By: CS Vikram Singh Sirohi

Compromise and Arrangement under Companies Act, 2013

Section 230

Power to make Compromise & Arrangement with Members & Creditors.

Section 231

Power of Tribunal to enforce Compromise or arrangement.

By: CS Vikram Singh Sirohi

Section 230

Power to make Compromise & Arrangement with Members & Creditors

Proposed between

Section 230(1)

Company

and

and

It's Creditors or any Class of them

Or

It's Members or any Class of them

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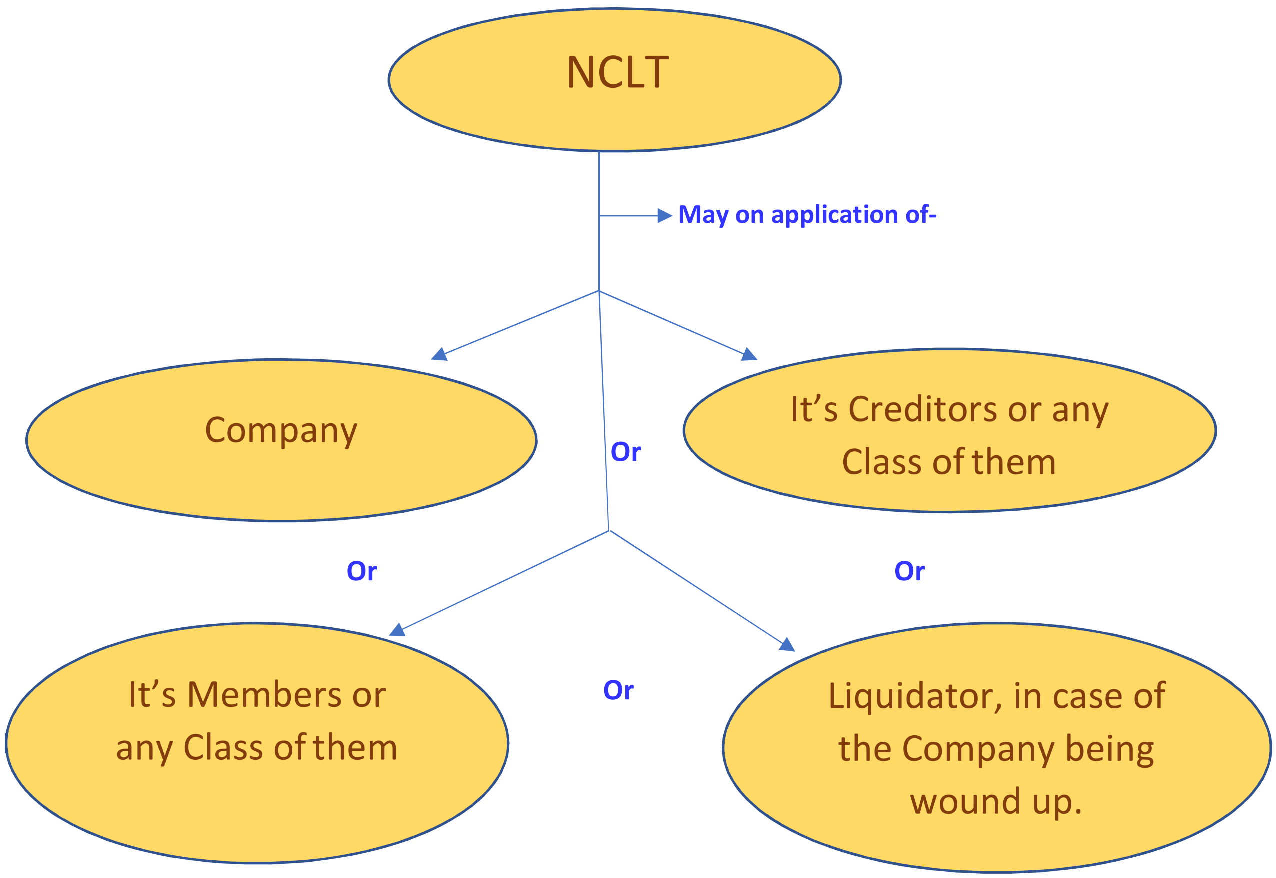
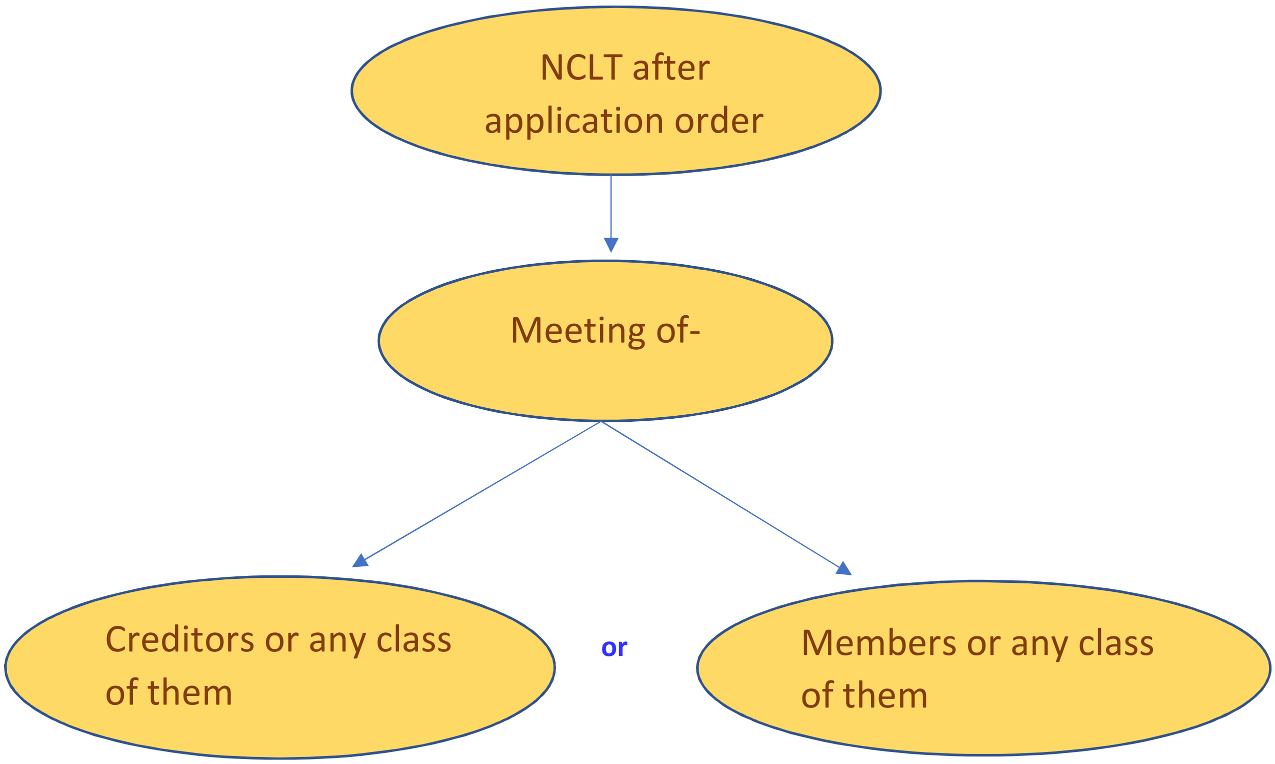
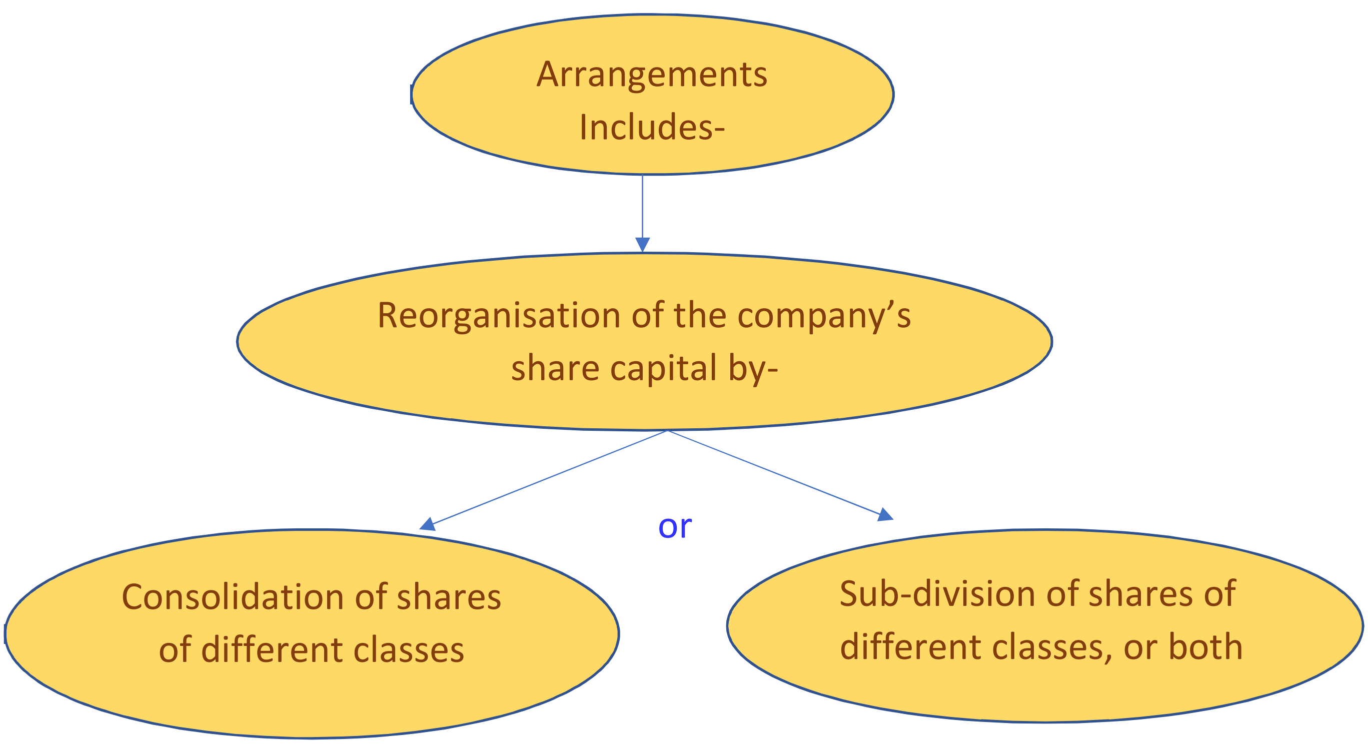
Section 230(1)



