

## **"RESTRUCTURING MADE SIMPLE: A DETAILED LOOK AT SECTION 230 OF THE COMPANIES ACT, 2013"**

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### **Introduction:**

Section 230 provides companies with the legal means to propose compromises or arrangements with their creditors or shareholders. This is particularly useful when a company is going through financial difficulties or wants to reorganize its operations. It allows companies to restructure their debts, settle disputes, or make changes to their capital structure with the approval of the National Company Law Tribunal (NCLT).

### **Key Provisions:**

#### **1. Proposal for Compromise or Arrangement:**

- a. A company can propose a plan of compromise or arrangement with its creditors, shareholders, or any specific class of them. This plan could involve reducing debts, changing shareholding structures, or resolving financial challenges.
- b. The company, a creditor, or even a member of the company can approach the Tribunal to seek permission for such a meeting. If the company is being wound up, the liquidator can also make the request.

#### **2. Tribunal's Role:**

- a. The NCLT will decide whether or not to allow the meeting between the company, its creditors, and members to discuss the proposed arrangement.
- b. Before approving, the Tribunal will require full disclosure of the company's financial information through an affidavit. This includes:
  - i. Latest financial position of the company.
  - ii. Audit report.
  - iii. Ongoing investigations, if any.
  - iv. Any planned reduction in share capital.
  - v. Debt restructuring details if involved.

#### **3. Disclosures to Stakeholders:**

- a. A notice must be sent to all stakeholders, including creditors, shareholders, debenture holders, and relevant authorities (such as SEBI and RBI), informing them about the meeting. This notice should include:
  - i. The details of the proposed compromise or arrangement.
  - ii. A valuation report, if applicable.
  - iii. Information on how this will affect creditors, key personnel, promoters, non-promoters, and debenture holders.
  - iv. Impact on any directors or debenture trustees.
  - v. For listed companies, this information must also be sent to stock exchanges and published in newspapers.

#### **4. Voting on the Arrangement:**

- a. Stakeholders can participate in the meeting and cast their vote in person, through a proxy, or by postal ballot.
- b. To pass the proposal, it must be approved by a majority representing at least 75% of the creditors or shareholders by value.

- c. Any objections to the arrangement can only be made by shareholders holding at least 10% of the company's shares or creditors holding at least 5% of the company's total debt.

**5. Binding Nature of Approved Arrangement:**

- a. If the proposal receives the necessary approval and the Tribunal sanctions it, the arrangement becomes legally binding on all parties, including the company, creditors, and members.

**6. Role of Independent Auditors:**

- a. The Tribunal requires an independent auditor to certify that the proposed compromise or arrangement complies with accounting standards. This ensures that the company's financial reporting remains accurate and fair.

**7. Additional Safeguards for Creditors and Shareholders:**

- a. The Tribunal can include various safeguards in its order, especially when there's a change in the rights of creditors or shareholders. This may involve protection for secured and unsecured creditors, or ensuring that preference shareholders are given fair options if their shares are converted into equity.

**8. Meeting Waiver for Certain Creditors:**

- a. If 90% of the creditors (by value) agree to the proposed arrangement and confirm it via an affidavit, the Tribunal can waive the need for a meeting. This fast-tracks the process if there's already strong support for the proposal.

**9. Special Cases:**

- a. Any buy-back of securities or takeover offers included in the arrangement must comply with relevant provisions of the Companies Act and SEBI regulations. For listed companies, this is particularly important as takeover offers must follow SEBI's takeover code.
- b. An aggrieved party can approach the Tribunal if they have concerns regarding a takeover offer involving a non-listed company..

**10. Regulator Involvement:**

- a. Notices of the arrangement must also be sent to the Central Government, SEBI, RBI, Income Tax authorities, and other relevant bodies. These authorities have 30 days to raise objections, if any. If they do not respond, it's assumed that they have no objections to the proposal.

**11. Filing with Registrar:**

- a. Once the Tribunal approves the arrangement, the company must file the order with the Registrar of Companies within 30 days, making it part of the public record.

**Conclusion:**

Section 230 of the Companies Act, 2013, offers companies an organized way to manage financial difficulties, restructuring, or other necessary changes. This section ensures that both the company and its creditors or members can negotiate and reach a fair agreement, all under the supervision of the NCLT. The Tribunal plays a crucial role in ensuring that these arrangements are fair and protect the interests of all stakeholders.