

CHAPTER - 5 - DOCUMENTATION - M/A.

Synopsis.

- Stages involved in Merger and Amalgamation.
- List of Document filed in case of scheme of Amalgamation.
- Person Eligible for Filing the petition before NCLT.
- Submission of Application.
- Calling of meeting by tribunal.
- Drafting of scheme.
- Standard guidelines for petition before NCLT
- Basic principles of Drafting of application and petition
- Final order of tribunal.

⇒ Stages involved in Merger and Amalgamation

- Stage-1 - Drafting of scheme.
- Stage-2 - Obtaining the approval of BOD.
- Stage-3 - Obtaining the approval of SE in case of Listed co.
- Stage-4 - Application / Petition for convening meeting of crs / mem
- Stage-5 - Convening meeting of members / creditors.
- Stage-6 - Scheme Approvals or No objection from RD / O.L.
- Stage-7 - Filing of Final Petition with NCLT
- Stage-8 - Obtaining order for approval for scheme from NCLT

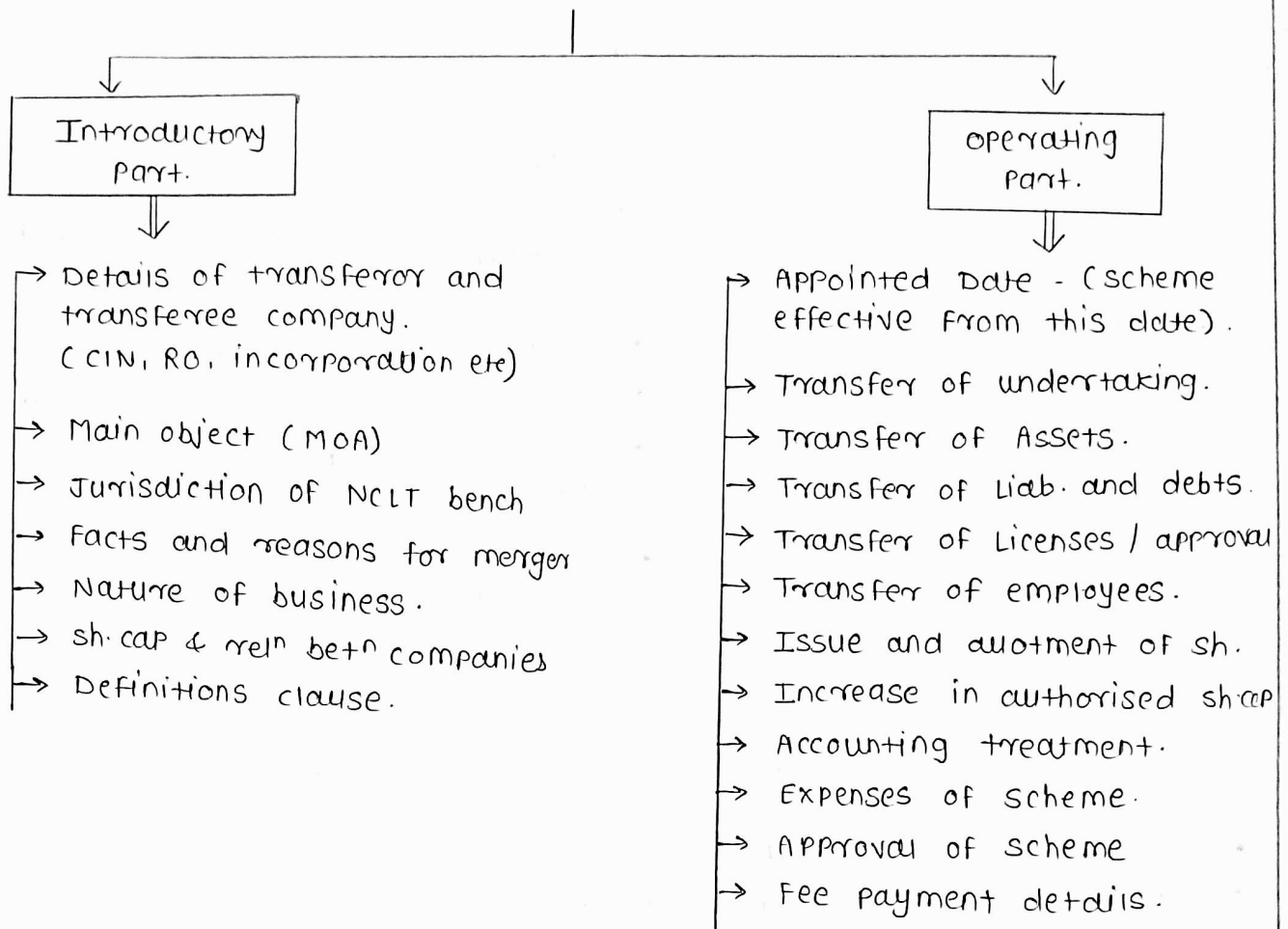
⇒ List of Documents Filed in case of a scheme of Amalgamation.

