



The Companies Act 2013

Enlightening Nation

E-newsletter

DECEMBER, 2016

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To keep you updated about the latest notifications, circulars & orders issued during the month, thecompaniesact2013.com present herewith its monthly e-newsletter. This is the issue of the December month comprising contemporary articles & monthly amendments.

The notion is to render all the updates in a compiled format and serve a better pavement for easy accessibility.



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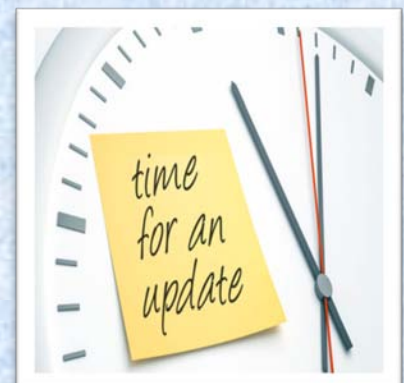
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ARTICLE

Procedure for Removal of Names of Companies from the Register of Companies



➤ Introduction

Ministry of Corporate Affairs (MCA) issued a Notification dated 26th December, 2016 notifying Section 248, 249, 250, 251 and 252 of Companies Act, 2013 (Chapter XVIII). This chapter deals with Removal of Names of Companies from Register of Companies. MCA has appointed 26.12.2016 as effective date for Section 248 to 252. On the very same day MCA has issued rules pursuant to relevant chapter which contain the procedure for Removal of Names of Companies from Register of Companies.

This has replaced Section 560 (Form FTE) of erstwhile Companies Act, 1956.

➤ Methods of Removal /strike off of Name of Companies from the Register of Companies: -

- a) **Removal of name of company from Register by ROC on suo-moto basis:** ROC may remove Company's name from Register on suo-moto pursuant to Section 248(1) of Companies Act, 2013 in the following conditions.
- If a company fails to commence its business within one year of its incorporation, or
 - If a company is not carrying on any business or operation for period of two immediately preceding financial years and has not made any application for obtaining status of dormant company under section 455

b) *Removal/Strike off of name of company from Register on Application from Company:*

An application can be made by Company for removing its name from Register under Section 248(2) of the Act by submitting Form STK-2 along with Fees of Rs 5,000. Such application shall be accompanied by following documents:

- (i) indemnity bond duly notarized 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 percent 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.

➤ ***Categories of Companies not Eligible to be Removed from the Register of Companies***

i. Listed Companies

ii. Companies registered under section 8

iii. Companies having charges which are pending for satisfaction

iv. Companies whose application for Compounding is pending

v. Companies against which any prosecution for an offence is pending in any court

vi. Vanishing Companies

vii. Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;

viii. Companies where inspection or investigation is ordered and being carried out or actions or such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court.

ix. Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;

x. Companies where notices under section 234 of CA 1956 or 206 or 207 of the Act, 2016 have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the court.

➤ *Situations when a company cannot make application to Registrar*

If, at any time in the previous three months, the company (Section 249): -

- i. Has Changed its name or
- ii. Has shifted its registered office from one State to another;
- iii. 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;
- iv. Has made an application to the Tribunal for the sanctioning of a Compromise Or Arrangement and the matter has not been finally concluded; or
- v. Is being wound up under Chapter XX, whether voluntarily or by the Tribunal.

➤ *Procedure to be followed by the Company for making Application to the Registrar: -*

- ✚ **Step-1: Board Meeting:** Hold a board meeting by complying the Secretarial Standards and pass the resolution for getting the name of the company name struck off as per the provisions of Section 248 of the Companies Act 2013. Ascertain whether consent of shareholders holding 75% or more of the share capital is to be taken or general meeting to be called for passing special resolution. If General Meeting is to be convened then pass necessary resolution
- ✚ **Step 2: Clear the balance sheet:** Repay all its liabilities, close its bank account, and dispose all its assets. There should be no assets and liabilities before proceeding for application for striking off name of the company.
- ✚ **Step 3: Statement of Affairs :** Prepare 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 get the same certified from a Chartered Accountant.
- ✚ **Step 4: Indemnity Bond:** Obtain an indemnity bond in Form STK-3 individually or collectively from all directors. Stamp duty as prevalent state laws to be paid and the same has to be got notarized.
- ✚ **Step 5: Affidavit:** Obtain an affidavit in Form STK-4 individually from every directors. Stamp duty as prevalent state laws to be paid and the same has to be got notarized. Contents of the declaration reproduced below for reference
 - The application has been in accordance with the conditions mentioned under sub section (1) and (2) of section 248 and sub section (1) of section 249:

- There is no inspection or investigation ordered and carried out or yet to be carried out or being carried out against the company and where inspection or investigation have been carried out , no prosecution pending in any court arising out of such inspection or investigation;
- The company is neither having any public deposit which are outstanding nor the company is in default in its repayment or interest thereon ;
- The company does not have any outstanding loans, secured or unsecured;
- The company does not have any dues towards income tax .VAT, excise duty, service tax or any other duty, by whatever name called, payable to the central government or state government, statutory authority or local authority;
- All other liabilities of the company have been settled or discharged or extinguished;
- All the requirements of the act and rules made there under relating to removing the name of the company from the register of companies and matters incidental or supplemental thereto have been complied with;
- To the best of my knowledge and belief, the information given in this application and its attachment is correct and complete;
- The requisite fee has been paid.

✚ **Step 6: Hold General Meeting to pass special resolution OR obtain consent of 75% members in terms of paid up share capital:** The company either can conduct a general meeting and pass a resolution for strike off of the name of company (File for MGT 14 if special resolution is passed) OR can obtain consent of members having 75 % paid up share capital without conducting meeting for striking off the name of the Company.

✚ **Step 7: Manner of notarisation , apostilisation or consularisation of indemnity bond and declaration in case of foreign nationals or non-resident Indians:-** If the person is a foreign national or non-resident Indian ,the indemnity bond ,and declaration shall be notarized or apostilised or consularised by the appropriate authority.

✚ **Step 8: Application to ROC by Company in e form STK-2:** The company after following above mentioned procedure shall make an application in Form STK-2 along with prescribed fees, presently Rs.5000/- and necessary attachments

- ***Form STK-2 and its certification:***

E-form STK-2 shall be signed (Affixation of DSC) by a Director. Director should be authorized by the Board for such purpose. In case director don't have DSC then physical copy of STK-2 manually signed by the director authorized shall be attached with the form STK-2.

The e-form STK-2 shall be certified by Company Secretary in Whole time Practice or Chartered Accountant or Cost Accountant in whole time practice.

➤ Steps to be taken by ROC:

✚ **Publication of notice and its manner:**

(1) The notice under **sub-section (1)** (*Removal of name of company from Register by ROC on suo-moto basis*) or **sub-section(2)** (*Removal/Strike off of name of company from Register on Application from Company*) 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.

