CLB/BIFR/AIFR/HHC	:	**Transfer Petition (CLB/BIFR/AIFR/HC) No. (CP.No.OR ....)**
For Other matters	:	**Company Petition No.**

FORM NO.3 A
Interlocutory application
[Pursuant to rule 9]
[HEADING AS IN FORM NO. 4]

Misc. Application No. .... of ....

In

Original Petition No. ....of ....

XXX ... Applicant (Applicant/ Respondent)

Versus

YYY ...Respondent (Respondent / Applicant)

1. Brief facts leading to the application:

2. Interim order prayed of:

Signature of the Applicant
(Signature of the Authorized Representative)

Place:
Date:

Form No. 3 B
Individual Notice of petition/ application to creditors, members, etc.
[Pursuant to rule 118.]

To
....
....
....

(sub: Notice of petition/ application filed under section .... of Companies Act, 2013)

Take notice that a petition/ application under section .... of the Companies Act, 2013 dated........... was presented by.......... (name of the company) before .... Bench, National Company Law Tribunal, for .... (state the purpose of the petition).

The said petition/ application has been accepted and is fixed for hearing before the Bench on ....

If you desire to support or oppose the petition at the hearing, you should give notice thereof in writing to the undersigned so as to reach him/ it not later than .... days before the date fixed for the hearing of the petition, and appear at the hearing in person or by your authorized representative.

Where such person seeks to oppose the petition/ application, the grounds of opposition or a copy of the affidavit shall be furnished with such notice.

A copy of the petition/ application will be furnished by the undersigned to any person requiring the same on payment of the prescribed charges for the same.

Signature:
Name of the petitioner/ applicant
(& his authorized representative, if any)

Date:
Place:

FORM No. 4

[See rule 6 (7)]

General Heading for Proceedings

Before the National Company Law Tribunal,
Bench, at ________

In the mater of the Companies Act, 2013

And

In the matter of .... Ltd: (Give the name of the Company)

*Notes: (1) Where the company is being wound-up, the words "in liquidation" should be inserted in brackets after the name of the company.

(2) If the application or petition or appeal is under relevant Act which should be set out in the cause title along with the Companies Act, 2013.

*****

FORM No. 5

[See rule 13]

[HEADING AS IN FORM NO.4]

Company Application No .... of 20 .....
"in Company Petition No .... of 20 .....
*I.A. No...............................of.20 ....
Name and Description ....
Applicant(s).

versus

.... Respondents].

Notice

[Under .... :]

Let all parties concerned attend the sitting Member (s) in Tribunal Room No.__ or Chamber of Honourable Mr/Mrs/Ms_______________ on ...... (day), the .... day of .... 20___, at. .... o'clock in the .... noon on the hearing of an application by the applicant(s) above-named, for an order that:

(Here set out the relief sought)

Dated this ..... day 01 ..... 20 ...Registrar/ Authorised Representative or the Applicants s) .

This Notice was taken out by Shri .... Authorised Representative for the applicant(s) and will be supported by the affidavit(s) of... ....

To Respondent(s)/ Opposite Party

[Here insert the section of the Act or other provision of law under which the application is made.] *Omit if not applicable

*****

FORM No. 6
(GENERAL)

[See rule 6 (8)]
[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20.

General Affidavit Verifying Petition

I, ..., son of... .... , aged .... residing at... , do solemnly affirm and say as follows:-

1. I am a director/secretary/ ..../of... Ltd., the petitioner in the above matter [" and am duly authorised by the said petitioner to make this affidavit on its behalf.]
Note: This paragraph is to be included in cases where the petitioner is the Company.

2. The statements made in paragraphs .... of the petition herein now shown to me are true to my knowledge, and the statements made in paragraphs ..... are based on information, and I believe them to be true.

Solemnly affirmed, etc.

-sd

VERIFICATION

'Note: 1. To be included when the affidavit is sworn to by any person other than a director, agent or secretary or other officer of the company.

****Note:- 2. This form can be used for any other general application moved before the Tribunal with such alteration or modification in the title and the content.**

*****

FORM No. 7

[See rule 15(3)]

[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20 .

Affidavit by way evidence

I, A.B., son of... .... , aged .... residing at... , do solemnly affirm and say as follows:-

1. I am a director/secretary/ ..../of... Ltd., the petitioner in the above matter [" and am duly authorised by the said petitioner to make this affidavit on its behalf.]

Note: This paragraph is to be included in cases where the petitioner is the Company.

2. The statements made in deposition in forthcoming paragraphs herein now are true to my knowledge, and believe them to be true.

Solemnly affirmed, etc.

"Note: To be included when the affidavit is sworn to by any person other than a director, agent or secretary or other officer of the company.

*****

FORM NO.8

[See rule 45]

[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20. **Application for Execution of Order under clause (3) of section 424 of the Act with reference to a Decree (Order 21, R.11.)**

I................., holder of an order passed by the National Company Law Tribunal, hereby apply for execution of the order under the

Order 21 Rule 11 of the Code of Civil Procedure, 1908 read with clause (3) of section 424 of the Act herein below set	**Names of Parties**	**Date of Order**	**Whether any appeal preferred from order**	**Payment or adjustment made, if any**	**Previous application, if any, with date and result**	**Amount with interest due upon the order or other relief granted**	**Amount of costs, if any, awarded**	**Against whom to be executed**

forth: **No. of Company Application/Company Petition/ Company Appeal/ Misc. Company Application**						**thereby together with particulars of any cross order/decree. Amount of costs, if any, awarded**		
1	2	3	4	5	6	7	8	9
___ of 20.......	A.B. - Applicant/ Petitioner/ Appellant C.D. - Respondant	Month. __, 20........	No	None	Application No dated _______ 2013 Result:	Rs. one lac principal interest at 6 per cent per annum, from the date of decree till payment	Rs. A. p. As awarded in Order No.___ Subsequently Incurred 8. 2.0	Against the defendant C.D.

Mode in which the assistance of the Tribunal is required:

When attachment as sale of movable property is sought: I pray that the total amount of Rs. .... (together with interest on the principal sum up to date of payment) and the costs of taking out this execution, be realised by attachment and sale of defendant''s movable property as per annexed list and paid to me. When attachment and sale of immovable property is sought: I pray that the total amount of Rs. .... (together with interest on the principal sum up to date of payment) and the costs of taking out this execution be realised by the attachment and sale of defendant''s immovable property specified at the foot of this application and paid to me.

I...........declare that what is stated herein is true to the best of my knowledge and belief.

Signed, Order /decree-holder.
Dated the.......... day of........20..............

[When attachment and sale of immovable property is sought.]
Description and Specification of Property

The undivided one-third share of the judgment-debtor in a house situated in the village of, value Rs. ...., and bounded as follows:--
East by G''s house; west by H''s house; south by public road; north by private lane and J''s house.

I.................declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed, Order/ decree-holder.

******(Note: The similar form may also be used for transfer of order to any other Tribunal having territorial jurisdiction to entertain the order of the tribunal as a decree under Code of Civil Procedure, 1908 read with section 424 of the Act)**

FORM NO. 9

[General Form for all purposes if no specific form is prescribed under these rules and Forms]

[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20 ....

Details of Application/ Petition:
Particulars of the applicant/ petitioner/ appellant:
i. Name of the **applicant/ petitioner/ appellant**
ii. Address of registered office of the **applicant/ petitioner/ appellant**
iii. Address of service of all notices
iv. Telephone/Fax Number and e-mail address, if any

Particulars of the respondent(s):
v. Name of the respondent(s).
vi. Office address of the respondent(s).
vii. Address of respondent(s) for service of all notices.
viii. Telephone/Fax Number and e-mail address, if any.

Application /Petition/ Appeal in the form of affidavit under Section ___ of the Act for .... I, ... solemnly affirm and say as follows:

1. I am the Managing Director or Chairman of the Board of Directors/a director/........... Of the above named company, and I have been a ________ of the company since.......... 201..... [the capacity in which the deponent swears to the affidavit should be set out.]

2. I have read the petition now shown to me and state that the statements made in paragraph 1 to __ thereof are correct and true to my knowledge.

4. **Facts of the order against which appeal or review is filed**:

5. **The facts of the case are given below:** (give here a concise statement of facts and other gr ounds in a chronological order, each paragraph containing as neatly as possible as separate issue, fact or otherwise).

6. **Jurisdiction of the Tribunal:** The **applicant/ petitioner/ appellant** declares that the matter of application/petition/ appeal falls within the jurisdiction of the Tribunal.

7. **Limitation.-** The **applicant/ petitioner/ appellant** further declares that the application/petition/ appeal is within the limitation as prescribed in the provision of section ___ read with section 433 of the Act.

8. **Matter not pending with any other Tribunal etc.** - The **applicant/ petitioner/appellant** further declares that the matter regarding with this **application/petition/appeal** has been made is not pending before any Tribunal of law or any other authority or any other Tribunal.

9. **Particulars in respect of the fee paid in terms of the Appendix-B of these rules.-**

Amount of fees
Name of the Bank on which Demand Draft is drawn or Online Payment is made
Demand draft number

10. **Details of Index.-** An index containing the details of the documents to be relied upon is enclosed.

11. **List of enclosures.-**

12. **It is therefore prayed that directions may please be given:**

Relief(s) sought.- In view of the facts mentioned in paragraph 5 above, the **applicant/petitioner/ appellant** prays r the following relief(s) (Specify below the relief(s) sought explained the grounds for relief(s) and the legal ovisions, if any, relied upon).

Interim order, if prayed for.- Pending final decision of **application/petition/ appeal, the applicant/ petitioner/ ppellant** prays for the following interim relief: (Give here the nature of the interim relief prayed for with reasons)

Dated this .... day of .... 20.........

(Signature of the applicant/ petitioner/ appellant)

Solemnly affirmed before me at _____ on this (month) .... day of .... 20 ....

(signature)

FORM NO.10

(See rule 55)

APPLICATION FOR THE REGISTRATION OF A CLERK OF AUTHORISED REPRESENTATIVE UNDER THE RULES

1. Name of Authorised Representative referred under these rules on whose behalf the clerk is to be registered.

2. Particulars of the clerk to be registered.

i) Full name (in capitals)

ii) Address with contact no. and valid email address:

iii) Father’s name

iv) Age and date of birth

v) Place of birth

vi) Nationality

vii) Educational qualifications

viii) Particulars of previ ous employment, if any

ix) Proof of Identity

I, ... (clerk above named), do hereby affirm that the particulars relating to me are true.

3. Whether the authorized Representative has a clerk already registered on his behalf and whether the clerk sought to be registered is in lieu of or in addition to the clerk already registered.

4. Whether the clerk sought to be registered is already registered as a clerk of any other Authorised Representative and if so the name of such practitioner.

I, ... (Authorised Representative) and Practicing as .... Bearing Registration No .... on the rolls of .... At ...., having office at (address with contact no and valid email) .... and residing at .... certify that the particulars given above are true to the best of my information and belief and that I am aware of any facts that any unethical and immoral attitude or behavior or character of the above clerk if found would lead to cancellation of the registration of the said ....(name) as a clerk without any notice.

Date:

Signature of Authorised Representative

To
The Registrar of the Tribunal
....
....
....

FORM NO. 11

(See rule 133)

APPLICATION BY DEPOSITOR UNDER SECTION 73 (4) OR 76(2) OR BY COMPANY U/S 74(2) OR BY DEBENTURE HOLDER OR DEBENTURE TRUSTEE UNDER SECTION 71 (10) OF THE ACT OR SECTION 45QA OF THE RESERVE BANK OF INDIA ACT, 1934 (*delete whichever is not applicable)

[HEADING AS IN FORM NO. 4]
Company Petition No .... of 20 ....

IN THE MATTER OF THE SECTION 73 (4) OR 76 (2) OR 74(2) OR SECTION 71 (10) OF THE ACT OR SECTION 45QA OF THE RESERVE BANK OF INDIA ACT, 1934

AND

IN THE MATTER OF (State the name of the Depositor or Company or Debenture Holder or Debenture Trustee-applicant)

AND

IN THE MATTER OF .... LIMITED (State the name of the company)
(i) Name and address of the Depositor/ Debenture holder-applicant:
(ii) Name of the company and address of its Registered Office:
(iii) Name(s) of Depositor (s)/ company Debenture holder/ Debenture Trustee (s) with full address:
(iv) Amount of Deposits\:
(v) Fixed Deposit / Debenture Receipt No. & date (Photostat copy to be enclosed):
(vi) Terms and Conditions of Deposit/ Debenture as also date of Maturity of Deposit:
(vii) Details of payment made, by the company, if any:
(viii) Actual amount due as on date of application (Principal/interest)
(ix) Details of correspondence, if any, made between the company and the Depositor (copy of correspondence to be enclosed):
(x) Any other particular (s) as may be considered relevant:
The Depositor/ Company/Debenture holder/Debenture Trustee -applicant, therefore, prays:-

(i) that the company, abovenamed be directed to make repayment of the aforesaid Deposit(s)/ Debenture (s) along with interest due thereon in accordance with the Terms and Conditions of the Deposit/ Debenture:
(ii) that such further orders be passed as the Tribunal deem fit in the circumstances of the case.

(Signature of the Depositor/ Company/Debenture holder/Debenture trustee-applicant)

Place: ....
Date: ....

Which ever not applicable may be deleted.

*****

FORM NO. 12
[See rule 69]
Memorandum of appearance

To

The Registrar,
National Company Law Tribunal, ... Bench,

In the matter of .... Petitioner.
V.
.... Respondent

(C.P. NO. ....of 20 ....)

Sir,

Please take notice that I, AB, Company Secretary in practice/ practising Chartered Accountant/ practising Cost Accountant, duly authorised to enter appearance, and do hereby enter appearance, on behalf of .... petitioner/ opposite party/ Registrar/ Regional Director/ Government of .... in the above-mentioned petition.

