Application

NCLT

Application for Relief

- Sec 241 → if affairs of company being conducted in a manner prejudicial to interests of members or any class of members or oppressive to any member or members.

Procedure:
- NCLT → + Affidavit
- Petition filed by
  - Affected (241-2)
  - Petitioner (241-3)
- Non-appearance (u-action)
- Adjournment - may do so in interest of justice etc

App for Compromise and Arrangement

- Procedure - Same.
- Institution of application
  - Report of Reg. where company
  - Notice of Reg. for Comm. in Int. in ROC
  - Sec 230 - 232 to Income Tax Department etc

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1. NCLT - 2 + Affidavit
2. Provision of petition / Report
3. Timeline
4. Verification (NCLT-6)
5. Index
6. Security of CA (NCLT-5) (Section Wise Fees)
7. Legal
8. Proceeding (Interlocutory stages)

Source for Ruling on Quorum in NCLT-2

Formulation in English (all the documents)

In case of objects, the APEX followed & must be rectified within 7 days

Serving of notice to opp party
- NCLT-5
  - Incorp -
  - Hand delivery
  - By post / speed P.

Production of evidence as NCLT may direct.

Non appearance

Applicant		
	D(opp) → ex-parte decree	
P ✓	D ✗	→ may proceed
P ✗	D ✗	→ dismiss.

- Appearance before NCLT - P & 4 Sy (Sec 2-20(7))
- Appeal against P/D to NCLT against T/O & Shares (Allowed)

4. Adjournment (Sec 2-20) NCLT-3A
   - In charge before hearing (V+D)
   - Contents -
     - date of filing
     - Name of petitioner & opposition
     - Nature of relief
     - Date of hearing
     - Petitioner (Sec 2-20) - be served at least 7 days before hearing
     - NCLT should - adjournment
   - All relevant facts admit must have public hol — 2 days before hearing
5. Right to party to appear
   - appear in person or through Pleader (241 - 3)
   - AR through Vakalatnama
   - Rep may submit info about company if NCLT directs
   - No parties / other proceedings
6. Substitution of legal
   - Participation in proceeding shall continue against the deceased LR / Interest holder

Rules - 2 Rules

Structure of NCLT
- App of Compromise / Arrangement
  - Intimation to / Minister for safety reasons
  - Relig state / Int / Inter for well meeting
  - Appoint / Constitute a Chairperson.
  - Prior / Quorum
  - Rule & order of meeting
  - Notice to Reg. bodies

Notice - CAA-1
- to MCA
- Copy of notice / report & explaining effect on A / [illegible]
- uploaded on website

Adjournment - CAA-2
V+D — 2 days before meeting

Notice to Secretary authorities - CAA-3
to — CG, ROC, IT
- RBI, SEBI, CCI (if)
- 10 days before meeting

Voting results by chairperson to NCLT — 3 days from conclusion

CAA-4

CAA-5 → petition for sanction / Comp / Arrangement within 7 days of voting
Copy of minutes are public - certified copy filed by CO. to NCLT within 30 days

CAA-8 - Statement of compliance within 120 days of order

Final - NCLT takes EFFECT
- T/O of undertaking / A/L to T/Frame from effective date
- Assignment of shares to T/Frame Co.
- Continuance of T/Frame Co.
- Dissolution of T/Transferor Co.
- T/O of employees
- T/Frame's Detail -
  - T/Frame shall be valid until it becomes listed
  - Exit opportunity for dissenting shareholders

Certificate by company's auditor must be filed with NCLT regarding acc. standard

M&A of certain companies
→ 2 or more start up co.
→ One start up with one small co.

1. Notice initiating objection - CAA-3 (management)
2. Declaration of following with NCLT before convening meeting of members & cr.
3. CAA-10 (NCLT)
4. CAA-11 - copy of scheme within 5 days of receipt of order of NCLT
5. Information broke — [illegible] within 30 days of NCLT order.