✚ **Intimation to Authorities for any objections:**

The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the Company, having jurisdiction over the Company, viz;

- Income Tax Authorities
- Central Excise Authorities
- Service Tax Authorities

If the authorities have any objections, they have to intimate the same to ROC within a period of 30 days from the date of issue of the letter of intimation.

✚ **Check compliances:** 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

The assets of the company shall be available for discharge of liabilities even after the name of the company is removed from the register.

✚ **Issue notice of Striking off and dissolution of Companies:**

If no objections received then ROC shall issue a notice u/s 248(5) of striking off of Company and publish the same in official gazette in form No. STK-7. The copy of notice shall also be placed on the official website of the MCA.

➤ Effect of Strike off:

The company cease to operate as a company as on the date of notice under sub-section (5) of section 248 and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date. The company shall be liable for the purpose of realising the amount due and for the payment or discharge of the liabilities or obligations.

If a company make an application in violation of section 248, it shall be punishable with fine upto 1 lakh.

➤ Appeal to Tribunal:

Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal (NCLT) 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.



NOTIFICATIONS

A. S.O.3677(E) Commencement notification dated 07.12.2016

Dated 07.12.2016

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 15th day of December, 2016 as the date on which the following provisions of the said Act shall come into force, namely :-

SL.No.	Section
1.	Clause (23) of section 2
2.	Clause (c) and (d) of sub-section (7) of section 7
3.	Sub-section (9) of section 8
4.	Section 48
5.	Section 66
6.	Sub-section (2) of section 224
7.	Section 226

8.	Section 230 [except sub-section (11) and (12)], and Sections 231 to 233
9.	Sections 235 to 240
10.	Sections 270 to 288
11.	Sections 290 to 303
12.	Section 324
13.	Sections 326 to 365
14.	Proviso to section 370
15.	Sections 372 to 373
16.	Sections 375 to 378
17.	Sub-section (2) of section 391
18.	Clause (c) of sub-section (1) of section 434

B. G.S.R. 119 (E) Companies (Transfer of Pending Proceeding) Rules 2016

Dated 07.12.2016

In exercise of the powers conferred under sub-sections (1) and (2) of section 434 of the Companies Act, 2013 (18 of 2013) read with sub-section (1) of section 239 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016) (hereinafter referred to as the Code), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement:-

- (1) These rules may be called the Companies (Transfer of Pending Proceedings) Rules, 2016.
- (2) They shall come into force with effect from the 15th december, 2016, except rule 4, which shall come in to force from 1st April, 2017.

2. Definitions:-

- (1) In these rules, unless the context otherwise requires-
 - (a) "**Code**" means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
 - (b) "**Tribunal**" means the National Company Law Tribunal constituted under section 408 of the Companies Act, 2013.
- (2) Words and expressions used in these rules and not defined, but defined in the Companies Act, 1956 (1 of 1956) (herein referred to as the Act), the Companies Act, 2013, (18 of 2013) or the Companies (Court) Rules, 1959 or the Code shall have the meanings respectively assigned to them in the respective Act or rules or the Code, as the case may be.

3. Transfer of the pending proceedings relating to cases other than winding up:-

All proceeding under the Act including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up on the date of coming into force of these rules shall stand transferred to the benches of the Tribunal exercising respective territorial jurisdiction:

Provided that all those proceedings which are reserved for orders for allowing or otherwise of such proceedings shall not be transferred .

4. Pending proceeding relating to voluntary winding up:-

All applications and petitions relating to voluntary winding up of companies pending before a High Court on the date of commencement of this rule, shall continue with and dealt with by the high court in accordance with provisions of the Act.

5. Transfer of the pending proceeding of winding up on the ground of inability to pay debts:-

- (1) All petitions relating to winding up under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules,1959 shall be transferred to the bench of the Tribunal established under sub section(4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under Sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7,required for admission of the petition under Sections 7, 8 or 9 of the Code, as the Case may be, including details of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

- (2) All cases where opinion has been forwarded by Board for Industrial and Financial Reconstruction, for winding up of a company to a high Court and where no appeal is pending the proceedings for winding up initiated under the Act, pursuant to section 20 of the Sick industrial Companies (Special Provisions) Act,1985 shall continue to be dealt with by such high Court in accordance with the provisions of the Act.

6. Transfer of pending proceedings of Winding up matters on the grounds other than inability to pay debts:-

All petitions filed under clauses (a) and (f) of Section 433 of the Companies Act, 1956 pending before a High Court and where the petition has not been served on the respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provision of the Companies act, 2013(18 of 2013).

7. Transfer of Records:-

Pursuant to the transfer of cases as per these rules the relevant records shall also be transferred by the respective high Courts to the National Company Law Tribunal benches having jurisdiction forthwith over the cases so transferred.

8. Fees not to be paid:-

Notwithstanding anything contained in the National Company law Tribunal Rules,2016,no fee shall be payable in respect of any proceedings transferred to the Tribunal in accordance with these rules.

C. G.S.R. (E) Corrigendum notification relating to amendment in Schedule II

Dated 09.12.2016

In the notification of the Government of India in the Ministry of Corporate Affairs number G.5.R. 1075(E), dated the 17th November, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 17th November, 2016 at page 2, in line 13, for "2006." read "2006".

D. G.S.R.1134 (E) The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

Dated 14.12.2016

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with sections 230 to 233 and sections 235 to 240 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:-

1. Short Title and commencement

(1) These rule may be called the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016.

(2) They shall come into force with effect from 15th December, 2016.

2. Definitions

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

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

(b) **“Annexure”** means the annexure to these rules;

(c) **“Form”** means a set of forth in annexure “A” to these rules which shall be used for the matter to which it relates, and includes an electronic version thereof;

(d) **“Liquidator”** means the Liquidator appointed under the Act or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(2) All other words and expressions used in these rules but not defined herein, and defined in the act or in the Companies (Specification of Definitions Details) Rules, 2014 or in the National Company Law Tribunal Rules, 2016, shall have the same meanings respectively assigned to them in the Act or in the said rules

3. Application for order of meeting

(1) An application under sub-section (1) of section 230 of the Act may be submitted in form no. NCLT-1 (appended in the National Company Law Tribunal Rules; 2016) along with:-

(i) a notice of admission in Form No. NCLT-2 (appended in the National Company Law Tribunal Rules; 2016);

(ii) an affidavit in Form No. NCLT -6 (appended in the National Company Law Tribunal Rules; 2016);

(iii) a copy of scheme of compromise or arrangement, which should include disclosures as per sub-section (2) of section 230 of the Act; and

(iv) fee as prescribed in the Schedule of Fees.

(2) Where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies, be filed as joint-application.

(3) Where the company is not the applicant, a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, not less than fourteen days before the date fixed for the hearing of the notice of admission.

(4) The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

4. Disclosures in application made to the Tribunal for compromise or arrangement – Creditors Responsibility Statement

For the purposes of sub-clause (i) of clause (c) of sub-section 230 of the Act, the creditor's responsibility statement in Form No. CAA.1 shall be included in the scheme of corporate debt restructuring.