*A copy of the resolution passed by the Board of Directors authorising me to enter appearance and to act for every purpose connected with the proceedings for the said party is enclosed, duly signed by me for identification.

Yours sincerely,

Dated .... day of ....
Address:
Enclosure: as aforesaid

Tele No.:

*****

FORM NO. 13

[See Rule 111]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... - Petitioner

Petition under section 66 of the Act, for Confirming the Reduction of Share Capital

The petition of .... Ltd. the petitioner herein showeth :

1. The above named company, the petitioner herein (hereinafter "called the company") was registered on the .... day of .... 20...... under the provisions of the Companies Act, 2013,] as a company limited by shares/limited by guarantee with a share capital.

2. The Registered Office of the company is situate at ....

3. The objects of the company are ....

4. **The Authorised share capital of the company**

5. Paid Up Share Capital

6. Shortly after its incorporation, the company commenced business, and it has since been and is still carrying on business.

7. By article(s) .... of the articles of association of the company, it is provided that the company may, from time to time, by special resolution reduce its share capital in any manner permitted by law.

8. [Set out reasons for reduction.]

9. By a special resolution of the company, duly passed in accordance with section 114 of the Act, at a general meeting thereof, held after due notice as provided in the Act on the .... day of ....20...... it was resolved :-

[Here set out the resolution]

11. [Here set out whether the reduction of share capital does or does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up share capital, and whether the company has creditors or any class of them entitled to object.]

12. The form of the minute proposed to be registered under section 66 (5) of the Act, is as follows :--

[Here set out the proposed minute]

13. The petitioner therefore prays :-

(1) That the reduction of share capital resolved on by the special resolution set out in paragraph 8 above be confirmed;

(2) That to this end all inquiries and directions necessary and proper be made and given;

(3) That the proposed minute be approved; and,

(4) That such further or other orders be made in the premises as to the Tribunal shall deem fit.

Dated...............

Petitioner.

Authorised Representative for petitioner.

*****

FORM NO. 14

[See Rule 111]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

A.B. & Co. Ltd.--Petitioner

Application No. .... of 20.....

Summons for Directions

Let all parties concerned attend the sitting Member (s) in Tribunal Room No.__ or Chamber of Honourable Mr/Mrs/Ms_______________ on ...... (day), the .... day of .... 20___, at. .... o'clock in the .... noon on the hearing of an application by the applicant(s) above-named Company [that a day may be fixed for the hearing of the petition above-named for the reduction of the company''s share capital presented on the .... day of .... 20...... and that directions may be given as to the advertisement of the petition and that the certificate of creditors be dispensed with] (or) [for directions as to the proceedings to be taken for settling a list of creditors of the said company entitled to object to the proposed reduction, and the notices and advertisements to be issued, etc.]

Dated this .... day of .... 20.....

Registrar/Authorised Representative for Petitioner

This summons was taken out by Shri .... Authorised Representative for the company and will be supported by the affidavit of...............

[Note:- It is not intended to serve this summons on any person.]

*****

FORM NO. 15

[See Rule 113]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

..................-Petitioner

Application No................ of 20.....

Before the Hon''ble Member(s)...............

Dated ....

Orders on Summons for Directions

Upon the application of .... Ltd., the petitioner in the petition abovementioned by summons dated the .... day of .... 20..... and upon hearing Shri .... Authorised Representative for the petitioner, and upon reading the said petition filed on the .... day of............... 20..... and the affidavit of............... filed on .... 20...... and the several exhibits therein referred to, and it appearing that the special resolution for the reduction of the share capital of the said company referred to in the said petition has been duly passed ;

[It is ordered that section 66 shall not apply to (here set out the class or classes of creditors to whom section 66 is not to apply) and]. It is ordered that an inquiry be made to ascertain the debts, claims and liabilities of or affecting the said company as on the .... day of ....20...... [other than the debts, claims or liabilities in respect of (here set out any debts, claims or liabilities which have been excluded from the provisions of section 66 by the earlier part of the order)].

And it is ordered that a list of creditors of the said company to whom the inquiry extends be made out as on the said .... day of ....20...... and that the said list and an affidavit verifying the same, be filed in the office of the Registrar within .... days hereof.

And it is further ordered that notice, in the prescribed Form, of the presentation of the petition and of the list of creditors be inserted in .... (here set out the newspapers) on or before the .... day of............. 20.....

And it is further ordered that any creditor whose name does not appear in the list, but who claims to be entitled to be entered therein, or who claims to be a creditor for a larger amount than that for which he is entered on such list, shall, on or before the .... day of .... 20..... , send in his name and address and the particulars of his debt or claim and the name and address of his advocate, if any, to the advocate of the company.

And it is further ordered that notice of the day fixed as last aforementioned be given by registered post to every creditor whose name appears in such list.

And it is further ordered that a statement signed and verified by the Advocate for the company, as to the result of the notices, and an affidavit by a competent Officer or Officers of the company as required by Rule 120.of the NCLT Rules, 2013 be filed on or before the .... day of............... 20.....

Dated this .... day of .... 20.....

(By the Tribunal)
Registrar.

*****

FORM NO. 16

[See Rule 114]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.– Petitioner

Application No................ of 20.....

List of creditors as on the .... day of............... 20...

Serial No.	**Name, address and description of creditor**	**Nature of debt or claim**	**Amount or estimated value of the debt or claim**

(Sd.).................

Director, Secretary or other competent Officer of the Company.

The above list of creditors marked "A" was produced and shown to E.F., and is the same list of creditors referred to in his affidavit shown before me this .... day of............... 20.....
X,Y,

Commissioner for Oaths/ or any Authorised Officer hereto.

*****

FORM NO. 17

[See Rule 115]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

...............Ltd.-- Petitioner

Application No................ of 20.....

Affidavit Verifying List of Creditors

I s/o .... etc., solemnly affirm and say as follows :--

1. I am the .... of the said company.

2. The writing now produced and shown to me contains a list of the creditors of, and persons having claims upon, the said company on the .... day of .... 20..... (the date fixed by the order made in this matter, dated ....) together with their respective addresses and the nature and amount of their debts or claims and such list is to the best of my knowledge, information and belief a true and accurate list of such creditors and persons having claims on the day aforesaid, and in cases of debts payable on a contingency or not ascertained, or any claims admissible to proof in a winding-up, the values thereof as stated in such list, are, in my belief, just and proper estimates of the values of such debts and claims respectively.

3. To the best of my knowledge and belief there was not at the date aforesaid, any debt, claim or liability which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company, other than and except the debts, claims and liabilities set forth in the said list and the debts, claims and liabilities to which the enquiry directed by the order made herein and dated the .... day of............... 20....,, does not extend.

4. I am enabled to make the above statements from facts within my knowledge as the .... of the said company, and from information derived upon investigation of the affairs and the books, documents and papers of the said company.

Solemnly affirmed, etc.

Deponent.

*****

FORM NO. 18

[See Rule 117]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.--Petitioner

Notice to Creditors

To

....

....

You are requested to take notice that a petition was presented to the Tribunal at .... , on the .... day of .... 20....….. for confirming the reduction of the share capital of the above company from Rs. .... to Rs. .... and that by an order, dated .... 20....., an inquiry was directed as to the debts, claims and liabilities of the said company as on the .... day of .... 20...., [other than the debts, claims and liabilities in respect of (here set out the nature of the debts, claims or liabilities to which the inquiry does not extend)]. In the list of persons admitted by the company to have been on the said .... day of .... 20..... creditors of me company for debts, claims and liabilities to which such inquiry extends, your name is entered as a creditor for Rs. .... (the nature of the debt or claim to be stated).

If you claim in respect of any such debt, claim or liability to have been, on the last mentioned day, a creditor to a larger amount than is stated above, you must, on or before the .... day of .... 20...... send your name and address, the particulars of your claim and the name and address of your Authorised Representative , if any, to the undersigned at .... In default of your so doing the above entry in the list of creditors will, in all the proceedings under the above petition to reduce the share capital of the company, be treated as correct.

Dated ....

Authorised Representative for the Company,

*****

FORM NO. 19

[See Rule 118]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.– Petitioner

Notice/Advertisement of Petition/ Application and List of Creditors

Notice is hereby given that a petition for confir ming the reduction of the share capital of the above company from Rs. .... to Rs. ....was on the...............day of .... 20...... presented to the Tribunal at .... and by order, dated the .... day of ....20.....,an inquiry was directed as to the debts, claims and liabilities of the said company as on the.............. day of.............. 20......"[other than debts, claims and liabilities in respect of (here set out the nature of the debts , claims and liabilities to which the inquiry does not extend.)]. A list of the persons admitted by the company to have been creditors thereof on the said date for debts, claims and liabilities to which the inquiry extends, may be inspected at the offices of thecompany at.............. or at the office of Shri............................. Authorised Representative for the company, at any time during usual business hours, on payment of a fee of Rs. 50 (fifty . Any person who claims to have been on the said .... day of ....20...... and still to be a creditor of the company in respect of any such debt, claim or liability, and who is not entered on the said list and claims to be so entered, must, on or before the .... day of .... 20..... send in his name and address, and the particulars of his claim and the name and address of his authorised representative (if any) to the undersigned at.............. or, in default thereof, he will be precluded from objecting to the proposed reduction of share capital.

Dated this .... day of .... 20...

A.B.

Authorised Representative for the Company.

*****

FORM NO. 20

[See Rule 119]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.--Petitioner

Affidavit for Proof of Service

I............................... (name, etc.), do solemnly affirm and say as follows :--

1. I did on the .... day of .... 20...... served a true copy of the notice now produced and shown to me and marked "B" upon each of the respective persons whose names, addresses and descriptions appear in the second column of the list of creditors marked "A", referred to in the affidavit of .... filed on the............... day of .... 20...... by sending such copies by registered post to their respective addresses appearing in the said list, and the postal receipts and the acknowledgments [including (if any) the covers returned as undelivered] now produced and shown to me and marked "C" to "Cn" are the receipts and acknowledgments received from the post office in respect of the said registered letters.

2. A true copy of the notice now produced and shown to me and marked "D" has been published in the issue(s) of............... (state the newspapers) dated the .... 20..... Solemnly affirmed, etc.

(Sd.).............
Deponent.

*****

FORM NO. 21

[See Rule 120]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. -- Petitioner

Affidavit as to the result of notices issued

I,..................., authorised representative for the company, state as follows:-

1. I have in the list now produced and shown to me and marked "E" set forth all claims the particulars of which have been sent to me pursuant to the notice referred to as Exhibit "B" in the affidavit of .... filed on the .... day of .... 20..... by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked "A" referred to in the affidavit of............. filed on the .... day of............... 20.....

[(or) No person has sent into me pursuant to the said notice "B" a claim to be entered on the said list for a larger sum than that in respect of which he is entered in the said list "A"]

2.1 have in the list now produced and shown to me and marked "F" set forth all claims the particulars of which have been sent in to me pursuant to the notice referred to in paragraph 2 of the affidavit of .... filed on the .... day of .... 20...... by persons whose names do not appear in the list of creditors marked "A" aforesaid, but who claim to be creditors of the said company as on the .... 20.... and to be entered on the said list.

[(or) No claims have been sent to me pursuant to the notice referred to in paragraph 2 of the affidavit of .... filed on the .... day of .... 20...... by persons not entered on the said list "A" aforesaid and claiming to be so entered.]

I declare that the statements are true to my knowledge.

(Sd.)
Authorised Representative for the company.

I, ... Managing Director of the said Company, etc., do solemnly affirm and say as follows :–

1. I have in the first part of the said list marked "E" (now produced and shown to me) and also in the first part of the list marked "F". (now produced and shown to me) respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted in respect of such of the

same debts and claims respectively as are not wholly admitted, and such of the same debts and claims as the company contends are wholly, or as to any and what part thereof, not included in the inquiry in this matter.

2. I have in the second part of the said lists marked "E" and "F set forth such of the debts and claims as are wholly disputed by the said company, and such of the same debts and claims as the company contends would, even if admitted, be wholly, or as to any and what part thereof, not included in the inquiry in this matter.

In the said lists marked "E" and "F" are distinguished such of the debts the full amounts whereas arc proposed to be appropriated in such manner as the Member or Bench shall direct.

The Exhibits now produced and shown to me and marked "G" to "Gn" are the receipts and the written consents of such of the persons as have been paid by the said company, or have consented to the proposed reduction of the share capital.

This said company is willing to set apart and appropriate the full amount of the debts, claims and liabilities specified in the said list "A" and in the said Exhibits "E" and "F" in respect of which consents have not been obtained or which the said company has not paid or discharged.

All rents, rates, taxes, salaries, wages and other incidental expenses current on the said .... day of............... 20..... and since become due have been paid and discharged by the said company.

Solemnly affirmed, etc.

(Sd.)

EXHIBIT. E

List of debts" and claims of which the particulars have been sent in by persons claiming to be creditors of the said company for larger amount than are stated in the list of creditors made out by the company.

First Part

Debts and claims wholly or partly admitted by the company

Name, address and description of creditor	Particulars of debt or claim	Total amount claimed	Amount admitted by the company to be within the enquiry and to be owing to creditor	Debts proposed to be appropriated in full although disputed	Amounts admitted by the company to be owing but which it is contended are not within the enquiry
(1)	(2)	(3)	(4)	(5)	(6)

Second Part

Debts and claims wholly disputed by the company

Name, address and description of Claimant	**Particulars of claim**	**Total Amount claimed**	**Debts proposed to be appropriated in full although disputed**	**Amount which even if admitted it is contended would of claimant claimed although disputed not be within the enquiry.**
(1)	**(2)**	**(3)**	**(4)**	**(5)**

EXHIBIT. F

List of debts and claims, the particulars of which have been sent in by persons claiming to be creditors of the company and to be entered on the list of creditors made out by the company.

