

Basics  
of  
CAA

Compromise, Arrangements  
&  
Amalgamation

Chapter  
XV of  
Co Act, 2013

Sec 230  
to  
Sec 240  
Effective from 15<sup>th</sup> Dec,  
2016

Companies (Compromise,  
Arrangements &  
Amalgamation)  
Rules, 2016

CAA — Formbs  
NCLT

\* Note - The 3 terms are not defined under Sec 2 of  
Companies Act, 2013.

Faltu Ka Pyaar - 1

Co, Act,  
1956

HC  
↓  
Advocates

CAA  
matters

Co. Act,  
2013

NCLT  
↓  
Set Up on 1<sup>st</sup> June, 2016  
PCS

# Faltu Ka Pyan - 2

13<sup>th</sup> Dec, 2000 - Lok Sabha  
(+) Rajya Sabha } approved NCLT

BCC  
(Board Council  
of  
Chennai)

Petition

Madras High Court

appealed

Supreme Court

↓  
2012  
↓

NCLT shall be established

Companies Act, 2013 = NCLT [Sec 407 - 434]

# Faltu Ka Pyan - 3

Sec 234 get enforced on 13<sup>th</sup> April, 2017

Co. Act, 1956

Co. Act, 2013

Foreign  
Co.

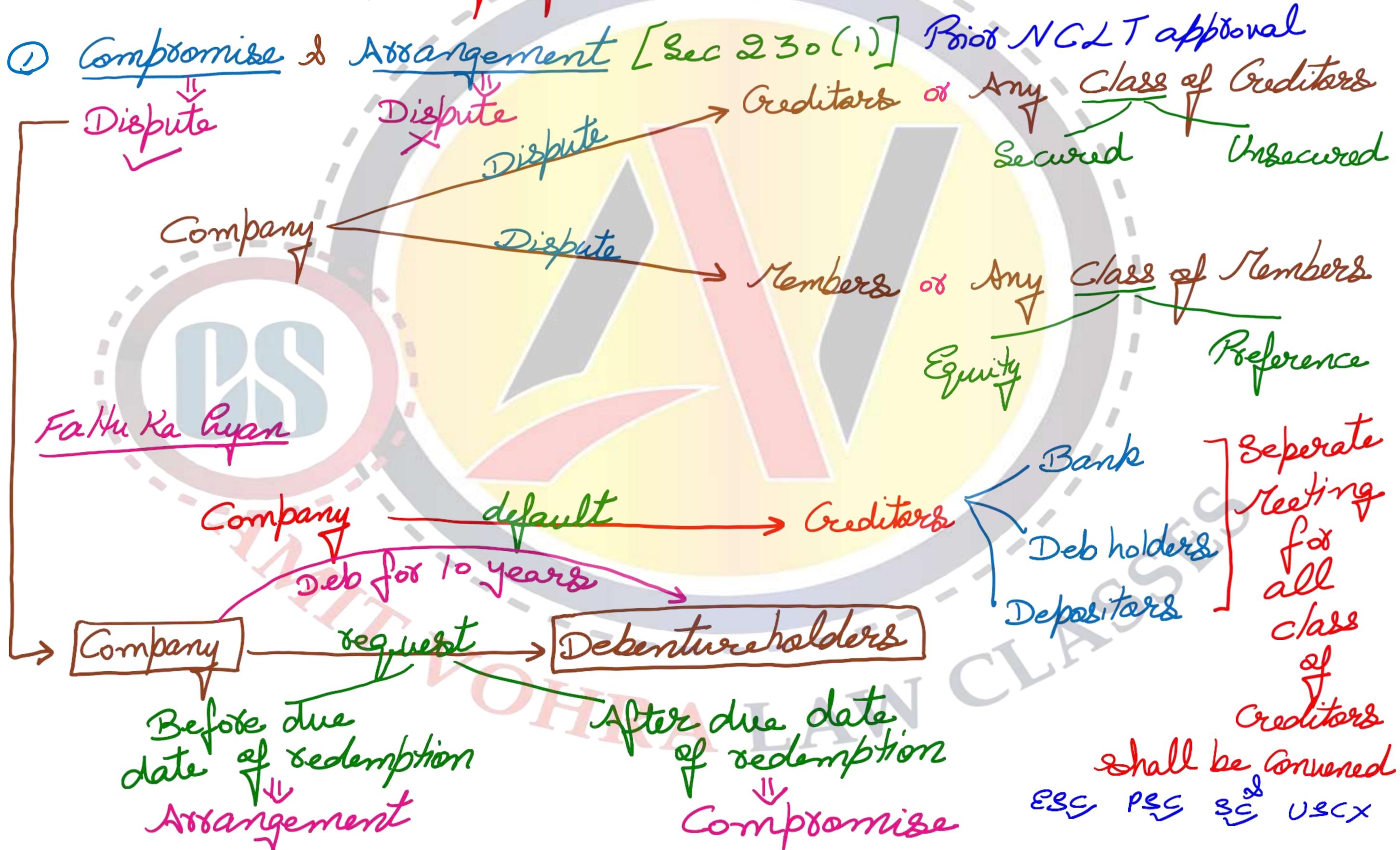
Indian  
Co.

FC

IC

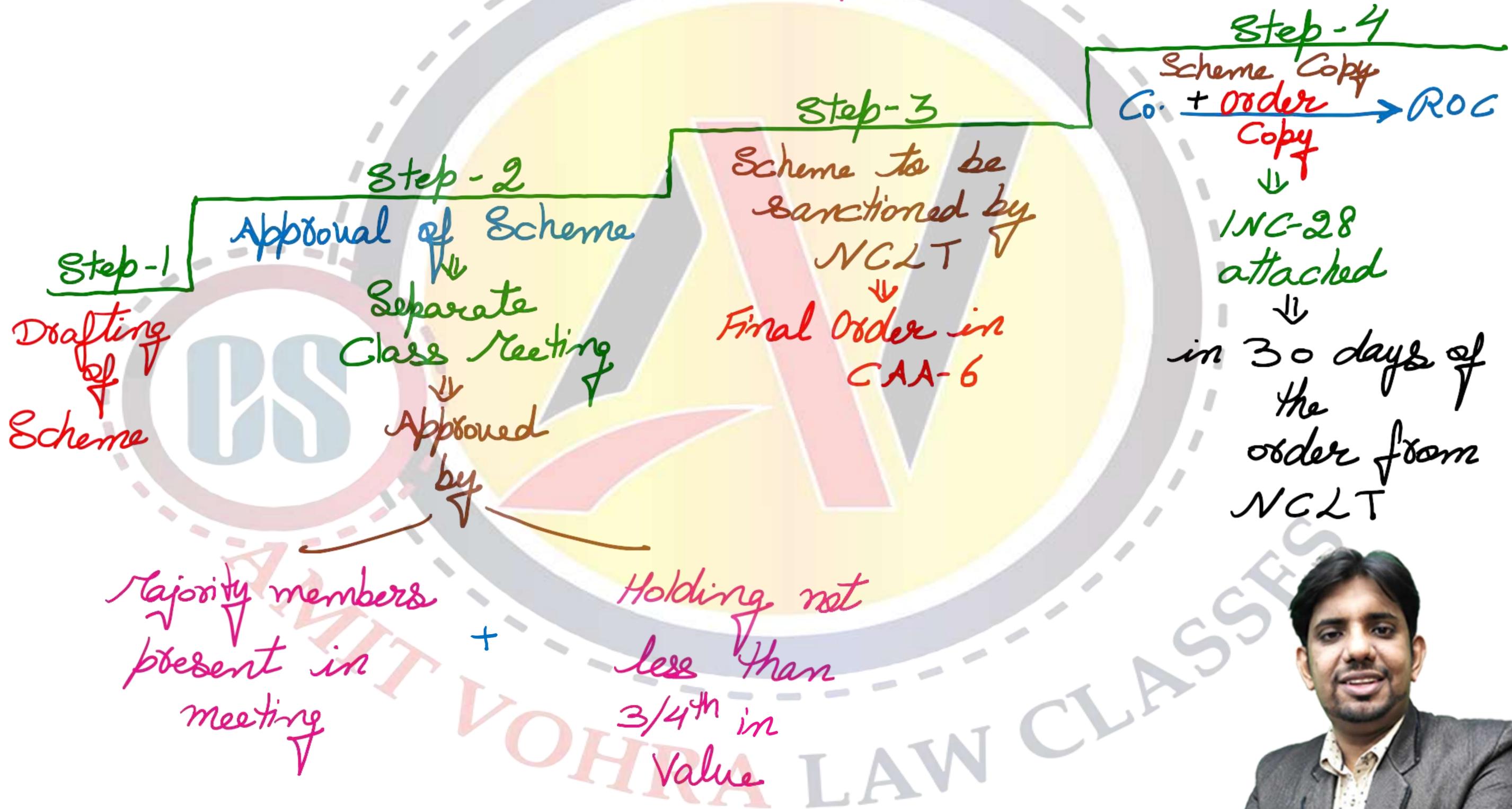
FATF Compliant Nation

# Meaning of Compromise, Arrangements & Amalgamation



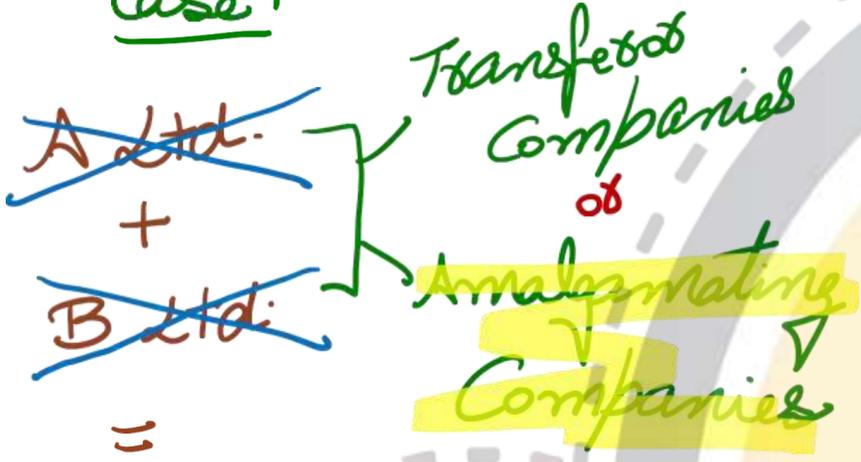
# Sec 230 - Important Steps for Compromise & Arrangements (Glimpse)

Legal Procedure is same

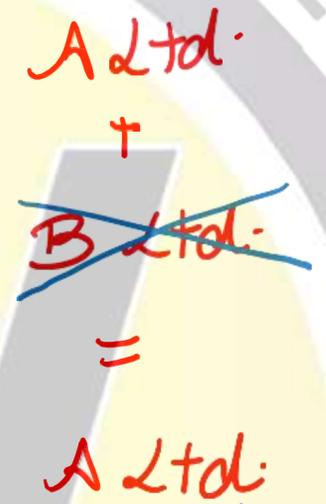


② Meaning of Amalgamation [Sec 232] Prior NCLT approval  
Final Order in CAA-7

Case 1

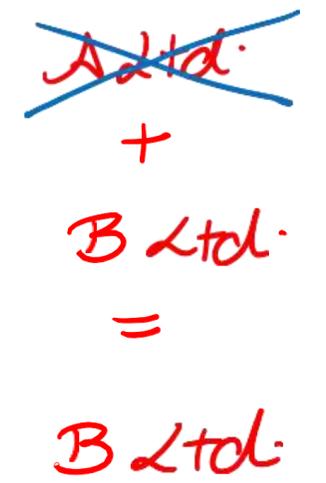


Case 2



Amalgamation by Absorption

Case 2

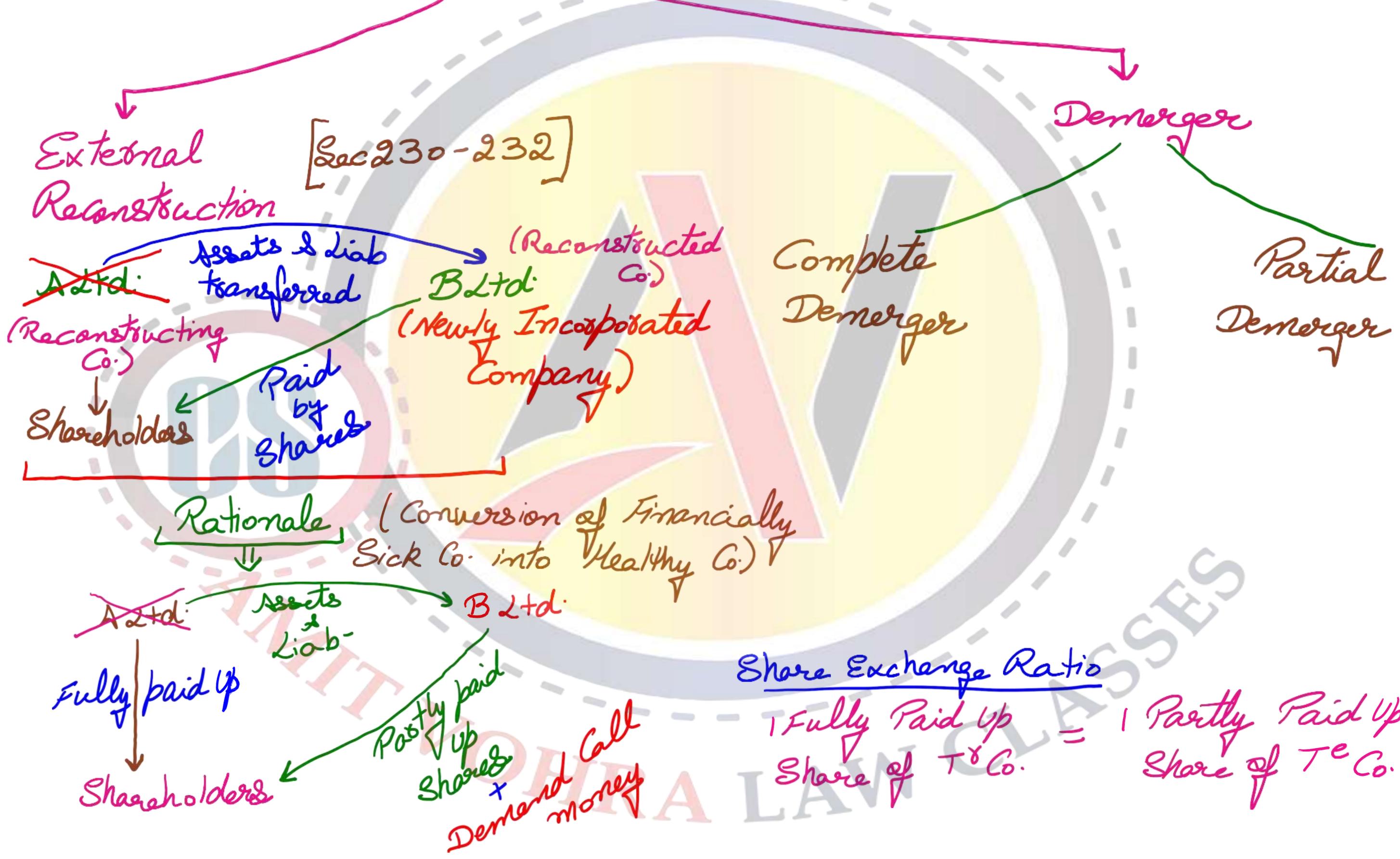


or

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③ Meaning of Reconstruction [Sec 232] Prior NCLT approval  
 Final Order in CAA-7



Imp Note

$$\cancel{A} = B$$

(External Reconstruction)

$$\cancel{A} + B = B$$

(Amalgamation in the form of absorption)