Explanation:- For the purpose of this rule, it is clarified that a scheme of corporate debt restructuring as referred to in clause (c) of sub-section (2) of section 230 of the Act shall mean a scheme that restructures or varies the debt obligations of a company towards its creditors.

5. Directions at hearing of the application

Upon hearing the application under sub-section (1) of section 230 of the Act, the Tribunal shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters:-

- (a) determining the class or classes of creditor or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meeting for any class or classes or creditors in terms of sub-section (9) of section 230;
- (b) fixing the time and place of the meeting or meetings;
- (c) appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;
- (d) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronics means;

Explanation.- For the purpose of these rules, "voting through electronics means" shall take place, mutatis mutandis, in accordance with the procedure as specified in rule 20 of Companies (Management and Administration) Rules, 2014.

- (e) determining the values of the creditors or the members, or the creditors or member of any class, as the case may be, whose meetings have to be held;
- (f) notice to be given of the meeting or meetings and the advertisement of such notice;
- (g) notice to be given to sectoral regulators or authorities as required under sub-section (5) of section 230;
- (h) the time within which the chairperson of the meeting of the meeting is required to report the result of the meeting to the tribunal; and

(i) such other matters as the Tribunal may deem necessary.

6. Notice of meeting

(1) Where a meeting of any class or classes of creditors or members has been directed or to be convened, the notice of the meeting pursuant to the order of the Tribunal to be given in the manner provided in sub-section (3) of section 230 of the Act shall be in Form No. CAA.2 and shall be sent individually to each of the creditors or members.

(2) The notice shall be sent by the chairperson appointed for the meeting, or, if the Tribunal so directs, by the company (or its liquidator), or any other person as the Tribunal may direct, by registered post or speed post or by courier or by e-mail or by hand delivery or any other mode as directed by the Tribunal to their last known address at least one month before the date fixed for the meeting.

Explanation: - It is hereby clarified that the service of meeting shall be deemed to have been effected in case of delivery by post, at the expiration of forty eight hours after the letter containing the same is posted.

(3) The notice of the meeting to the creditors and members shall be accompanied by a copy of the scheme of compromise or arrangement, if such details are not already included in the said scheme:-

(i) Details of the order of the Tribunal directing the calling, convening and conducting of the meeting;

(a) Date of the Order

(b) Date, Time and Venue of the Meeting

(ii) details of the company including:

(a) Corporate Identification Number (CIN) or Global Location Number (GLN) of the company;

(b) Permanent Account Number (PAN)

(c) name of the company;

(d) date of incorporation;

(e) type of the company (whether public or private or one-person company);

(f) registered office address and e-mail address;

(g) summary of main object as per the memorandum of association; and main business carried on by the company;

(h) details of change of name, registered office and objects of the company during the last five years;

- (i) name of the stock exchange (s) where securities of the company are listed, if applicable;
- (j) details of the capital structure of the company including authorized, issued, subscribed and paid up share capital; and
- (k) name of the promoters and directors along with their addresses.
- (iii) if the scheme of compromise or arrangement relates to more than one company, the fact and details of any relationship subsisting between such companies who are parties to such scheme of compromise or arrangement, including holding, subsidiary or of associate companies.
- (iv) the date of the Board meeting at which the scheme was approved by the Board of directors including the name of the directors who voted in favour of the resolution, who voted against the resolution and who did not vote/ participate on such resolution;
- (v) explanatory statement disclosing details of the scheme of compromise or arrangement including:
 - (a) parties involved in such compromise or arrangement;
 - (b) in case of amalgamation or merger, appointed date, effective date, share exchange ratio (if applicable) and other considerations, if any;
 - (c) summary of valuation report (if applicable) including basis of valuation and fairness opinion of the registered valuer, if any; and the declaration that the valuation reports is available for inspection at the registered office of the company;
 - (d) details of capital/debt restructuring, if any;
 - (e) rationale for the compromise or arrangement;
 - (f) benefits of the compromise or arrangement as perceived by the Board of directors to the company, members, creditors and others (as applicable);
 - (g) amount due to unsecured creditors.
- (vi) disclosure about the effect of the compromise or arrangement on:
 - (a) key managerial personnel;
 - (b) directors;
 - (c) promoters;
 - (d) non-promoter members;
 - (e) depositors;
 - (f) creditors;
 - (g) debenture holders;
 - (h) deposit trustee and debenture trustee;
 - (i) employee of the company;
- (viii) Disclosure about effect of compromise or arrangement on material interests or directors, Key Managerial Personnel (KMP) and debenture trustee.

Explanation – For the purpose of these rules it is clarified that-

(a) the term ‘interest’ extends beyond an interest in the shares of the company, and is with reference to the proposed scheme of compromise or arrangement.

(b) the valuation report shall be made by a registered valuer, and till the registration of persons report shall be made by an independent merchant banker who is registered with the Securities and Exchange Board or an independent chartered accountant in practice having a minimum experience of ten years.

(viii) investigation or proceedings, if any, pending against the company under the Act.

(ix) details of the availability of the following documents for obtaining extract from or for making/obtaining copies of or for inspection by the members and creditors, namely:

(a) latest audited financial statements of the company including consolidated financial statements;

(b) copy of the order of Tribunal in pursuance of which the meeting is to be convened or has been dispensed with;

(c) copy of scheme of compromise or arrangement;

(d) contracts or agreements material to the compromise or arrangement;

(e) the certificate issued by Auditor of the company to the effect that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the Accounting standards prescribed under section 133 of the Companies Act, 2013 and

(f) such other information or documents as the Board or Management believes necessary and relevant for making decision for or against the scheme;

(x) details of approvals, sanctions or no-objection(s), if any, from regulatory or any other government authorities required, received or pending for the purpose scheme of compromise or arrangement.

(xi) a statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, or where applicable, by voting through electronics means.

Explanation- For the purposes of this rule, disclosure required to be made by a company shall be made in respect of all the companies, which are a part of the compromise or arrangement.

7. Advertisement of the notice of the meeting

The notice of the meeting under sub-section (3) of section 230 of the Act shall be advertised in Form No. CAA.2 in at last one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspaper as may be directed by the Tribunal and shall also be placed, not less than thirty days

before the date fixed for the meeting, on the website of the company of the SEBI and the recognized stock exchange where the securities of the company are listed:

Provide that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

8. Notice to statutory authorities

(1) For the purpose of sub-section (5) of section 230 of the Act, the notice shall be in Form No. CAA.3, and shall be accompanied with a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures mentioned under rule 6, and shall be sent to.-

- (i) the Central Government, the Registrar of Companies, the Income-tax authorities, in all cases;
- (ii) the Reserve Bank of India, the Securities and Exchange Board of India, the competition commission of India, and the stock exchanges, as may be applicable;
- (iii) other sectoral regulators or authorities, as required by Tribunal.