Parts 1 and 2 as in Exhibit "E"

The above lists marked "E" and "F" were shown to .... and are the same as referred to in their respective statement and affidavit.

Solemnly affirmed before me this.............. day of.............. 20.....

(Sd.)
Commissioner for Oaths/Any Authroised Officer

*****

FORM NO. 22

[See Rule 121]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

...................Ltd. --Petitioner

Notice to Creditors to come in and prove

To

....

....

You are hereby required to come in and prove [(or), establish your title to be entered in the list of creditors in this matter in respect of] the debt claimed by you against the above company, by filing your" affidavit and serving a copy thereof on Shri .... Authorised Representative for the company on or before the .... day of .... 20...... and you are to attend in person or by Authorised Representative before the Member(s) Sri .... sitting in Chambers or in the Court Hall No .... on the .... day of .... 20 ..... at .... o"clock in the .... noon, being the time appointed for hearing and adjudicating upon the claim, and produce your evidence relating to your claim.

In default of your complying with the above directions, you will [be precluded from objecting to the proposed reduction of the share capital of the company] or [be treated as a creditor for such amount only as is set against your name in the list of creditors in all proceedings relating to the proposed reduction of capital.]

Dated this .... day of............... 20.....

(Sd.)
Authorised Representative for the company

FORM NO. 23

[See Rule 121]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.--Petitioner

Affidavit of Creditor proving debt

I ...., of................ , do solemnly affirm and say as follows :--

1. That the above named company was on the .... day of .... 20...... and still is justly and truly indebted to me in the sum of Rs. .... [here state the consideration for the debt, e.g., for goods sold and delivered by me to the company between .... 20..... and ....20...... as shown by the account produced and shown to me and marked "A", etc. State also the security held, if any, for the debt.

2. I have not, nor has any person by my order, to my knowledge or belief, for my use had or received the sum aforesaid or any part thereof or any manner of satisfaction or security whatever for the same or any part thereof (except the security hereinbefore referred to).

Solemnly affirmed, etc.

(Sd.)

[Note.–Where the affidavit is made by an agent of the creditor, the deponent should state his authority for making the same and his means of knowledge.].

*****

FORM NO. 24

[See Rule 124]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. -- Petitioner

Advertisement of Hearing of Petition

Notice is hereby given that a petition presented to the Tribunal at............ on the..............day of..............20........... for confirming the reduction of the share capital of the above company from Rs....................to Rs. .... will be heard before the Tribunal on the.............day of.............20.........

Dated this.............day of............20.........

(Sd.)...............................

Authorised Representative for the company

*****

FORM NO. 25

[See Rule 128]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. – Petitioner

Before the Hon"ble Member (s)..............

Order confirming Reduction of share Capital and Approving Minute

Upon the petition of ....Ltd. presented on the .... day of............... 20.....[upon hearing Shri..............Authorised Representative for the petitioner, and upon reading the said petition and the affidavit in support thereof.............filed the.............day of..............20...............,] and the ex hibits therein referred to, the order on the summons made on the .... day of............... 20...... directing an inquiry into the debts and liabilities of the said company, the certificate, dated .... 20...... signed by the ....setting out the result of the settlement of the list of creditors in pursuance of the said inquiry, and upon perusing (here set out the newspapers) containing the notice of the date of hearing of this petition, and upon hearing Shri .... Authorised Representative for the creditor(s) and Shri .... Authorised Representative for the shareholders [or, (where there is no appearance) none of the creditors or shareholders appearing in person or by the Authorised Representative], and the Tribunal being satisfied with respect to every creditor entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, THIS TRIBUNAL DOTH ORDER:

(1) That the reduction of the share capital of the above company resolved on and effected by the special resolution passed at a general meeting of the said company held on the .... day of .... 20,...., which resolution was in the words and figures following, viz..

[Here set out the resolution]

be and the same is hereby confirmed.

(2) That the minute set forth in the schedule hereto be and is hereby approved.
(3) That a certified copy of this order including the minute as approved be delivered to the Registrar of Companies within .... days from this date.
(4) That notice of the registration by the Registrar of Companies of this order and of the said minute be published within .... days of the registration aforesaid.
[Note.–Where the Tribunal confirms the reduction subject to any terms and conditions, such terms and conditions should be set out, as well as any directions that the Tribunal may think fit to give regarding the use of the words "and reduced" or the publication of the reasons for reduction, the order being suitably cast in such cases.]

*Dated this .... day of................ 20.....

SCHEDULE
(Here set out the minute)
(By the Tribunal)

Registrar.
*Date of the order to be the date of the approval of the minute.

*****

FORM NO. 26

[See Rule 130]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. -- Petitioner

Form of Minute

The capital of A.B. & Co. Ltd., is henceforth Rs. .... divided into.......................... shares of Rs. . ... each, reduced from Rs. .... divided into .... shares of Rs. .... each. At the date of the registration of this minute .... shares numbered .... etc., have been issued and are deemed to be fully paid (and the remaining .... shares are unissued).

[Note:– 1. The words "and reduced" are to be added only where the order so directs.]

If all the shares of a class are not issued, the minute should state the serial numbers of the issued shares. Partly paid shares should also be distinguished by their serial numbers and the amounts paid thereon should be stated. The serial numbers of shares with calls in arrears and of forfeited shares should also be stated.]

*****

FORM NO. 27

[See Rule 130]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

................Ltd. -- Petitioner

Notice of Registration of Order and Minute

Notice is hereby given that the order of the Tribunal at............... dated the.................... 20...... confirming the reduction of the share capital of the above named company from Rs. .... divided into .... shares of Rs. .... each, to Rs. .... divided into ....shares of Rs. .... each, and the minute approved by the Tribunal showing, with respect to the share capital of the above company as altered, the several particulars required by the above Act were registered by the Registrar of Companies on the .... day of ....20.....

Dated ....

(Sd.)...............

Authorised Representative for the company.

*****

National Company law Appellate Tribunal (Salaries and Allowances and other Terms and Conditions of Service of the Chairperson and other Members) Rules, 2013

In exercise of the powers conferred by section 414 read with sub-section (2) of section 469 of the Companies Act, 2013 (of 2013) the Central Government hereby makes the following rules, namely:-

1. Short title and commencement:-

(1) These rules may be called the National Company Law Appellate Tribunal (Salaries and Allowances and other terms and conditions of service of the Chair person and other Members) Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions:-

(1) In these rules, unless the context otherwise requires, -

(a) 'Act' means the Companies Act, 2013 (of 2013);

(b) 'Chairperson' means the Chairperson of the Appellate Tribunal appointed under sub-section (1) of section 412 of the Act;

(2) Words and expressions used in these rules and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Salary, allowances, etc. of the Chairperson:-

(a) When a serving or a retired Judge of the Supreme Court, is appointed as Chairperson, he shall be entitled to a monthly salary, and to such allowances and other benefits, as are admissible to a serving Judge of the Supreme Court.

(b) When a serving or a retired Chief Justice of a High Court, is appointed as Chairperson, shall be entitled to a monthly salary and to such allowances and other benefits as are admissible to a serving Chief Justice of the High Court of the Headquarter station of the Appellate Tribunal.

Provided that in case the retired Judge of the Supreme Court or the retired Chief Justice of a High Court, is in receipt of, or has received or has become entitled to receive any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such Chairperson shall be reduced by the gross amount of pension or employers contribution to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent of gratuity), drawn or to be drawn by him.

4. Other conditions of service of Chairperson:-

(1) In case of serving or retired Judge of the Supr eme Court or serving or retired Chief Justice of a High Court is appointed to the Appellate Tribunal, the conditions of service of Chairperson for which no provision is made in these rules shall be governed by the Supreme Court Judges (Conditions of Servic e) Act, 1958 (41 of 1958), Supreme Court Judges (Travelling Allowance) Rules, 1959 and any other rules made under that Act, or the High Court Judges Act, 1954 (28 of 1954), High Court Judges (Travelling Allowance) Rules, 1956 and any other rule made under that Act, as the case may be.

(2) In case of serving or retired Judge of the High Court is appointed as Member of the Appellate Tribunal, the conditions of service of Member for which no provision is made in these rules shall be governed by the High Court Judges Act, 1954 (28 of 1954), High Court Judges (Travelling Allowance) Rules, 1956 and any other rule made under that Act.

5. Salary of Member:-

(1) (a) Every Judicial Member shall be entitled to a monthly salary and to such allowances and other benefits as are admissible to a serving Judge of the High Court of the Headquarter station of the Appellate Tribunal.

(b) every Technical Member shall be paid a salary of eighty thousand rupees (fixed) per mensem.

Provided that in case of appointment of a person as a Member who has retired from the service under the Central Government or a State Government or any local body or authority owned or controlled by the Central Government or State Government or the Supreme Court or a High Court, as the case may be, who is in receipt of, or has received or has become entitled to received any retirement benefits by way of pension, gratuity, employers contribution to the Contributory Provident Fund or other forms of retirement benefits, the pay of such Member shall be reduced by the gross amount of pension or employers contributions to the Contributory Provident Fund or any other form of retirement benefits, if any (except pension equivalent to gratuity), drawn or to be drawn by him.

6. Dearness Allowance and other Allowances:-

(1) The Chairperson who is or has been a Judge of the Supreme Court or Chief Justice of a High Court shall receive dearness allowance at the rate admissible to a Judge of the Supreme Court or the Chief Justice of the High Court of the headquarter station of the Appellate Tribunal, as the case may be, as per orders issued by the concerned Courts from time to time.

(2) (a) The Judicial Member shall receive dearness allowance and other allowances at the rates admissible to a Judge of the High Court of the Headquarter station of the Appellate Tribunal as per orders issued by it from time to time.

(b)The Technical Member shall receive dearness allowance and other allowances at the rates admissible to a Group 'A' Officer of the Central Government drawing an equivalent pay.

7. Leave:-

(1) The grant of leave to Chairperson and Members of the Appellate Tribunal shall be governed as under:-

(i) Chairperson :A serving or retired Judge of the Supreme Court or Chief Justice of a High Court appointed as Chairperson shall continue to be governed in matters relating to his rights in respect of leave by the provisions of the Supreme Court Judges (Conditions of Service) Act, 1958 (41 of 1958), or, as the case may be, the High Court Judges (Conditions of Service) Act, 1954 (28 of 1954), and the rules made thereunder:

(ii) Member : (1)(a) The Judicial Member shall be governed in the matters relating to his rights in respect of leave by the provisions of the High Court Judges (Conditions of Service) Act, 1954 (28 of 1954), and the rules made thereunder.

(b) The Technical Member shall be governed in the matters relating to his rights in respect of leave by the Central Civil Services (Leave) Rules, 1972.

(2) The payment of leave salary to the persons appointed as Chairpersons after their retirement from the Supreme Court or the High Court and Members during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.

(3) The Chairperson and Members shall be entitled to encashment of leave in respect of the Earned Leave standing to his credit, subject to the condition that maximum leave encashment, including received at the time of retirement from previous service shall not in any case exceed the prescribed limit of 300 days.

8. Leave sanctioning authority:-

In the case of the Chairperson, the Minister in charge of the Ministry of Corporate Affairs, and in the case of a Member, the Chairperson, shall be the leave sanctioning authority.

9. Pension:-

The Chairperson and a Member shall have the option either to be governed by New Pension Scheme or annuitization or complete withdrawal of the corpus plus accretion.

10. Travelling Allowance:-

When a serving or retired Judge of the Supreme Court or Chief Justice of a High Court is appointed to the Appellate Tribunal as Chairperson he while on tour or on transfer (including the journey undertaken to join Appellate Tribunal or on the expiry of his term with the Appellate Tribunal to proceed to his home town) shall be entitled to travelling allowance, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rates as are applicable to Supreme Court Judge or Chief Justice of High Courts as per orders issued by the concerned Courts from time to time.

In case of Judicial Member of Appellate Tribunal, while on tour or on transfer (including the journey undertaken to join Appellate Tribunal or on the expiry of his term with the Appellate Tribunal to proceed to his home town) shall be entitled to travelling allowance, daily allowances, transportation of personal effects and other similar matters at the same scale and at the same rates as are applicable to Judge of High Court and in case of Technical Member at the same rates as are applicable to Group 'A' Officers of the Central Government drawing an equivalent pay.

11. Leave Travel Concession:-

(a) When a serving or retired Judge of the Supreme Court or Chief Justice of a High Court is appointed as Chairperson, he shall be entitled to Leave Travel Concession as is admissible to a serving Judge of the Supreme Court or Chief Justice of a High Court, as the case may be;

(b)The Judicial Member of Appellate Tribunal shall be entitled to Leave Travel Concession for self and family as admissible to re-employed pensioners and the entitlement will be as applicable to the Judge of High Court

(c) The Technical Members of Appellate Tribunal shall be entitled to Leave Travel Concession for self and family as admissible to re-employed prisoners and the entitlement will be that of the highest grade in the Central Government.

12. Facilities of Medical Treatment:-

The Chairperson and Members of Appellate Tribunal shall, while in service be entitled to medical treatment and hospital facilities as provided in the Contributory Health Services Rules, 1954 and in places where Central Health Services Scheme is not in operation, the said Chairperson and Member shall be entitled to the facilities as provided in the Central Services (Medical Attendance) Rules, 1944.

13. Transport:-

The Chairperson shall be entitled for conveyance facilities as admissible to serving Judge of a Supreme Court or Chief Justice of a High Court as the case may be. A Judicial Member shall be entitled for conveyance facilities as are admissible to serving Judge of a High Court. A Technical Member shall be entitled for conveyance facilities as are admissible to Group 'A' officer of the Central Government drawing an equivalent pay.

