

# **Amita Desai & Co., Company Secretaries, Mumbai-India**

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## **REVIVAL OF STRUCK-OFF COMPANIES**

Recently around 3 lakh Companies were issued notices for striking off under Section 248(1)(c) of Companies Act, 2013 in Form STK-1 for default in Annual filing for 2 immediately preceding financial years. Registrar of Companies (RoC) had given a time limit till June, 2017 to reply on such default.

Till date approx 1 lakh Companies were struck off from the Register of Companies.

MCA vide notification dated 05<sup>th</sup> July, 2017 has amended the National Company Law Tribunal (“NCLT”) Rules, 2016 (“Principal Rule”). The amendment specifically provides for revival/restoration of struck off Companies from the Register of Companies. The amended rules results in insertion of **Rule 87A** in the principal rule which provides for Appeal/ Application to Tribunal(**Section 252**) by any person aggrieved by the order of Registrar under **Section 248**.

### **I. STRIKE OFF by RoC u/s 248 of CA 2013:**

A. Where RoC has reason to believe:

- a. That Company has **failed to commence its business within 1 year of incorporation**  
OR
- b. **The Company is not carrying on any business or operation for a period of 2 immediately preceding financial years** and has not made any application within such period for obtaining the status of a dormant company under Section 455;

Then it shall issue notice in **STK-1** to the Company and all the Directors of the Company for striking off.

B. The Company may itself strike off the name of the Company from the Register of Companies by making application to RoC in e-Form **STK-2**.

For detailed analysis refer our article on strike off in the link below:

<http://amitadesai.com/images/uploads/downloads/Write%20up%20Strike%20off%20the%20Companies%20by%20RoC%20section%20248.pdf>

### **II. SECTION 252 OF COMPANIES ACT,2013 APPEAL TO TRIBUNAL FOR REVIVAL**

A. **SECTION 252(1) READ WITH RULE 87A OF NCLT RULES :**

#### **APPEAL BY AGGRIEVED PERSON OF STRIKE OFF**

- Person ( Company, Member, Creditor or any person)aggrieved by the order of RoCfor striking off the name of the Company, may **file an appeal to NCLT within a period of 3 years from the date of order of ROC.**

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- NCLT may order revival/ restoration of the name of the Company in the Register of Companies, if it **believes that the order passed by RoC is based on unjustified grounds.**

### **B. SECOND PROVISOR OF SECTION 252(1) READ WITH RULE 87A OF NCLT RULES:**

#### **APPLICATION BY ROC**

- If RoC is satisfied that the name of the Company has been struck off from Register of Companies either:
  - a) **Inadvertently**, or;
  - b) **Incorrect information furnished by the Company** or its Directors,
- Then **ROC can file an application in Form NCLT-9** along with additional documents as per point 13 of Annexure B of NCLT Rules, 2016 for revival/ restoration of name of such Company within 3 years from the date of passing of the order dissolving the Company under Section 248.

### **C. SECTION 252(3) READ WITH RULE 87A OF NCLT RULES:**

#### **APPLICATION BY COMPANY/ MEMBER / CREDITOR/ WORKMAN:**

- If a Company or member or creditor or workman are aggrieved by the Company having its name struck off from the Register of Companies.
- Can make **application to NCLT within 20 years from the date of publication of notice (STK-7)** in the Official Gazette as per Section 248(5).
- NCLT may order to revive/restore the name of the Company in the Register of Companies, if it is satisfied that the Company at time of being struck off was :
  - a) **Carrying out business or was in operation**, or;
  - b) **Just the name of the Company be restored to the Register of Companies.**

### **D. SECTION 252 (2) OF COMPANIES ACT, 2013:**

#### **FRESH CERTIFICATE OF INCORPORATION (COI)**

- The copy of order passed by NCLT restoring the name of the Company is required to be **filed by the Company with RoC within 30 days** from the date of passing of the order.
- On receipt of the order, RoC shall restore the name of the Company in the Register of Companies maintained by him and issue a **fresh Certificate of Incorporation**