(2) The notice of the authorities mentioned in sub-rule (1) shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority.

(3) If the authorities referred to under sub-rule (1) desire to make any representation under sub-section (5) of the section 230, the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case of representation is received within the stated period of thirty days by the Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of compromise or arrangement

9. Voting

The person who receives the notice may within one month from date of receipt of the notice vote in the meeting either in person or through electronics means to the adoption of the scheme of compromise and arrangement.

Explanation. For the purpose of voting by persons who receive the notice as shareholder or creditor under this rule-

- (a) "shareholding" shall mean the shareholding of the members of the class who are entitled to vote on the proposal; and

(b) “outstanding debt” shall mean all debt owed by the company to the respective class or classes of creditors that remains outstanding as per the latest audited financial statement , or if such statement is more than six months old , as per provisional financial statement not preceding the date of application by more than six months.

10. Proxies

(1) Voting by proxy shall be permitted , provided a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its registered office not later than 48 hours before the meeting.

(2) Where a body corporate which is a member or creditor (including holder of debentures) of a company authorizes any person to act as its representative at the meeting, of the members or creditors of the company , or of any class of them , as the case maybe , a copy of the resolution of the board of directors or other governing body of such corporate authorizing such person to act as its representative at the meeting , and certified to be a true copy by a director ,the manager , the secretary , or other authorized officer of such body corporate shall be lodged with the company at its registered office not later than 48 hours before the meeting.

(3) No person shall be appointed as a proxy who is a minor.

(4) The proxy of a member or creditor blind or incapable of writing maybe accepted if such member or creditor has attached his signature or mark thereto in presence of a witness who shall add to his signature his description and address : provided that all insertions have been made by him at the request and in the presence of member or creditor before he attached his signature or mark.

(5) The proxy of a member or creditor who does not know English maybe accepted if it is executed in the manner prescribed in the preceding sub-rule and the witness certifies that it was explained to the member or creditor in the language known to him , and gives the member’s or creditor’s name in the English below the signature.

11. Copy of compromise or arrangement to be furnished by the company

Every creditor or member entitled to attend the meeting shall be furnished by the company , free of charge , within one day on a requisition being made for the same , with a copy of the scheme of the proposed compromise or arrangement together with a copy of the statement required to be furnished under section 230 of the Act.

12. Affidavit of service

(1) The chairperson appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit before the Tribunal not less than seven days before the date fixed for meeting or date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

(2) In case of default under sub rule (1), the application along with copy of the last order issued shall be posted the tribunal for such orders as it may think fit to make.

13. Result of the meeting to be decided by voting

(1) The voting at the meeting or meetings held in pursuance of the directions of the tribunal under Rule 5 on all resolutions shall take place by poll or by voting through electronics means.

(2) The report of the result of the meeting under sub rule (1) shall be in form no CAA.4 and shall state accurately the number of creditors or class of creditors, as the case maybe, who were present and who voted at the meeting either in person or by proxy, and where applicable, who voted through electronics means, their individual values and the way they voted

14. Report of the result of the meeting by chairperson

The chairperson of the meeting (or where there are separate meetings, the chairperson of each meeting) shall, within the time fixed by the tribunal, or where no time has been fixed, within three days after the conclusion of the meeting submit a report to the Tribunal on the result of the meeting in Form No. CAA.4.

15. Petition for confirming compromise or arrangement

(1) Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case maybe with or without modification, the company (or its liquidator), shall, within seven days of the filing of the report by the chairperson, present a petition to the tribunal in Form No.CAA.5 for sanction of the scheme of compromise or arrangement.

(2) Where a compromise or arrangement is proposed for the purposes of or in connection with scheme for the reconstruction of any company proposed for the purposes of or in connection with

scheme for the reconstruction of any company or companies or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 230 read with section 232 of the Act.

(3) Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or member as the case may be, with the leave of the tribunal, to present the petition and the company shall be liable for the cost thereof

16. Date and notice of hearing

(1) The tribunal shall fix a date for the hearing of petition, and notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised, or in such other newspaper as the Tribunal may direct, not less than ten days before the date fixed for the hearing.

(2) The notice of the hearing of the petition shall also be served by the Tribunal to the objectors or to their representatives under sub section (4) of section 230 of the Act and to the central government and other authorities who have made representation under rule 8 and have desired to be heard in their representation

17. Order on petition

(1) where the tribunal sanctions the compromise or arrangement, the order shall include such directions in regard to any matter or such modifications in the compromise or arrangement as the tribunal may think to fit to make for the proper working of the compromise or arrangement.

(2) The order shall direct that a certified copy of the same shall be filed with the registrar of companies within thirty days from the date of the receipt of copy of the order, or such other time as maybe fixed by the tribunal.

(3) The order shall be in Form No. CAA. 6, with such variations as may be necessary.

18. Application for directions under section 232 of the act

(1) where the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and the matters involved cannot be dealt with or dealt with adequately on the petition for sanction of the compromise or arrangement, an application shall be made to the

tribunal under section 232 of the Act, by a notice of admission supported by an affidavit for directions of the Tribunal as to the proceedings to be taken.

(2) Notice of admission in such cases shall be given in such manner and to such persons as the tribunal may direct.

19. Directions at hearing of application

Upon the hearing of the notice of admission given under rule 18 or upon any adjourned hearing thereof, the tribunal may make such order or give such directions as it may think fit, as to the proceeding to be taken for purpose of reconstruction or amalgamation, as the case may be , including where necessary, an inquiry as to the creditors of the transferor company and the securing of the debts and claims of any of the dissenting creditors in such manner as the tribunal may think just and appropriate

20. Order under section 232 of the Act

An order made under section 232 read with section 230 of the act shall be in Form No CAA.7 with such variation as the circumstances may require

21. Statement of compliance in mergers and amalgamations

For the purpose of sub section (7) of section 232 of Act , every company in relation to which an order is made under sub section (3) of section 232 of the act shall until the scheme is fully implemented, file with the registrar of companies, the statement in Form No.CAA.8 along with such fee as specified in the companies (Registration offices and Fees) Rules,2014 within two hundred and ten days from the end of each financial year.

22. Report on working of compromise or arrangement

At any time after issuing an order sanctioning the compromise or arrangement, the Tribunal may, either on its own motion or on the application of any interested person, make an order directing the company or where the company is being wound-up, its liquidator, to submit to the Tribunal within such time as the Tribunal may fix, a report on the working of the said compromise or arrangement and on consideration of the report , the Tribunal may pass such orders or give such direction as it may think fit

23. Liberty to apply

(1) The company, or any creditor or member thereof, or in case of a company which is being wound-up, its liquidator, may, at any after the passing of the order sanctioning the compromise or arrangement, apply to the Tribunal for the determination of any question relating to the working of the compromise or arrangement .

(2) The application shall in the first instance be posted before the tribunal for directions as to the notices and the advertisement, if any, to be issued, as the Tribunal may direct.