Application for Oppression (u/s)

VS Minority VS majority hospital hi end hospital limited

Conditions for invoking Sec 241 (Oppression)

1. Conduct is harsh, burdensome
2. Conduct is multiple and for illegal purpose
3. Against majority and good conduct
4. Illegal and oppressive

Judgements
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- Power of tribunal (241 - 242)
- If application is made against oppression then NCLT may give following order -
  1. Purchase of shares of members by other members
  2. Reduction in Sh. capital
  3. Termination of agreement entered by D / MD / MTD in oppression
  4. Setting aside T/P / delivery of goods
  5. Removal of MD / MTD / D
  6. Appointment of Dir by NCLT
  7. Imposition of cost

Class action suit

Persons eligible to file class action suit:
1. Shareholder to man
2. member in capacity of member
3. RD
4. depositor of public / for co
5. } same as (2)
6. }

Procedure
Compromising application
- Affidavit (NCLT-6)
- Post for appearance
- Copy of notice from ROC
- File a form GNL-1
- Joint app by Co & appoint in default / shareholder

NCLT orders against class action suits:
1. to restrain co. against ultra vires act / act
2. to restrain from committing breach of member
3. declare resolution void if materially misleading
4. to restrain Co / director from acting
5. Compensate the aggrieved.

COST → costs of CAS shall be borne by co.

NCLT shall consolidate all the multiple applications with the same issue.

Publication of notice
1. Once NCLT accepts class action suit, it shall publish a PUBLIC NOTICE in NCLT-13 within 7 days from order.
   Contents -
   - Name of lead applicants
   - Grounds
   - Relief
   - date & time of hearing
   - copy of this notice shall be borne by applicant but reimbursed by co.

Publication of notice
- Sec 241
  - Co. having Sh. Cap. 100 m or more or turnover of 500 m } ↓ OR
  - Co. not having Sh. Cap. } both of stated mean
  - any member holding 1/10 m of issued capital.

Right to apply under U/s 241
(forms (NCLT) → claims)

Compromising application

Compromisable / Non compromisable

- Fine fine on imp / imp
- Imp only fine
- Imp / imp & fine

App of compromising
- NCLT
- RD (upto 25 lks (max-cost) of fee)

Procedure
Compromising application
- Affidavit (NCLT-6)
- Post for appearance
- Copy of notice from ROC
- File a form GNL-1
- Joint app by Co & appoint in default / shareholder

✓ File NCL-28 (copy of NCLT order) with in 30 days

Adjudication

1. Issue of SCN by AO - for the reasons
2. Reply within 30 days in electronic mode
3. If physical appearance is necessary then a notice will be served in 10 days from reply to appear.
4. Representation - oral or through LR is allowed by RD & mentioned in reply
5. AO will give order within 30 days of physical appearance, if required
6. Quantum of penalty factors -
   - size & no.
   - Nature of business
   - Injury to public int
   - nature of default
   - Repetition
   - amount of undue gains
   - Amount of loss.

Appeal against RD against AO
- Joint more than one party
- If appeal is deficient - 14 days to rectify
- Appeal on accept appeal in 7 days
  ↓
  If appeal is accepted then a copy will be issued to AO who shall reply within 21 days
  ↓
  Hearing
  ↓
  Passed an (signed)

60 | 14 | 7 | 21 days

Appeals before NCLAT

Appeal against NCLT — 45 days → NCLAT (45 + 45)

- OBM
- confirm, modify, set aside order of NCLT

Appeal against NCLAT → Codes → SC (60+60)

45 days extension
- Limitation Act, 1963 Sec 5 → Sufficient cause shall be given (Hon. Tribunal / appellate).

Procedure before NCLAT
1. Application in NCLAT-2 in Duplicate + copy of NCLT order [Interlocutory - NCLAT-2 / Application]
2. One copy to be delivered to opposite party
3. All translated in English
4. Affidavit - NCLAT-4
   Affidavit by illiterate / visually challenged - NCLAT-5

Other points
- Litigation calendar
- Title 'In the National Company Law Tribunal'
- Separate paragraph, consecutively numbered