1.8 · Compromises, Arrangements and Amalgamations P13 · Module 1

· Chapter XV, s.230–240

SM pp. 141–149 (9 pages). 32 marks in 7 papers, **always as a 7-mark half** (5 papers). ICMAI's PTP turned the Jun'23 merger case into a 4-MCQ set.

Paper	What was asked	Marks
Jun'23	Q4(a)(I) **unlisted holding company (70%) merges with its listed subsidiary**: in order? shareholders' approval? dissenters? NCLT order needed?	4
Dec'23	Q5(b) **minority squeeze-out** in a reconstruction: price set by the promoters, more than 90% voted for it; can the minority reject?	7
Dec'24	Q8(b) **amalgamation by the Central Government** in the public interest (s.237)	7
Dec'25	Q3(b) s.237 again: **dissenting shareholders' remedy** on compensation (also ICMAI MQP)	7
Jun'26	Q4(b) **compromise and arrangement (s.230)**: procedure, role of the Tribunal, filing	7

DEC'26 PREDICTION · HOW TO ANSWER

- Tier A, **7 marks**; an **80%** chance of the 4-MCQ case set (PTP ran one on the Jun'23 facts).
- Likely: (1) **holding + listed subsidiary merger** case, and **when the fast track (s.233) applies** · (2) s.237 (asked twice running, so less likely a third time) · (3) **s.236/minority buy-out**.
- Write procedure questions as a **flow**: application → meetings → approvals → sanction → filing.

MAP

1. Meanings · s.230 compromise or arrangement ★★★
2. Tribunal's powers (s.231) · merger (s.232) ★★
3. Fast-track merger (s.233) ★★
4. Cross-border (s.234) · dissenters and minority (s.235, 236, 230(7)) ★★
5. Amalgamation by the CG (s.237) ★★
6. Model answers · MCQs · numbers

1 Meanings, and compromise or arrangement (s.230) · Jun'26 Q4(b)

MEANINGS

- **Compromise**: settling a **dispute** by mutual concessions. No dispute, no compromise; if members give up their rights entirely, it is not a compromise. [SM 141]
- **Arrangement**: very wide. Any reorganisation of share capital (consolidation or division of classes, varying special rights), between classes of shareholders, or between creditors and shareholders (*Investment Corp. of India*). [SM 141]
- **Amalgamation**: two or more companies join into a new one, or one is absorbed into another. The amalgamating company **loses its existence** and its shareholders become shareholders of the amalgamated company. **Not defined** in the Act. [SM 141]

WHO AND WITH WHOM

- Between the company and its **creditors** (or a class), or its **members** (or a class). [SM 141]
- Application to the **NCLT** by the **company, any creditor, any member, or the liquidator** (jointly too). [SM 141–142]
- The application discloses: the latest financial position and auditor's report, pending investigations, any **reduction of capital**, and any **corporate debt restructuring** consented to by **75% of secured creditors in value** (with a creditors' responsibility statement, safeguards, the auditor's liquidity-test report, RBI CDR guidelines and a **registered valuer's** report). [SM 142]

The s.230 procedure, step by step [SM 142–144]

1 · APPLY to the NCLT, with full disclosure [SM 142]

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2 · NCLT ORDERS MEETINGS of the creditors or members (by class), held as it directs [SM 142]

→

3 · NOTICE individually (Form 15.3) with the scheme's effect, valuation, interests, and investigations; on the website; for listed companies to **SEBI and the exchanges**; in newspapers [SM 142–143]

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4 · REGULATORS notice to the CG, income tax, RBI, SEBI, ROC, exchanges, OL, CCI and sector regulators: representations within **30 days**, else none presumed [SM 143]

→

5 · VOTE a **majority of persons representing three-fourths in value**, in person, by proxy or postal ballot [SM 144]

→

6 · SANCTION the NCLT's order makes it **binding on all**. File with the ROC within **30 days** [SM 144]

- **Who may object:** only persons with at least **10% of the shareholding** or at least **5% of total outstanding debt**. [SM 143]
- The notice includes directors', KMP's and promoters' shareholding and changes in the last **6 months**, approvals received, documents for inspection, and a declaration that the scheme is in the interest of employees, creditors and minority shareholders. [SM 143]
- **The NCLT may dispense with a creditors' meeting** if creditors holding at least **90% in value** consent by affidavit. [SM 144]
- **The NCLT's order provides for:** convertible preference shareholders choosing cash for dividend arrears or equity · protection of any class of creditors · variation of rights under **s.48** · an **exit offer to dissenting shareholders** and other matters. [SM 144]
- The company's **auditor certifies** that the accounting treatment conforms to the accounting standards. [SM 144]
- A **statement of compliance** is filed with the ROC within **210 days**. [SM 144]
- **Takeover offer within a scheme (s.230(11))**: by a member who, with others, holds at least **three-fourths** of the shares, to acquire the rest. For listed companies, under SEBI regulations. [SM 144]
- **s.231:** the NCLT **supervises implementation**, gives directions or modifies the scheme, and may call for reports. If the scheme cannot work and the company cannot pay its debts, it may order **winding up**. [SM 144]