(3) The Tribunal may, on such application, pass such orders and give such directions as it may think fit in regard to the matter, and may make such modifications in the compromise or arrangement as it may consider necessary for the proper working thereof, or pass such orders as it may think fit in the circumstances of the case .

24. Liberty of the tribunal

(1) At any time during the proceedings, if the Tribunal hearing a petition or application under these Rules is of the opinion that the petition or application or evidence or information or statement is required to be filed in the form of affidavit, the same may be ordered by the Tribunal in the manner as the Tribunal may think fit.

(2) The tribunal may pass any direction(s) or order or dispense with any procedure prescribed by these rules in pursuance of the object of the provisions for implementation of the scheme of arrangement or compromise or restructuring or otherwise practicable except on those matters specifically provided in the act.

25. Merger or Amalgamation of certain companies

(1) The notice of the proposed scheme , under clause (a) of section 233 of the Act, to invite objections or suggestions from the Registrar and official liquidator or persons affected by the scheme shall be in Form No.CAA.9.

(2) For the purposes of clause (c)of sub section (1) of section 233 of the act the declaration of solvency shall be filed by each of the companies involved in the scheme of merger or amalgamation in Form No.CAA.10 along with the fee as provided in the companies (Registration offices and fees) Rules, 2014, before convening the meeting of members and creditors for approval of the scheme.

- (3) For the purpose of clause (b) and (d) of sub-section (1) of section 233 of the Act, the notice of the meeting to the members and creditors shall be accompanied by-
- (a) a statement , as far as applicable, referred to in sub section (3) of section 230 of the act read with sub rule (3) of rule 6 hereof ;
 - (b) The declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in Form No.CAA.10;
 - (c) A copy of the scheme.
- (4)(a) For the purposes of sub-section (2) of section 233 of the Act, the transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings in Form no. CAA.11 with the central government, along with the fees as provided under the companies (Registration offices and fees) rules, 2014.
- (b) Copy of the scheme shall also be filed , along with Form No. CAA.11 with-
- (i) the registrar of companies in form no. GNL-1 along with fees provided under the companies (Registration offices and fees) rules, 2014 ; and
 - (ii) the official liquidator through hand delivery or by registered post or speed post.
- (5) Where no objection or suggestion is received to the scheme from the Registrar of companies and official Liquidator or where the objection or suggestion of registrar and official liquidator is deemed to be not sustainable and the central government shall issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.
- (6) Where objections or suggestions are received from the registrar of companies or official liquidator and the central government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest of creditors , it may file an application before the tribunal in Form No.CAA.13 within sixty days of the receipt of the scheme stating its objections or opinion and requesting that tribunal may consider the scheme under section 232 of the act.
- (7) The confirmation order of the scheme issued by the central government or tribunal under sub section (7) of section 233 of the Act, shall be filed, within thirty days of the receipt of the order of confirmation, in Form INC-28 along with the fees as provided under companies (registration offices and fees)rules 2014 with the Registrar of companies respectively.
- (8) For the purpose of this rule, it is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the act, the concerned companies may , at their discretion, opt to undertake such schemes under sections 230to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the act has not been met.

26. Notice to dissenting shareholders for acquiring the shares

For the purposes of sub-section (1) of section 235 of the Act, the transferee company shall send a notice to the dissenting shareholder(s) of the transferor company , in Form No.CAA.14 at the last intimated address of such shareholder for acquiring the shares of such dissenting shareholders.

27. Determination of price for purchase of minority shareholding

For the purposes of sub-section (2) of section 236 of the Act, the registered valuer shall determine the price (hereinafter called as offer price) to be paid by acquirer, person or group of persons referred to in sub-section (1) of section 236 of the Act for purchase of equity shares of the minority shareholders of the company, in accordance with the following rules:

(1) In case of a listed company ;

(i) The offer price shall be determined in the manner as may be specified by the Securities And Exchange Board Of India under the relevant regulations framed by it, as may be applicable; and

(ii) The registered valuer shall also provide a valuation report on the basis of valuation addressed to the board of directors of the company giving justification for such valuation.

(2) In the case of an unlisted company and a private company,

(i) the offer price shall be determined after taking into account the following factors :-

(a) the highest price paid by the acquirer, person or group of persons for acquisition during last twelve months;

(b) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies; and

(ii) the registered valuer shall also provide a valuation report on the basis of valuation addressed to the board of directors of the company giving justification for such valuation.

28. Circular containing scheme of amalgamation or merger

(1) For the purposes of clause (a) of sub-section (1) of section 238 of the Act, every circular containing the offer of scheme or contract involving transfer of shares or any class of shares and recommendation to the members of the transferor company by its directors to accept such offer, shall be accompanied by such information as set out in Form No. CAA.15.

(2) The circular shall be presented to the Registrar for registration.

29. Appeal under sub-section (2) of section 238 of the Act

Any aggrieved party may file an appeal against the order of the Registrar of Companies refusing to register any circular under sub-section (2) of section 238 of the Act and the said appeal shall be in the Form No. NCLT.9 (appended in the National Company Law Tribunal Rules, 2016) supported with an affidavit in the Form No. NCLT.6 (appended in the National Company Law Tribunal Rules, 2016).

SCHEDULE OF FEES

No.	Sections of the Companies Act, 2013	Rule Number	Nature of application or petition	Fees
1	Sub-section (1) of section 230	3(1)	Application for compromise arrangement and amalgamation	Rs. 5,000/-
2	Sub-section (2) of section 235		Application by dissenting shareholders	Rs. 1,000/-
3	Sub-section (2) of section 238	29	Appeal against order of Registrar refusing to register any circular	Rs. 2,000/-

E. G.S.R.1147(E) National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

Dated 15.12.2016

1. Short title and Commencement

(1) These rules may be called the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

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

(3) The words and expressions used in these rules but not defined and defined in the Companies Act, 2013 (hereinafter referred to as the Act) or in the Companies (Specification of Definitions Details) Rules, 2014 or the National Company Law Tribunal Rules, 2016 shall have the meanings respectively assigned to them in the Act or the said rules.

2. Form of application or petition for Reduction of share capital under section 66

(1) An application to the Tribunal to confirm a reduction of share capital of a company shall be in Form No. RSC-1 and fee shall be, as prescribed in the Schedule of fee to these rules.

(2) An application to confirm a reduction of share capital of a company shall be accompanied with-

(a) the list of creditors duly certified by the Managing Director, or in his absence, by two directors, as true and correct, which is made as on a date not earlier than fifteen days prior to the date of filing of an application showing the details of the creditors of the company, class wise, indicating their names, addresses and amounts owed to them;

(b) a certificate from the auditor of the company to the effect that the list of creditors referred to in clause (a) is correct as per the records of the company verified by the auditor;

(c) a certificate by the auditor and declaration by a director of the company that the company is not, as on the date of filing of the application, in arrears in the repayment of the deposits or the interest thereon; and

(d) a certificate by the company's auditor to the effect that the accounting treatment proposed by the company for the reduction of share capital is in conformity with the accounting standards specified in section 133 or any other provisions of Act.