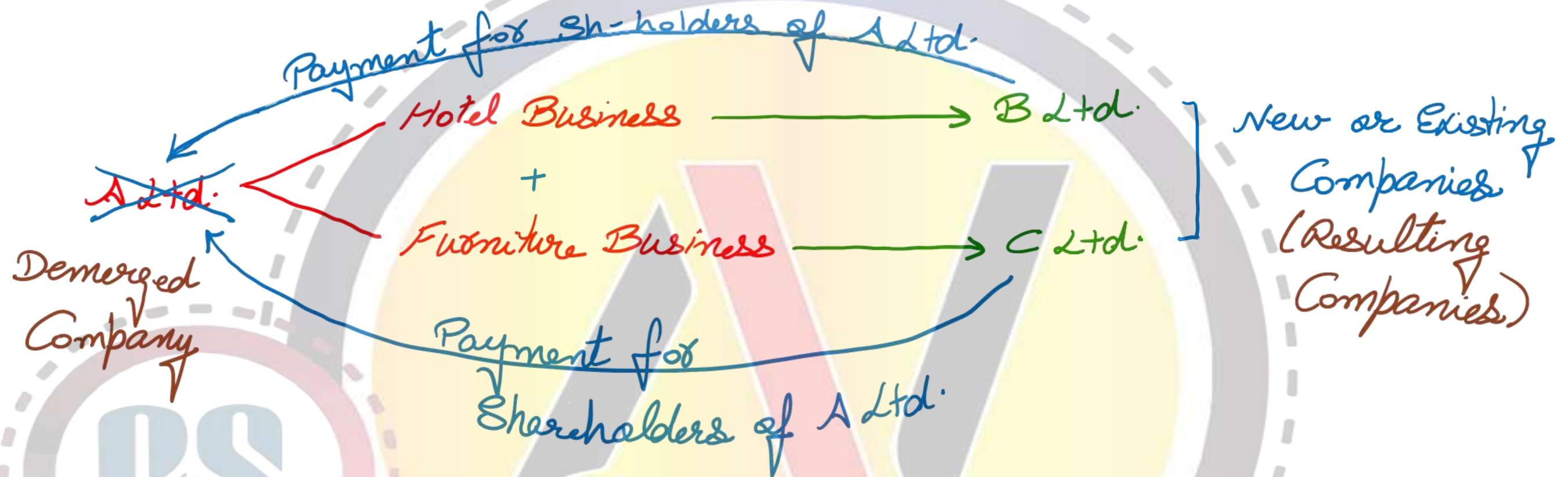


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# Meaning of Complete Demerger [Sec 232] - Prior NCIT Approval

$$X = B + C$$

Final Order in CAA-7

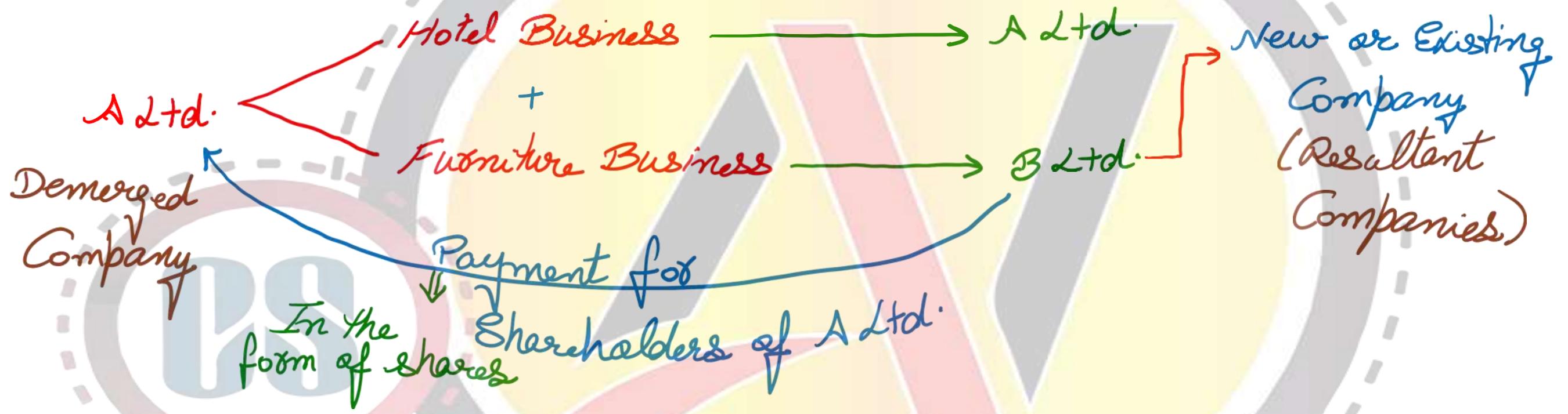


\* Shareholders of A Ltd. = Sh-holders of B Ltd. + Sh-holders of C Ltd.

$$10 \text{ Sh @ } ₹ 10/- \text{ each} = 5 \text{ Sh @ } ₹ 10/- \text{ each} + 5 \text{ Sh @ } ₹ 10/- \text{ each}$$

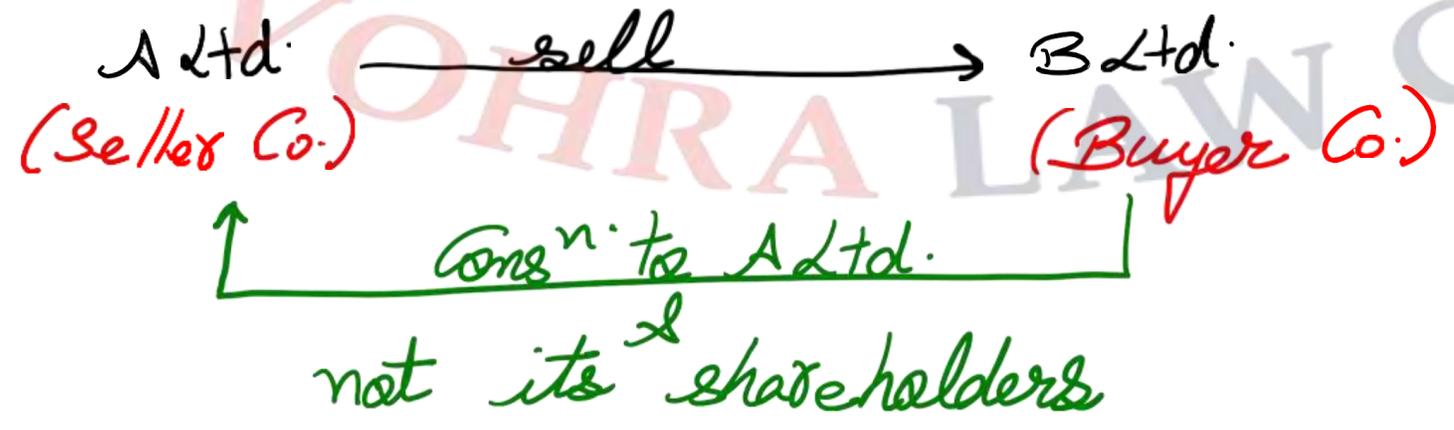
$$10 \text{ Sh @ } ₹ 10/- \text{ each} = 10 \text{ Sh @ } ₹ 5/- \text{ each} + 10 \text{ Sh @ } ₹ 5/- \text{ each}$$

Meaning of Partial Demerger [Sec 232] - Prior NCZT Approval  
 A = A + B  
 Final Order in CAA-7



Point to remember → Sec 180(i)(a) shall not be applicable in the case above.

Sec 180(i)(a) is applicable in case of Stump Sale.



Partial Demerger of L & T Ltd.

L & T Ltd.

Infra  
Development

Heavy  
Engineering

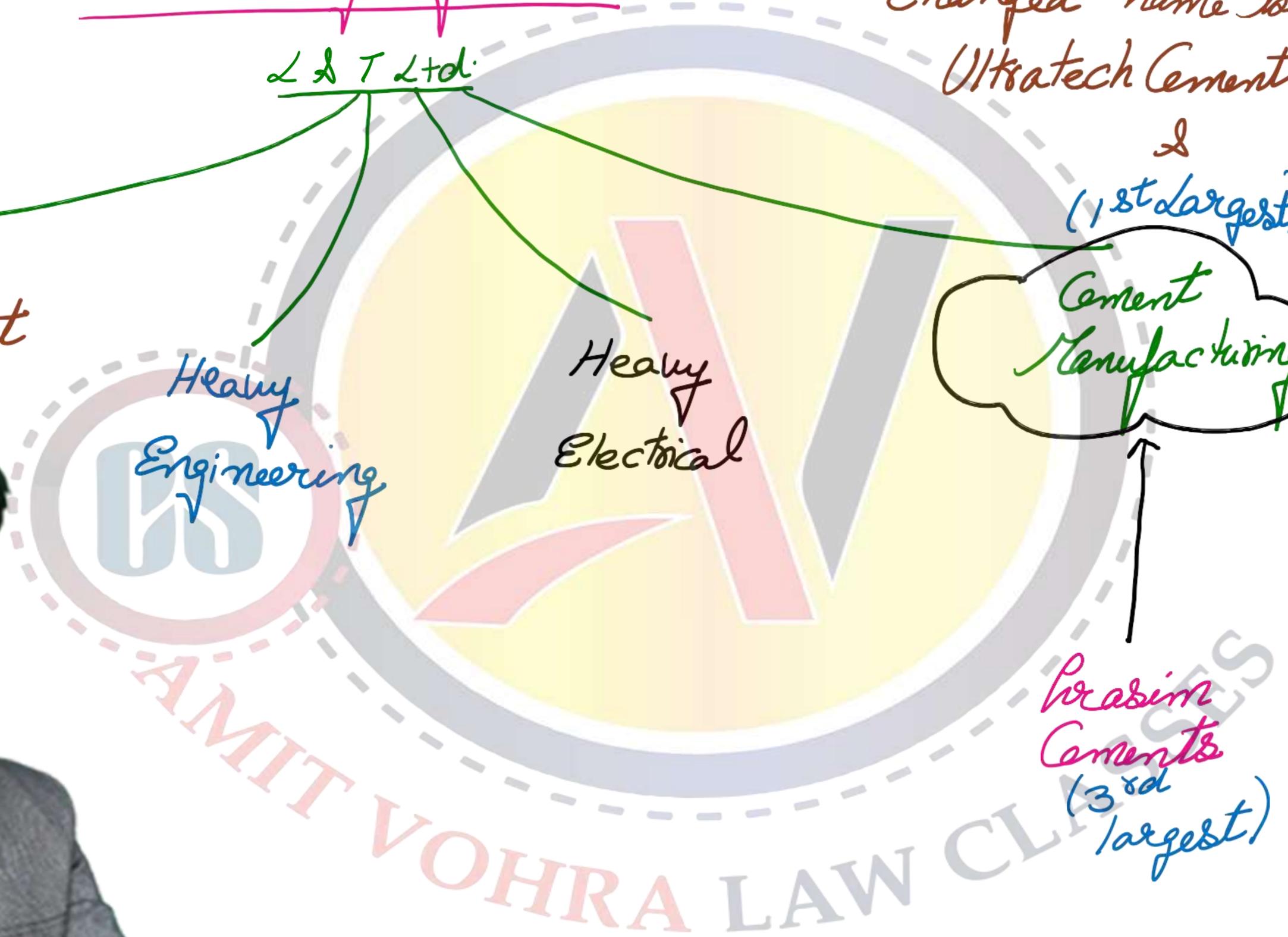
Heavy  
Electrical

Changed name to  
Ultratech Cement

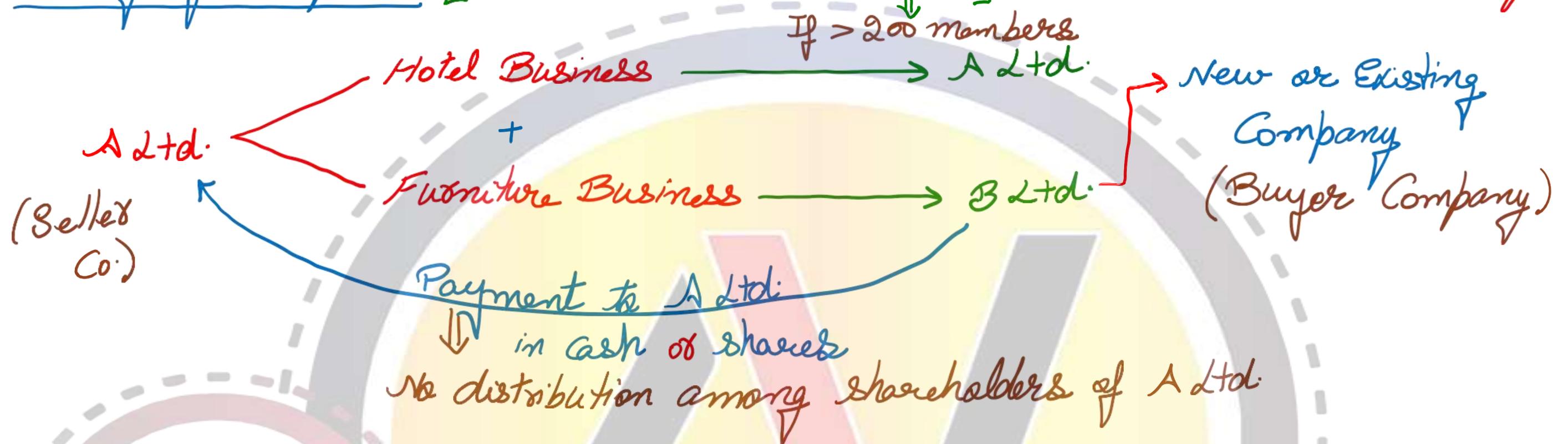
&  
(1<sup>st</sup> largest)

Cement  
Manufacturing

Prasim  
Cements  
(3<sup>rd</sup>  
largest)



Meaning of Stump Sale [Sec 180(1)(a) + Sec 110] = No NCLT approval is reqd.



Point to remember → Sec 180(1)(a) shall be applicable in the case above (if threshold limit has been exceeded).

SS to be authorized by MOA as Ancillary Objects.

Seller Company is liable for the payment of Capital Gain Tax, if earned through stump sale.

Sec 2(42C) of Income Tax Act, 1961

Stump Sale means the transfer of 1 or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets & liabilities in such sales

Sec 180(1) (a)



# Faltu Ka Pyar

Amalgamation v/s  
↓  
2 or more  
Companies  
becoming  
1 Company

External  
Reconstruction

↓  
1 Existing Company  
becoming  
1 New Company

v/s Demerger v/s

↓  
1 Existing Company  
is breaking  
up into  
2 or more  
Companies

Take Over  
↓

Acquirer Co.  
acquiring  
> 5% shares  
of  
Target Company

## Amalgamation v/s Takeover

↓  
 $A + \cancel{B}$   
=  
A

2 Companies are  
required

$A + B$

=  
 $A + B$

↓  
Holding  
Co.

↓  
Subsidiary  
Co.

Can be done by natural  
person, firm, LLP etc. as  
Acquirer



Sec 2

Index of CAA

Sections to be read together but independent of Sec 232.

Sec 230 - Power to compromise or make arrangements with creditors & members.

Sec 231 - Power to Tribunal to enforce compromise or arrangements  
Supervise  $\leftarrow$  modify  $\leftarrow$  w.up

Sec 232 - Merger & Amalgamation of Companies (Reconstruction)

[It is compulsory to follow Sec 230 & 231 while complying Sec 232 because every scheme of M/A/R includes arrangements]

Sec 233 - Amalgamation of Certain Companies without NCLT Approval. (H & WOS)  $\leftarrow$  (Fast Track Merger)  $\rightarrow$  Small Companies u/s 2(85) But CA approval is required.

Sec 234 - Amalgamation of Indian Companies into Foreign Companies  
 $\rightarrow$  [Effective from 13<sup>th</sup> April, 2017]

Takeovers (100% WOS)

Sec 235 - Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.

Sec 236 - Purchase of Minority Shareholders

(Global Trust Bank + Oriental Bank of Commerce) = OBC [Audi Alteram Partem]

Sec 237 - Amalgamation of 2 or more companies on the order of CA in public interest (Aix India + Indian Airlines) = NACIL  
 $\downarrow$  International  $\downarrow$  Domestic

Sec 238 - Registration of offer of schemes involving transfer of shares

Sec 239 - Destruction of books of Accounts of Amalgamating Company with prior approval of Cr. [read with Sec 232]

Sec 240 - Liability of Officers in respect of Offences committed prior to merger, amalgamation etc. [OID includes Past Officers]

Supreme Court ⇒ Baldev Krishna Sahi v/s Shipping Corp<sup>n</sup> of India

→ Faltu Ka Pyan - Can NCLT pass order to destroy books while approving scheme?

Answer - A Big No, Even NCLT needs to seek approval from Cr.