2 Merger and amalgamation through the NCLT (s.232)

When the s.230 application is for a **reconstruction, merger or amalgamation** transferring an undertaking, property or liabilities to another company, the NCLT orders meetings and **s.230 applies with necessary modifications**. [SM 145]

CIRCULATED FOR THE MEETINGS

1. the **draft scheme** adopted by the directors of the merging company
2. confirmation that it has been **filed with the ROC**
3. the directors' report on its effect on each class, KMP, promoters and non-promoters, with the **share exchange ratio** and any valuation difficulties
4. the **expert's valuation report**
5. a **supplementary accounting statement** if the last accounts are more than **6 months** old at the first meeting

[SM 145]

THE NCLT'S ORDER PROVIDES FOR

- transfer of the undertaking, property and liabilities from the date the parties fix · allotment of shares and debentures · **continuation of pending legal proceedings** [SM 145]
- **dissolution of the transferor without winding up** (SM MCQs 70, 84) · provision for **dissenters** · allotment to non-residents per FDI norms · **transfer of employees** [SM 145–146]
- **Listed transferor, unlisted transferee:** the transferee **stays unlisted until it lists** (SM MCQ 73); shareholders who opt out are **paid** per a predetermined price formula or valuation [SM 146]
- the transferor's **authorised-capital fees are set off** against the transferee's [SM 146]
- the **auditor's certificate** on the accounting treatment (SM MCQ 71) [SM 146]

After sanction: property and **liabilities pass** to the transferee (SM MCQ 72: both) and charges may be released · certified order filed with the ROC within **30 days** · the scheme states an **appointed date** and is effective from it, not later · until completion, an **annual statement** certified by a practising CA, CMA or CS is filed with the ROC on compliance. [SM 146]

3 Fast-track merger (s.233): no NCLT

WHO MAY USE IT

- **Two or more small companies** (small company: SM 147; ⚠ now **₹10 cr / ₹100 cr** per the Dec'26 supplementary, see 1.1) [SM 146–147]
- a **holding company and its wholly-owned subsidiary** [SM 146]
- prescribed classes (Feb 2021): two or more **start-ups**; start-ups with small companies [SM 146]

Jun'23 case: a **70% subsidiary** is **not wholly owned**, and a listed company is not small. So the **fast track is not available**; the full s.230–232 NCLT route applies.

STEPS

1. notice inviting **objections from the ROC, the Official Liquidator** and affected persons within **30 days**
2. objections considered; scheme approved by members holding at least **90% of the total number of shares**
3. each company files a **declaration of solvency** with the ROC
4. approved by **nine-tenths in value of creditors** (meeting on **21 days'** notice, or in writing)
5. transferee files the scheme with the **CG, ROC and OL**
6. no objection → the **CG registers and confirms**. If the ROC or OL objects (within **30 days**), the CG may within **60 days** ask the NCLT to consider it under s.232; silence = no objection

[SM 147–148]

Effect of registration: the transferor is **dissolved without winding up**; property, liabilities and charges pass; pending proceedings continue against the transferee; unpaid dues to dissenters become the transferee's liability; shares the transferee holds in itself (or through trusts) are **cancelled**. [SM 148]

4 Cross-border merger, dissenters, minority buy-out, and amalgamation by the CG

s.234 · s.235 · s.230(7)(e) + RULE 27 · s.238

- **s.234 cross-border:** a foreign company (with or without a place of business in India) may merge into an Indian company, or vice versa, with **RBI's prior approval**. Consideration in **cash and/or depository receipts**; only with companies in **notified countries** (Rule 25A). [SM 148]
- **s.235:** where a scheme is approved by holders of **nine-tenths in value** of the shares, the transferee may acquire the **dissenters'** shares: notice to dissenters, their right to apply to the Tribunal, and the consideration kept in a **separate bank account**. [SM 149]
- **Minority exit (s.230(7)(e), Rule 27):** the NCLT may order an exit for dissenters. The minority's shares are valued by a **registered valuer**; their particulars are verified within a **fortnight** of receiving the money; the cut-off date for corporate actions is declared in advance. [SM 149]
- **s.238:** a circular recommending a s.235 offer must carry the prescribed information and the transferee's statement on **cash availability**, and is **registered with the ROC before issue**. Appeal against refusal to the NCLT (the SM misprints "NCCT"). [SM 149]

s.237: AMALGAMATION ORDERED BY THE CENTRAL GOVERNMENT (Dec'24, Dec'25, MQP)

1. If **essential in the public interest**, the CG may by an **order in the Official Gazette** amalgamate two or more companies into one, with the constitution, property, powers, rights, liabilities and duties the order specifies.
2. The order may continue **pending legal proceedings** by or against the transferee.
3. Every **member, creditor and debenture holder** keeps, as nearly as possible, the **same interest or rights** in the transferee as before.
4. Where the interest or rights are **less** than before, they get **compensation**, assessed by a **prescribed authority**, published in the Gazette, and paid by the transferee.
5. **Remedy:** anyone aggrieved by the assessment may **appeal to the Tribunal within 30 days** of its publication; the Tribunal assesses the compensation.