14. Accommodation:-

The Chairperson and Members of the Appellate Tribunal shall be entitled for General Pool Residential Accommodation. If they do not avail the accommodation facilities, they shall be entitled for House Rent Allowance as is admissible to Group 'A' officer of the Central Government or State Government drawing an equivalent pay.

15. Official visits abroad:-

(1) Official visits abroad by the Chairperson shall be undertaken with the prior approval of Minister-in-charge of the Ministry of Corporate Affairs and by the members with prior approval of the Chairperson, after clearance from the Ministry of External Affairs from political angle and from the Ministry of Home Affairs for acceptance of foreign hospitality, if any, under the provisions of the Foreign Contribution (Regulation) Act, 1976.

(2) The daily allowance and provision of hotel accommodation during the period of tour abroad in case of Chairperson shall be regulated in accordance with his entitlement before joining the Appellate Tribunal, in case of Judicial Members shall be regulated in accordance with his entitlement before joining the Appellate Tribunal and in case of Technical Members shall be regulated in accordance with the Central Government instructions as applicable to Group 'A' officers of the Central Government drawing an equivalent pay.

(3) Indian missions abroad shall take care of arrangements and extend facilities as admissible to the Chairperson and the Member.

(4) The instructions issued by Ministry of External Affairs, Ministry of Finance and Ministry of Home Affairs as amended from time to time will be applicable and shall be followed while undertaking visits abroad.

16. Applicability of rules:-

(1) When a serving Judge of the Supreme Court or the Chief Justice of a High Court is appointed as the Chairperson, his terms and conditions of service shall be the same as were applicable to him prior to his appointment as the Chairperson:

Provided that in case of superannuation of Chairperson as Judge before the expiry of his term as Chairperson, his terms and conditions of service shall be the same as are applicable to a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, as the case may be, under these rules, for remainder period of his term.

(2) When a serving Judge of the High Court is appointed as the member, his terms and conditions of service shall be the same as were applicable to him prior to his appointment as the member:

Provided that in case of superannuation of member as Judge before the expiry of his term as member, his terms and conditions of service shall be the same as are applicable to a retired Judge of the High Court under these rules, for remainder period of his term.

(3) When a person who is in Government Service or employed in any Public Sector Undertaking or any Authority including Autonomous Body of the Government or a Technical Member of the National Company Law Tribunal have been appointed as a Technical Member of the Appellate Tribunal, he shall be entitled for all the service benefits till his superannuation. After the date of his superannuation, his salary and other terms shall be in accordance with the terms of retired person who is appointed as Technical Member. In case a retired person is

appointed as a Member his salary and other terms would be governed in accordance with the terms of the retired person (i.e., after making necessary adjustments of post retirement benefits).

17. Oath of office and secrecy:-

(1) Person appointed as the Chairperson shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

(2) Every person appointed as a member shall, before entering upon his office, make and subscribe an oath of office and secrecy, in Form I and Form II annexed to these rules.

18. Declaration of financial or other interest:-

Every person, on his appointment as the Chairperson or Member, as the case may be, shall give a declaration in Form III annexed to these rules, to the satisfaction of the Central Government, that he does not have any such financial or other interest as is likely to affect prejudicially his functions as Chairperson or Member, as the case may be.

19. Residuary provisions:-

Matters relating to the terms and conditions of service of the Chairperson or Member with respect to which no express provision has been made in these rules, shall be determined by the rules and orders for the time being applicable to a serving Judge or Chief Justice of a High Court as the case may be in the case of Chairperson and officer drawing an equivalent pay in the Central Government in case of Member.

20. Other Conditions of Service. –

Matters relating to the terms and conditions of service of the Chairperson or other Members with respect to which no express provision has been made in these rules, shall be referred by the Appellate Tribunal to the Central Government for its decision, and the decision of the Central Government thereon shall be final.

21. Powers to relax:-

The Central Government shall have power to relax any provision of these rules with respect to any class or category of persons.

Form - I

(See rule 17)

Form of oath of office for Chairperson or Members of the National Company Law Appellate Tribunal

"I, ..., having been appointed as Chairperson or member of the National Company Law Appellate Tribunal

do solemnly affirm

swear in the name of God

that I will faithfully and conscientiously discharge my duties as Chairperson or member to the best of my ability, knowledge and judgment, without fear or favour, affection or ill-will."

Signature: ....

Place: ....

Name: ....

Designation: ....

Date: ....

Form - II

(See rule 17)

Form of oath of secrecy for Chairperson or Members of the National Company Law Appellate Tribunal

"I, ..., having been appointed as Chairperson or member of the National Company law Appellate Tribunal

do solemnly affirm

swear in the name of God

that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as Chairperson or member of the said Tribunal except as may be required for the due discharge of my duties as Chairperson or member."

Signature: ....

Place: ....

Name: ....

Designation: ....

Date: ....

Form - III

(See rule 18)

Declaration against acquisition of any adverse financial or other interest

I, ..., having been appointed as the Chairperson or Member (cross out portion not applicable) of the National Company Law Appellate Tribunal, do solemnly affirm and declare that I do not have, nor shall have in future any financial or other interest which is likely to affect prejudicially my functioning as the Chairperson or Member (cross out portion not applicable), of the National Company Law Appellate Tribunal.

Signature: ....

Place: ....

Name: ....

Designation: ....

Date: ....

DRAFT RULES UNDER COMPANIES ACT, 2013

National Company Law Appellate Tribunal Rules, 2013.

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, Dated ……….

G.S.R. No…………..— In exercise of the powers conferred by section 469 read with section 410 and 421 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement. –

(1) These rules may be called the National Company Law Appellate Tribunal Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3)These rules shall also be applicable for the proceedings before the Appellate Tribunal in case of limited liability partnerships under LLP Act, 2008 or rules made thereunder and in case of any inconsistency between rules made under the LLP Act, 2008 and these rules, these rules shall apply.

2. Definitions –

(1) In these rules, unless the context otherwise requires,

(a) Act means the Companies Act, 2013 (18 of 2013);

(b) Appeal means an appeal preferred under sub-section (1) of section 421 of the Act;

(c) Appellate Tribunal' means the National Company Law Appellate Tribunal constituted under section 410 of the Act;

(d) Appendix means Appendix to these rules.

(e) Authorized Representative means a person authorized in writing by a party to present his case before the Appellate Tribunal as provided under section 432 of the Act;

(f) Chairperson means the Chairperson of the Appellate Tribunal appointed under section 410 of the Act;

(g) Form means the form specified in the Appendix A' to these Rules;

(h) Member means the Member, whether Judicial or Technical of the Appellate Tribunal appointed under section 410 of the Act;

(i) Party means a person who prefers an appeal before the Appellate Tribunal and includes respondent(s) and any person interested in the appeal;

(j) Registrar means the Registrar of the Appellate Tribunal and includes an officer of such Appellate Tribunal who is authorized by the Chairperson to function as Registrar;

(k) Registry means the Registry of the Appellate Tribunal;

(l) Tribunal means the National Company Law Tribunal constituted under section 408 of the Act and includes its Benches;

(2) All other words and expressions used but not defined in these rules but defined in the Companies Act, 2013 (18 of 2013) shall have the same meaning assigned to them in that Act.

3. Limitation for filing appeal –

(1) Every appeal shall be filed within a period of forty-five days from the date for which a copy of the order of the Tribunal is made available to the person aggrieved.

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

4. Procedure of filing Appeal –

(1) A memorandum of appeal shall be presented in the Registry or shall be sent by registered post addressed to Registrar of the Appellate Tribunal within whose jurisdiction his case falls in the Form prescribed in Appendix A ; to these rules.

(2) A memorandum of appeal sent by post shall be deemed to have been presented on the day it was received in

the registry.

(3) Every Memorandum of Appeal shall be in three sets in a paper book and shall be accompanied with the certified copy of the order against which the appeal is preferred. In the event, the order appealed against is not filed, the Memorandum of Appeal shall be contain the reasons therefor.

(4) Where a party is represented by an authorized representative, authorization to act as the authorized representative and the written consent thereto by such authorized representative in original, shall be appended to memorandum of the appeal.

(5) Every memorandum of appeal presented to the Appellate Tribunal shall be in English or in Hindi and shall be legibly type written, or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.

(6) No Appeal, reference, application, representation, document or other matters contained in any language other than English or Hindi shall be accepted by the Registry, unless the same is accompanied by a true coy of translation thereof in English or Hindi.

5. Language of Appellate Tribunal –

(1) Proceedings of the Appellate Tribunal shall be conducted in English or Hindi.

(2) All orders and judgments of Appellate Tribunal may be either in English or Hindi.

6. Presentation and Scrutiny of Memorandum of Appeal –

(1) The Registrar, or the officer authorized by him, shall endorse on every appeal, the date on which it is presented or received through post under Rule 4 and shall sign the endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number;

(3) If the appeal, on scrutiny, is found to be defective, the Registrar may return the appeal for removal of defects within 7 days from the date of receipt of intimation;

(4) If the appellant fails to rectify the defect within the time allowed under sub-rule (3), the Registrar may, by order and for reasons to be recorded in writing, decline to register the appeal and inform the appellant accordingly within seven days thereof.

(5) An appeal against the order passed under sub-rule (4) may be preferred by the person aggrieved within fifteen days from the date of such order to the Chairperson or any Member to whom the power is vested and such appeal shall be dealt with and disposed of in Chamber by the Chairperson or such Member whose decision thereon shall be final.

7. Registrar to Place Appeal before Appellate Tribunal for Hearing

The Registrar shall place the appeal before the Appellate Tribunal, as soon as it is registered, for hearing.

8. Summary dismissal of Appeal:

The Appellate Tribunal, after considering the appeal, may summarily dismiss the same, for reasons to be recorded, if the Appellate Tribunal is of opinion that there are not sufficient grounds for proceeding therewith.

9. Filing of Process Fee

Upon direction of the Appellate Tribunal to issue notice, the party shall file Process Fee for service of notice of Appeal or Application, as the case may be.

10. Endorsing copy of appeal to the respondents

A copy of the memorandum of appeal and the paper book shall be served on each of the respondents, as directed by the Appellate Tribunal, by the Registrar by registered post.

11. Filing of reply to the appeal and other documents by the respondents

1) The respondent may file three complete sets containing the reply, if so directed by the Appellate Tribunal. to the appeal along with documents in a paper book form with the registry within one month of the service of the

notice on him.

2) The respondent shall also serve one copy of the reply to the appeal along with documents as mentioned in sub-rule (1) to the appellant and shall file proof of service in the Registry.

3) The Appellate Tribunal may, in its discretion on application by the respondent, allow the filing of reply referred to in sub-rule (1), after the expiry of the period referred to therein.

12. Order to be signed and dated

1) Every order of the Appellate Tribunal shall be in writing and shall be signed and dated by the Chairperson and Member (s) of the Appellate Tribunal.

2) The order shall be pronounced in open court.

13. Publication of orders

The orders of the Appellate Tribunal as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Appellate Tribunal may lay down.

14. Communication of orders:

Every order passed on an appeal shall be made available to the appellant and to the respondent and to the Tribunal concerned either in person or by registered post free of cost.

15. Power to Regulate the Procedure:

In exercise of the powers conferred on it in sub section (1) of Section 424 of the Act, the Appellate Tribunal may regulate its own procedure for the purpose of discharging its functions under the Act.

16. Costs:

The Appellate Tribunal may, in its discretion, pass such order (s) in respect of costs incidental to any proceedings before it, as it may deem fit or impose such costs on either of the parties for the proceedings on frivolous appeals or if any opinion of Appellate Tribunal, any party to the proceedings is delaying or has delayed, without sufficient cause, the proceedings of the Appellate Tribunal.

17. Certified copy of the order and inspection of record-

(1) If the Appellant or the respondent to any proceeding requires a copy of any order passed by the Appellate Tribunal, the same shall be supplied to him on payment of fees as specified inAppendix –B within four working days from the receipt of application for the said purpose and on urgent basis within two working days from the receipt of application for the said purpose on payment of further fee as specified in Appendix-B.

(2) The parties to the case or their authorized representative may be allowed to inspect the record of the case on making application as prescribed by the Appellate Tribunal in writing to the Registrar and on payment of fee as specified inAppendix –B between 10.30 AM to 3 PM.

18. Working Hours of the Appellant Tribunal:

Except on Saturdays, Sundays and other public holidays, the office of the Appellate Tribunal shall, subject to any order made by the Chairperson, remain open from 09-30 a.m. to 6-00 p.m.

19. Sitting hours of the Appellate Tribunal:

The sitting hours of the Appellate Tribunal shall ordinarily be from 10-30 a.m. to 1-15 p.m. and 2-15 p.m. to 4-30 p.m. or if otherwise subject to any general or special order made by the Chairperson.

20. Inherent powers of the Tribunal:

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.

21. Dress for Chairperson and Members and for the Authorised Representatives and for the parties in person:

(1). For Chairperson and Members:

The dress of the Chairperson and members shall be white or striped or black trouser with black coat over white shirt and band or buttoned- up black coat and band. In the case of a female Chairperson or a Member, the dress shall be black coat over a sober colouredsaree or any other sober dress and band.

(2). For Authorized Representatives:

Every authorized representative as provided in Section 432 of the Act, of the party shall appear before the Appellate Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned–up coat over a trouser or a long buttoned-up coat on dhoti or churidarpyjama, and a female, in a coat over white or any other sober colouredsaree or in any other sober dress.

(3) For Parties in Person :-

Parties appearing in person before the Appellate Tribunal shall be properly dressed.

22. Memorandum of Appearance:

(1) The Authorized Representatives other than the representative of Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator .shall make an appearance through the filing of Memorandum of Appearance in representing the respective parties to the proceedings. In case of legal practitioner/ advocate, he may make appearance by filing Vakaltanama.