(3) Copies of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees fifty for inspection and for taking extracts on payment of the sum of rupees ten per page to the company.

3. Issue of notice and directions by the National Company Law Tribunal

(1) The Tribunal shall, within fifteen days of submission of the application under rule 2, give notice, or direct that notice be given to -

(i) the Central Government, Registrar of Companies, in all cases, in Form No. RSC-2;

(ii) the Securities and Exchange Board of India, in the case of listed companies in Form No. RSC-2;

(iii) the creditors of the company, in all cases in Form No. RSC-3;

seeking their representations and objections, if any.

(2) The notice under clause (iii) of sub-rule (1) shall be sent, within seven days of the direction given under that sub-rule or such other period as may be directed by the Tribunal, to each creditor whose name is entered in the list of creditors submitted by the company about the presentation of the application and of the said list, stating the amount of the proposed reduction of share capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time within which the creditor may send his representations and objections.

(3) The Tribunal shall along with directions under sub-rule (1) give directions for the notice to be published, in Form No. RSC-4 within seven days from the date on which the directions are given, in English language in a leading English newspaper and in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal and for uploading on the website of the company (if any) seeking objections from the creditors and intimating about the date of hearing.

(4) The notice under sub-rule (3) shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company may send their objections:

Provided that the objections, if any, shall be filed in the Tribunal within three months from the date of publication of the notice with a copy served on the company.

(5) The company or the person who was directed to issue notices and the publication in the newspaper under this rule shall, as soon as may be, but not later than seven days from the date of issue of such notices, file an affidavit in Form No. RSC- 5 confirming the despatch and publication of the notice.

(6) Where the Tribunal is satisfied that the debt or claim of every creditor has been discharged or determined or has been secured or his consent is obtained, it may dispense with the requirement of giving of notice to creditors or publication of notice under this rule or both.

4. Representation by Central Government, Registrar etc. under sub-section (2) of section 66

If the authorities or the creditors of the company referred to in clause (i), clause (ii) and clause (iii) of sub-rule (1) of rule 3 desire to make any representation under sub-section (2) of section 66, the same shall be sent to the Tribunal within a period of three months from the date of receipt of notice

and copy of such representation shall simultaneously be sent to the company and in case no representation has been received within the said period by the Tribunal it shall be presumed that they have no objection to the reduction.

5. Procedure with regard to representations and objections received

(1) The company shall submit to the Tribunal, within seven days of expiry of period upto which representations or objections were sought, the representations or objections so received along with the responses of the company thereto.

(2) The Tribunal may give such directions as it may think fit with respect to holding of any enquiry or adjudication of claims or for hearing the objection or otherwise.

(3) At the hearing of the application, the Tribunal may, if it thinks fit, give such directions as may deem proper with reference to securing the debts or claims of creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

6. Order on application and Minute thereof

(1) Where the Tribunal makes an order confirming a reduction, the order confirming the reduction and approving the minute may include such directions or terms and conditions as the Tribunal deems fit .

(2) The order confirming the reduction of share capital and approving the minute shall be in Form No. RSC - 6 on such terms and conditions as may be deemed fit.

(3) The Certificate issued by the Registrar under sub-section (5) of section 66 shall be in Form No. RSC -7.

Schedule of Fees

S.No.	Sections of the Companies Act, 2013	Nature of application / petition	Fees in Rs.
1.	Sub-section (1) of section 66	Application for reduction of share capital	5000/-

F. S.O. 4090(E) Delegations of Powers to Regional Directors under section 458 of CA, 2013

Dated 19.12.2016

In exercise of the powers conferred by Section 458 of the Companies Act, 2013 (18 of 2013), and in supersession of the notification of the Government of India, in the Ministry of Corporate Affairs, dated the 10th July, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) vide number S.O. 1539(E), dated the 10th July, 2012, and also in supersession of the notification of the Government of India, in the Ministry of Corporate Affairs, dated the 21st May, 2014, published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) vide number S.O. 1352(E), dated the 22nd May, 2014, except as respects things done or omitted to be done before such supersession, the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest, namely :—

(a) Clause (i) of sub-section (4) of section 8 (for alteration of memorandum in case of conversion into another kind of company);

(b) Sub-section (6) of section 8;

(c) Sub-sections (4) and (5) of section 13;

(d) Section 16;

(e) Section 87;

(f) sub-section (3) of section 111;

(g) sub-section (1) of section 140;

(h) sub-section (5) of section 230;

(i) sub-sections (2), (3), (4), (5) and (6) of section 233;

(j) first and second proviso of sub-section (3) of section 272;

(k) sub-section (1) of section 348;

(l) sections 361, 362, 364 and 365

(m) clause (i) of the proviso to sub-section (1) of section 399 and

(n) section 442.

2. This notification shall come into force with effect from the date of its publication in the Official Gazette.

G. G.S.R. 1159(E) NCLT(Amendment) Rules ,2016

Dated 20.12.2016

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the National Company Law Tribunal Rules, 2016, namely:-

1. (1) These rules may be called the National Company Law Tribunal (Amendment) Rules, 2016.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the National Company Law Tribunal Rules, 2016, (hereinafter referred to as the principal rules), in “Part-I”, for the heading, “Definitions, forms and etc.”, the heading “Definitions and forms etc.” shall be substituted;
3. In the principal rules, in rule 2,- (a) in clause (5), the words “interlocutory application” shall be omitted; (b) in clause (9), in sub-clause (d), for the words “or a chartered accountant or a cost accountant or a company secretary”, the words “or a chartered accountant in practice or a cost accountant in practice or a company secretary in chartered accountant in practice or a cost accountant in practice or a company secretary in practice” shall be substituted.
4. In the principal rules, after rule 23, the following rule shall be inserted, namely:-

“23A. Presentation of joint petition. –

(1) The Bench may permit more than one person to join together and present a single petition if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter.

(2) Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Act.”.

5. In the principal rules, in rule 25, for the words “in the form prescribed”, the words “in the Form No. NCLT 3C” shall be substituted.

6. In the principal rules, in rule 27, in sub-rule (1), for the words, “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”, the words “or if the 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” shall be substituted.

7. In the principal rules, in rule 38, –

- (i) in sub-rule (1), after the words “by post”, the words “or by courier” shall be inserted;
- (ii) in sub-rule (2), in clause (b), after the words, “acknowledgement due” the words, “or by courier” shall be inserted;
- (iii) after sub-rule (2), the following Explanation shall be inserted, namely :-

Explanation.—For the purposes of sub-rules (1) and (2), the term “courier” means a person or agency which delivers the document and provides proof of its delivery.

8. In the principal rules, after rule 38, the following Rule shall be inserted, namely :-

“38A. Multiple remedies - A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another.”.

