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GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION

New Delhi, 27th July, 2017

G.S.R... (E)- 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 Companies (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) Second Amendment Rules, 2017.

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

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules), for rule 28, the following rule shall be substituted, namely:-

“28. Shifting of registered office within the same State.- (1) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in **Form No.INC.23** along with the fee and following documents,-

(a) Board Resolution for shifting of registered office;

(b) Special Resolution of the members of the company approving the shifting of registered office;

(c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof;

(d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;

(e) acknowledged copy of intimation to the Chief Secretary of the State as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting”.

3. In the principal rules, for rule 30, the following rule shall be substituted, namely:-

“30. Shifting of Registered Office from one State or Union Territory to another State

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in **Form No. INC.23** along with the fee and shall be accompanied by the following documents, namely:-

(a) a copy of Memorandum of Association, with proposed alterations;

(b) a copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;

(c) a copy of Board Resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the list of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that **(i)** they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge, and

(ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.

(3) A duly authenticated copy 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 a sum not exceeding ten rupees per page to the company.

(4) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(5) The company shall, not more than thirty days before the date of filing the application in Form No. INC.23 -

(a) advertise in the **Form No.INC.26** in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the state in which the registered office of the company is situated:

Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.

(b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.