

## **PART-III**

### **Institution of proceedings, petition, appeals etc.**

**20. Procedure.**-(1) Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;

(2) The cause title shall state “Before the National Company Law Tribunal” and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.

(3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

(4) Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given.

(5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

(7) These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.

(8) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

**21. Particulars to be set out in the address for service.**- The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:-

(a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;

(b) the name of the town or village;

(c) the post office, postal district and PIN Code, and

(d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any.

**22. Initialling alteration.**- Every interlineations, eraser or correction or deletion in any appeal or petition or application or document shall be initialled by the party or his authorised representative presenting it.

**23. Presentation of petition or appeal .-** (1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same

(2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.

(3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.

(5) In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.

(6) The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal.

**24. Number of copies to be filed.-** The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

**25. Lodging of caveat.-** (1) Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before this Tribunal by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the form prescribed and contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant which full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up:

Provided, that the Tribunal may pass interim orders in case of urgency.

(2) The caveat shall remain valid for a period of ninety days from the date of its filing.

**26. Endorsement and Verification.-** (1) At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.

(2) Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules.

**27. Translation of document.-** (1) A document other than English language intended to be used in any proceeding before the Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or by any other advocate or authorised representative whether engaged in the case or not or if the advocate or authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.

(2) Appeal or petition or other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed into Tribunal.

**28. Endorsement and scrutiny of petition or appeal or document.-**(1) The person in charge of the filingcounter shall immediately on receipt of petition or appeal or application or document affix the date stamp of Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or petition or application or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document.

**29. Registration of proceedings admitted.-** On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.

**30. Calling for records.-** On the admission of appeal or petition or application the Registrar shall, if so directed by the Tribunal, call for the records relating to the proceedings from any adjudicating authority and retransmit the same.

**31. Production of authorisation for and on behalf of an association.-**Where an appeal or application or petition or other proceeding purported to be instituted by or on behalf of an association, the person or persons who sign (s) or verify (ies) the same shall produce along with such application, for verification by the Registry, a true copy of the resolution of the association empowering such person(s) to do so: Provided that the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization: Provided further that it shall set out the list of members for whose benefit the proceedings are instituted.

**32. Interlocutory applications.-** Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

**33. Procedure on production of defaced, torn or damaged documents.-** When a document produced along with any pleading appears to be defaced, torn, or in any way damaged or otherwise its condition or appearance requires special notice, a mention regarding its condition and appearance shall be made by the party producing the same in the Index of such a pleading and the same shall be verified and initialed by the officer authorized to receive the same.

#### **PART- IV General procedure**

**34. General Procedure. -** (1) In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.

(2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in **Form No. NCLT. 4.**

(3) Every petition or application or reference shall be filed in form as provided in **Form No. NCLT. 1** with attachments thereto accompanied by **Form No. NCLT.2** and in case of an interlocutory application, the same shall be filed in Form No. NCLT. 1 accompanied by such attachments thereto along with **Form No. NCLT. 3.**

(4) Every petition or application including interlocutory application shall be verified by an affidavit in **Form No. NCLT.6.** Notice to be issued by the Tribunal to the opposite party shall be in **Form NCLT-5.**

**35. Advertisement detailing petition.-** (1) Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in **Form NCLT-3A**, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district.

(2) Every such advertisement shall state;- (a) the date on which the application, petition or reference was presented; (b) the name and address of the applicant, petitioner and his authorised representative, if any; (c) the nature and substance of application, petition or reference; (d) the date fixed for hearing; (e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorised representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing.

(3) Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.

(4) An affidavit shall be filed to the Tribunal, not less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served:

Provided that the affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.

(5) Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

(6) The Tribunal may, if it thinks fit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.

**36. Maintenance of Cash Register.** - (1) If any payment has been received by way of Indian postal orders or demand drafts or in cash by the Registry, the transaction shall be entered immediately by the Registration Clerk on their receipt side in a Cash Register kept for the purpose.

(2) On every next working day or the last working day of the week, the payments received during such day or week by way of Indian postal orders or demand drafts shall be transmitted by the Registration Clerk to the concerned official vested with the work pertaining to the Cashier who after scrutiny and verification shall acknowledge the receipt of all moneys in the Cash Register.