9. In the principal rules, after rule 68, the following rule shall be inserted, namely:-

“68A. Application to cancel variation of rights under sub-section (2) of section 48.- (1) Where an application to cancel a variation of the rights attached to the shares of any class is made on behalf of the shareholders of that class entitled to apply for cancellation under sub-section (2) of section 48 by the letter of authority signed by the shareholders so entitled, authorising the applicant or applicants to present the application on their behalf, such letter of authority shall be annexed to the application, and the names and addresses of all the shareholders, the number of shares held by each of them, aggregate number of such shares held and percentage of the issued shares of that class shall be set out in the Schedule to the application.

(2) The application in Form No. NCLT. 1 shall be accompanied by documents required for the purposes of the case and shall set out –

- (a) the particulars of registration;
- (b) the capital structure, the different classes of shares into which the share capital of the company is divided and the rights attached to each class of shares;
- (c) the provisions of the memorandum or articles authorising the variation of the rights attached to the various classes of shares;
- (d) the total number of shares of the class whose rights have been varied;

- (e) the nature of the variation made, and so far as may have been ascertained by the applicants, the number of shareholders of the class who gave their consent to the variation or voted in favour of the resolution for variation and the number of shares held by them;
- (f) the number of shareholders who did not consent to the variation or who voted against the resolution, and the number of shares held by them;
- (g) the date on which the consent was given or the resolution was passed; and
- (h) the reasons for opposing the variation.

(3) The applicant shall at least fourteen days before the date of the filing of the petition advertise the application in accordance with rule 35.

(4) Where any objection of any person whose interest is likely to be affected by the proposed application is received by the applicant, a copy thereof shall be served to the Registrar of Companies and Regional Director on or before the date of hearing.

(5) On any application, the Tribunal, after hearing the applicant and any other person, as appears to it, to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case that the variation would unfairly prejudice to the shareholders of the class represented by the applicant, cancel the variation and shall, if not so satisfied, confirm the variation for reasons to be recorded:

Provided that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.”.

10. In the principal rules, in rule 69, sub-rule (3), shall be omitted.

11. In the principal rules, in rule 70, sub-rule (6), shall be omitted.

12. In the principal rules, after rule 76, the following rule shall be inserted, namely:-

“76A. Application under section 130.- The Central Government, the Income-tax authorities, the Securities and Exchange Board of India, any other statutory regulatory body or authority or any person concerned may file an application in Form No. NCLT. 9 for re-opening of books of accounts and for re-casting of financial statement of a company under section 130 of the Act and such application shall be accompanied by such documents as mentioned in Annexure-B.”.

13. In the principal rules, after rule 83, the following rule shall be inserted, namely:-

“83A. Application under sub-section (1) of section 244.- An application in Form No. NCLT. 9 may be filed before the Tribunal for waiver of requirement of clause (a) or (b) of Section 244 of the Act which shall be accompanied by such documents as mentioned in Annexure-B.”.

14. In the principal rules, in rule 112, in sub-rule (3), after the words, “shall be paid by means of”, the words, “an Indian Postal Order or by” shall be inserted.

15. In the principal rules, in the Schedule of Fees, in serial number 10, under the heading ‘Nature of application/petition’, for the word, “deposition” the word, “depositor” shall be substituted.

16. In the principal rules, in Annexure ‘A’,-

(a) for Form No. NCLT. 3, the following Form No. NCLT. 3 shall be substituted.

H.S.O.(E)Commencement of sections 248 to 252 of Companies Act, 2013

Dated 26.12.2016

In exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 26th December, 2016 as the date on which the provisions of section 248 to 252 of the said Act, shall come into force .

I. G.S.R.(E) Companies (Removal of Names of Companies from the Register of Companies)

Rules, 2016

Dated 26.12.2016

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 and defined in the Act or in the companies (specifications of Definitions Details) Rules ,2014,shall have the same meanings respectively assigned to them in 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 2016 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 offices 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 purpose 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 of Stock Exchange and none of its directors are traceable.

(2) For the purpose of sub-rule (1), the Registrar shall give notice in writing in Form STK1 which shall be sent to all the directors of the company at the address 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-1 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 notarized 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 percent 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 filling of application:-

(1) The application in Form STK 2 shall be signed by a director duly authorized 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 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.

(2) The Registrar of Companies shall, simultaneously imitate 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 latter intimation and if no objections are received within thirty days from the respective authorities, 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 purpose of these rules ,if the person is a foreign national or non-resident Indian ,the indemnity bond ,and declaration shall be notarized or apostilised or consularised.

9. Notice of striking off and dissolution of company:

The Registrar shall cause a notice under sub-section (5) of section 248 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 7and 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 filled 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 authority ,be disposed of in accordance with the rules made under the Companies Act ,1956 (1 of 1956).

J. G.S.R.(E) Companies (Incorporation) Fifth Amendment Rules, 2016

Dated 29.12.2016

In exercise of the powers conferred by sub sections (1) and (2) or section 469 of the Companies Act, 2013 (18 of 2013) the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Incorporation) Fifth Amendment Rules, 2016.
(2) They shall come into force on the 1st day of January,2017.
2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules),
3. In the principal rules,
 - (a) in rule 4, in sub-rule(2) for the words and figures 'such nomination in Form No.INC-2 along with consent of such nominee obtained in Form No.INC-3' the words and figures 'such nomination in Form No. INC-32 (SPICe) along with consent of such nominee obtained in Form No INC-3' shall be substituted.
 - (b) in Rule 10 for the words and figures 'Form No. INC-7' the words and figures 'Form No. INC-7 or Form No. INC-32 (SPICe)' shall be substituted
 - (c) in Rule 12, for the words and figures 'Form No. INC-2 (for One Person Company) and Form No INC-7 (other than One Person company)' the words and figures 'Form No INC-7 (Part I company and company with more than seven subscribers) and Form No INC-32 (SPICe)' shall be substituted.
 - (d) Rule 36 shall be omitted.
 - (e) For rule 38, the following rule shall be substituted, namely:-

“38. Simplified Performa for Incorporating Company Electronically (SPICe)-

- (1) The application for incorporation of a company under this rule shall be in FORM No. INC-32 (SPICe) along with e-Memorandum of Association (e-MOA) in Form No. INC-33 and e-Articles of Association (e-AOA) in Form No. INC-34.

Provided that in case of incorporation of a company falling under section 8 of the Act, FORM No. INC-32 (SPICe) shall be filed along with FORM No. INC-13 (Memorandum of Association) and FORM No. INC-31 (Articles of Association) as attachments.

- (2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act, shall be filed in FORM No. INC-32 (SPICe), with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules, 2014:

Provided that where an applicant has applied for reservation of a name under Rule 9 and which has been approved therein, he may fill the reserved name as proposed name of the company.

- (3) For the purpose of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filed in FORM No INC-32 (spice), and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in FORM No INC-32 (SPICe) in case of proposed directors not having approved Director Identification Number

- (4) The promoter or applicant of the proposed company shall propose only one name in FORM No. INC-32 (SPICe).