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# [Sec 230] - Procedure for Compromise or Arrangement

① Final Petition [2<sup>nd</sup> motion application] in CAA-5 within 7 days of report + Annexure (Statutory Aud<sup>r</sup> IVD-AS Comply)

② Report by Chairperson in CAA-4 within 3 days of meeting or other time fixed by NCLT

③ Affidavit by Chairperson stating Compliances done

②B Dispositions to Proceed [NCLT may fix Date, Time, Place of Class Meeting + Appoint Chairperson + NCLT may fix Quorum (Rule 5)]

Ex parte Hearing (if Applicant is Co/Liq<sup>r</sup>)

Only if applic<sup>n</sup> by Members or Creditors

②A [14 days + Summon + Audi Alterem Partem] to BOD or liquidator

⑩ Copy of Sanctioned Scheme + INC-28 Order + Copy Attached

Attached MOA-AOA, if any in 30 days to website

③ Notice CAA-2 (Members, Crs, SE, 2 Newspapers) Joint or Separate Adv

Majority in No. + 3/4<sup>th</sup> in Value = Approval

(BOD) Company or Members or Creditor or Liquidator

Rule 3

1 month notice

⑤ Class Meeting RM PB E Vote = Approval

① 1<sup>st</sup> Motion Application (Request to allow to convene Class Meeting) Petition (NCLT-1) + Notice of Admission (NCLT-2)

+ Draft Scheme + Fee ₹ 5000/-

+ Affidavit (NCLT-6)

+ Creditors Responsibility Statement (CAA-1)

[No malafide intention at the time of Loan  
No fraudulent intention in scheme  
No wilful default]

If there is Corporate Debt Restructuring scheme sanctioned by 75% of Sec Crs in Value

NCLT

⑧ Date of Hearing + Newspaper adv (Same 2)

At least 10 days before date of hearing

Mihir H. Rafatal v/s Rafatal Industries Ltd

True & Fairness of Scheme

Not detrimental to interest of Crs/Members

Fair Exchange Ratio Dissenting members - 10% in Value or

NOC of Creditors

In the interest of stakeholders Dissenting Creditors - 5% in Value

Eminent CA Firm (Valuation Report) Scheme not for tax Evasion

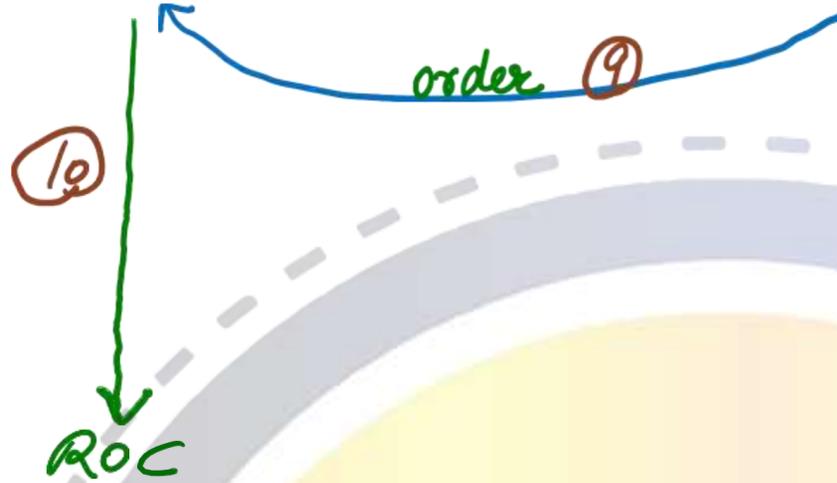
Raise Objection

NCLT shall not offer new scheme on its own.

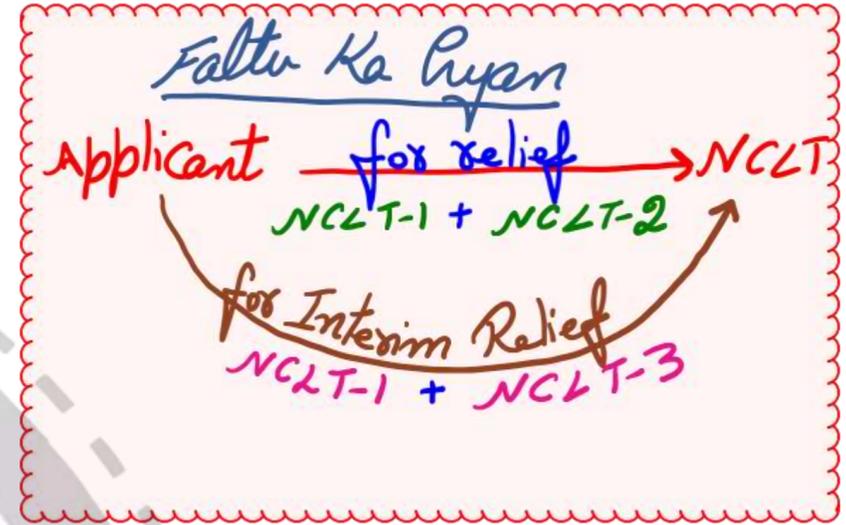
⑨ Final Order in CAA-6

Factors

Co Negative 45 days + 45 days extension → NCLAT



Be an umpire & not player  
Resol<sup>n</sup> passed accordingly.



- CAA-1 - Creditors Responsibility Statement
- CAA-2 - Notice to Members, Crs, SE, & Newspapers
- CAA-3 - Notice to Statutory Authorities
- CAA-4 - Report by Chairperson in 3 days of meeting
- CAA-5 - Final Petition (2<sup>nd</sup> Motion Applic<sup>n</sup>) to NCLT in 10 days of meeting.
- CAA-6 - Final Order of NCLT

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# Extra Points to Remember

## ① Sec 230(1)

### Explanation

For the purpose of this sub-section, arrangement includes a re-organisation of Company's share capital by the

Consolidation of shares of different classes

By Division of Shares into Shares of different classes

Both

Sec 61

OR only +

SH-7

Consolidation or Division of Same Class

₹ 10/- Eq. Sh

2 shares of ₹ 5/- each

Sec 230

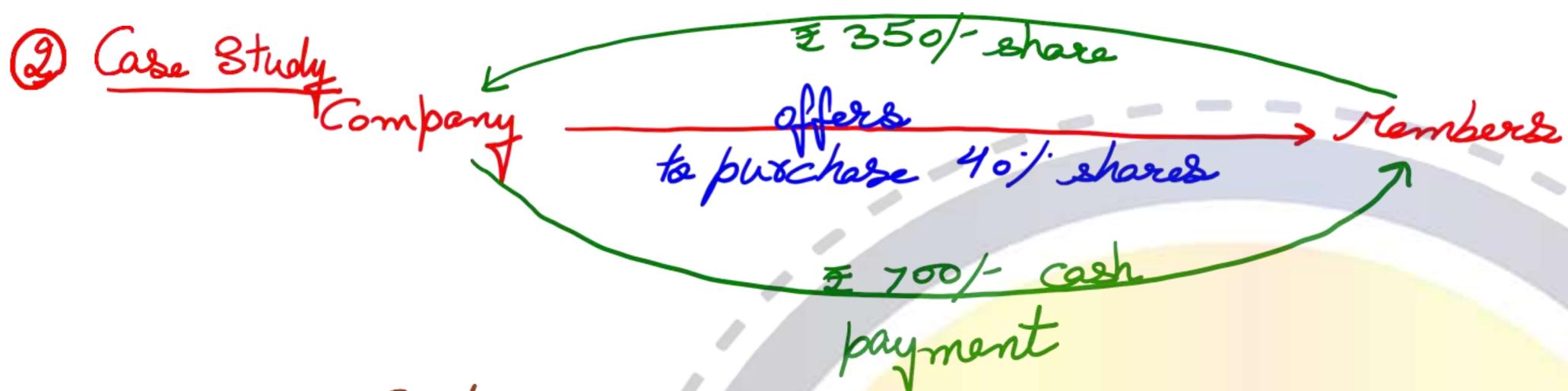
NCLT Approval

Consolidation or Division of Different Classes

₹ 10/- Equity Share

Class-1  
₹ 6/-

Class-2  
₹ 4/-



Can Company do so?

Answer

Companies Act, 1956 ⇒ Sec 391 ⇒ Answer was Yes.

Companies Act, 2013 ⇒ Sec 230 ⇒ Answer is No.

X Ltd.

+ Y Ltd.

= X Ltd.

↓  
is a member of X Ltd. (20% shares)

X Ltd. wants to retain the shares as Treasury Stock. Can it do so?

No  
Destruction of shares under section 68 is mandatory.

Sec 230 (10)

No compromise or arrangement in respect of any buy back of securities under this section, shall be sanctioned by the Tribunal unless such Buy Back is in accordance with the provisions of Section 68.

③ Sec 230(12)

Explanation - For the removal of doubts, it is hereby declared that the provisions of Sec 66 shall not apply to the reduction of share capital effected in pursuance of the order of Tribunal under this section.

Conclude

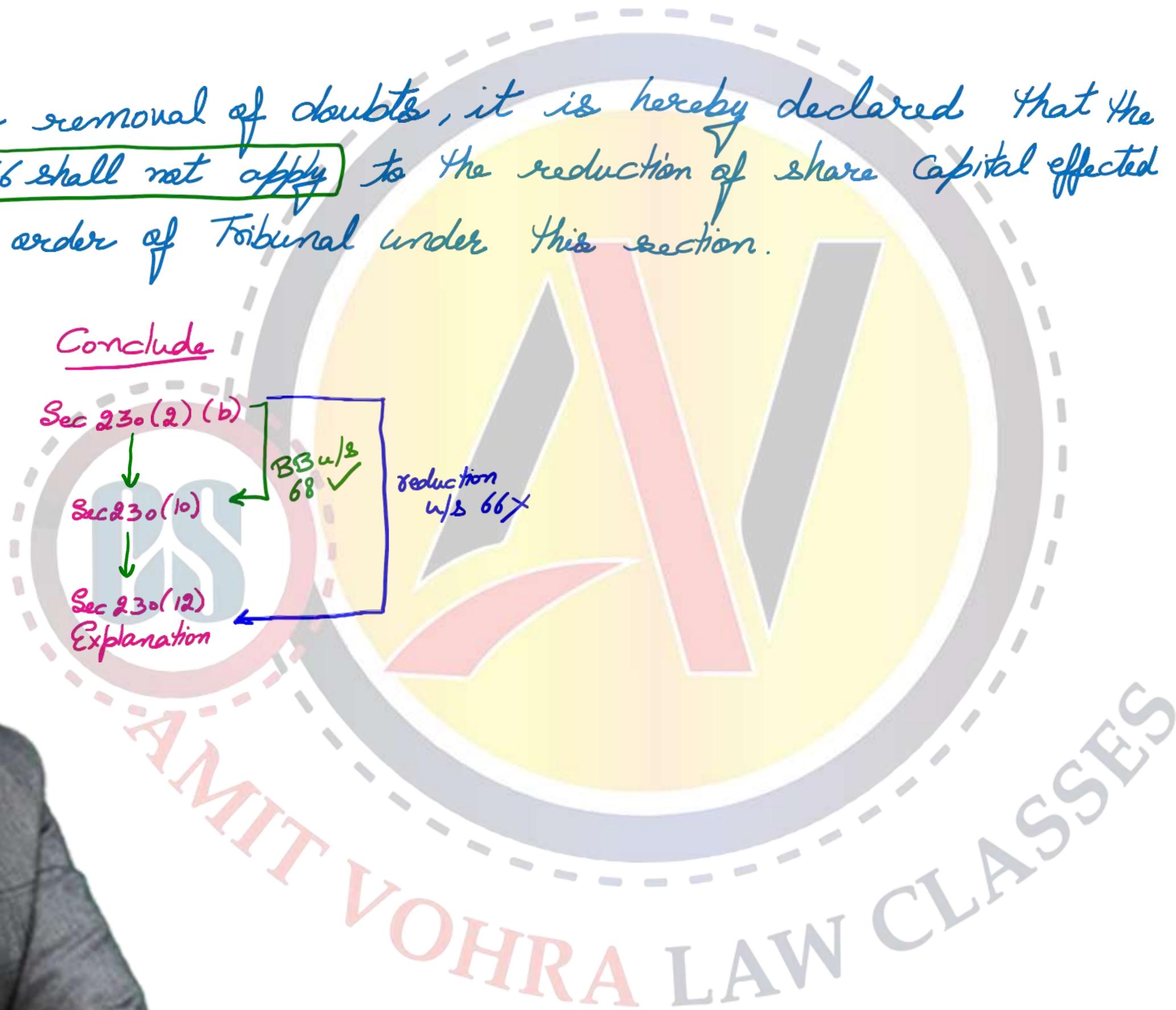
Sec 230(2)(b)

↓  
Sec 230(10)

↓  
Sec 230(12)  
Explanation

BB u/s  
68 ✓

reduction  
u/s 66 ✗



④ Case Study → 100% Creditors  
or  
100% Members

Scheme → NCLT

We don't want to  
convene class meeting

↓  
We are 100% in value  
& has already verified  
the contents of scheme

↓  
So, why to waste time

↓  
why not directly file Final Petition  
2<sup>nd</sup> or motion application

Examine

Answer - Yes

Sec 230(9)

(waive off)

The Tribunal may dispense with calling of a meeting of a Creditor or Class of Creditors, where such Creditors or class of Creditors, having at least 90% value, agree & confirm by way of affidavit, to the scheme of compromise or arrangement.

5

# Can the members of Company apply NCLT for dispensation of Class Meeting? [2017-4 Judgments]

13<sup>th</sup> Jan, 2017  
 JVA Trading (P) Ltd.  
 &  
 C & S Electric Ltd.  
 ↓  
 Principal Bench, NCLT  
 ↓  
 We are not inclined to grant dispensation taking into consideration the provisions of the Companies Act, 2013

18<sup>th</sup> Jan, 2017  
 Gauss Networks (P) Ltd.  
 &  
 Delta Corp - Ltd.  
 ↓  
 Mumbai, NCLT  
 ↓  
 Rejected the dispensation & affidavit  
 &  
 ordered a meeting of the equity shareholders along with a prior notice with the quorum as prescribed under Section 103.

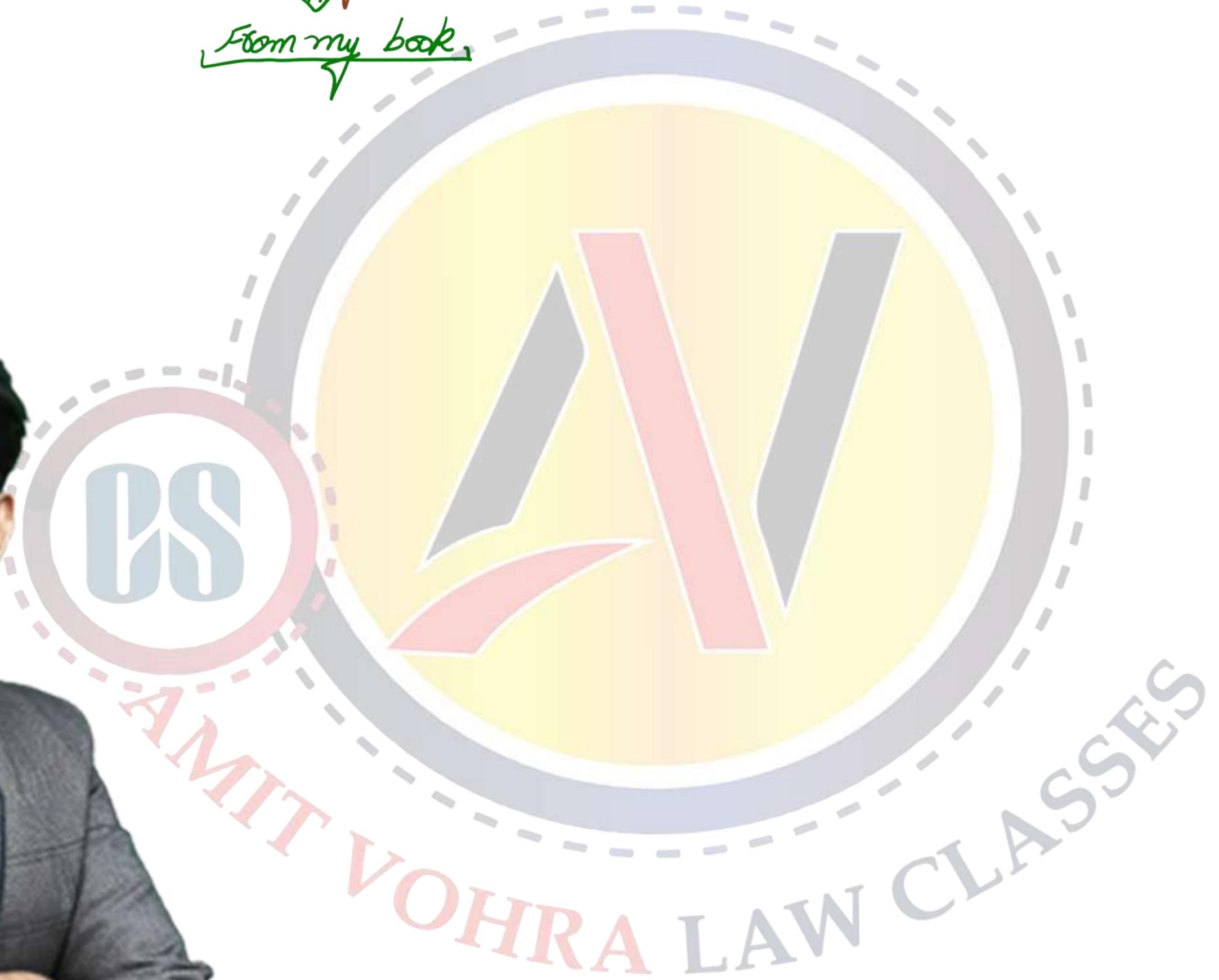
L & T Shipping Building Ltd.  
 &  
 Marine Infra Structure Development (P) Ltd.  
 ↓  
 Chennai NCLT  
 ↓  
 Allowed the dispensation  
 ↓  
 The Tribunal noted that the shareholders of the Transferee Company had "accorded their unconditional consent & approval to the scheme of demerger".