(3) The official referred to in sub-rule (2) shall deposit all payments received by way of Indian postal order or demand draft or cash in the Bank account of the Tribunal.

**37. Notice to Opposite Party.**- (1) The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in **Form No. NCLT.5** shall be accompanied by a copy of the application with supporting documents.

(2) If the respondent does not appear on the date specified in the notice in **Form No. NCLT.5**, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application.

(3) If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.

**38. Service of Notices and processes.**- (1) Any notice or process to be issued by the Tribunal may be served by post or at the e-mail address as provided in the petition or application or in the reply; (2) The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal; - (a) by hand delivery through a process server or respective authorised representative; (b) by registered post or speed post with acknowledgment due; or (c) service by the party himself.

(3) Where a notice issued by the Tribunal is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such other person duly authorised by the Registrar in this behalf, an affidavit of service of notice alongwith the proof of delivery.

(4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

(5) A notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be a proper service.

(6) Where the Tribunal directs a service under sub-rule (4), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the registry of the Tribunal by the petitioner or applicant.

**39. Production of Evidence by Affidavit.**- (1) The Tribunal may direct the parties to give evidence, if any, by affidavit.

(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary in the interest of natural justice, it may order cross-examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by the Tribunal, on an application moved by any party.

(3) Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7.

**40. Production of additional evidence before the Bench.** - (1) Notwithstanding anything contained in rule 39, the parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector, appointed by the Central Government for the purpose of investigating the affairs of the concerned company, during investigation under Chapter XIV of the Act, but if the Bench requires any additional evidence or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be produced.

(2) Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.

(3) If the document is directed to be produced or witness examined or evidence adduced before any authority, the party shall comply with the direction of the Bench and after compliance, send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.

(4) Additional evidence or document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they shall be afforded an opportunity to rebut the contents of the said additional evidence.

**41. Filing of Reply and other Documents by the Respondents.** - (1) Each respondent may file his reply to the petition or the application and copies of the documents, either in person or through an authorised representative, with the registry as specified by the Tribunal.

(2) A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.

(3) To the reply or documents filed under sub-rule (1), the respondent shall specifically admit, deny or rebut the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

**42. Filing of Rejoinder.** - Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.

**43. Power of the Bench to call for further information or evidence.** - (1) The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.

(3) Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.

**44. Hearing of petition or applications.-** (1) The Tribunal shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

(2) Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interests of the justice.

**45. Rights of a party to appear before the Tribunal.-** (1) Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.

(2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.

(3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Tribunal.

(4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.

(5) During any proceedings before the Tribunal, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA21 portal. Reasons for such directions shall be recorded in writing.

(6) There shall be no audio or video recording of the Bench proceedings by the parties or their authorised representatives.

**46. Registration of authorised representative's interns.-** (1) No intern employed by an authorised representative shall act as such before the Tribunal or be permitted to have access to the records and obtain copies of the orders of a Bench of the Tribunal in which the authorised representative ordinarily appears, unless his name is entered in the register of interns maintained by the Bench.

(2) An authorised representative desirous of registering his intern shall make a petition or an application to the Registrar in Form NCLT 10 and on such application being allowed by the Registrar, his name shall be entered in the register of interns.

**47. Oath to the witness.-** The Bench Officer or the Court Officer, as the case may be, shall administer the following oath to a witness:- "I do swear in the name of God / solemnly affirm that what I shall state shall be the truth and nothing but the truth."

**48. Consequence of non-appearance of applicant.-** (1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.

**49. Ex-parte Hearing and disposal.-** (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit. Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.

**50. Registry to send certified copy.-** The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.

**51. Power to regulate the procedure.-** The Tribunal may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Act.

**52. Summoning of witnesses and recording Evidence.-** (1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.

(2) Where summons are issued by the Tribunal under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.

**53. Substitution of legal representatives.-** (1) Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.

(2) In the case of death of a party during the pendency of the proceedings before the Tribunal, the legal representative of the deceased party may apply within ninety days of the date of such death for being brought on record.