Section 230(1)



Explanation:



Section 230(2)

Following disclosures to the NCLT by Affidavit by the person(s) who made application-

- All material facts relating to the Company.
- Reduction of share capital of the Company, if any in include the Scheme.
- Any Scheme of Corporate debt restructuring approved by not less than 75% of the secured creditors in value.

Section 230(3)

Notice of the Meeting ordered by NCLT

- To all Creditors or any class of them
- To all Members or any class of them
- To Debenture holders of the company

At the address registered with the Company

Notice shall accompanied by-

- A statement disclosing the details of compromise and arrangements.
- Copy of valuation report if any,
- Explanations of effects of the valuation report on the stakeholders.

Notice and other documents shall also-

- Placed on the website of the company.
- If company is a listed company, then notice and documents shall be sent to the SEBI & Stock Exchange and also placed on their website.
- Notice shall also be published in the Newspaper.

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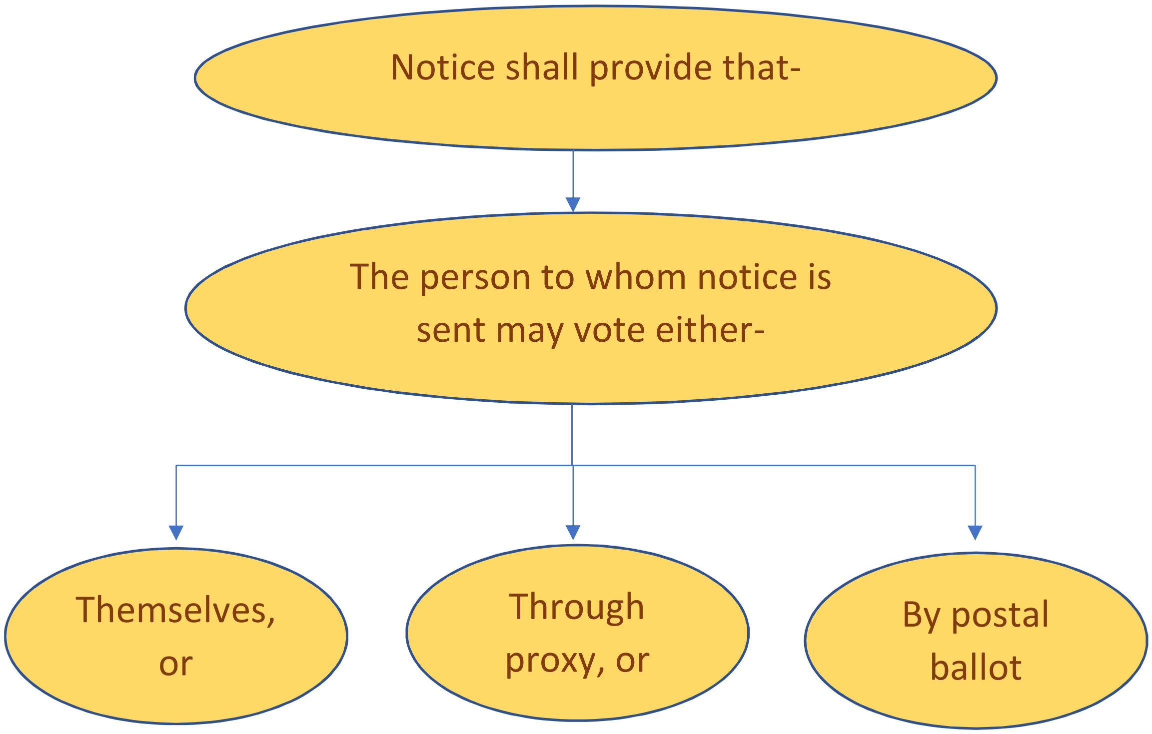
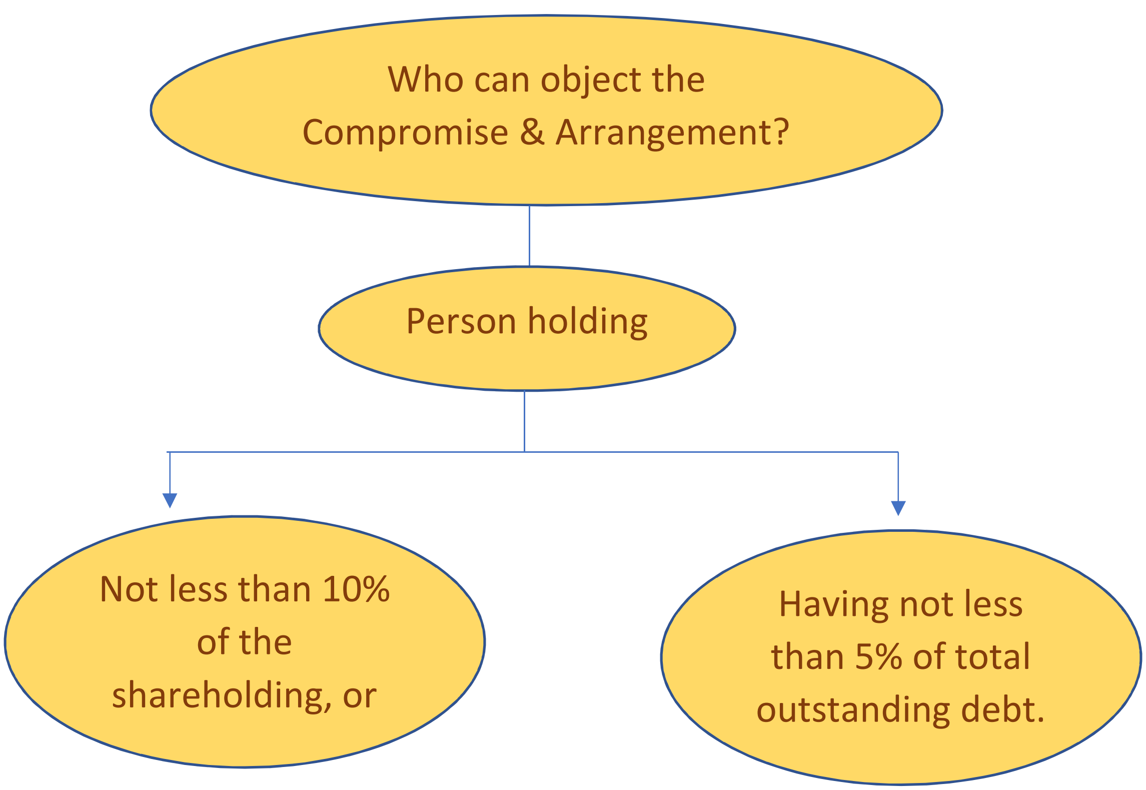
Section 230(4)