Coffee Day Overseas (P) Ltd.  
 &  
 Coffee Day Enterprises Ltd.  
 ↓  
 Bangalore NCLT  
 ↓  
 ordered a dispensation of the shareholders meeting  
 "as the application made by the Transferee Company already included the consent received from the 2 shareholders of the company"

&  
 the rules framed thereunder, both of which do not clothe this Tribunal with the power of dispensation in relation to the meeting of shareholders or members.

Interpretation of Sec 230

From my book



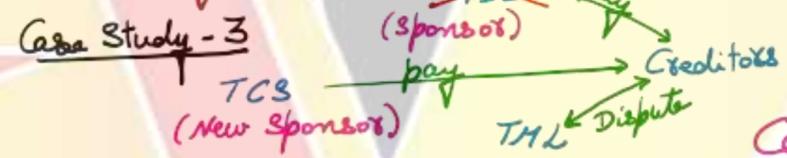
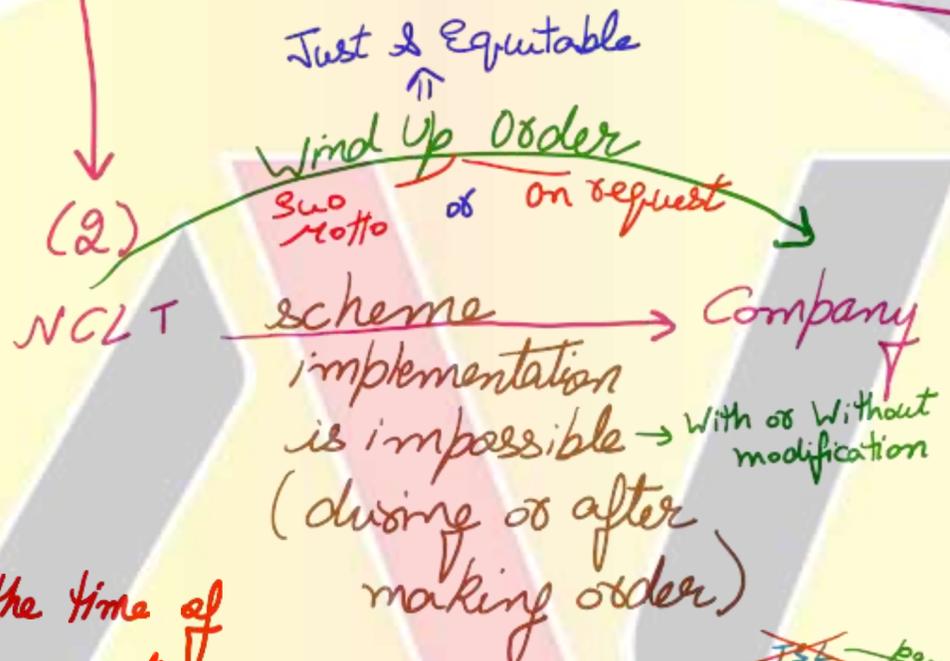
# Sec 231 - Power of NCLT to enforce Compromise or Arrangement

(1) Tribunal makes an order under Section 230 sanctioning a compromise or arrangement in respect of a company, it:-

a) Shall have the power to supervise the implementation of the compromise or arrangement  
 w/jmp Evacuation is under supervision

b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement

To remove difficulties in smooth implementation of existing scheme.



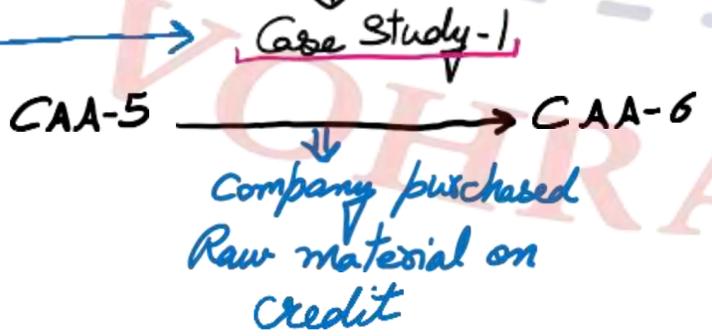
If there is any sponsor in the scheme of C/A, then after sanctioning the scheme the NCLT can modify the scheme to replace the existing sponsor with a new sponsor after verifying the financial strength of new sponsor.

## Case Study - 2, Gross Over Valuation of the relevant property

Negligence will amount to fraud → Complaint → NCLT → modify scheme to bring the other properties of the company into the scheme to fulfill the shortfall created due to Overvaluation.

Maddi Lakshmaiah v/s Duncan Agro Industries Limited

may modify for the implementation of existing scheme  
 shalln't modify to include new creditors in the scheme



(3) C. Act, 1956 - HC order

New Act

C. Act, 2013

[Sec 231 shall apply to such order passed before commencement of this act].

15<sup>th</sup> Dec, 2016

Rules

[Rule 22] Report on working of C/A  
(Part of Supervision)

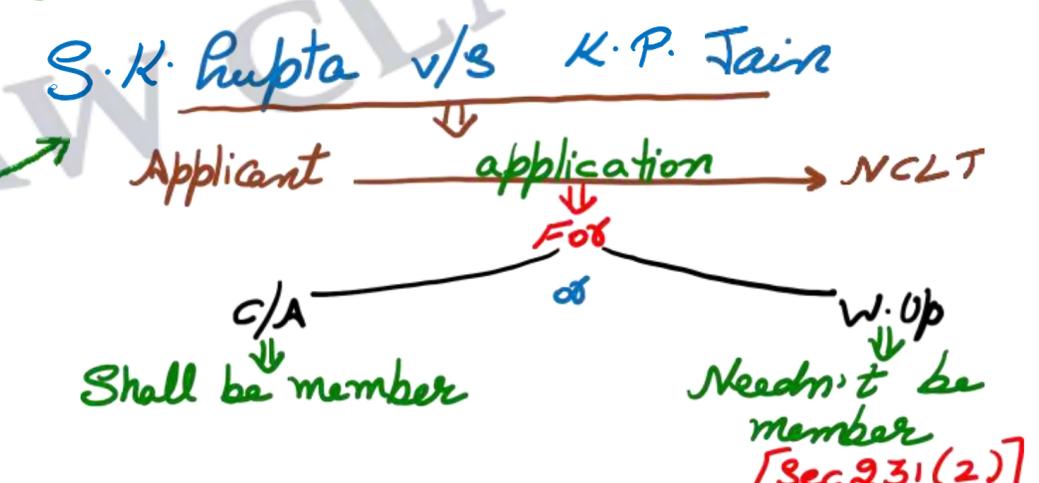
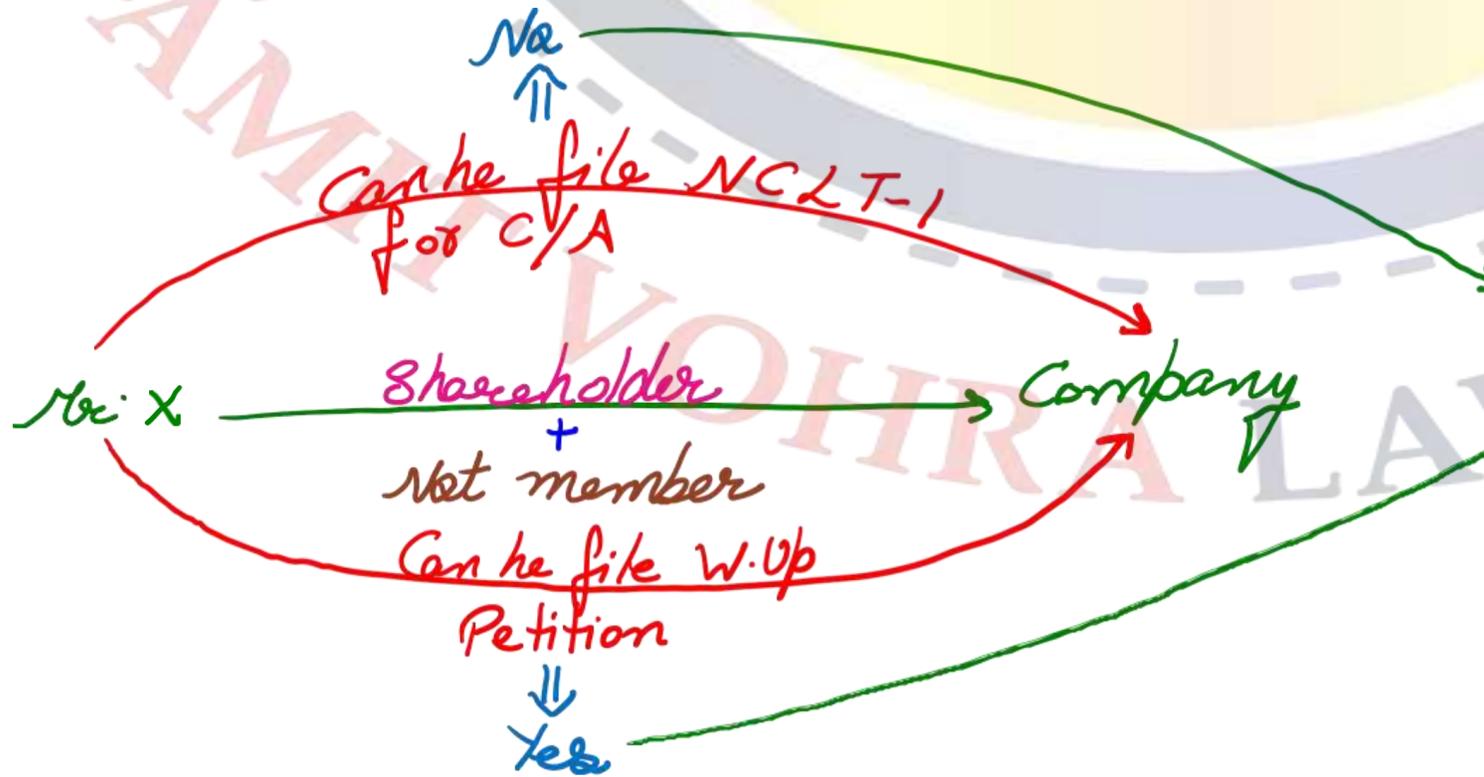
[Rule 23] Liberty to apply

[Rule 24] Liberty of the NCLT



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Case Study -



# [Sec 232] Merger & Amalgamation of the Companies

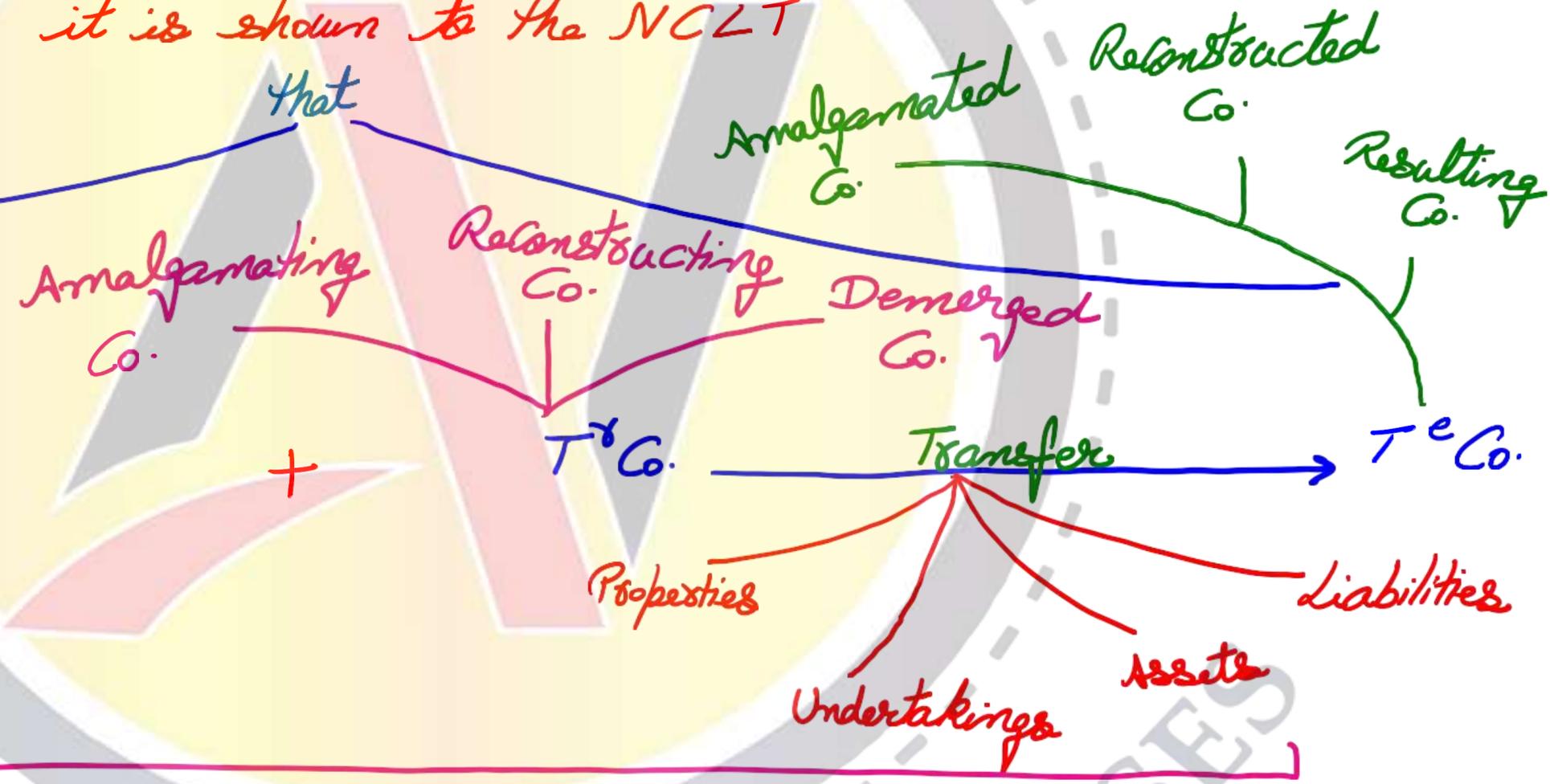
Where an application is made to NCLT

⇓  
under Sec 230

∩  
it is shown to the NCLT

that

Scheme of Compromise or Arrangement is proposed as a part of Amalgamation or Reconstruction



NCLT may pass order to convene the class meetings and then Provisions of Sec 230 (3) to (6) shall apply

NCLT may pass order in CAA-7

Approval of Scheme

Dissolution of T<sup>o</sup> Co. without being Wound Up  
↳ being Paper Company Only  
↳ Except Partial Demerger

- CAA-2
- CAA-3
- 30 days advertise
- Approval
- Maj No. + 3/4th Value
- CAA-4
- CAA-5

