

## COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LLP

Chapter XII of the Limited Liability Partnership Act, 2008 (for short “**LLP Act**”) lays down the provisions concerning Compromise, Arrangement or Reconstruction of LLP’s. The said Chapter under Sections 60, 61 and 62 lay down the provisions regarding Compromise or arrangement of LLP’s, the powers of the Tribunal to enforce compromise or arrangements and the provisions for facilitating reconstruction or amalgamation of limited liability partnerships. The aforesaid Section concerning the Compromise, arrangement or reconstruction of LLP’s are very similar to the provisions concerning arbitration, compromises, arrangements and reconstructions under Chapter V of the Companies Act, 1956<sup>1</sup>. In addition to the above it is to be noted that the definition of Tribunal which is the quasi judicial authority for implementing inter alia others, the scheme of compromise, arrangement and reconstruction in the LLP’s is the National Company Law Tribunal for the Companies Act, 1956. This has been laid down under Section 2(u) of the LLP Act which states that the ‘Tribunal’ means the National Company Law Tribunal constituted under sub-section (1) of Section 10FB of the Companies Act, 1956.

### MEANING OF “COMPROMISE”, “ARRANGEMENT” “RECONSTRUCTION” AND DIFFERENCES BETWEEN THE SAME

The term “compromise”, “arrangement” and “reconstruction” forms an essential part of Companies and LLP’s as it encompasses within its meaning the entirety of any kind of restructuring taking place in the business entities whether by means of a change in the structure taking place internally or an external Act of takeover or amalgamation. However, the terms compromise and reconstruction have not been defined anywhere in any Act whereas the term “arrangement” has been defined under Section 390 (b) of the Companies Act, 1956 to include a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both the method.

The term “Compromise” has however, been judicially construed in consonance with its popular import as postulating a dispute relating to rights and as a scheme which seeks to be in the nature of a settlement of those disputes<sup>2</sup>. The term “reconstruction” which has also not been defined by the Act has been judicially construed in England as being applicable to a scheme under which a company transfers its assets to a new company, in consideration of the assignment of the new company’s shares to the first company’s members, and if the first company’s debentures are not paid off, in further consideration of the new company issuing debentures to the first company’s debenture holders (Pennington’s Company Law, 2nd edition, page 727)<sup>3</sup>. As per the Halsbury’s Laws of England “Neither ‘reconstruction nor amalgamation’ has a precise legal meaning. Where an undertaking is being carried on by a company and is in substance transferred, not to an outsider, but to another company consisting substantially of the same shareholders with a view to its being continued by the transferee company, there is a reconstruction. It is none the less a reconstruction because all the assets do not pass to the new company, or all the shareholders of the transferor company are not shareholders in the transferee company, or the liabilities of the transferor company are not taken over by the transferee company<sup>4</sup>.

Although the above meanings have been attributed to the aforesaid terms in the context of Companies Act, yet the same can be made applicable to LLP’s under the LLP Act in view of the fact that a perusal of the provisions regarding Compromise, arrangement and reconstruction under the LLP Act and the Companies Act would bring us to opine that there is almost little or no difference between the fundamental nature of the provisions.

A perusal of the meaning attributed helps us to identify that the terms compromise and arrangement generally take place within the business organisation whereas a reconstruction is one which necessarily involves external influences, although not in total. In pursuance of the above it is to be also noted that the terms compromise and arrangement is linked to internal factors to a greater extent, not absolutely precluding the aspect of external influences. Also an important aspect is that the terms of a compromise may often involve some or the other kind of conflict between the interested parties, compromise being the result of the amicable settlement of such disputes.

### DIFFERENCES BETWEEN COMPROMISE, ARRANGEMENT AND RECONSTRUCTION

<sup>1</sup>In view of the fact that the provisions concerning compromises, arrangements and amalgamations under Chapter XV of the Companies Act, 2013 have not come into force Chapter V of the Companies Act, 1956 is being referred to for the purpose of comparison.

<sup>2</sup>Bank of India Ltd. vs. Ahmedabad Manufacturing & Calico Printing Co. Ltd. [1972]42CompCas211(Bom)

<sup>3</sup>*Id* at 2

<sup>4</sup><http://www.legalservicesindia.com/article/article/reconstruction-&-amalgamation-319-1.html>

PARTICULARS	COMPROMISE	ARRANGEMENT	RECONSTRUCTION
Mode	Settlement arrived at between the parties thereby arriving at a mutually determinable scheme.	Reorganisation of the existing arrangement by either division or consolidation.	Transfer of whole or a part of the undertaking, property and liability of the Company.
Ownership	Ownership may or may not be transferred.	Ownership may or may not be transferred.	Ownership is transferred.
Dilution of equity	Equity may or may not be diluted.	Generally equity is not diluted.	Dilution of equity takes place owing to transfer.