*Purpose of the vote- to adoption of compromise & arrangement within one month within one month from the date of receipt of such notice.

Proviso.



Section 230(5)

Notice shall also be sent to-

- The Central Govt.
- The Income tax Authorities,
- The Reserve Bank of India,
- SEBI,
- The Respective stock exchange,
- The official Liquidator,
- The CCI & other authorities.

For their representation within 30 days from the receipt of such notice

Section 230(6)

Binding effect

If the Compromise & Arrangement approved the meeting of Creditors or any class of the or Members or any class of them, the same shall be binding on-

- Company
- Creditors
- Members, or
- Liquidator
- Contributories

Section 230(7)

Matters to be covered under order passed by NCLT

- Right/option to Preference shareholders.
- Protection of any class of creditors.
- Variation of shareholder rights.
- Abatement of proceedings pending before BIFR, if Compromise & Arrangement is approved by the creditors.
- Exit offer to dissenting shareholders.

Role of Section 133

- No Compromise & Arrangement shall be sanctioned by the NCLT unless a certificate by the Auditor has been filed with NCLT to effect that the accounting treatment in the Scheme is in accordance with the provision of Section 133.

Section 230(8)

Order of the Tribunal
(INC-28)

Filed with ROC Within 30 days from the date of passing Order by NCLT.

Section 230(9)

Dispense with calling meeting of Creditors or class

If Creditors or class of Creditors having 90% value, agree and confirm by way of affidavit for the scheme of Compromise & Arrangement.

Section 230(10)

Role of Section 68

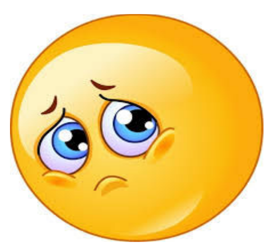
No Compromise & Arrangement in respect of Buy back of securities under this section shall be sanctioned by NCLT, unless the provision of Section 68 has complied.

Section 230(11)

Any compromise & arrangement may include any offer of Takeover

Section 230(12)

Right to aggrieved party



Any aggrieved party may make an application to NCLT in the event of any grievances with respect to takeover offer of the companies other than listed Companies in such manner as may be prescribed and the tribunal may, on application pass such order as may be prescribed.

Section 231

Power of Tribunal (NCLT) to enforce Compromise & Arrangement

Order pass by NCLT under Section 230 then-

- NCLT have power to supervise the Scheme
- NCLT may pass any order, give any directions
- NCLT can order for winding up if company is unable to pay its debts.