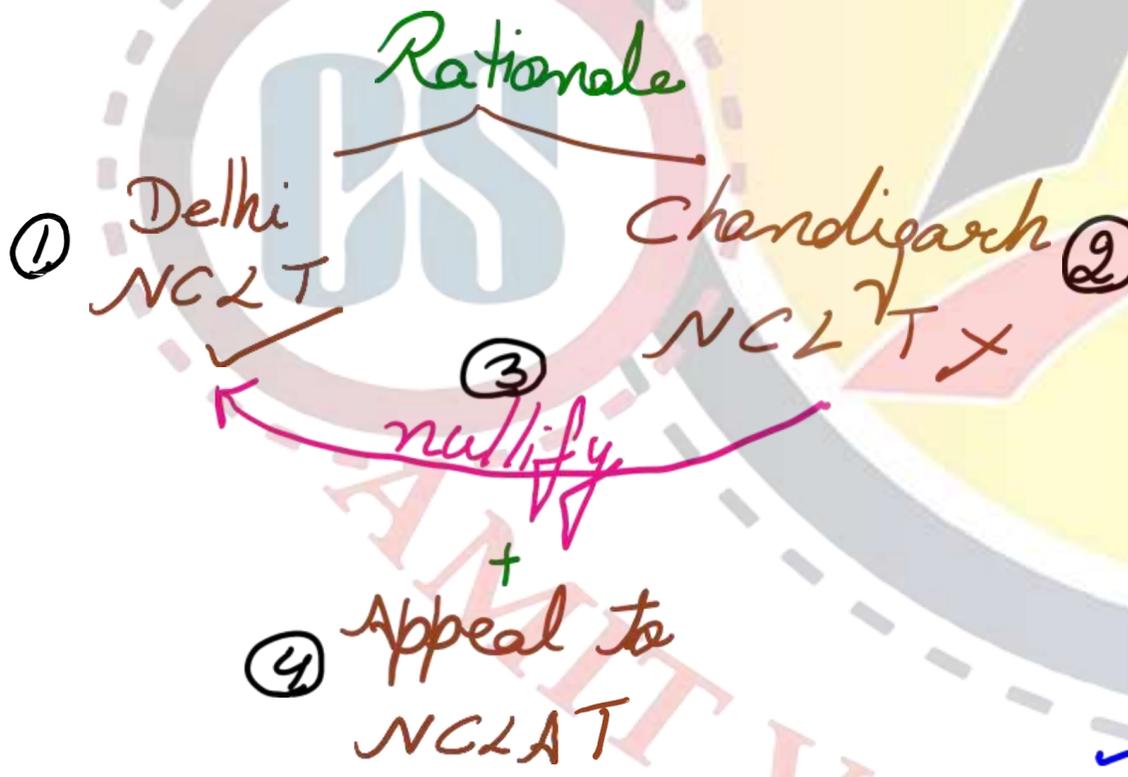
CS-1

A Ltd. + B Ltd. = C Ltd. (New)  
↓ ↓ ↓  
Delhi Chandigarh Delhi

Advise regarding filing of petition.

Answer

Separate Application may be filed ✗  
or  
Joint Application may be filed ✓ u/s 3(2)



Real life Solution, if separate petitions are filed  
Delhi NCLT ⇒ Our approval sanctioning the scheme is subject to the approval of Chandigarh, NCLT sanctioning the scheme.

Faltu Ka Ryan

If the scheme of C/A/M/A/R, is disapproved by NCLT, then an appeal to NCLAT may be filed, but if, scheme is disapproved by class of members/Creditors, then no remedy is available to the company.

Sec 232 - Procedure for Merger or Amalgamation or Reconstruction

read with  
Sec 230  
&  
Sec 231

External  
Total Demerger  
Partial Demerger

① Final Petition [2<sup>nd</sup> motion application] in CAA-5 within 7 days of report + Annexure (Statutory Aud<sup>r</sup> IVD-AS Comply)

② Report by Chairperson in CAA-4 within 3 days of meeting or other time fixed by NCLT

④ Affidavit by Chairperson stating Compliances done

②B Directions to Proceed

[NCLT may fix Date, Time, Place of Class Meeting + Appoint Chairperson + NCLT may fix Quorum (Rule 5)]

②A Ex parte Hearing

1<sup>st</sup> Motion Application (Request to allow to convene class meeting)

① Joint Petition (NCLT-1) + Notice of Admission (NCLT-2)

+ Draft Scheme + Fee ₹ 5000/-

+ Affidavit (NCLT-6)

NCLT

⑧ Date of Hearing + Newspaper adv (Same 2)

At least 10 days before date of hearing

Likeer H. Rafatal v/s Rafatal Industries Ltd.

True & Fairness of Scheme

Not detrimental to interest of Crs/Members

Fair Exchange Ratio

NOC of Creditors

In the interest of stakeholders

Eminent CA Firm (Valuation Report)

Scheme not for tax Evasion

NCLT shall n't offer new scheme on its own.

Raise Objection

⑨ Final Order in CAA-7

Factors

Co 45 days + 45 days extension → NCLAT

⑤ Class Meeting = Approval

③ Notice CAA-2 (Members, Crs, SE, 2 Newspapers) Joint or Separate Adv

Majority in No. + 3/4<sup>th</sup> in Value

⑩ Copy of Sanctioned Scheme + INC-28 Order + Copy Attached

ROCK Attached MOA-AOA, if any in 30 days

Company (BOD)

Company

1 month notice

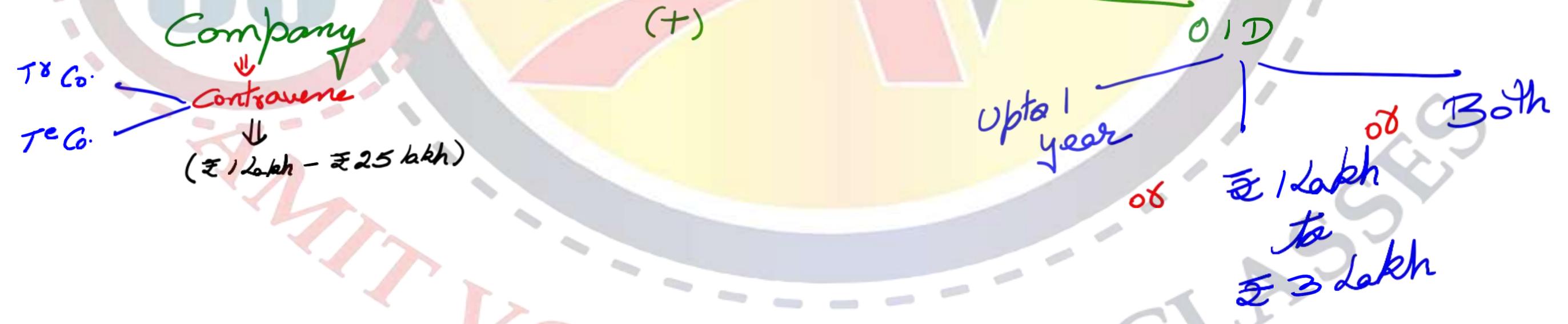
RM PB E Vote

Be an Umpire & not Player  
Resolution passed accordingly



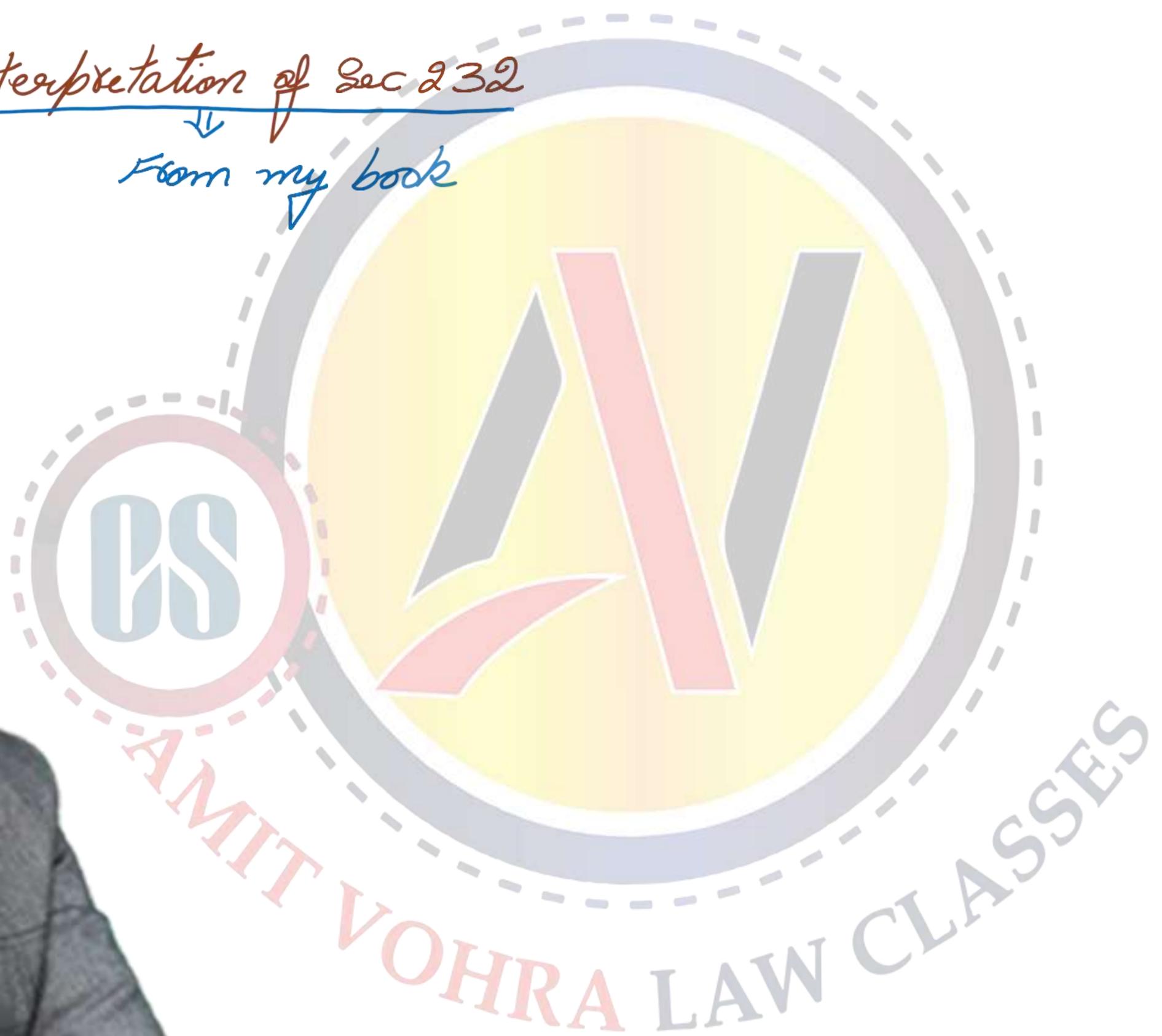
Note 1 -> Every Company in relation to which order under Sec 232 is passed until the scheme is fully implemented, file a statement in CAA-8 within 210 days from end of financial year certified by PCA/PCS/PCA regarding scheme compliance.

Note 2 - Punishment for Contravention



Interpretation of Sec 232

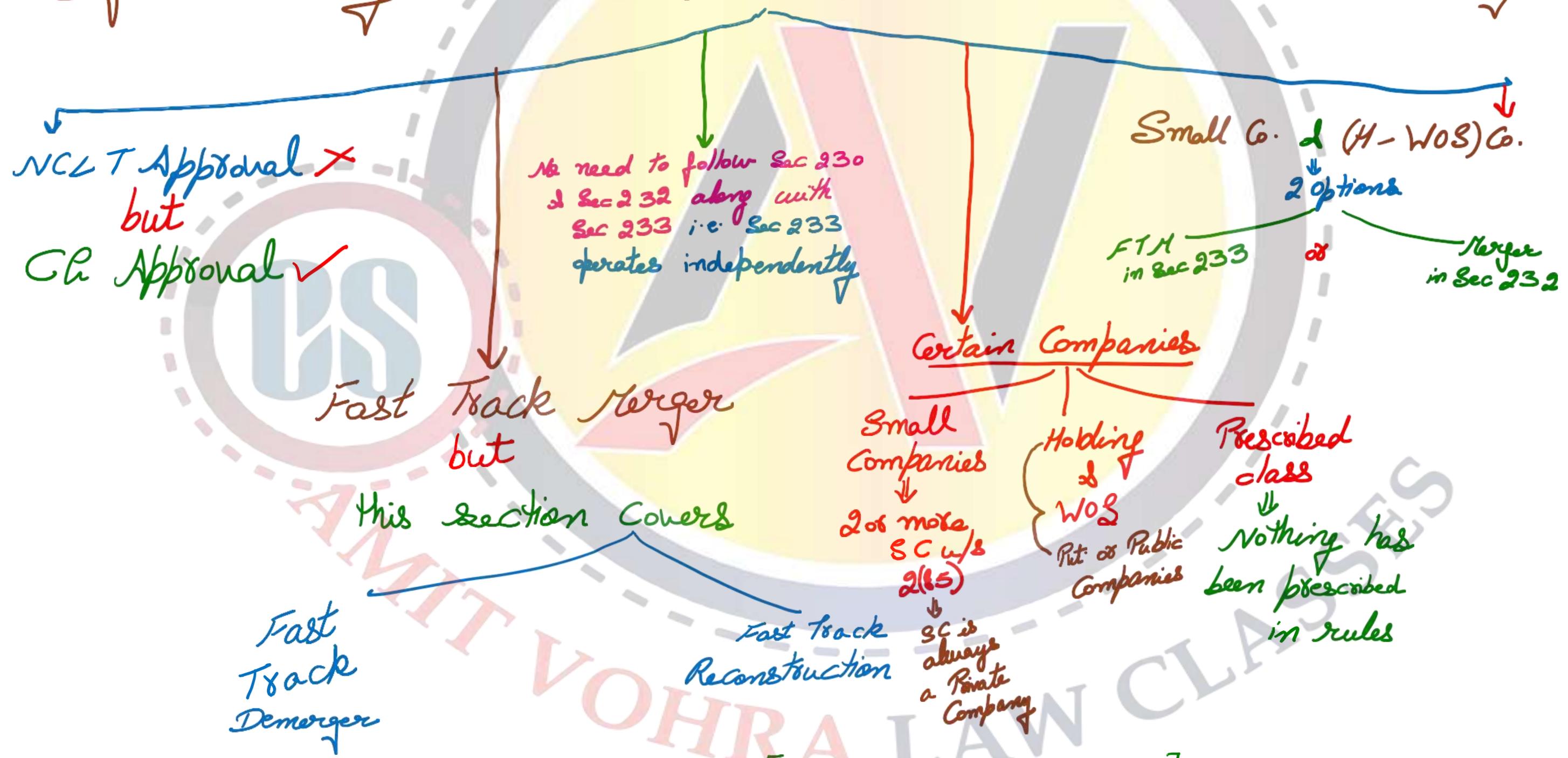
↓  
From my book



[Sec 233] - Merger or Amalgamation of Certain Companies

Fast Track Merger

Before starting this section, we need to understand certain things:-



Note-1 BR in BM only & not by circulation [Sec 179(3)(i) read with Rule 4].  
Video Conferencing

Note-2

Public Company  $\xrightarrow[\text{in 30 days}]{\text{MRT-14}}$  ROC [Sec 117 read with Sec 179(3)]

Step-1

Companies  $\xrightarrow[\text{Notice}]{\text{CAA-9}}$  ROC of respective states of both companies  
Any affected Person  
30 days time to raise objection  $\xrightarrow[\text{Step-2}]{} \rightarrow$

Step-3 gives an idea to BOD regarding mind set of members & creditors i.e. more objections means lesser chances of approval in Step-7 & Step-8

Step-3

Company  $\xrightarrow[\text{DOB}]{\text{CAA-10}}$  ROC  
BOD (we will remain solvent for 1yr)

via -  
If objection  $\begin{cases} > 10\% \& \leq 25\% \\ \text{by} \\ \downarrow \\ \text{then } \& \text{ not Sec 233.} \\ \text{Consider Sec 232} \end{cases}$

Step-4

Company  $\xrightarrow[\text{Scheme Copy}]{\text{CAA-10}}$  Members & Creditors  
+ Explanatory Statement  
+ 21 days advance notice

Step-5

Members Meeting  $\xrightarrow{[ \text{Approval by } 90\% \text{ of Total Number of Shares} ]}$