#### COMMENCEMENT AND PROCEDURE OF COMPROMISE, ARRANGEMENT OR RECONSTRUCTION

- i. **Commencement of Proceeding:** Section 60 of the LLP Act, lays down that in order to commence any proceeding for a compromise or arrangement between an LLP and its creditors<sup>5</sup> or between an LLP and its partners<sup>6</sup> an application has to be made by the LLP, the Creditor or the Partner pursuant to which the Tribunal can order a meeting of such Creditors or Partners to be held and conducted in a manner as directed by the Tribunal.  
Rule 35(1) of the Limited Liability Partnership Rules (for short “LLP Rules”) lay down that any such application under Section 60(1) of the Act has to be supported by an affidavit laid in Form 20 of the Rules. Rule 35(2) mandates service of a copy of the summons in Form 21 and an affidavit upon the LLP in cases where the LLP is not an applicant and upon the official liquidator, where the LLP is being wound up.
- ii. **Direction by Tribunal:** The Tribunal may either dismiss the summons or give directions in respect of determination of the partners/creditors for the meeting, fixing the time, quorum, procedure of the meeting, appointing the chairman and determination of the notice of the meeting and necessity to give an advertisement for the same.
- iii. **Notice:** Notice has to be served upon the creditors/partners at least 21 clear days before the date of the meeting. [35(5) of LLP Rules]. Where a direction is present for issuing an advertisement, the Chairman has to file an affidavit at least 7 days before the date of meeting evidencing compliance of the same. [Rule 35(8)]
- iv. **Service of proposed Compromise or Arrangement:** In case of a requisition made by any creditor/ partner entitled to attend the meeting, a copy of the proposed compromise or arrangement has to be supplied within 48 hours free of charge. [Rule 35(7)]
- v. **Meeting:** If a majority represented by 3/4<sup>th</sup> in value of the creditors/partners agree to the compromise or arrangement, then the said scheme if sanctioned by the tribunal by an Order would be binding upon all creditors/partners and in case of an LLP being wound up upon the liquidators/ contributories. [Section 60(2) of the Act]
- vi. **Report the Result:** The Chairman of the meeting shall report the results of the meeting to the Tribunal within the time fixed by the Tribunal or within 7 days in case no time has been fixed. The said report shall state the number of creditors, partners who were present and voted at the meeting. Rule 35(9)
- vii. **Confirmation Petition:** When the proposed compromise or arrangement is agreed to under Section 60(2) of the Act, the LLP or its Liquidator shall within 7 days of filing of the report by the Chairman, present the petition for compromise or arrangement [Rule 35(10)(i)]. However if the said Petition is not presented or cannot be presented because of non approval, the aforesaid report under Rule 35(10) has to be filed for appropriate orders. [Rule 35(10)(iii)]
- viii. **Filing of Order:** The order passed by the Tribunal under Section 60(2) shall be filed with the Registrar within thirty days failing which the LLP and every designated partner would be punishable with a fine of up to Rs. One lakh rupees. [Section 60(3) of the Act]

<sup>5</sup>Section 60(1)(a)

<sup>6</sup>Section 60(1)(b)

**POWERS OF THE TRIBUNAL FOR EFFECTUATING THE ABOVE.**

Section 61 of the Act lays down the powers of the Tribunal to enforce compromise or arrangement. This is similar to Section 392 of the Companies Act and is adopted from the same. This section empowers the Tribunal making an Order under Section 60 of the Act, to supervise the carrying out of a compromise or an arrangement or to make any modifications in the compromise or arrangement for proper working of the same. However, if the tribunal is of the opinion that that any compromise or arrangement sanctioned under Section 60 cannot be worked out either with or without any modifications then the Tribunal can order winding up of a company in such circumstances.

The Tribunal further has the power under Section 62 of the Act to make provisions for transfer of the undertaking, properties and liabilities of the LLP, continuation of pending legal proceedings, dissolution without winding up of the Company, making provisions for persons dissenting from the Compromise or Arrangement and other incidental consequential or supplementary matters necessary to secure the reconstruction or amalgamation.

**CONCLUSION**

Chapter XII of the LLP Act comprehensively covers the law relating to compromise, arrangement and reconstruction of LLP's. The aforesaid chapter of the LLP Act read with Chapter XII of the LLP Rules covers within its ambit the entire scope of compromise, arrangement and reconstruction of LLP's from its initiation to the rules concerning the procedure to be followed, enforcement of such schemes and lastly the compliance with these provisions. An important aspect is the similarity between the scheme of compromise, arrangement and reconstruction of Companies and LLP's as under the Companies Act and the LLP Act respectively. This resemblance portrays the intention of the legislature to bring Companies and LLP's at par in respect of issues which if disregarded may impact the interest of the parties involved. This is particularly keeping in mind the distinction between a partnership concern and a LLP, in view of the liability aspect which can cause a tendency to omit/breach the law thereby necessitating strict provisions similar to that of Companies as under the Companies Act, 1956. The LLP Act is hence seen to have been brought under the ambit of the National Company Law Tribunal, which would govern Companies once the same is notified and would imply that the LLP's would be kept on the same par as that of Companies to avoid any misconduct in view of the limited liability status endowed to the same. However, a flipside to this is that the aforesaid provision concerning LLP's are dependent upon the setting up of the National Company Law Tribunal and the notification regarding the same, prior to which it would be dealt with by the High Court's similar to Companies under the Tribunal, thereby further burdening the High Courts and impacting the efficiency of any such arrangement.