(3) Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate: Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased at any time before disposing the petition on merits.

**54. Assessors or valuers.-** (1) In any enquiry into a claim, the Tribunal may call in the aid of assessor or valuer, not exceeding two in number, who possess any technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal.

(2) An assessor or valuer shall perform such functions as the Tribunal may direct.

(3) The remuneration, if any, to be paid to an assessor or valuer shall in every case be determined by the Tribunal and be paid by it in the manner as may be specified by the Tribunal.

**55. Pleadings before the Tribunal.-** No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

**56. Application for execution.-** For execution of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in Form NCLT.8.

**57. Issue of process of execution.**- (1) On receipt of an application under rule 56 the Tribunal shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Tribunal shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such form as provided in the Code of Civil Procedure, 1908 (5 of 1908), as the case may be.

**58. Effect of non-compliance.**- Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice.

**59. Procedure for imposition of penalty under the Act.**- (1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings of the Bench, has been given a show cause notice and reasonable opportunity to represent his or her or its case before the Bench or any officer authorised in this behalf.

(2) In case the Bench decides to issue show cause notice to any person or company or a party to the proceedings, as the case may be, under sub-rule (1), the Registrar shall issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Bench shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.



## **Power of Registrar to Remove Name of Company from Register of Companies.**

248. (1) Where the **Registrar has reasonable cause to believe** that—  
(a) a company ***has failed to commence its business within one year of its incorporation*** or;

(c) a company ***is not carrying on any business or operation for a period of two immediately preceding financial years AND has not made any application within such period for obtaining the status of a dormant company*** under section 455,

**he shall send a notice to the company and all the directors of the company**, of his intention **to remove the name of the company** from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) **WITHOUT PREJUDICE** to the provisions of sub-section (1), a ***company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent.*** members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) **Nothing in sub-section (2) shall apply to a company registered under section 8.**

(4) A notice issued under sub-section (1) or sub-section (2) **shall be published in the prescribed manner and also in the Official Gazette** for the information of the general public.

(5) At the ***expiry of the time mentioned in the notice***, the ***Registrar may***, unless cause to the contrary is shown by the company, ***strike off its name from the register of companies***, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, ***the company shall stand dissolved.***

(6) The **Registrar, before passing an order** under sub-section (5), **shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company** and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

**COMPANIES (REMOVAL OF NAME OF COMPANIES FROM THE REGISTER OF COMPANIES) RULES, 2016**

**G.S.R. 1174 (E).**—In exercise of the powers conferred by sub-sections (1), (2) and (4) of section 248 read with section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government) General Rules and Forms, 1956 except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

**1. Short title and commencement.—**

(1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

**2. Definitions.-**

(1) In these rules, unless the context otherwise requires, -

(a) “Act” means the Companies Act, 2013 (18 of 2013);

(b) “Form” or “e-Form” means a non-electronic form or an electronic form annexed to these rules.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

**3. Removal of name of company from the Register on suo-motu basis.-**

(1) The Registrar of Companies may remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act:

Provided that **following categories of companies shall not be removed from the register of companies under this rule and rule 4**, namely:-

(i) *listed companies;*

(ii) *companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;*

(iii) *vanishing companies;*

(iv) *companies where inspection or investigation is ordered and being carried out or actions on such order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in the Court;*

(v) *companies where notices under section 234 of the Companies Act, 1956 (1 of 1956) or section 206 or section 207 of the Act have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 has not yet been submitted or follow up of instructions on report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court;*

(vi) *companies against which any prosecution for an offence is pending in any court;*

(vii) *companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default;*

(viii) *companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;*

(ix) *companies having charges which are pending for satisfaction; and*

(x) *companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.*

**Explanation.-** For the purposes of clause (iii), the expression “vanishing company” means a company, registered under the Act or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

(2) For the purpose of sub-rule (1), the Registrar shall give a notice in writing in Form STK 1 which shall be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post.

(3) The notice shall contain the reasons on which the name of the company is to be removed from the register of companies and shall seek representations, if any, against the proposed action from the company and its Directors along with the copies of relevant documents, if any, within a period of thirty days from the date of the notice.