Note -

The amount paid up on shares i.e. whether shares are partly paid up or fully paid up is immaterial for Step-7

(+)

Step-5 Creditors' Meeting [Approval by 90% creditors in Value]

(+)

Step-6



Step-7

Scheme Approval

(+)

No Objection from ROC + OL

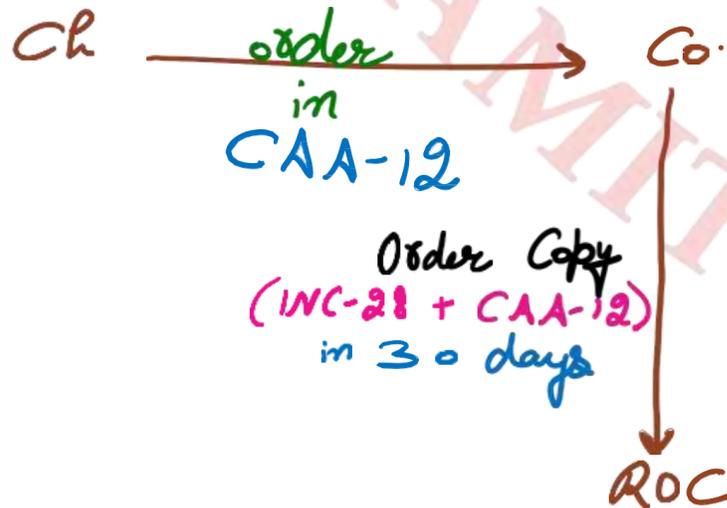
If objection from ROC + OL in 30 days to CR

CR is forming the opinion that scheme is bonafide

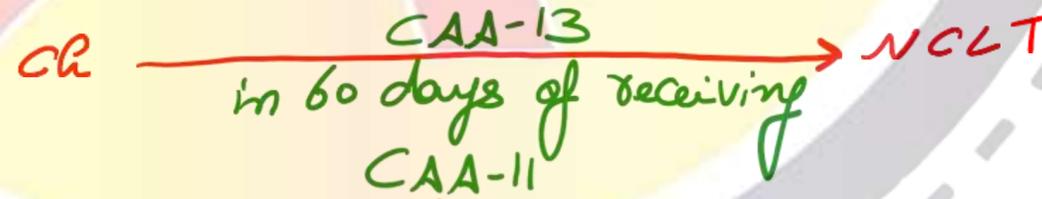
Scheme deemed against Public Interest to CR

30 days

Step-8



Step-8



Start procedure u/s 232 read with 230

Next 30 days  
60 days

Step-9

NCLT is of the opinion that direct approval to the scheme can be given without going into the procedure of Sec 230 & 232

Step-9

NCLT is of the opinion that procedure u/s 232 read with Sec 230 needs to be complied with.

Step-10

Transferee Co. → INC-28 Order Copy → ROC

Step-12

Confirmation file

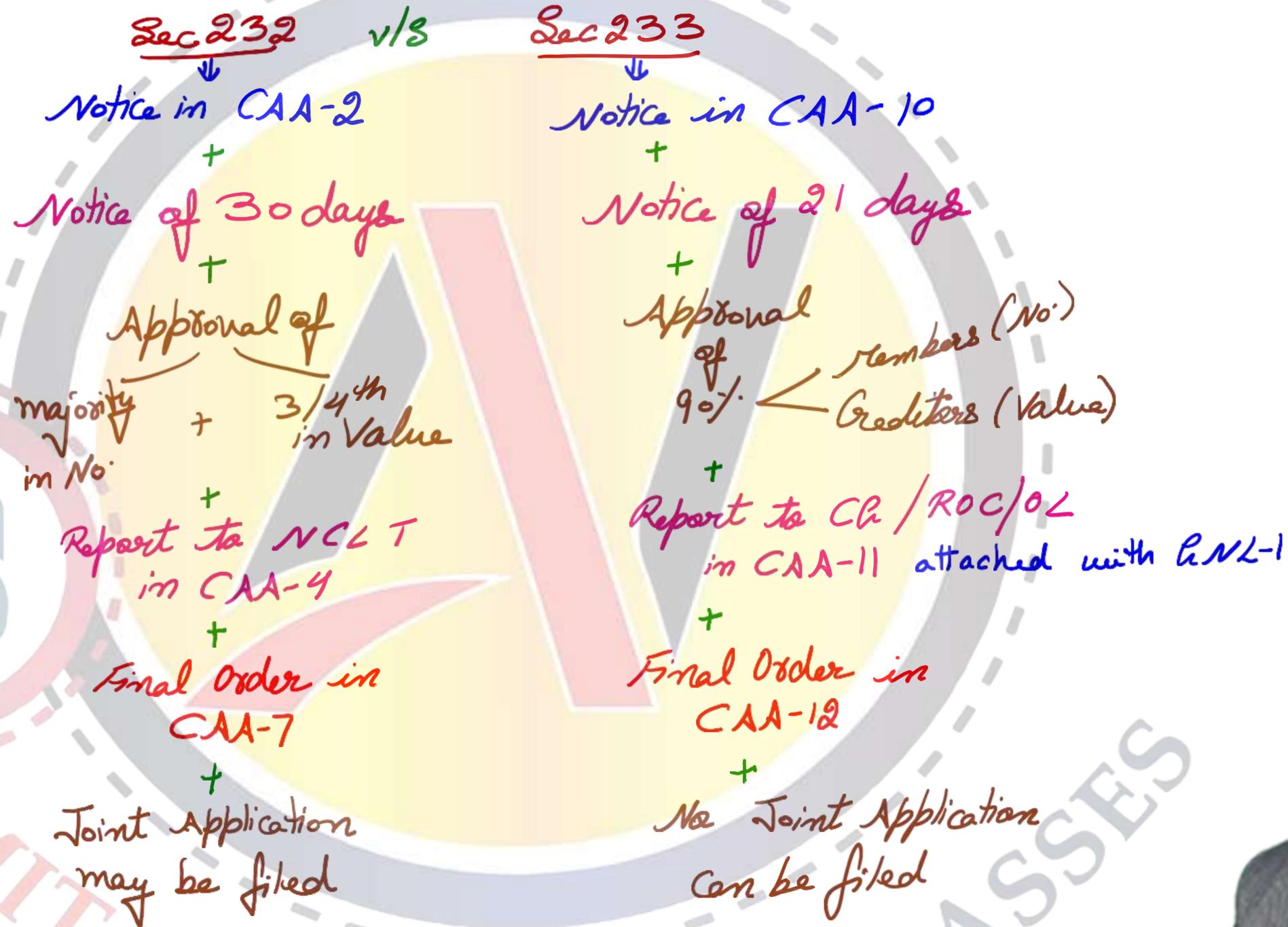
ROC of Tr Co.

Confirmation Step-11

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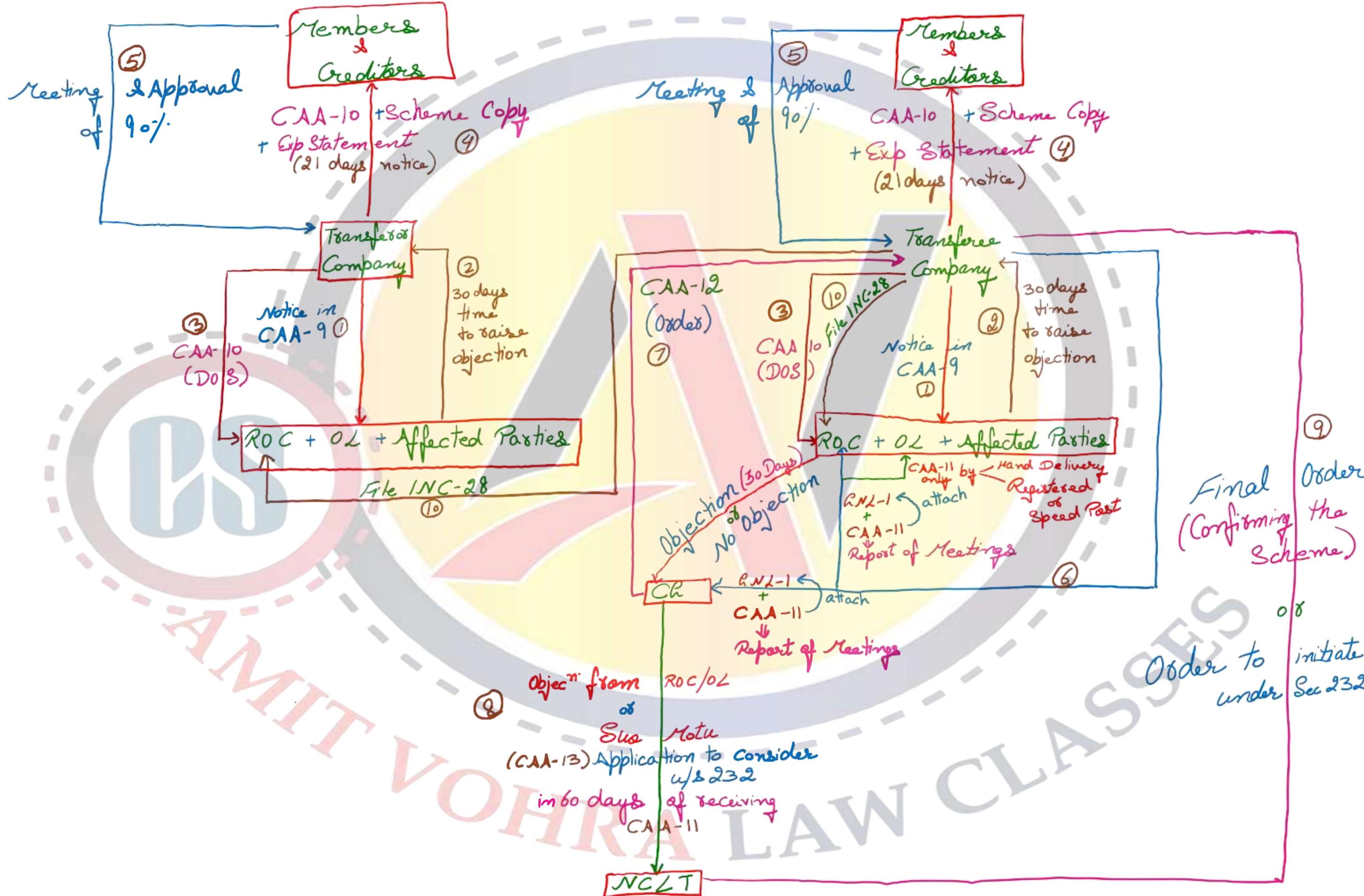


# Comparative Analysis



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# [Sec 233] - Procedure for Fast Track Merger



Interpretation of Sec 233

From my Book



AMIT VOHRA LAW CLASSES



[Sec 234]

# Amalgamation of Company with Foreign Company

read with Rule 25A

Effective from 13<sup>th</sup> April, 2017

Basic Rule of Interpretation

(1)

Company

M & A  
Ch XV provisions shall be applicable

Company Incorporated in the Jurisdictions of Such Countries as may be notified by CA [Annexure B] to Rule 25

(2)

India Ltd. + Dubai Ltd. = India Ltd. or Dubai Ltd.

Prior RBI Approval

+ Consideration

Cash or DR or Both

CA + RBI

Rules frame (+) Rules Amend → Sec 234

Interpretation

Prior RBI + NCLT

Explanation - For the purpose of Sec 234(2), the expression "Foreign Company" means a Company or a Body Corporate Incorporated Outside India, whether having a place of business in India or not.

Interpretation

CIOI ≠ FC

bcoz, CIOI + Place of Bus in India or Bus in India = Foreign Company

Conducting

Sec 234  
Every CIOI = FC

# [Rule 25A] Merger or Amalgamation of a FC with a Co. or Vice-versa



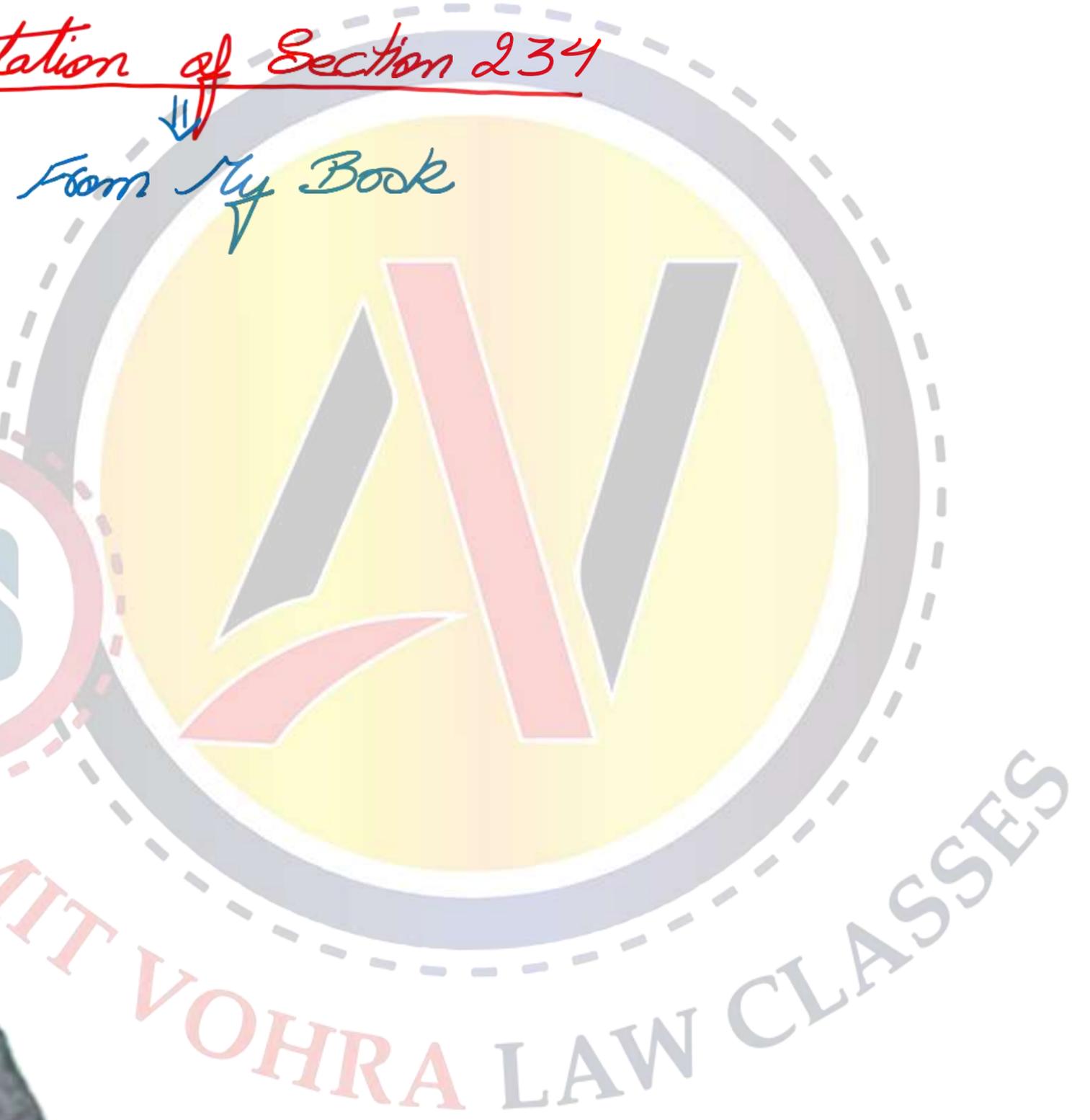
b) T<sup>e</sup> Co. (FC) = Valuer (Member of Recognised Professional Body)  
 + Valuation  
 + Internationally Accepted Accounting Principles