- MOA and AOA of First applicant company.
- MOA and AOA of Second applicant company.
- Latest audited b/s of First applicant company.
- Audited b/s of Second applicant company.
- BR for approval and auth. of scheme by First applicant co.
- BR for approval and auth. of scheme by Second applicant co.
- List of Equity sh. hol. of First applicant company.
- List of Equity sh. hol. of Second applicant company.
- observation letter issued by SE approving the scheme.
- scheme of Amalgamation.
- certificate of CA for non applicability of obtaining a VAVⁿ Report
- Fairness opinion issued by Merchant Banker.

⇒ Person Eligible for Filing the Petition before NCLT

- who can file? → Both transferor and transferee co. → NCLT
- where more than 1 co involved → May file joint application.
- If R.O. at diff. Sta States
 - There will be two tribunals having the Jurisdiction over those.
 - separate petition to be filed → resp. tribunals
 - as a matter of practice co. may shift R.O. UBI2 of ULS 12 of co. Act to bring under 1 Jur.

⇒ Drafting of Scheme.



⇒ Standard Guidelines for Petition before NCLT (AS PER NCLT RULES 2016)

- General Drafting Req. -
 - Filed in prescribed form (NCLT-1) with prescribed fee.
 - Filed in triplicate.
 - Must mention relevant provisions of co. Act 2013 & NCLT rules.
 - Proper territorial Jurisdiction of NCLT bench.
- Format and structure.
 - Legibly typewritten in English language.
 - Divided into numbered paragraphs.
 - Each paragraph - separate fact / point
 - Double spacing, margin of about 4cm width on top and with a right margin of 2.5 cm left margin of 5 cm.
 - Duly paginated, indexed & stitched.

→ signature and verification -

- Name and signature of authorised representative at foot.
- complete address details.
- contact details.
- Affidavit verifying petition - NCLT-6
- Affidavit on proper stamp paper notarized.

→ Attachments -

- Annexures serially numbered.
- Vakalatnama with court fee stamp.
- Shareholding / paid up capital / Latest balance sheet.
- Documents in other language - translated and certified.
- All documents duly certified by AR

⇒ submission of Application (Merger / Amalgamation)

- Notice of Admission - Form NCLT-2
- Affidavit - Form NCLT-6
- copy of scheme (comprom / Am / merger)
- Disclosure of basis of classification of mem / crs.

⇒ calling of meeting by tribunal - Notice of meeting - NCLT CAA-2

- person entitled to receive the notice - each crs. mem, deb. hol. - individually at the address reg. with the co.
- person authorized to send the notice - chairman of the meeting, or if tribunal so direct - co. or liquidator
- modes of sending of notice - By Registered Post, Speed Post, by courier, by e-mail, hand delivery
- Minimum time of notice - At least one month before the date fixed for meeting.

⇒ Report of the Result of Meeting :-

Time fixed by tribunal. otherwise chairperson shall submit a report within 3 days after conclusion of the meeting to the tribunal - CAA-4

⇒ Basic principles of Drafting of Application and petition.



order 6 (Pleading generally & Associates rules of CPC)

- Rule-2 - Pleading must contain only material facts in a concise form.
 - Each allegation should be in separate numbered paragraphs.
 - Dates, amounts and numbers must be written in figures and words.

- Rule-4 - In case of fraud, misrepresentation, breach of trust, undue influence etc, specific details (time, date, year) must be clearly mentioned. Vague allegations are not accepted.

- - Before drafting, collect all facts, documents, and evidence from the client. The info. could be gather by asking questions on ↓ facts.
 - whether all factual details have been taken out?
 - whether basic details of parties have collated?
 - All evidence necessary for drafting.
 - Appointment of additional director.

- Rule-64 - Pleading must be signed by the party and pleader (or an authorized person).

⇒ Final order of tribunal.



- If the tribunal is satisfied that meeting of crs / mem. has been held as per the prescribed procedure



- Then the tribunal may by order sanction the scheme (CAA-6)