- (5) The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MoA) in FORM No. INC-33 and Articles of Association (e-AoA) in FORM No. INC-34, in accordance with rule 13.

Provided that the subscribers and witness or witnesses shall affix their digital signatures to the e-MoA and e-AoA.

- (6) For incorporation using application as provided in this rule. provisions of the sub-clause (i) of sub-section (5) of section 4 of the Act. rule 9. and clause (a) of sub-rule (1) of rule 16 to the extent of affixing recent photograph shall not apply

- (7) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filing FORM No. INC-32 (SPICe)

in which case the company shall attach along with such FORM No. INC-32 (SPICe), any of the documents referred to in sub-rule (2) of rule 25.

(8) FORM No. INC-22 shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address.

(9) (a) Where the Registrar, on examining FORM No. INC-32 (SPICe), finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

(b) After the resubmission of the document. if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

Provided that the total period for resubmission of documents shall not exceed thirty days.

(10) The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11.

4. In the principal rules:

(a) Form No. INC-2 shall be omitted;

(b) for Form No. INC-7 the following form shall be substituted. namely:- (please refer revised format of Form No. INC 7)

(c) in Form No. INC-11. for the words and figures 'rule 8 the Companies (Incorporation) Rules, 2014', the words and figures 'rule 8 of the Companies (Incorporation) Rules, 2014' shall be substituted;

(d) For Form No. INC-27, the following form shall be substituted. namely:- (please refer revised format of Form No. INC 27)

e) FORM no. INC-29 shall be omitted.

CIRCULARS

A. General Circular No. 13/2016: Clarification in reference to the Filing of Offline Challans with IEPF Authority under Companies Act

Dated 05.12.2016

The Ministry of Corporate Affairs has clarified that it is mandatory for the Companies to deposit the amount in IEPF through online challans only under section 125 of the Companies Act, 2013. Further Form IEPF-1 mentioning SRN No. of Challan generated online can only be accepted.

All Companies transferring the amount to IEPF are requested to ensure that the online procedure is followed. The challans not generated on MCA Portal will not be accepted after 15.12.2016.

B. General Circular No. 14/2016: Relaxation of additional fees on Annual filing upto 31.12.2016 – in the State of J&K

Dated 07.12.2016

In continuation of this Ministry's General Circular 12/2016 dated 27.10.2016, keeping in view the requests received from various stakeholders stating that due to curfew/strikes and disturbances from past more than four months in the State of Jammu and Kashmir and the resultant difficulty expressed by various stakeholders in convening meetings in a timely manner, it has been decided to relax the additional fees payable by the companies having registered offices in the State of Jammu and Kashmir on e-forms AOC-4, AOC (CFS), AOC-4 XBRL and e- Form MGT-7 upto 31.12.2016, wherever additional fee is applicable.

C. General Circular No. 15 /2016: Clarification regarding due date of transfer of shares to IEPF

Authority

Dated 07.12.2016

Various representations have been received from the Companies for simplification of transfer process of shares under Investor Education & Protection Fund (Accounting, Audit, Transfer and Refund) Rules, 2016, notified on 05.09.2016. It has also been requested for extending the due date prescribed for transferring the shares to IEPF Authority.

The matters including simplification of transfer process and extension of date for such transfer, are under consideration and the rules are likely to be revised. The revised rules shall be notified in due course.

D. General Circular No. 16 /2016: Removal of names of companies from the Register of Companies- clarification regarding availability of Form STX on MCA-21 portal

Dated 26.12.2016

The Ministry has commenced provisions of sections 248 to 252 of the companies act, 2013 w.r.t. removal of names of companies from the Register of Companies today and notified relevant rules simultaneously. However, e-Form STK 2 prescribed under the said rules, for making application to the Registrar of Companies for removal of name of the company from the register of companies, is under development and would be deployed in some time.

ORDERS

S.O. 3676(E) Companies (Removal of Difficulties) Fourth Order, 2016

Dated 07.12.2016

Whereas clause (c) of sub-section (1) of section 434 of the Companies Act, 2013 (hereinafter referred to as the 2013 Act) provides that on a date which may be notified by the Central Government for the purpose of transfer of pending proceedings, all proceedings under the Companies Act, 1956 (hereinafter referred to as the 1956 Act) including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer;

And, whereas, the proviso thereof further provides that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government;

And, whereas, clause (c) of sub-section (1) of section 434 of the 2013 Act shall come into force from the 15th December, 2016;

And, whereas, provisions of sections 6 to 32, 60 to 67 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) have been brought into force on 1st December, 2016 and sections 33 to 54 of the Code and the provisions of Chapter XV and Chapter XX of the 2013 Act shall be notified to come into force from 15th December, 2016;

And, whereas, it has been decided that (i) proceedings under the 1956 Act with High Courts on all cases other than winding-up as on 15th December, 2016 shall stand transferred to the Benches of the Tribunals exercising respective territorial jurisdiction and (ii) all cases of winding up under the 1956 Act which are pending before the High Courts as on 15th December, 2016 and wherein petitions have not been served to the respondents as per rule 26 of Companies (Court) Rules, 1959 shall be transferred to Tribunal, and all remaining cases of winding up pending on that date would continue with the respective High Courts;

And, whereas, difficulties have arisen regarding continuation of provisions of the 1956 Act for (i) those proceedings relating to cases other than winding-up that are reserved for orders for allowing or otherwise and (ii) those winding up cases which would not be transferred to Tribunal and be proceeded with by High Courts on account of commencement of the corresponding provisions under the 2013 Act or under the Code;

And, whereas, difficulties have also arisen regarding transfer of proceedings relating to cases other than winding-up where hearings have been completed and only pronouncement of order is pending or is reserved since their transfer to Tribunal may result into delay and rights of parties to the proceedings are likely to be affected prejudicially;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the above said difficulties, namely:-

1. Short title and commencement.- (1) This Order may be called the Companies (Removal of Difficulties) Fourth Order, 2016.

(2) It shall come into force with effect from the 15th December, 2016.

2. In the Companies Act, 2013, **in Section 434, in sub-section (1), in clause (c), after the proviso**, the following provisos shall be inserted, namely:-

“Provided further that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that –

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts;

shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959”.

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- **Companies (Incorporation) Fifth Amendment Rules, 2016**
- **Companies (Removal of names of companies from the Register of Companies) Rules, 2016**
- **Commencement of sections 248 to 252 of the Companies Act, 2013**
- **General Circular No. 16/2016: Removal of names of companies from the Register of Companies- clarification regarding availability of Form STX on MCA-21 portal**
- **NCLT (Amendment) Rules, 2016**
- **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**
- **Delegations of Powers to Regional Directors under section 458 of CA, 2013**
- **NCLT (Procedure for reduction of share capital of company) Rules, 2016**
- **Companies (Compromise and Arrangement) Rules, 2016**
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