## Annexure B Jurisdictions



Interpretation of Section 234

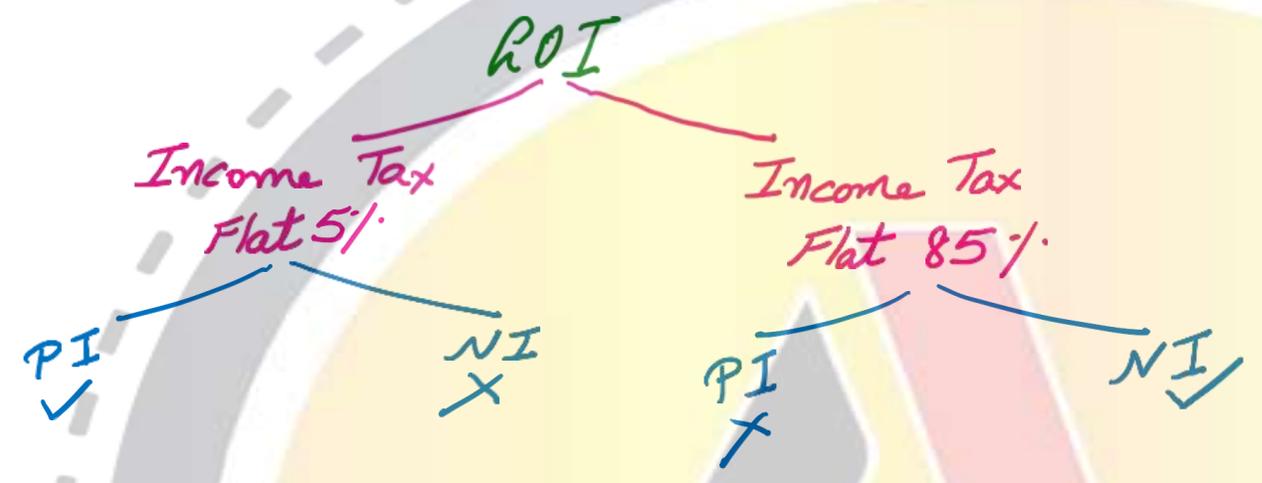
From My Book



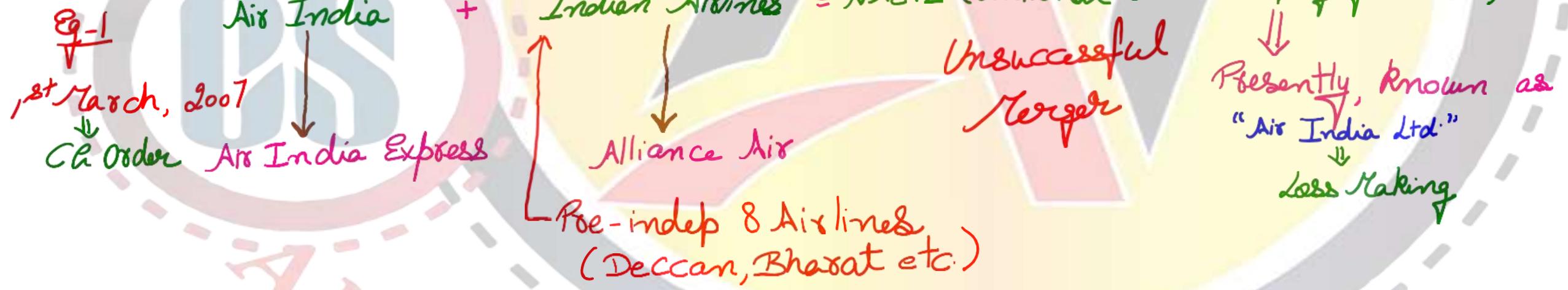
[Sec 237] - Power of CR to provide for Amalgamation of Companies in Public Interest

Basic-1

Public Interest v/s National Interest

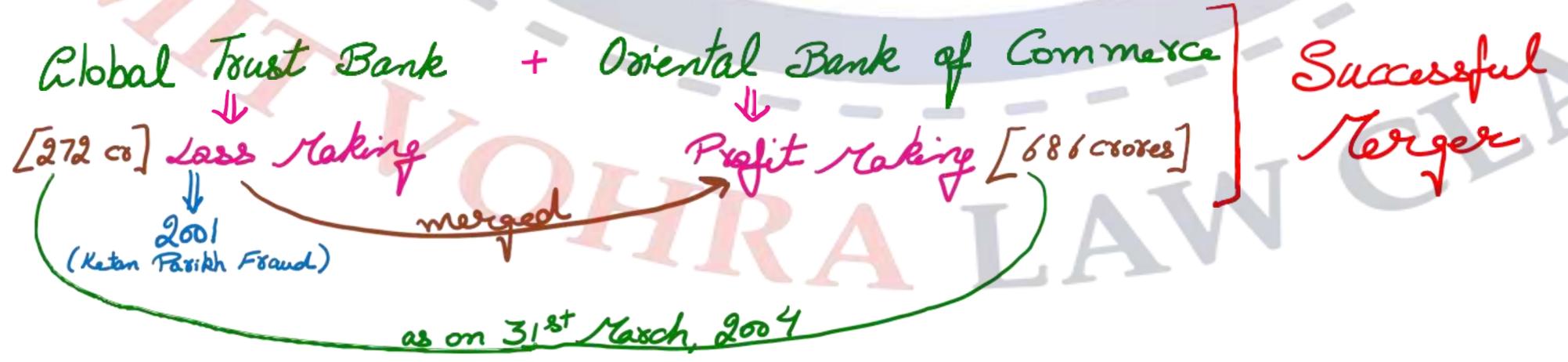


Basic-2

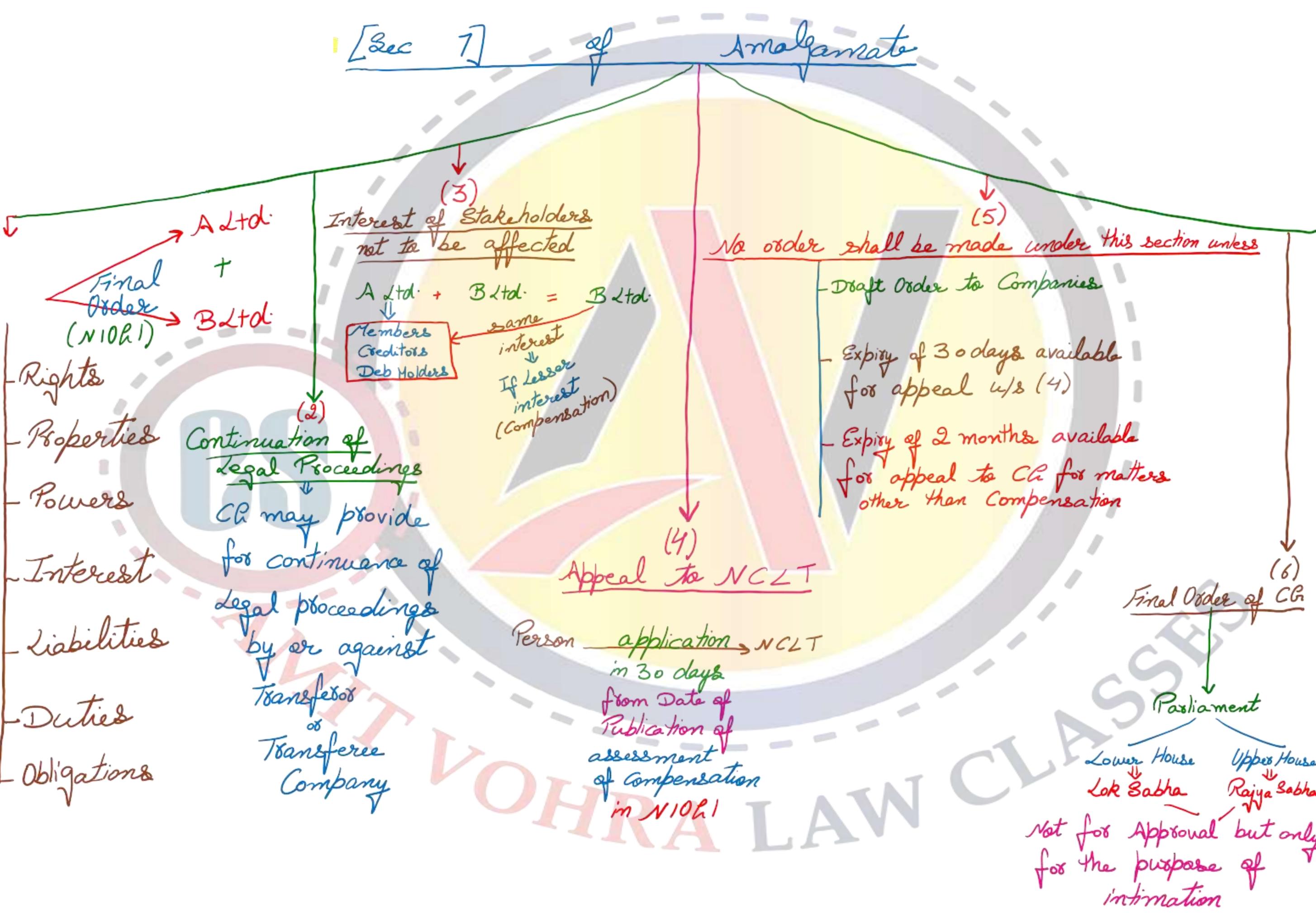


Eq-2

14th Aug, 2004



# [Sec 7] of Amalgamate



- Rights
- Properties
- Powers
- Interest
- Liabilities
- Duties
- Obligations

(2)  
Continuation of Legal Proceedings  
 CR may provide for continuance of legal proceedings by or against Transferor or Transferee Company

(3)  
Interest of Stakeholders not to be affected  
 A Ltd. + B Ltd. = B Ltd.  
 Members, Creditors, Deb Holders  
 same interest  
 ↓  
 If lesser interest (Compensation)

(4)  
Appeal to NCLT  
 Person application → NCLT in 30 days from Date of Publication of assessment of Compensation in NIOB1

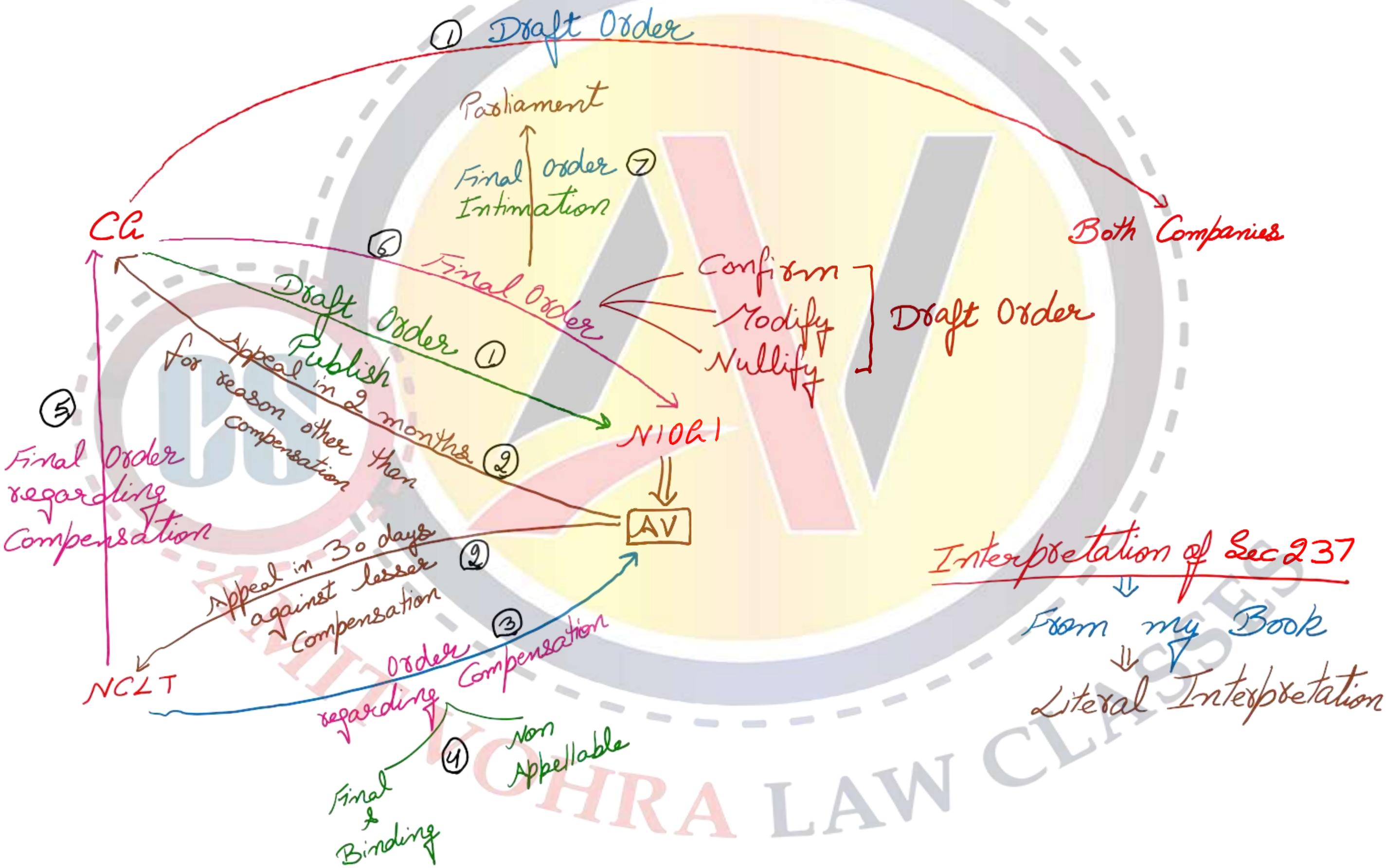
(5)  
No order shall be made under this section unless

- Draft Order to Companies
- Expiry of 30 days available for appeal u/s (4)
- Expiry of 2 months available for appeal to CA for matters other than Compensation

(6)  
Final Order of CR

Parliament  
 Lower House ↓ Lok Sabha  
 Upper House ↓ Rajya Sabha  
 Not for Approval but only for the purpose of intimation

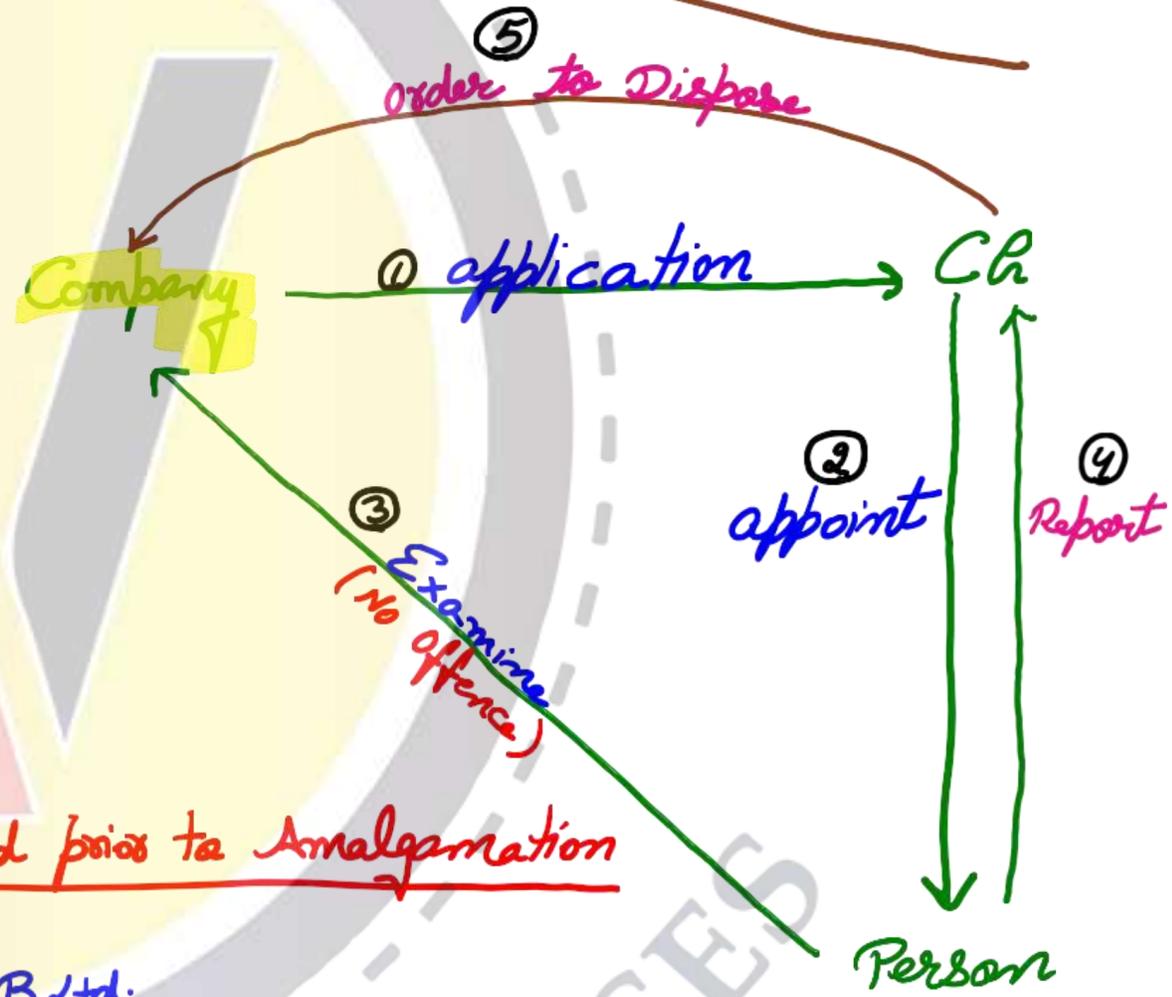
Procedure



Interpretation of Sec 237  
↓  
From my Book  
↓  
Literal Interpretation

[Sec 239] - Preservation of Books & Papers of Amalgamated Companies (Transfers)

