

Section 230 - Power to Compromise or Make Arrangements with Creditors and Members

The Ministry of Corporate Affairs has notified sub-sections 11 and 12 of section 230 of the Companies Act, 2013 (“Act”) on 3rd February 2020. Correspondingly amendments have been made to the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016 (“CAA Rules”) and the National Company Law Tribunal Rules, 2016.

The aforementioned sub-sections provide that arrangements and compromises may include takeover offers, however, in case of listed companies, such takeover offers shall be made in accordance with the Security Exchange Board of India (Substantial Acquisitions and Takeover) Regulations, 2011 (“Takeover Regulations”) where minority shareholders are afforded greater protection including exit at a fair value rate. For unlisted companies minority shareholders aggrieved with a takeover offer are permitted to approach the Hon’ble National Company Law Tribunal (“NCLT”) which may consider such application and pass such orders as it deems fit.

The amendment to the CAA Rules provide the process for application to the Hon’ble NCLT for arrangement / compromise for acquiring remaining number of shares via takeover, by member(s) holding minimum three-fourth (i.e 75%) value of shares of the Company .

Such application shall include: -

1. Valuation Report (should contain the methodology for the valuation of shares which is to be acquired)
2. Details of Bank Account wherein 50% of the total consideration of takeover offer is deposited in the bank at the time of making application.

Shareholders aggrieved with takeover offers in listed companies are therefore not entitled to approach the Hon’ble NCLT under the newly notified sections, such takeovers being solely governed under the Takeover Regulations.

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