[SM 149]

5 Model answers

MODEL ANSWER 1 · HOLDING COMPANY + LISTED 70% SUBSIDIARY MERGER (JUN'23 Q4(a)(I), ICMAI PTP MCQ SET) · OUR TOP 1.8 PICK

Facts: ABC Ltd (unlisted public, ₹50 cr capital) holds 70% of BCG Ltd (listed, ₹20 cr). They decide to merge. (i) Is the decision in order? (ii) Must each company's shareholders approve? (iii) What if some shareholders do not consent? (iv) Is an NCLT order required?

1. **In order?** Yes. A merger is a scheme of **reconstruction or amalgamation** under **s.230 read with s.232**, a business decision of the Boards. The draft scheme is adopted by the directors and filed with the ROC. As BCG is **listed**, SEBI and stock-exchange requirements also apply. [SM 145]
2. **Shareholders' approval?** Yes. The NCLT orders meetings of the **members (and creditors) of each company**, and the scheme must be approved by a **majority of persons representing three-fourths in value** in each meeting. [SM 144–145]
3. **Non-consenting shareholders:** once approved and **sanctioned by the NCLT**, the scheme is **binding on all** members, dissenters included. The order may provide for **dissenters** or an **exit offer**. Here the listed transferor merges into an **unlisted** transferee, so ABC **stays unlisted until it lists**, and BCG shareholders who opt out are **paid the value of their shares** per a predetermined price formula or valuation. Only holders of at least **10%** of shares (or **5%** of debt) may object. [SM 143–146]
4. **NCLT order?** Yes. The **fast-track route (s.233)** covers only a holding company with its **wholly-owned** subsidiary, or small companies or start-ups. BCG is a **70%**, listed subsidiary, so the NCLT route under s.230–232 is compulsory. The certified order is filed with the ROC within **30 days**. [SM 146]

MODEL ANSWER 2 · MINORITY SQUEEZE-OUT IN A RECONSTRUCTION (DEC'23 Q5(b)) · 7 MARKS

Facts: a listed MNC's reconstruction scheme makes the minority sell their shares back to the promoters at a **price fixed by the promoters**, with no choice. Six non-promoter shareholders voted against; the scheme passed with over 90%. The minority say they can reject it. Will they succeed?

1. **Binding effect:** a compromise or arrangement approved by a **majority representing three-fourths in value** and **sanctioned by the NCLT** binds all members, dissenters included (s.230). A 90% vote meets this. [SM 144]
2. **Right to object:** only holders of at least **10%** of shares (or **5%** of debt) may object to the scheme. Six small shareholders below 10% **cannot block it**. [SM 143]
3. **But the price:** the NCLT may order an **exit for dissenting shareholders** (s.230(7)(e)), and the **minority's shares are valued by a registered valuer** (Rule 27), not at a price the promoters fix. The scheme must be **fair**, and the NCLT will not sanction an unfair or unilateral price. [SM 144–149]
4. **Conclusion:** the minority **cannot reject the scheme itself** on numbers. But they can **challenge the valuation before the NCLT** and insist on a price fixed by a registered valuer. If the price is fair and the procedure followed, the squeeze-out stands.
   (⚠ ICMAI's suggested answer is not with us. Courts have upheld such schemes where the majority was overwhelming and the price independently fair; the SM cites no case.)

SM exercise MCQs on 1.8 (SM 169–171)

70 in a merger the transferor company is	**dissolved**	72 transferred on amalgamation	**rights and liabilities (both)**
71 the auditor confirms the scheme	**conforms to the accounting standards**	73 listed transferor into an unlisted transferee	**stays unlisted unless it lists**
84 A Ltd merges with B Ltd: A Ltd is	**dissolved**	bank 252 "mutatis mutandis"	**subject to necessary modifications**

R Revision: every number in 1.8

Rule	Number
CDR consent: secured creditors in value	75%
regulators' representations within	30 days
objection only by: shareholding / debt	≥ 10% / ≥ 5%
shareholding changes disclosed for last	6 months
approval: majority + value	¾ in value
dispense with creditors' meeting if they consent	90% in value
order to ROC / compliance statement	30 / 210 days
takeover within scheme: holding at least	¾ of shares

Rule	Number
supplementary accounts if last accounts older than	6 months
s.233: objections / members / creditors	30 days / 90% shares / 9/10 value
s.233 creditors' meeting notice	21 days
s.233: ROC/OL objection / CG to NCLT	30 / 60 days
s.235 approval	9/10 in value
minority particulars verified within	a fortnight
s.237 appeal to Tribunal within	30 days