#### **4. Application for removal of name of company.—**

(1) An **application for removal of name of the company** under sub-section (2) of section 248 **shall be made in Form STK-2** along with the fee of five thousand rupees.

(2) Every application under sub-rule (1) shall accompany **a no objection certificate from appropriate Regulatory Authority** concerned in respect of following companies, namely :-

(i) companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 (2 of 1934) or rules and regulations thereunder;

(ii) housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987 (53 of 1987);

(iii) insurance companies as referred to in the Insurance Act, 1938 (4 of 1938) or rules and regulations thereunder;

(iv) companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;

(v) companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;

(vi) asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;

(vii) any other company which is regulated under any other law for the time being in force.

#### **(3) The application in Form STK 2 shall be accompanied by -**

(i) indemnity bond duly notarised by every director in Form STK 3;

(ii) a statement of accounts containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant;

(iii) An affidavit in Form STK 4 by every director of the company;

(iv) a copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application;

(v) a statement regarding pending litigations, if any, involving the company.

## **5. Manner of filing of application.–**

(1) The application in **Form STK 2 shall be signed by a director duly authorised by the Board in their behalf.**

(2) Where the director concerned does not have a registered digital signature certificate, a physical copy of the form duly filled in shall be signed manually by the director duly authorised in that behalf and shall be attached with the Form STK 2 while uploading the form.

## **6. Form to be certified.-**

The Form STK 2 shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time Practice or Cost Accountant in whole time practice, as the case may be.

## **7. Manner of publication of notice –**

(1) The notice under sub-section (1) or sub-section (2) of section 248 shall be in **Form STK 5 or STK 6**, as the case may be, and be-

(i) placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;

(ii) published in the Official Gazette;

(iii) published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

Provided that in case of any application made under sub-section (2) of section 248 of the Act, the company shall also place the application on its website, if any, till the disposal of the application.

Provided further that the publications of notice under clause(iii) of this sub-rule, in respect of cases falling under sub-section (1) of section 248 shall be in Form No. STK 5A".

(2) The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz, the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections, if any, to be furnished within a period of thirty days from the date of issue of the letter of intimation and if no objections are received within thirty days from the respective authority, it shall be presumed that they have no objections to the proposed action of striking off or removal of name.

## **8. Manner of notarisation, apostilisation or consularisation of indemnity bond and declaration in case of foreign nationals or non-resident Indians:-**

For the purposes of these rules, if the person is a foreign national or non-resident Indian, the indemnity bond, and declaration shall be notarised or apostilised or consularised.

## **9. Notice of striking off and dissolution of company. –**

The Registrar shall cause a notice under subsection (5) of section 248 of striking off the name of the company from the register of companies and its dissolution to be published in the Official Gazette in Form STK 7 and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

## **10. Applications or forms pending before Central Government**

Any application or pending proceeding for striking off or Form-FTE filed with the Registrar of Companies prior to the commencement of these rules but not disposed of by such authority for want of any information or document shall, on its submission, to the satisfaction of the authority, be disposed of in accordance with the rules made under the Companies Act, 1956 (1 of 1956).

### **Restrictions on Making Application Under Section 248 in Certain Situations.**

**249.** (1) An application under sub-section (2) of section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

- (a) has changed its name or shifted its registered office from one State to another;
- (b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- (c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
- (d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
- (e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

(2) If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.

(3) An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

### **Effect of Company Notified as Dissolved**

**250.** Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the *Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company* and for the payment or discharge of the liabilities or obligations of the company.

### **Fraudulent Application for Removal of Name.**

**251.** (1) Where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

- (a) be **jointly and severally liable to any person or persons who had incurred loss or damage** as a result of the company being notified as dissolved; and
- (b) be **punishable for fraud in the manner as provided in section 447.**

(2) Without prejudice to the provisions contained in sub-section (1), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (2) of section 248.

### **Appeal to Tribunal.**

**252.** (1) *Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar* and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the *Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned* :

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

**(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order** and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.