(2) The Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator may be represented by an officer not below the rank of the officer of the senior time scale. The Chartered Accountant in practice or Company Secretary in practice or Cost Accountant in practice shall have post qualification experience of five years.

(3) The Company Liquidator or Administrator shall make his appearance before the Appellate Tribunal in person.

23. Amendment of Order:

Any clerical or arithmetical mistakes in any order of the Appellate Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Appellate Tribunal on its own motion or on application of any party.

24. Powers to relax. – The Appellate Tribunal shall have power to relax any provision of these rules with respect to any class or category of cases.

25. Salary, Allowances, and other Terms and Conditions of Service of Chairperson and Members: The Salary, Allowances, and other Terms and Conditions of Service of Chairperson and Members shall be in the manner as may be prescribed by the Central Government in exercise of the powers provided under section 414 of the Act.

26. Powers and functions of the Registrar

(1) The Registrar shall have the custody of the records of the Appellate Tribunal and shall exercise such other functions as are assigned to him under these rules or by the Chairperson by a separate order in writing.

(2) The official seal shall be kept in the custody of the Registrar.

(3) Subject to any general or special direction by the Chairperson, the seal of the Appellate Tribunal shall not be affixed to any order, summons or other process have under the authority in writing from the Registrar.

(4) The seal of the Appellate Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

27. Additional powers and duties of Registrar

In addition to the powers conferred elsewhere in these rules, the Registrar shall have the following powers and duties subject to any general or special orders of the Chairperson, namely,

(1) to receive all appeals and other documents;

(2) to decide all questions arising out of the scrutiny of the appeals before they are registered;

(3) to require any appeal presented to the Appellate Tribunal to be amended in accordance with the rules;

(4) subject to the directions of the Chairperson to fix date of hearing of the appeals or other proceeding and issue notices thereof;

(5) direct any formal amendment of records;

(6) to order grant of copies of documents to parties to proceedings;

(7) to grant leave to inspect the record of Appellate Tribunal

(8) dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisements in the newspapers;

(9) to requisition records from the custody of any court or other authority.

28. Powers, Functions and duties of the Secretary of the Appellate Tribunal:

The post of the Secretary shall be at the Appellate Tribunal, New Delhi. He shall discharge his duties, function and exercise his powers under the general superintendence and control of the Chairperson of the Appellate Tribunal. His main function is to co-ordinate with the Tribunal and to act as a liaison officer between the Appellate Tribunal and the concerned Ministry having administrative jurisdiction only over the Appellate Tribunal. He shall in addition to the work assigned to him by the Chairperson from time to time, have the following functions, duties and powers:

In charge of the long term projects and initiatives of the Appellate Tribunal;

Supervise the divisions and sections of the Human Resources;

Budgetary allocations and Financial Management;

Court operations;

Court facilities and Administrative Services;

Supervise the Public Grievances Mechanism;

Coordinate with the Authorized Representatives and other Professionals;

ICT and Technology facilities;

Communication services;

Public affairs and Public safety provisions in the Appellate Tribunal Premises;

Supervision of Library and Court Research;

Attend and execute such directions given by the Chairperson and discharge such other functions and duties as may be assigned to him.

29. Seal and emblem-

The official seal and the emblem of the Tribunal shall be such as the Central Government may specify.

30. Fee. –

(1) Every memorandum of appeal shall be accompanied with a fee as specified in Appendix-B and such fee may be remitted in the form of demand draft drawn in favour of Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi.

(2) The Tribunal may, to advance the cause of justice and in suitable cases, waive payment of fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be, by an order for reasons to be recorded.

(3) The Central Government may review the fee after every three years and the fee may be amended by a notification.

31. Application of National Company Law Tribunal Rule 2013 in certain cases:-

Save as otherwise provided in these rules, the Appellate Tribunal may follow the rules of National Company Law Tribunal Rule 2013 in the circumstances in which these rules do not specifically provide or elaborate in relation to any matter.

****

DRAFT FROMS I.R.O DRAFT RULES FOR CHAPTER XXVII OF THE COMPANIES ACT, 2013

FORM NO. 1

[See rule 6(8)]

[HEADING AS IN FORM NO. 4]

Columns required for electronic filing of Original Application / Reply / Rejoinder / Interlocutory Application or filing of additional documents under directions of the Bench

********(Note: This form shall be subject to such modifications if any as may be made by the Service Provider for Electronic filing in consultation with the MCA)**

S.No.	Particulars				
1.	State whether the filing is for Original Application (OA) or Reply or Rejoinder or IA	**O.A.**	**REPLY**	**REJOINDER**	**DOCUMENT**
		Click whichever is applicable			
2.	If filing is for Reply / Rejoinder/IA or some other additional documents, kindly state the OA Number.				
3.	If OA, please provide the following details	**(In case of providing DIN or CIN number, you may prefill the columns**			
	DIN / CIN NUMBER				
	Name of the Petitioner				
	Father's Name.				
	Date of Birth				
	e-mail id				
	Mobile Number				
4.	**Details of Respondents**				
	DIN / CIN NUMBER				
	Name of the Petitioner				
	Father's Name.				
	Date of Birth				
	e-mail id				
	Mobile Number				
5.	**ATTACHMENTS**				
6.	**DECLARATION**				
7.	**DATE OF SIGNING**				
8.	**DIGITAL SIGNATURE**				
9.	**APPROVAL OF DOCUMENT BY REGISTRAR**				

*****

FORM No. 2

[See rule 6(8)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

_________________ **BENCH :** ________________

NOTICE OF ADMISSION

Date: ____________________

From: ________________________________*(Insert name of party filing the Admission)*

To : The Registrar,
NCLT (_________ Bench).

...Applicant.

- Vs-

...Respondent.

The Party named above requests that the Tribunal grant the following relief:

____
(Insert the relief or order sought)

In terms of ____
(Insert the section of the Act, or the Rules/Regulation, that provides for the order or relief sought)

For the following reasons:

(Insert a concise statement of the circumstances, and the particulars of the request)

____

____

____

____

____

____

____

In support of this Application, the applicant has attached an affidavit setting out the facts on which the Applicant relies.

Name and Title of person signing on behalf of Applicant:

Authorised Signature and Address:

____

____

Tel No.
Fax No.
e-mail:

This form is prescribed under Rule ____ under NCLT Rules, 2013.

For rehabilitation	:	**Rehab. Petition No.**
For TransferredMatters from the	:	**Transfer Petition (CLB/BIFR/AIFR/HHC) No. (CP.No.OR ....)**
CLB/BIFR/AIFR/HHC		
For Other matters	:	**Company Petition No.**

*****

FORM No. 3

[See rule 6(8)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

___________________ BENCH AT: __________________

NOTICE OF MOTION

Date: ______________________

From: ___________________________________*(Insert name of party filing the Motion)*

To : The National Company Law Tribunal

Concerning:

(Name and file number of matter being considered by the National Company Law Tribunal)

Name:____
File No:____

The Party named above requests that the Tribunal grant the following relief:
____
(Insert the relief or order sought)

In terms of ____
(Insert the section of the Act, or the Rules/Regulation, that provides for the order or relief sought)

For the following reasons:

(Insert a concise statement of the circumstances, and the particulars of the request)

____

____

____

____

____

____

____

In support of this Application, the applicant has attached an affidavit setting out the facts on which the Applicant relies.

Name and Title of person signing on behalf of Applicant:

Authorised Signature and Address:

____

____

Tel No.
Fax No.
e-mail:

This form is prescribed under Rule ____ under NCLT Rules, 2013.

For rehabilitation	:	**Rehab. Petition No.**
For TransferredMatters from the	:	**Transfer Petition (CLB/BIFR/AIFR/HC) No. (CP.No.OR ....)**
CLB/BIFR/AIFR/HHC		
For Other matters	:	**Company Petition No.**

FORM NO.3 A
Interlocutory application
[Pursuant to rule 9]
[HEADING AS IN FORM NO. 4]

Misc. Application No. .... of ....

In

Original Petition No. ....of ....

XXX ... Applicant (Applicant/ Respondent)

Versus

YYY ...Respondent (Respondent / Applicant)

1. Brief facts leading to the application:

2. Interim order prayed of:

Signature of the Applicant
(Signature of the Authorized Representative)

Place:
Date:

Form No. 3 B
Individual Notice of petition/ application to creditors, members, etc.
[Pursuant to rule 118.]

To
....
....
....

(sub: Notice of petition/ application filed under section .... of Companies Act, 2013)

Take notice that a petition/ application under section .... of the Companies Act, 2013 dated.......... was presented by.......... (name of the company) before .... Bench, National Company Law Tribunal, for .... (state the purpose of the petition).

The said petition/ application has been accepted and is fixed for hearing before the Bench on ....

If you desire to support or oppose the petition at the hearing, you should give notice thereof in writing to the undersigned so as to reach him/ it not later than .... days before the date fixed for the hearing of the petition, and appear at the hearing in person or by your authorized representative.

Where such person seeks to oppose the petition/ application, the grounds of opposition or a copy of the affidavit shall be furnished with such notice.

A copy of the petition/ application will be furnished by the undersigned to any person requiring the same on payment of the prescribed charges for the same.

Signature:
Name of the petitioner/ applicant
(& his authorized representative, if any)

Date:
Place:

FORM No. 4

[See rule 6 (7)]

General Heading for Proceedings

Before the National Company Law Tribunal,
Bench, at ________

In the mater of the Companies Act, 2013
And
In the matter of .... Ltd: (Give the name of the Company)

*Notes: (1) Where the company is being wound-up, the words 'in liquidation' should be inserted in brackets after the name of the company.

(2) If the application or petition or appeal is under relevant Act which should be set out in the cause title along with the Companies Act, 2013.

*****

FORM No. 5

[See rule 13]

[HEADING AS IN FORM NO.4]
Company Application No .... of 20 .....
'in Company Petition No .... of 20 .....
*I.A. No...............................of.20 ....
Name and Description ....
Applicant(s).

versus

.... Respondents].

Notice

[Under .... :]
Let all parties concerned attend the sitting Member (s) in Tribunal Room No.__ or Chamber of Honourable Mr/Mrs/Ms______________ on ...... (day), the .... day of .... 20___, at. .... o'clock in the .... noon on the hearing of an application by the applicant(s) above-named, for an order that:

(Here set out the relief sought)

*Dated this ..... day 01 ..... 20 ...Registrar/ Authorised Representative or the Applicants*s) .

This Notice was taken out by Shri .... Authorised Representative for the applicant(s) and will be supported by the affidavit(s) of... ....

To Respondent(s)/ Opposite Party

[Here insert the section of the Act or other provision of law under which the application is made.] *Omit if not applicable

*****

FORM No. 6
(GENERAL)

[See rule 6 (8)]

[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20.

General Affidavit Verifying Petition

I, ..., son of ... . , aged .... residing at... , do solemnly affirm and say as follows:-

1. I am a director/secretary/ ..../of... Ltd., the petitioner in the above matter [' and am duly authorised by the said petitioner to make this affidavit on its behalf.]
Note: This paragraph is to be included in cases where the petitioner is the Company.

2. The statements made in paragraphs .... of the petition herein now shown to me are true to my knowledge, and the statements made in paragraphs ..... are based on information, and I believe them to be true.

Solemnly affirmed, etc.

-sd

VERIFICATION

'Note: 1. To be included when the affidavit is sworn to by any person other than a director, agent or secretary or other officer of the company.

****Note:- 2. This form can be used for any other general application moved before the Tribunal with such alteration or modification in the title and the content.**

*****

FORM No. 7

[See rule 15(3)]

[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20 .

Affidavit by way evidence

I, A.B., son of... .... , aged .... residing at... , do solemnly affirm and say as follows:-

1. I am a director/secretary/ ..../of... Ltd., the petitioner in the above matter [' and am duly authorised by the said petitioner to make this affidavit on its behalf.]

Note: This paragraph is to be included in cases where the petitioner is the Company.

2. The statements made in deposition in forthcoming paragraphs herein now are true to my knowledge, and believe them to be true.

Solemnly affirmed, etc.

'Note: To be included when the affidavit is sworn to by any person other than a director, agent or secretary or other officer of the company.

*****

FORM NO.8

[See rule 45]

[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20. **Application for Execution of Order under clause (3) of section 424 of the Act with reference to a Decree (Order 21, R.11.)**

I................., holder of an order passed by the National Company Law Tribunal, hereby apply for execution of the order under the

Order 21 Rule 11 of the Code of Civil Procedure, 1908 read with clause (3) of section 424 of the Act herein below set	**Names of Parties**	**Date of Order**	**Whether any appeal preferred from order**	**Payment or adjustment made, if any**	**Previous application, if any, with date and result**	**Amount with interest due upon the order or other relief granted**	**Amount of costs, if any, awarded**	**Against whom to be executed**

forth: **No. of Company Application/Company Petition/ Company Appeal/ Misc. Company Application**						**thereby together with particulars of any cross order/decree. Amount of costs, if any, awarded**		
1	2	3	4	5	6	7	8	9
___ of 20.......	A.B. - Applicant/ Petitioner/ Appellant C.D. - Respondant	Month. __, 20........	No	None	Application No dated _______ 2013 Result:	Rs. one lac principal interest at 6 per cent per annum, from the date of decree till payment	Rs. A. p. As awarded in Order No.___ Subsequently Incurred 8. 2.0	Against the defendant C.D.

Mode in which the assistance of the Tribunal is required:

When attachment as sale of movable property is sought: I pray that the total amount of Rs. .... (together with interest on the principal sum up to date of payment) and the costs of taking out this execution, be realised by attachment and sale of defendant's movable property as per annexed list and paid to me. When attachment and sale of immovable property is sought: I pray that the total amount of Rs. .... (together with interest on the principal sum up to date of payment) and the costs of taking out this execution be realised by the attachment and sale of defendant's immovable property specified at the foot of this application and paid to me.