Books not to be disposed off without prior CA approval



[Sec 240] Liability of Officers in respect of offences committed prior to Amalgamation



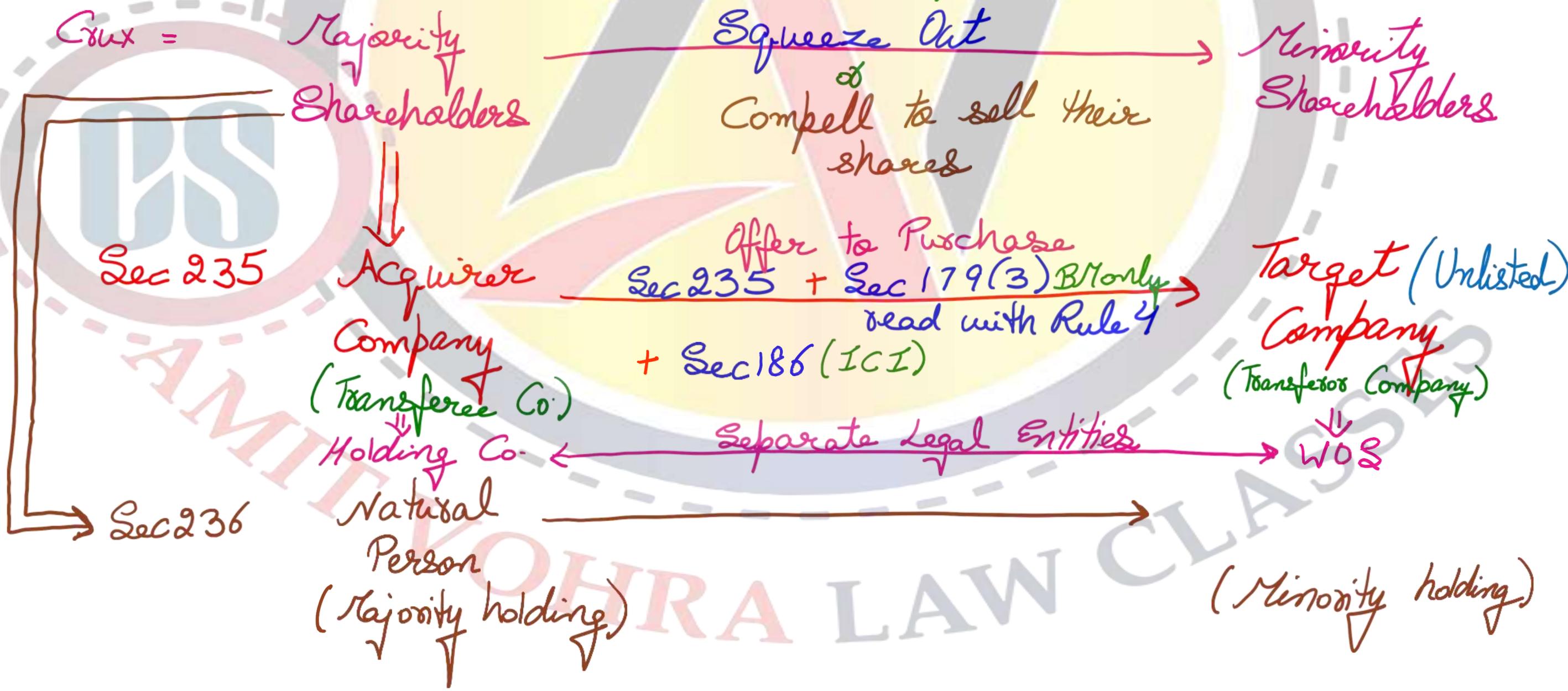
Officers are liable for Pre-Amalgamation offences even after Amalgamation.

[Sec 235] Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

Basic = Sec 235 read with Sec 238 & also touches Sec 236.  
(+)

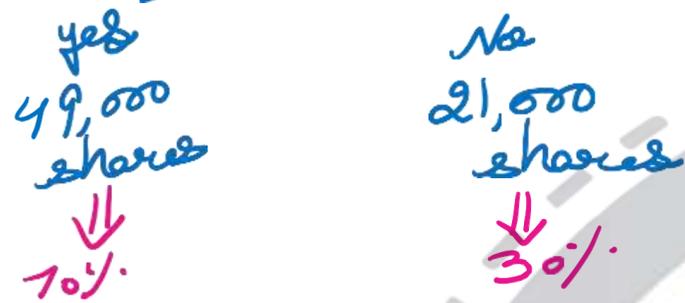
There is no independent operation of Sec 238.  
(+)

Sec 236 operates independently also.





CS - Out of 70,000 shares



Acq<sup>r</sup> Co. ?

Can it accept 49,000 shares?

Answer Yes  $\Rightarrow$  30,000 sh + 49,000 sh  
= 79,000 sh

Relationship

↓  
Holding & Subsidiary ✓  
~~WOS~~

### Imp Point to Consider

Acq<sup>r</sup> Co. should have given notice to all dissenting shareholders w/s 235 to avoid the helplessness (misery) of Sec 236.

### [Sec 236] touch with [Sec 235]

Where total equity shareholding (existing + new) of Acquirer Company becomes 90% or more in the Target Company, & the shares are registered in the name of acquirer, but the notice is not given to all or some of the dissenting shareholders under Sec 235(1).

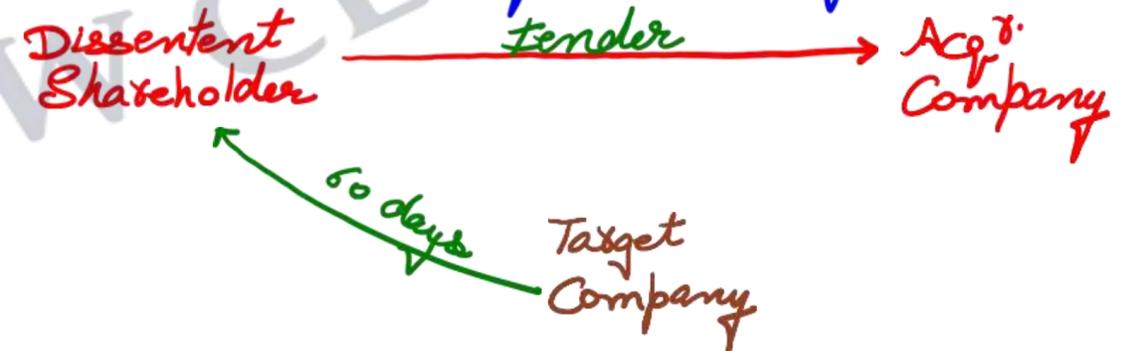
↓  
The acquirer shall open a separate bank account  
↓  
Escrow Account  
↓  
Acquirer Company shall notify the target company of their intention to acquire (buy) the remaining shares of all such shareholders.  
↓  
Then the Acquirer shall maintain Separate Bank Ac (Escrow account) for atleast 1 year, but such account will be operated by Target Company.

Note

Acquirer isn't legally entitled & bound to acquire shares of Dissenting Shareholders as under Sec 235

+ Dissenting shareholders may give their shares during 1 year.

No Compulsory Squeezing Out



### Case Study - 1



+  
Consenting Members in TC  
 $\downarrow$  9/10<sup>th</sup> of 80%  
i.e. 72%  
=  
92%

Advise the Acquirer Company

### Answer

Acquirer company ~~may~~ (shall) give notice under CAA-14 to ~~any~~ (all) the dissenting shareholders.  
Acquirer is "Entitled & Bound" to acquire the shares.

But

if the notice u/s 235 isn't given

Then, Acquirer shall give notice to all dissenting shareholders u/s 236  
 $\downarrow$   
No legal effect

### Case Study - 2



+  
Consenting Members in TC  
 $\downarrow$  8/10<sup>th</sup> of 40%  
i.e. 32%  
=  
92%

Advise the Acquirer Company

Answer Sec 235 notice can't be given +  
Acq<sup>r</sup> Co. is bound under  
Sec 236.  
Conclusion - 90% is Trigger Point for  
Acquirer Company

# [Sec 236] Purchase of Minority Shareholding [Squeeze Out Notice] "No Entitlement or Bondation"

Basic 1 - This section is applicable, irrespective of the listing status of Target Company

Basic 2 - Acquirer can be any person

- Natural
- Artificial
  - LLP
  - Company
  - Body Corporate
    - CIOI
    - FC

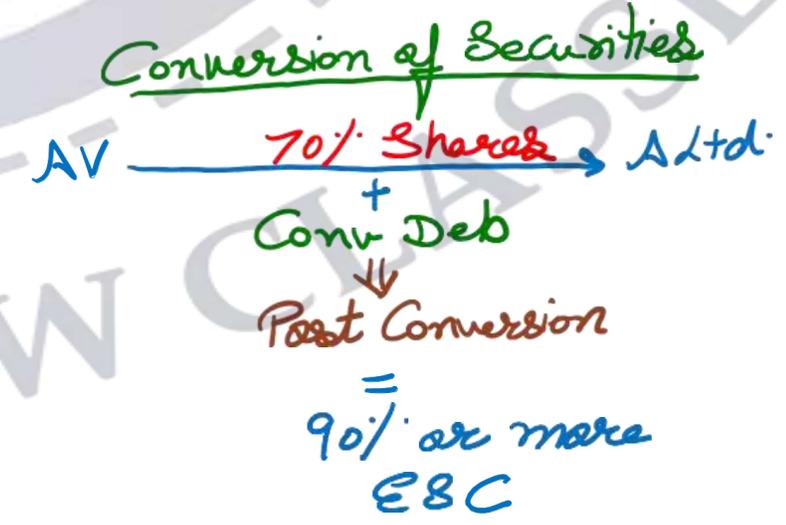
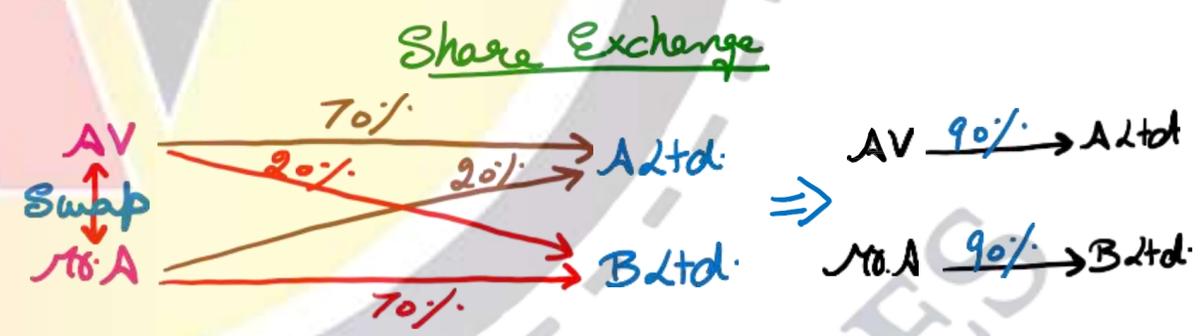
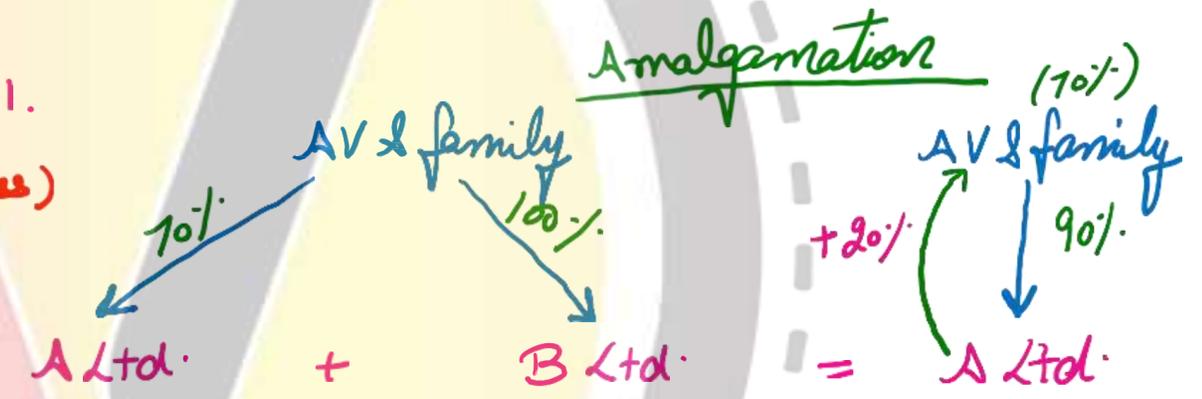
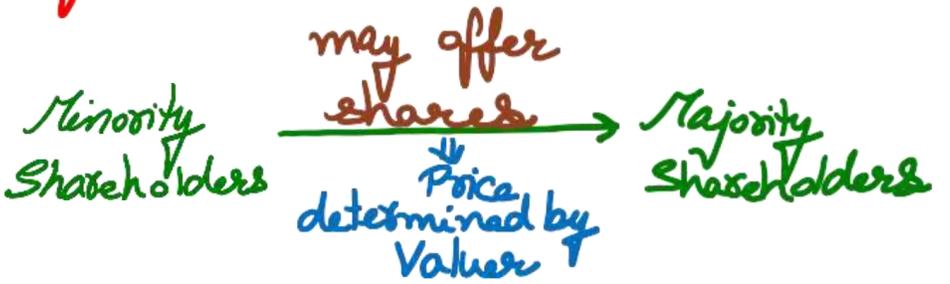
Basic 3 - Acquirer = Reg 2(1)(b)  
 Persons Acting in Concert = Reg 2(1)(c)

= SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011.



(2) Offer to buy equity shares (Squeeze Out Notice)  
 Price determined by Value Rule 27

(3) Optional Offer from Minority Shareholders to Majority Sh-holders before squeeze out notice.



(4) Acquirer → Special Bank A/c (Escrow A/c) → For 1 year

Minority Shareholders  
Shares Tender  
Pay in 60 days

(5) Target Company = Transfer Agent (DVP) → Target Company [Company whose shares are being transferred]

(6) Minority Shareholders → Target Company → Cancel such SC  
Paid

New SC → Acquirer



(7) Majority Shareholders  $\xrightarrow{\text{Cons}^n (10\% \text{ Shares})}$  Escrow A/C  
 Willing to make WOS

From the Date of Acquisition  
 1 year  
 5 years  
 7 years

Minority Shareholders

[Death or Cease to Exist]

Corporate Member  
 [Wind Up or Strike off by ROC]

T/C

(8) Minority Shareholders (10%)

Dissenting

Acquisition of shares  
 Order of Transfer  
 Process

25%  
 2.5%

75%  
 7.5%

Increased Price (Share)

Higher Price

Negotiate Higher Price

Majority Shareholders

Excep<sup>n</sup> Logical Interpretation



7.5% Shares

Members

Disclose to members holding 2.5%

or

Not disclose but negotiate after transfer of 2.5% shares

No need to share increased price compensation

(9) Majority Shareholder = Fails to acquire Full Purchase

This Section will continue to apply

Even Though

Listed Company has been delisted

Period of 1 year under SEBI (SAST) Reg, 2011 has been elapsed

Rule 27 - Determination of price for purchase of Minority Shareholding

Price from Registered Value

LC

As per SEBI regul<sup>n</sup>

+ Values report, BoD

Highest Price paid in last 12 months

ULC

or  
Pvt. Co.

Factors

Fair Price

Customary Parameters

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