

GENERAL CIRCULAR NO. 53/2011

F. No. 51/16/2011-CL.III

Government of India

Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,

Dr. R.P. Road, New Delhi-110001

Dated 26th July, 2011

To

All Regional Directors

All ROCs

All Official Liquidators

**Subject: Guidelines for RDs/ROCs in the matter of scheme of arrangement /
amalgamation under section 391-394.**

It has been observed that various field formations are following different practices while sending comments to the Hon'ble High Courts in respect of scheme of arrangement/amalgamation u/s 391-394 of the Companies Act, 1956 on behalf of the Central Government. In order to streamline the procedure the following guidelines alongwith timelines are issued for strict compliance. These guidelines supersede all previous guidelines on the matter. Issues to be examined by ROCs and RDs are given at annexure I and II respectively. The procedure to be followed and the timelines are indicated below.

- a) On receipt of notice from the court u/s 394A regarding the scheme, the Regional Director should make an entry in a register or in electronic form. If the petition has already been filed with ROC in Form 61 in the system, the same can be monitored directly from the system.
- b) Thereafter within three days of receipt, Regional Director shall send a mail to ROC concerned for the report.
- c) ROC should furnish his report online to RD within 7 days from receipt of Form 61 without waiting for RD's communication.
- d) Within seven days of receipt of notice RD should send a letter to local branch of Law Ministry / Assistant Solicitor General appointed for the state by Law Ministry as the case may be (furnishing copy of the notices received u/s 394A) requesting for nomination of an advocate.
- e) Regional Director should send a letter within five days of receipt of notice to company / its Advocate to provide material of valuation report, Chairman's report regarding creditors / members meeting and on receipt of the information, the matter should be processed and finalized within a week's time.
- f) The finalized affidavit should be sent to designated Standing Counsel for the particular case for signature and then to Law Ministry (local branch) for identification. This

exercise should not take more than five days after which the affidavit should be filed in Court Registry.

2. The ROCs may examine the matter in respect of issues mentioned in Annexure 'I' and send their report to concerned RDs who would take into consideration the report of the ROC before finalizing their comment.

(Jaikant Singh)
Director

Annexure - I

Issues to be examined by ROCs

1. Filing Position.
2. Investor Grievances.
3. Inspection / Investigation / Technical Scrutiny.
4. Pending Prosecution.
5. Furnishes comments on the scheme.

ISSUES TO BE EXAMINED BY REGIONAL DIRECTORS

Regional Director should ensure that all requisite statutory procedure for supporting the schemes has been complied with. For this he should examine the following:

- 1) Whether companies forming part of scheme are sensitive sectors categories companies such as, Defence Equipment Manufacturing Companies / Telecommunication / Insurance / Business / Companies / Media News / Channels / Television Broadcasting Companies / Aviation Section / Power, Energy, Natural Gas / Petroleum etc? If so, whether notices served on the concerned Regulatory Authorities / Ministry?
- 2) Whether any of the Transferor/ Transferee Company is listed company at any Stock Exchanges? If so, NOC from Stock Exchange is submitted?
- 3) Whether there is any NRI holding / foreign interest in any of the Transferor or Transferee Company?
- 4) Whether Petitioner Company and / or its director have prima facie contravened any provisions of Companies Act, 1956?
- 5) Whether Transferor and Transferee Company are regular in filing its statutory returns?
- 6) Reports sent by concerned Registrar of Companies should be examined.
- 7) Investors/or other companies regarding affairs of the company should be examined.
- 8) In case of complicated legal/technical issues, opinion of Law Ministry/ Government Advocates should also be obtained.
- 9) Whether Transferor or Transferee Company was inspected u/s.209A of the Companies Act, 1956 by this Directorate and position of latest follow up of penal actions arising out of inspection?
- 10) Whether Valuation Report submitted, if so, whether share exchange ratio in the scheme is as per Valuation Report and as per general accepted accounting principles?
- 11) Whether transfer of Employees and their interest is protected ?
- 12) Whether Accounting Treatment clause is as per Accounting Standard- 14 and in tune with the provisions of sec.211 3A / 3C of the Companies Act, 1956?
- 13) Whether meeting is conducted by the company in respect of equity shareholders/secured creditors/unsecured creditors ? If not, whether any exemption is granted by the Hon'ble High Court ?

- 14) Whether details of transactions entered with related parties of directors falling u/s.295, 297 and 299 of the Act is furnished?
- 15) Whether consideration is made in cash other than of shares?
- 16) Whether provisions of sec.77 in respect of buy back of shares is attracted?
- 17) Whether any reduction of share capital is involved in the scheme of demerger and provisions of sec.100-104 is complied with?
- 18) Where no such reduction of capital is involved, it is made sure that necessary adjustment is made in the books of accounts duly incorporating in the scheme?
- 19) Whether the authorized share capital of the Transferee Company is sufficient for allotment of new shares for the shareholders of the Transferor Company?
- 20) Whether any foreign entity is involved and if so necessary permission is obtained from Regulatory Authorities?
- 21) Whether compliance of FEMA/RBI Guidelines has been done wherever applicable?
- 22) Whether any qualification has been made by the Statutory Auditor, if so, whether company has complied with sec. 217(3) of the Companies Act, 1956?
- 23) How the qualification and reservations of the Auditors are complied with by the company?
- 24) Whether a listed company is merging with an unlisted company ? In such a case he should ensure that share of unlisted company also gets listed.
- 25) Whether consequent to merger, the promoters holding in the listed company is substantially increased ?
- 26) Whether the companies have come up with schemes to circumvent the Law in the garb of obtaining approval of the Hon'ble High Court under the accepted principle of "Single Window" approval and other grounds laid down by the Courts in its rulings ? If so, the Regional Director should bring out his objection in his statement/report/affidavit irrespective of the fact whether Court accepts it or not.