I...........declare that what is stated herein is true to the best of my knowledge and belief.

Signed, Order /decree-holder.
Dated the.......... day of........20..............

[When attachment and sale of immovable property is sought.]
Description and Specification of Property

The undivided one-third share of the judgment-debtor in a house situated in the village of, value Rs. ...., and bounded as follows:--
East by G's house; west by H's house; south by public road; north by private lane and J's house.

I.................declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed, Order/ decree-holder.

****(Note: The similar form may also be used for transfer of order to any other Tribunal having territorial jurisdiction to entertain the order of the tribunal as a decree under Code of Civil Procedure, 1908 read with section 424 of the Act)**

FORM NO. 9

[General Form for all purposes if no specific form is prescribed under these rules and Forms]

[HEADING AS IN FORM NO. 4]

Company Petition No .... of 20 ....

Details of Application/ Petition:
Particulars of the applicant/ petitioner/ appellant:
i. Name of the **applicant/ petitioner/ appellant**
ii. Address of registered office of the **applicant/ petitioner/ appellant**
iii. Address of service of all notices
iv. Telephone/Fax Number and e-mail address, if any

Particulars of the respondent(s):
v. Name of the respondent(s).
vi. Office address of the respondent(s).
vii. Address of respondent(s) for service of all notices.
viii. Telephone/Fax Number and e-mail address, if any.

Application /Petition/ Appeal in the form of affidavit under Section ___ of the Act for .... I, ... solemnly affirm and say as follows:

1. I am the Managing Director or Chairman of the Board of Directors/a director/........... Of the above named company, and I have been a ________ of the company since.......... 201..... [the capacity in which the deponent swears to the affidavit should be set out.]

2. I have read the petition now shown to me and state that the statements made in paragraph 1 to __ thereof are correct and true to my knowledge.

4. **Facts of the order against which appeal or review is filed**:

5. **The facts of the case are given below:** (give here a concise statement of facts and other grounds in a chronological order, each paragraph containing as neatly as possible as separate issue, fact or otherwise).

6. **Jurisdiction of the Tribunal:** The **applicant/ petitioner/ appellant** declares that the matter of application/petition/ appeal falls within the jurisdiction of the Tribunal.

7. **Limitation.-** The **applicant/ petitioner/ appellant** further declares that the application/petition/ appeal is within the limitation as prescribed in the provision of section ___ read with section 433 of the Act.

8. **Matter not pending with any other Tribunal etc.** - The **applicant/ petitioner/appellant** further declares that the matter regarding with this **application/petition/appeal** has been made is not pending before any Tribunal of law or any other authority or any other Tribunal.

9. **Particulars in respect of the fee paid in terms of the Appendix-B of these rules.-**

Amount of fees
Name of the Bank on which Demand Draft is drawn or Online Payment is made
Demand draft number

10. **Details of Index.-** An index containing the details of the documents to be relied upon is enclosed.

11. **List of enclosures.-**

12. **It is therefore prayed that directions may please be given:**

Relief(s) sought.- In view of the facts mentioned in paragraph 5 above, the **applicant/petitioner/ appellant** prays r the following relief(s) (Specify below the relief(s) sought explained the grounds for relief(s) and the legal ovisions, if any, relied upon).

Interim order, if prayed for.- Pending final decision of **application/petition/ appeal, the applicant/ petitioner/ ppellant** prays for the following interim relief: (Give here the nature of the interim relief prayed for with reasons)

Dated this .... day of .... 20.........

(Signature of the applicant/ petitioner/ appellant)

Solemnly affirmed before me at _____ on this (month) .... day of .... 20 ....

(signature)

FORM NO.10

(See rule 55)

APPLICATION FOR THE REGISTRATION OF A CLERK OF AUTHORISED REPRESENTATIVE UNDER THE RULES

1. Name of Authorised Representative referred under these rules on whose behalf the clerk is to be registered.

2. Particulars of the clerk to be registered.

i) Full name (in capitals)

ii) Address with contact no. and valid email address:

iii) Father's name

iv) Age and date of birth

v) Place of birth

vi) Nationality

vii) Educational qualifications

viii) Particulars of previ ous employment, if any

ix) Proof of Identity

I, ... (clerk above named), do hereby affirm that the particulars relating to me are true.

3. Whether the authorized Representative has a clerk already registered on his behalf and whether the clerk sought to be registered is in lieu of or in addition to the clerk already registered.

4. Whether the clerk sought to be registered is already registered as a clerk of any other Authorised Representative and if so the name of such practitioner.

I, ... (Authorised Representative) and Practicing as .... Bearing Registration No .... on the rolls of .... At ...., having office at (address with contact no and valid email) .... and residing at .... certify that the particulars given above are true to the best of my information and belief and that I am aware of any facts that any unethical and immoral attitude or behavior or character of the above clerk if found would lead to cancellation of the registration of the said ....(name) as a clerk without any notice.

Date:

Signature of Authorised Representative

To
The Registrar of the Tribunal
....
....
....

FORM NO. 11
(See rule 133)

APPLICATION BY DEPOSITOR UNDER SECTION 73 (4) OR 76(2) OR BY COMPANY U/S 74(2) OR BY DEBENTURE HOLDER OR DEBENTURE TRUSTEE UNDER SECTION 71 (10) OF THE ACT OR SECTION 45QA OF THE RESERVE BANK OF INDIA ACT, 1934
(*delete whichever is not applicable)

[HEADING AS IN FORM NO. 4]
Company Petition No .... of 20 ....

IN THE MATTER OF THE SECTION 73 (4) OR 76 (2) OR 74(2) OR SECTION 71 (10) OF THE ACT OR SECTION 45QA OF THE RESERVE BANK OF INDIA ACT, 1934

AND

IN THE MATTER OF (State the name of the Depositor or Company or Debenture Holder or Debenture Trustee-applicant)

AND

IN THE MATTER OF .... LIMITED (State the name of the company)
(i) Name and address of the Depositor/ Debenture holder-applicant:
(ii) Name of the company and address of its Registered Office:
(iii) Name(s) of Depositor (s)/ company Debenture holder/ Debenture Trustee (s) with full address:
(iv) Amount of Deposits\:
(v) Fixed Deposit / Debenture Receipt No. & date (Photostat copy to be enclosed):
(vi) Terms and Conditions of Deposit/ Debenture as also date of Maturity of Deposit:
(vii) Details of payment made, by the company, if any:
(viii) Actual amount due as on date of application (Principal/interest)
(ix) Details of correspondence, if any, made between the company and the Depositor (copy of correspondence to be enclosed):
(x) Any other particular (s) as may be considered relevant:
The Depositor/ Company/Debenture holder/Debenture Trustee -applicant, therefore, prays:-

(i) that the company, abovenamed be directed to make repayment of the aforesaid Deposit(s)/ Debenture (s) along with interest due thereon in accordance with the Terms and Conditions of the Deposit/ Debenture:
(ii) that such further orders be passed as the Tribunal deem fit in the circumstances of the case.

(Signature of the Depositor/ Company/Debenture holder/Debenture trustee-applicant)

Place: ....
Date: ....

Which ever not applicable may be deleted.

*****

FORM NO. 12

[See rule 69]

Memorandum of appearance

To

The Registrar,
National Company Law Tribunal, ... Bench,

In the matter of .... Petitioner.
V.
.... Respondent

(C.P. NO. ....of 20 ....)

Sir,

Please take notice that I, AB, Company Secretary in practice/ practising Chartered Accountant/ practising Cost Accountant, duly authorised to enter appearance, and do hereby enter appearance, on behalf of .... petitioner/ opposite party/ Registrar/ Regional Director/ Government of .... in the above-mentioned petition.

*A copy of the resolution passed by the Board of Directors authorising me to enter appearance and to act for every purpose connected with the proceedings for the said party is enclosed, duly signed by me for identification.

Yours sincerely,

Dated .... day of ....
Address:
Enclosure: as aforesaid

Tele No.:

*****

FORM NO. 13

[See Rule 111]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... - Petitioner

Petition under section 66 of the Act, for Confirming the Reduction of Share Capital

The petition of .... Ltd. the petitioner herein showeth :

1. The above named company, the petitioner herein (hereinafter 'called the company') was registered on the .... day of .... 20...... under the provisions of the Companies Act, 2013,] as a company limited by shares/limited by guarantee with a share capital.

2. The Registered Office of the company is situate at ....

3. The objects of the company are ....

4. **The Authorised share capital of the company**

5. Paid Up Share Capital

6. Shortly after its incorporation, the company commenced business, and it has since been and is still carrying on business.

7. By article(s) .... of the articles of association of the company, it is provided that the company may, from time to time, by special resolution reduce its share capital in any manner permitted by law.

8. [Set out reasons for reduction.]

9. By a special resolution of the company, duly passed in accordance with section 114 of the Act, at a general meeting thereof, held after due notice as provided in the Act on the .... day of ....20...... it was resolved :-

[Here set out the resolution]

11. [Here set out whether the reduction of share capital does or does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up share capital, and whether the company has creditors or any class of them entitled to object.]

12. The form of the minute proposed to be registered under section 66 (5) of the Act, is as follows :--

[Here set out the proposed minute]

13. The petitioner therefore prays :-

(1) That the reduction of share capital resolved on by the special resolution set out in paragraph 8 above be confirmed;

(2) That to this end all inquiries and directions necessary and proper be made and given;

(3) That the proposed minute be approved; and,

(4) That such further or other orders be made in the premises as to the Tribunal shall deem fit.

Dated..............

Petitioner.

Authorised Representative for petitioner.

*****

FORM NO. 14

[See Rule 111]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

A.B. & Co. Ltd.--Petitioner

Application No. .... of 20.....

Summons for Directions

Let all parties concerned attend the sitting Member (s) in Tribunal Room No.__ or Chamber of Honourable Mr/Mrs/Ms_______________ on …... (day), the .... day of .... 20___, at. .... o'clock in the .... noon on the hearing of an application by the applicant(s) above-named Company [that a day may be fixed for the hearing of the petition above-named for the reduction of the company's share capital presented on the .... day of .... 20...... and that directions may be given as to the advertisement of the petition and that the certificate of creditors be dispensed with] (or) [for directions as to the proceedings to be taken for settling a list of creditors of the said company entitled to object to the proposed reduction, and the notices and advertisements to be issued, etc.]

Dated this .... day of .... 20.....

Registrar/Authorised Representative for Petitioner

This summons was taken out by Shri .... Authorised Representative for the company and will be supported by the affidavit of...............

[Note:- It is not intended to serve this summons on any person.]

*****

FORM NO. 15

[See Rule 113]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

..................-Petitioner

Application No................ of 20.....

Before the Hon'ble Member(s)...............

Dated ....

Orders on Summons for Directions

Upon the application of .... Ltd., the petitioner in the petition abovementioned by summons dated the .... day of .... 20..... and upon hearing Shri .... Authorised Representative for the petitioner, and upon reading the said petition filed on the .... day of............... 20..... and the affidavit of............... filed on .... 20...... and the several exhibits therein referred to, and it appearing that the special resolution for the reduction of the share capital of the said company referred to in the said petition has been duly passed ;

[It is ordered that section 66 shall not apply to (here set out the class or classes of creditors to whom section 66 is not to apply) and]. It is ordered that an inquiry be made to ascertain the debts, claims and liabilities of or affecting the said company as on the .... day of ....20...... [other than the debts, claims or liabilities in respect of (here set out any debts, claims or liabilities which have been excluded from the provisions of section 66 by the earlier part of the order)].

And it is ordered that a list of creditors of the said company to whom the inquiry extends be made out as on the said .... day of ....20...... and that the said list and an affidavit verifying the same, be filed in the office of the Registrar within .... days hereof.

And it is further ordered that notice, in the prescribed Form, of the presentation of the petition and of the list of creditors be inserted in .... (here set out the newspapers) on or before the .... day of.............. 20.....

And it is further ordered that any creditor whose name does not appear in the list, but who claims to be entitled to be entered therein, or who claims to be a creditor for a larger amount than that for which he is entered on such list, shall, on or before the .... day of .... 20..... , send in his name and address and the particulars of his debt or claim and the name and address of his advocate, if any, to the advocate of the company.

And it is further ordered that notice of the day fixed as last aforementioned be given by registered post to every creditor whose name appears in such list.

And it is further ordered that a statement signed and verified by the Advocate for the company, as to the result of the notices, and an affidav it by a competent Officer or Officers of the company as required by Rule 120.of the NCLT Rules, 2013 be filed on or before the .... day of............... 20.....

Dated this .... day of .... 20.....

(By the Tribunal)
Registrar.

*****

FORM NO. 16
[See Rule 114]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.– Petitioner

Application No................ of 20.....

List of creditors as on the .... day of............... 20...

Serial No.	**Name, address and description of creditor**	**Nature of debt or claim**	**Amount or estimated value of the debt or claim**

(Sd.)..................

Director, Secretary or other competent Officer of the Company.

The above list of creditors marked 'A' was produced and shown to E.F., and is the same list of creditors referred to in his affidavit shown before me this .... day of............... 20.....
X,Y,

Commissioner for Oaths/ or any Authorised Officer hereto.

*****

FORM NO. 17

[See Rule 115]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

...............Ltd.-- Petitioner

Application No................ of 20.....

Affidavit Verifying List of Creditors

I s/o .... etc., solemnly affirm and say as follows :--

1. I am the .... of the said company.

2. The writing now produced and shown to me contains a list of the creditors of, and persons having claims upon, the said company on the .... day of .... 20..... (the date fixed by the order made in this matter, dated ....) together with their respective addresses and the nature and amount of their debts or claims and such list is to the best of my knowledge, information and belief a true and accurate list of such creditors and persons having claims on the day aforesaid, and in cases of debts payable on a contingency or not ascertained, or any claims admissible to proof in a winding-up, the values thereof as stated in such list, are, in my belief, just and proper estimates of the values of such debts and claims respectively.