**III. PROCEDURE FOR REVIVAL/ RESTORATION OF THE NAME**

**FOLLOWING IS THE PROCEDURE FOR APPEAL OR APPLICATION TO NCLT FOR REVIVAL/ RESTORATION OF THE NAME OF THE COMPANY:**

a) **Step 1**

The Appeal or an Application for revival/ restoration of the name of struck off Company shall be filled with NCLT in **Form NCLT-9 along with additional documents as per point 13 of Annexure B of NCLT Rules, 2016.**

**Following is the link of point 13 of Annexure B of NCLT Rules, 2016**

[http://www.mca.gov.in/Ministry/pdf/NCLT\(Amendment\)Rules\\_21122016.pdf](http://www.mca.gov.in/Ministry/pdf/NCLT(Amendment)Rules_21122016.pdf)

b) **Step 2**

A copy of the Appeal or Applications shall be **served on the RoC** and on such other persons as the **Tribunal may direct, not less than 14 days** before the date fixed for hearing of the appeal or application, as the case may be.

c) **Step 3**

NCLT shall hear the Appeal or Application or any adjourned hearing thereof, and pass the revival/ restoration order as it may deem fit

d) **Step 4**

Where NCLT makes an order restoring the name of a company in the Register of Companies, the order shall direct that the appellant or applicant shall deliver a certified copy of the Order to the RoC within 30 days from the date of passing of such order;

e) **Step 5**

On getting the Order RoC in his official name and seal, publish the order in the Official Gazette.

f) **Step 6**

The appellant or applicant do pay to the RoC his costs of, and occasioned by, the appeal or application, unless NCLT directs otherwise; and

g) **Step 7**

The Company shall file pending financial statements and annual returns with the RoC and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by NCLT.

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### **LIST OF CASE ACCEPTED/ REJECTED BY THE NCLT FOR RESTORATION OF THE NAME OF THE COMPANIES AND PENALTY CHARGED AS FOLLOWS:**

<b>Date of Decision</b>	<b>Bench</b>	<b>Section</b>	<b>Case name</b>	<b>Penalty</b>	<b>Status</b>
March 31, 2017	New Delhi	Section 252 (3)	M/s International Security Printers Pvt Ltd V/s RoC	₹ 25,000/-	Petition allowed
May 26, 2017	Kolkata	Section 252 (3) and Section 560 (6)	Mohit Parikh V/s RoC	₹ 1,04,000/-	Appeal allowed
June 02, 2017	Principal Bench at New Delhi	Section 252 (3)	M/s Rainbow Real Estates Private Limited V/s RoC	₹ 20,000/-	Petition dismissed as Applicant is not considered to be aggrieved as she is neither Director nor member
May 26, 2017	Kolkata	Section 252 (3) and Section 560 (6)	Sheikh Nuruzzaman V/s RoC	₹ 93,600/-	Appeal allowed
April 26, 2017	Kolkata	Section 252	Manoj Kumar Agarwal V/s RoC	₹ 1,24,800/-	Appeal allowed
May 12, 2017	Kolkata	Section 252 (3) and Section 560 (6)	Furore Housing Finance and Investment (India) Ltd V/s RoC	-	Appeal dismissed as barred by limitation period

### **CONCLUSION**

With the aforesaid notification, Ministry has provided procedures to be followed for restoration of struck off Companies. This is a critical amendment by the ministry in current scenario, where in approximately 1 lakh Companies were struck off by various ROCs. Companies and its directors were in dilemma about the consequences of striking off by ROC and corrective measures to be taken by Companies to make the default good. Now that the procedure is defined, NCLT can admit Appeal or Application for revival or restoration of struck off Companies.

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There may be companies which were in operation and active or which may have immovable properties or in which there are members, creditors or workmen aggrieved by strike off of the name. The persons who are aggrieved may now make such application or appeal to NCLT for seeking restoration of the name of the company and then get their claims from the Company or take the Company into liquidation or winding up.

The link for the above notification is as follows:

<http://egazette.nic.in/WriteReadData/2017/177222.pdf>

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