3. To the best of my knowledge and belief there was not at the date aforesaid, any debt, claim or liability which, if such date were the commencement of the winding-up of the said company, would be admissible in proof against the said company, other than and except the debts, claims and liabilities set forth in the said list and the debts, claims and liabilities to which the enquiry directed by the order made herein and dated the .... day of............... 20....,, does not extend.

4. I am enabled to make the above statements from facts within my knowledge as the .... of the said company, and from information derived upon investigation of the affairs and the books, documents and papers of the said company.

Solemnly affirmed, etc.

Deponent.

*****

FORM NO. 18

[See Rule 117]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.--Petitioner

Notice to Creditors

To

....

....

You are requested to take notice that a petition was presented to the Tribunal at .... , on the .... day of .... 20....….. for confirming the reduction of the share capital of the above company from Rs. .... to Rs. .... and that by an order, dated .... 20......, an inquiry was directed as to the debts, claims and liabilities of the said company as on the .... day of .... 20...., [other than the debts, claims and liabilities in respect of (here set out the nature of the debts, claims or liabilities to which the inquiry does not extend)]. In the list of persons admitted by the company to have been on the said .... day of .... 20..... creditors of me company for debts, claims and liabilities to which such inquiry extends, your name is entered as a creditor for Rs. .... (the nature of the debt or claim to be stated).

If you claim in respect of any such debt, claim or liability to have been, on the last mentioned day, a creditor to a larger amount than is stated above, you must, on or before the .... day of .... 20...... send your name and address, the particulars of your claim and the name and address of your Authorised Representative , if any, to the undersigned at .... In default of your so doing the above entry in the list of creditors will, in all the proceedings under the above petition to reduce the share capital of the company, be treated as correct.

Dated ....

Authorised Representative for the Company,

*****

FORM NO. 19

[See Rule 118]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.–Petitioner

Notice/Advertisement of Petition/ Application and List of Creditors

Notice is hereby given that a petition for confirming the reduction of the share capital of the above company from Rs. .... to Rs. ....was on the...............day of .... 20...... presented to the Tribunal at .... and by order, dated the .... day of ....20.....,an inquiry was directed as to the debts, claims and liabilities of the said company as on the..................... day of............... 20......'[other than debts, claims and liabilities in respect of (here set out the nature of the debts, claims and liabilities to which the inquiry does not extend.)]. A list of the persons admitted by the company to have been creditors thereof on the said date for debts, claims and liabilities to which the inquiry extends, may be inspected at the offices of thecompany at............... or at the office of Shri.............................. Authorised Representative for the company, at any time during usual business hours, on payment of a fee of Rs. 50 (fifty . Any person who claims to have been on the said .... day of ....20...... and still to be a creditor of the company in respect of any such debt, claim or liability, and who is not entered on the said list and claims to be so entered, must, on or before the .... day of .... 20..... send in his name and address, and the particulars of his claim and the name and address of his authorised representative (if any) to the undersigned at............... or, in default thereof, he will be precluded from objecting to the proposed reduction of share capital.

Dated this .... day of .... 20...

A.B.

Authorised Representative for the Company.

*****

FORM NO. 20

[See Rule 119]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd.--Petitioner

Affidavit for Proof of Service

I............................... (name, etc.), do solemnly affirm and say as follows :--

1. I did on the .... day of .... 20...... served a true copy of the notice now produced and shown to me and marked 'B' upon each of the respective persons whose names, addresses and descriptions appear in the second column of the list of creditors marked 'A', referred to in the affidavit of .... filed on the............... day of .... 20...... by sending such copies by registered post to their respective addresses appearing in the said list, and the postal receipts and the acknowledgments [including (if any) the covers returned as undelivered] now produced and shown to me and marked 'C' to 'Cn' are the receipts and acknowledgments received from the post office in respect of the said registered letters.

2. A true copy of the notice now produced and shown to me and marked 'D' has been published in the issue(s) of............... (state the newspapers) dated the .... 20..... Solemnly affirmed, etc.

(Sd.).............
Deponent.

*****

FORM NO. 21

[See Rule 120]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. -- Petitioner

Affidavit as to the result of notices issued

I,..................., authorised representative for the company, state as follows:-

1. I have in the list now produced and shown to me and marked 'E' set forth all claims the particulars of which have been sent to me pursuant to the notice referred to as Exhibit 'B' in the affidavit of .... filed on the .... day of .... 20..... by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked 'A' referred to in the affidavit of.............. filed on the .... day of............... 20.....

[(or) No person has sent into me pursuant to the said notice 'B' a claim to be entered on the said list for a larger sum than that in respect of which he is entered in the said list 'A']

2.1 have in the list now produced and shown to me and marked 'F' set forth all claims the particulars of which have been sent in to me pursuant to the notice referred to in paragraph 2 of the affidavit of .... filed on the .... day of .... 20...... by persons whose names do not appear in the list of creditors marked 'A' aforesaid, but who claim to be creditors of the said company as on the .... 20.... and to be entered on the said list.

[(or) No claims have been sent to me pursuant to the notice referred to in paragraph 2 of the affidavit of .... filed on the .... day of .... 20...... by persons not entered on the said list 'A' aforesaid and claiming to be so entered.]

I declare that the statements are true to my knowledge.

(Sd.)
Authorised Representative for the company.

I, ... Managing Director of the said Company, etc., do solemnly affirm and say as follows :–

1. I have in the first part of the-said list marked 'E' (now produced and shown to me) and also in the first part of the list marked 'F'. (now produced and shown to me) respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted in respect of such of the

same debts and claims respectively as are not wholly admitted, and such of the same debts and claims as the company contends are wholly, or as to any and what part thereof, not included in the inquiry in this matter.

2. I have in the second part of the said lists marked 'E' and 'F set forth such of the debts and claims as are wholly disputed by the said company, and such of the same debts and claims as the company contends would, even if admitted, be wholly, or as to any and what part thereof, not included in the inquiry in this matter.

In the said lists marked 'E' and 'F' are distinguished such of the debts the full amounts whereas arc proposed to be appropriated in such manner as the Member or Bench shall direct.

The Exhibits now produced and shown to me and marked 'G' to 'Gn' are the receipts and the written consents of such of the persons as have been paid by the said company, or have consented to the proposed reduction of the share capital.

This said company is willing to set apart and appropriate the full amount of the debts, claims and liabilities specified in the said list 'A' and in the said Exhibits 'E' and 'F' in respect of which consents have not been obtained or which the said company has not paid or discharged.

All rents, rates, taxes, salaries, wages and other incidental expenses current on the said .... day of............... 20..... and since become due have been paid and discharged by the said company.

Solemnly affirmed, etc.

(Sd.)

EXHIBIT. E

List of debts' and claims of which the particulars have been sent in by persons claiming to be creditors of the said company for larger amount than are stated in the list of creditors made out by the company.

First Part

Debts and claims wholly or partly admitted by the company

Name, address and description of creditor	Particulars of debt or claim	Total amount claimed	Amount admitted by the company to be within the enquiry and to be owing to creditor	Debts proposed to be appropriated in full although disputed	Amounts admitted by the company to be owing but which it is contended are not within the enquiry
(1)	(2)	(3)	(4)	(5)	(6)

Second Part

Debts and claims wholly disputed by the company

Name, address and description of Claimant	Particulars of claim	Total Amount claimed	Debts proposed to be appropriated in full although disputed	Amount which even if admitted it is contended would of claimant claimed although disputed not be within the enquiry.
(1)	(2)	(3)	(4)	(5)

EXHIBIT. F

List of debts and claims, the particulars of which have been sent in by persons claiming to be creditors of the company and to be entered on the list of creditors made out by the company.

Parts 1 and 2 as in Exhibit 'E'

The above lists marked 'E' and 'F' were shown to .... and are the same as referred to in their respective statement and affidavit.

Solemnly affirmed before me this.............. day of.............. 20.....

(Sd.)
Commissioner for Oaths/Any Authroised Officer

*****

FORM NO. 22

[See Rule 121]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

...................Ltd. --Petitioner

Notice to Creditors to come in and prove

To

....

....

You are hereby required to come in and prove [(or), establish your title to be entered in the list of creditors in this matter in respect of] the debt claimed by you against the above company, by filing your' affidavit and serving a copy thereof on Shri .... Authorised Representative for the company on or before the .... day of .... 20...... and you are to attend in person or by Authorised Representative before the Member(s) Sri .... sitting in Chambers or in the Court Hall No .... on the .. .. day of .... 20 ..... at .... o'clock in the .... noon, being the time appointed for hearing and adjudicating upon the claim, and produce your evidence relating to your claim.

In default of your complying with the above directions, you will [be precluded from objecting to the proposed reduction of the share capital of the company] or [be treated as a creditor for such amount only as is set against your name in the list of creditors in all proceedings relating to the proposed reduction of capital.]

Dated this .... day of............... 20.....

(Sd.)

Authorised Representative for the company

FORM NO. 23

[See Rule 121]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. --Petitioner

Affidavit of Creditor proving debt

I ...., of................ , do solemnly affirm and say as follows :--

1. That the above named company was on the .... day of .... 20...... and still is justly and truly indebted to me in the sum of Rs. .... [here state the consideration for the debt, e.g., for goods sold and delivered by me to the company between .... 20..... and ....20...... as shown by the account produced and shown to me and marked "A", etc. State also the security held, if any, for the debt.

2. I have not, nor has any person by my order, to my knowledge or belief, for my use had or received the sum aforesaid or any part thereof or any manner of satisfaction or security whatever for the same or any part thereof (except the security hereinbefore referred to).

Solemnly affirmed, etc.

(Sd.)

[Note.–Where the affidavit is made by an agent of the creditor, the deponent should state his authority for making the same and his means of knowledge.].

*****

FORM NO. 24

[See Rule 124]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. --Petitioner

Advertisement of Hearing of Petition

Notice is hereby given that a petition presented to the Tribunal at............ on the..............day of..............20........... for confirming the reduction of the share capital of the above company from Rs....................to Rs. .... will be heard before the Tribunal on the.............day of.............20.........

Dated this.............day of............20.........

(Sd.)...............................
Authorised Representative for the company

*****

FORM NO. 25

[See Rule 128]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. –Petitioner

Before the Hon'ble Member (s)...............

Order confirming Reduction of share Capital and Approving Minute

Upon the petition of ....Ltd. presented on the .... day of............... 20.....[upon hearing Shri..............Authorised Representative for the petitioner, and upon reading the said petition and the affidavit in support thereof.............filed the.............day of..............20...............,] and the exhibits therein referred to, the order on the summons made on the .... day of............... 20...... directing an inquiry into the debts and liabilities of the said company, the certificate, dated .... 20...... signed by the ....setting out the result of the settlement of the list of creditors in pursuance of the said inquiry, and upon perusing (here set out the newspapers) containing the notice of the date of hearing of this petition, and upon hearing Shri .... Authorised Representative for the creditor(s) and Shri .... Authorised Representative for the shareholders [or, (where there is no appearance) none of the creditors or shareholders appearing in person or by the Authorised Representative], and the Tribunal being satisfied with respect to every creditor entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured, THIS TRIBUNAL DOTH ORDER:

(1) That the reduction of the share capital of the above company resolved on and effected by the special resolution passed at a general meeting of the said company held on the .... day of .... 20,…., which resolution was in the words and figures following, viz..

[Here set out the resolution]

be and the same is hereby confirmed.

(2) That the minute set forth in the schedule hereto be and is hereby approved.
(3) That a certified copy of this order including the minute as approved be delivered to the Registrar of Companies within .... days from this date.
(4) That notice of the registration by the Registrar of Companies of this order and of the said minute be published within .... days of the registration aforesaid.
[Note.–Where the Tribunal confirms the reduction subject to any terms and conditions, such terms and conditions should be set out, as well as any directions that the Tribunal may think fit to give regarding the use of the words 'and reduced' or the publication of the reasons for reduction, the order being suitably cast in such cases.]

*Dated this .... day of................ 20.....

SCHEDULE
(Here set out the minute)
(By the Tribunal)

Registrar.
*Date of the order to be the date of the approval of the minute.

*****

FORM NO. 26

[See Rule 130]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

.... Ltd. -- Petitioner

Form of Minute

The capital of A.B. & Co. Ltd., is henceforth Rs. .... divided into.......................... shares of Rs. . ... each, reduced from Rs. .... divided into .... shares of Rs. .... each. At the date of the registration of this minute .... shares numbered .... etc., have been issued and are deemed to be fully paid (and the remaining .... shares are unissued).

[Note:– 1. The words 'and reduced' are to be added only where the order so directs.]

If all the shares of a class are not issued, the minute should state the serial numbers of the issued shares. Partly paid shares should also be distinguished by their serial numbers and the amounts paid thereon should be stated. The serial numbers of shares with calls in arrears and of forfeited shares should also be stated.]

*****

FORM NO. 27

[See Rule 130]

[HEADING AS IN FORM NO. 4]

Company Petition No................ of 20.....

................Ltd. -- Petitioner

Notice of Registration of Order and Minute

Notice is hereby given that the order of the Tribunal at............... dated the.................... 20...... confirming the reduction of the share capital of the above named company from Rs. .... divided into .... shares of Rs. .... each, to Rs. .... divided into ....shares of Rs. .... each, and the minute approved by the Tribunal showing, with respect to the share capital of the above company as altered, the several particulars required by the above Act were registered by the Registrar of Companies on the .... day of ....20.....

Dated ....

(Sd.)...............

Authorised Representative for the company.

*****

DRAFT RULES UNDER THE COMPANIES ACT, 2013

Chapter XXVIII

(Rules in respect of Clause 442: MEDIATION AND CONCILIATION PANEL)

28.1. Panel of mediators/conciliators.

(a) For the purposes of sub-section (1) of section 442 of the Act, any body, institute or association which has been authorized in this behalf by the Central Government shall prepare a panel of experts (to be called as Mediation and Conciliation Panel) willing and eligible to be appointed as mediators/conciliators and such Mediation and Conciliation Panel shall be placed on the website of Ministry of Corporate Affairs or any other website as may be notified by the Central Government.

(b) Any person who intends to get empanelled as mediator/conciliator possessing the requisite qualifications shall make an application addressed to the body, institute or association notified by the Central Government in **Form No. 28.1.** Such body, institute or association shall carry out due diligence before including the name of any person on the Mediation and Conciliation Panel. The body, institute or association may lay down regulations with the approval of the Central Government for considering the name of a person for inclusion in the Mediation and Conciliation Panel and for the purpose charge entrance and annual fee as may be determined by it.

28.2. Qualifications of persons to be empanelled as experts under Rule 28.1.

The following persons may be enlisted as experts in the panel of mediators/conciliators under Rule 28.1, namely:

(a) Retired Judges of the Supreme Court of India;

(b) Retired Judges of the High Courts;

(c) Retired District & Sessions Judges;

(d) Retired Members or Registrar of National Tribunal constituted under any law for the time being in force;

(e) Retired Indian Corporate Law Service Officers or Indian Legal Service Officers with the equivalent pay scale of Joint Secretary to the Government of India or more

(f) Advocates with at least fifteen years standing at any Bar Council;

(g) Professionals with at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary;

(h) Retired Members and Presidents of State Consumer Forums; and

(i) Persons who are experts in mediation/conciliation to be decided by the Central Government from time to time.

28.3. Disqualifications of persons.

(1) The following persons shall be deemed to be disqualified for being empanelled as mediators/conciliators:

(a) any person who is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending;

(b) any person:

(i) against whom criminal charges involving moral turpitude are framed by a court and are pending; or

(ii) who has been convicted by a criminal court or any other court for any offence involving moral turpitude.

(c) any person against whom disciplinary proceedings have been initiated by the appropriate disciplinary authority which have resulted in a punishment.

(2) The following persons shall be deemed to be disqualified for being appointed as mediators/conciliators:

(a) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them; and

(b) any authorised representative who has appeared or is appearing for any of the parties in the suit or in other proceedings(s).

28.4. Deletion from panel.

The body, institute or association may delete any person in the panel of mediators/conciliators by recording reasons in writing and after giving him an opportunity of being heard.

28.5. Preference.

The Central Government, Tribunal or the Appellate Tribunal shall, while nominating any person from the panel of mediators/conciliators referred to in Rule 28.1, consider his suitability for resolving the dispute(s) involved and shall give preference to those who have proven record of successful mediation/conciliation or who have special qualification or experience in the relevant field.

28.6. Duty of mediator/conciliator to disclose certain facts.

(a) When a person is approached in connection with his proposed appointment as mediator/conciliator, he shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality.

(b) Every mediator/conciliator shall from the time of his appointment and throughout continuance of the mediation/conciliation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in sub-rule (a).

28.7. Withdrawal of appointment.

Upon information furnished by the mediator/conciliator under rule 28.6, or upon any other information received from the parties or other persons, if the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, where the proceeding is pending, or the body, institute or association notified by the Central Government, is satisfied that such information has raised a reasonable doubt as to the mediator/conciliator's independence or impartiality, it may withdraw the nomination and replace him by another mediator/conciliator.

Provided that the mediator/conciliator may, himself, offer to withdraw from the proceedings and request the relevant authority or parties to appoint another mediator/conciliator.

28.8. Procedure of mediation/conciliation.

For the purposes of sub-section (5) of section 442 of the Act,

(a) The parties may agree on the procedure to be followed by the mediator/conciliator in the conduct of the mediation/conciliation proceedings.

(b) Where the parties do not agree on any particular procedure to be followed by the mediator/conciliator, the mediator/conciliator shall follow the procedure hereinafter mentioned, namely:

(i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation/conciliation session, where all parties have to be present;

(ii) he shall hold the mediation/conciliation at the place decided by the Central Government, the Tribunal or the Appellate Tribunal or the place where the parties and the mediator/conciliator jointly agree;

(iii) he may conduct joint or separate meetings with the parties;

(iv) each party shall, ten days before a session, provide to the mediator/conciliator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator/conciliator to understand the issue; such memorandum shall also be mutually exchanged between the parties.However, in suitable/appropriate cases, the period of ten days may be curtailed at the discretion of the mediator/conciliator;

(v) each party shall furnish to the mediator/conciliator such other information as may be required by him in connection with the issues to be resolved.

(c) Where there is more than one mediator/conciliator, the mediator/conciliator nominated by each party may first concur with the party that agreed to nominate him and thereafter interact with the other mediator/conciliator, with a view to resolve the dispute(s).

28.9. Mediator/conciliator not bound by Indian Evidence Act, 1872 or Code of Civil Procedure, 1908.

The mediator/conciliator shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872, but shall be guided by the principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute(s).

28.10. Representation of parties.

The parties shall ordinarily be present personally or through authorised attorney at the sessions or meetings notified by the mediator/conciliator. However, they may be represented by the counsel with permission of the mediator/conciliator in such sessions or meetings.

The party not residing in India may, with the permission of the mediator/conciliator, be represented by his or her authorised representative at the sessions or meetings.

28.11. Consequences of non-attendance of parties at sessions or meetings on due dates.

If a party fails to attend a session or a meeting notified by the mediator/ conciliator on account of deliberate or willful act, the other party or the mediator/conciliator can apply to the Central Government or the Tribunal or the

Appellate Tribunal for issuance of necessary direction in the matter having regard to the facts and circumstances of the case.

28.12. Administrative assistance.

In order to facilitate the conduct of mediation/conciliation proceedings, the parties, or the mediator/conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

28.13. Offer of settlement by parties.

(a) Any party to the application may, ‘without prejudice’, offer a settlement to the other party at any stage of the proceedings, with a notice to the mediator/conciliator.

(b) Any party to the application may make a, ‘with prejudice’ offer, to the other party at any stage of the proceedings, with a notice to the mediator/conciliator.

28.14. Role of mediator/conciliator.

The mediator/conciliator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute(s), emphasizing that it is the responsibility of the parties to take decision which affect them. He shall not impose any terms of settlement on the parties. However, if both the parties consent, he may impose such terms and conditions on the parties for early settlement of the dispute.

28.15. Parties alone responsible for taking decision.

The parties shall be made to understand that the mediator/conciliator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator/conciliator give any assurance that the mediation/conciliation will result in a settlement. The mediator/conciliator shall not impose any decision on the parties.

28.16. Time limit for completion of mediation/conciliation.

On the expiry of ninety days from the date fixed for the first appearance of the parties before the mediator/conciliator, the mediation/conciliation shall stand terminated, unless the Central Government or the Tribunal or the Appellate Tribunal, which referred the matter, either suo motu, or upon request by any of the parties, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

28.17. Parties to act in good faith.

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute (s), if possible.

28.18. Confidentiality, disclosure and inadmissibility of information.

(a) When a mediator/conciliator receives factual information concerning the dispute(s) from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate:

Provided that when a party gives information to the mediator/conciliator subject to a specific condition that it be kept confidential, the mediator/conciliator shall not disclose that information to the other party.

(b) Receipt or perusal, or preparation of records, reports or other documents by the mediator/conciliator, while serving in that capacity shall be confidential and the mediator/conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation/conciliation before the Central Government orthe Tribunal or the Appellate Tribunal or any other authority or any person or group of persons.

(c) Parties shall maintain confidentiality in respect of events that transpired during the mediation/conciliation and shall not rely on or introduce the said information in other proceedings as to:

(i) views expressed by a party in the course of the mediation/conciliation proceedings;

(ii) documents obtained during the mediation/conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator/conciliator;

(iii) proposals made or views expressed by the mediator or conciliator;

(iv) admission made by a party in the course of mediation/conciliation proceedings;

(v) the fact that a party had or had not indicated willingness to accept a proposal.

(d) There shall be no audio or video recording of the mediation/conciliation proceedings.

(e) No statement of parties or the witnesses shall be recorded by the mediator/conciliator.

28.19. Privacy.

The Mediation/conciliation sessions or meetings would be conducted in privacy where the persons as mentioned in Rule 28.1 shall be entitled to represent parties. However, other persons may attend only with the permission of the parties and with the consent of the mediator/conciliator.

28.20. Immunity.

No mediator/conciliator shall be held liable for anything bonafide done or omitted to be done by him during the mediation/conciliation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear before the Central Government or the Tribunal or the Appellate Tribunal to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation/conciliation proceedings.

28.21. Communication between mediator/conciliator and the Central Government or the Tribunal or the Appellate Tribunal.

(a) In order to preserve the confidence of parties in the Central Government or the Tribunal or the Appellate Tribunal and the neutrality of the mediator/conciliator, there should be no communication between the mediator/conciliator and the Central Government or the Tribunal or the Appellate Tribunal except as stated in sub-rules (b) and (c) of this Rule.

(b) If any communication between the mediator/conciliator and the Central Government or the Tribunal or the Appellate Tribunal is necessary, it shall be in writing and copies of the same shall be given to the parties or the authorised representative.

(c) Communication between the mediator/conciliator and the Central Government or the Tribunal or the Appellate Tribunal shall be limited to communication by the mediator/conciliator:

(i) with the Central Government or the Tribunal or the Appellate Tribunal about the failure of the party to attend;

(ii) with the Central Government or the Tribunal or the Appellate Tribunal about the consent of the parties;

(iii) regarding his assessment that the case is not suited for settlement through the mediation/conciliation;

(iv) that the parties have settled the dispute(s).

28.22. Settlement Agreement.

(a) Where an agreement is reached between the parties in regard to all the issues in the suit or proceeding or some of the issues, the same shall be reduced to writing and signed by the parties. If any counsel has represented the parties, the conciliator/mediator may also obtain his signature on the settlement agreement.

(b) The agreement of the parties so signed shall be submitted to the mediator/conciliator who shall, with a covering letter signed by him, forward the same to the Central Government or the Tribunal or the Appellate Tribunal.

(c) Where no agreement is arrived at between the parties, before the time limit stated in Rule 28.16 or where, the mediator/conciliator is of the view that no settlement is possible, he shall report the same to the Central Government or the Tribunal or the Appellate Tribunal in writing.

28.23. The Central Government or the Tribunal or the Appellate Tribunal to fix a date for recording settlement and passing decree.

(a) The Central Government or the Tribunal or the Appellate Tribunal shall fix a date of hearing normally within fourteen days from the date of receipt of the report of the mediator or conciliator under rule 28.22. On such date of hearing, if the Central Government or the Tribunal or the Appellate Tribunal is satisfied that the parties have settled their dispute(s), it shall pass a decree in accordance with terms thereof.

(b) If the settlement dispose of only certain issues arising in the suit or proceeding, on the basis of which any decree is passed as stated in sub-rule (a), the Central Government or the Tribunal or the Appellate Tribunal shall proceed further to decide remaining issues.

28.24. Fee of mediator/conciliator and costs.

(a) At the time of referring the dispute(s) to the mediation/conciliation, the Central Government or the Tribunal or the Appellate Tribunal may, fix the fee of the mediator/conciliator.

(b) As far as possible, a consolidated sum may be fixed rather than for each session or meeting.

(c) Where the Tribunal has nominated or appointed mediators or conciliators under sub-rule (b) of Rule 28.1, the Tribunal shall fix the fee payable to the mediators/conciliators, which shall be shared equally by the two sets of parties.,

(d) The expense of the mediation/conciliation including the fee of the mediator/conciliator, costs of administrative assistance, and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Tribunal.

(e) Each party shall bear the costs for production of witnesses on his side including experts, or for production of documents.

(f) The mediator/conciliator may, before the commencement of the mediation/conciliation, direct the parties to deposit equal sums, 100% of the probable costs of the mediation/conciliation.

(g) If any party or parties do not pay the amount referred to sub-rule (f), the Central Government, the Tribunal or the Appellate Tribunal, shall, on the application of the mediator/conciliator, or any party, issue appropriate directions to the concerned parties.

(h) If the expense of the mediation/conciliation including fee, is not paid by the parties, the Central Government, the Tribunal or the Appellate Tribunal, shall, on the application of the mediator/conciliator or the parties, direct the concerned parties to pay, and if they do not pay, the Tribunal shall recover the said amounts as if there was a decree for the said amount.

28.25. Ethics to be followed by mediator/conciliator.

The mediator/conciliator shall:

(a) follow and observe these Rules strictly and with due diligence;

(b) not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator/conciliator;

(c) uphold the integrity and fairness of the mediation/conciliation process;

(d) ensure that the parties involved in the mediation/conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process;

(e) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;

(f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;

(g) avoid, while communicating with the parties, any impropriety or appearance of impropriety;

(h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator/conciliator;

(i) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;

(j) recognize that the mediation/conciliation is based on principles of self-determination by the parties and that the mediation/conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement;

(k) maintain the reasonable expectations of the parties as to confidentiality and refrain from promises or guarantees of results.

28.26. Transitory provisions.

Until a panel of Mediators/Conciliators is prepared by the Central Government or body, institute or association as stated in Rule 28.1, the Central Government or the Tribunal or the Appellate Tribunal may nominate a mediator/conciliator of its choice, if the mediator/conciliator belongs to the various classes of persons referred to in Rule 28.2 and is duly qualified and is not disqualified, taking into account the suitability of the mediator/conciliator.