

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

I. COMPANIES (TRANSFER OF PENDING PROCEEDINGS) SECOND AMENDMENTS RULES, 2017:

The Ministry of Corporate Affairs (“MCA”) vide notification dated 29th June, 2017 has amended the Companies (Transfer of Pending Proceedings) Rules, 2016 (“Principal Rule”).

The amendment is to Rule No.4 and 5 of the Principal Rule, which clarifies the pending proceedings relating to voluntary winding up if the notice of resolution by advertisement is given shall continue to be dealt with High Court as per the Companies Act ,1956 and the Companies (Court) Rules, 1959

and

the pending proceedings of winding up on the ground of inability to pay debts shall either continue with High Court or shall transfer to NCLT.

Following are the details of amendment in Rule 4 and 5 of the Principal Rule:

Particulars	Principal Rule 07th Dec 2016	2nd Amended Rule 29th June 2017
Rule 4: Pending Proceeding relating to Voluntary Winding Up	All applications and petitions relating to voluntary winding up pending before High Court as on 01 st April, 2017 shall be dealt with by the High Court.	All proceedings relating to voluntary winding up pending before the High Court <u>shall continue to be with High Court</u> , if, <u>Notice of passing of such resolution is given</u> by advertisement in the Official Gazette and also in News Paper ,as per Section 485 (1) of the CA 1956 (which is required when a company pass a resolution for voluntary winding up and to be given within 14 days of the passing of the resolution) <u>BUT</u> <u>The Company has not been dissolved before 01st April, 2017</u>

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<p>Rule 5(1) and proviso : Transfer of Pending Proceedings of Winding Up on ground of inability to pay debts</p>	<p>1. All Petitions relating to winding up under clause (e) of section 433 of the Companies Act, 1956 pending before a High Court and <u>where the Petition has not been served on the respondents as required under Rule 26 of the Companies (Court) Rules, 1959</u> ,shall stand transferred to NCLT exercising respective territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code.</p> <p>2. Further petitioner shall also submit information forming part of the records transferred, required for admission of the petition under sections 7, 8 or 9 of the Code, including details of the proposed Insolvency Professional to the NCLT within *60 days failing which the petition shall abate.</p> <p>*60 days were amended to Six (6) months vide Notification dated 28th Feb 2017 vide Companies (Transfer of Pending Proceedings) Amendment Rules , 2017</p>	<p>1. Petitions relating to winding up under clause (e) of section 433 of the Companies Act, 1956 pending before a High Court and where the petition <u>has not been served on the respondents , such petitions shall be transferred to NCLT</u> exercising respective territorial jurisdiction . The petitioner shall submit all information required for admission of the petition under section 7, 8 or 9 of the Insolvency and Bankruptcy Code 2016 (IBC 2016) including giving the name of <u>Insolvency Professional latest by 15th July 2017</u>, failing which the petition shall abate.</p> <p>2. <u>After 15th July, 2017</u> the party to the earlier Petition <u>would be eligible to file fresh application</u> under Section 7, 8 or 9 of the Code as the case may.</p> <p>3. Where a Petition for winding up of a Company <u>has been served on the Respondents</u> such Petition shall not be transferred to NCLT and remains in the High Court.</p> <p style="text-align: center;">However</p> <p>Where further another petition for winding up on ground of inability to pay debts against the same Company is pending as on 15th December, 2016, in which the <u>petition has not been served on the respondents</u>, then also such other petition shall not be transferred to NCLT .</p>
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The link for the above notification is as follows:

<http://mca.gov.in/Ministry/pdf/CompaniesTransferofPendingProceedingsSecondAmdtRules.pdf>

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II. AMENDMENT IN SECTION 434(1)(c) OF THE COMPANIES ACT, 2013: TRANSFER OF PENDING PROCEEDINGS:

The MCA had on 29th June 2017 issued an Order to remove difficulties and has amended Section 434 (1)(c) by inserting additional proviso relating to transfer of pending proceedings for voluntary winding up.

Section 434 (1)(c) of the Companies Act, 2013 read as follow , which has been notified vide Notification No. 1936 (E) dated 1st June 2016.

All proceedings under the Companies Act, 1956, 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 NCLT and NCLT may proceed to deal with such proceedings from the stage before their transfer.

Section 434(1)(c) of the Companies Act, 2013 has been amended as follow by insertion of proviso:

Notification Date	Proviso
15 th November, 2016 (Notification of Section 255 of the Insolvency & Bankruptcy Code by which by Companies Act, 2013 is amended)	Section 434 of the Companies Act 2013 has been altered by adding one proviso under Section 434 (1) (c) as follow and deleting section 434 (1) (d): Proceedings relating to the winding up of Companies shall be <u>transferred to the Tribunal</u> that are at a stage as may be prescribed by Central Government.
7 th December, 2016 (Enforcement of Companies (Removal of Difficulties) Fourth Order, 2016)	Following 2 proviso are added under Section 434 (1) (c) of the Companies Act, 2013: i.Provided further that only such proceedings relating to cases <u>other than winding up</u> for which orders for allowing or otherwise of the proceedings are <u>not reserved by High Court shall be transferred to NCLT</u> ii.Provided further that : I. all proceedings under the Companies Act, 1956 <u>other than the cases relating to winding up</u> of the Companies that are <u>reserved for orders</u> for allowing or otherwise such proceedings or II. the proceedings relating to winding up of Companies <u>which have not been transferred from High Court;</u> shall be dealt with the provisions of Companies Act,1956 and the Companies (Court) Rules 1959

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	<p>The link for the notification is as follows: http://egazette.nic.in/WriteReadData/2016/172971.pdf</p>
29 th June, 2017 (enforcement of Companies (Removal of Difficulties) Order, 2017)	<p>Following forth proviso is added under Section 434 (1) (c) of the Companies Act, 2013:</p> <p>Provided that proceedings relating to voluntary winding up of the Company where <u>notice of the resolution by advertisement has been given</u> under sub section (1) of Section 485 of the Companies Act, 1956, <u>but the Company has not been dissolved before 1st April, 2017</u> shall continue to be dealt with in accordance with the provisions of the Companies Act 1956 and the Companies (Court) Rules, 1959.</p> <p>The link for the notification is as follows: http://mca.gov.in/Ministry/pdf/CompaniesRemovalofDifficultiesOrder_30062017.pdf</p>

OUR ANALYSIS ON PROCEEDINGS TRANSFERRED TO TRIBUNALS:

Matters related	Analysis
Voluntary Winding up Rule 4 of the Companies (Transfer of Pending Proceedings) Rules, 2016	MCAhas clarified that <u>where notice of resolution for winding is given</u> by an advertisement as required under Section 485 (1) of the Companies Act, 1956 but the Company has not yet dissolved before 1 st April, 2017 than <u>such cases shall stay with High Court</u> and to be dealt with as per Companies Act, 1956 and the Companies (Court) Rules, 1959.
Winding Up on the ground of inability to pay debt Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016	<p>When the <u>petition has not been served on the respondent</u> under Rule 26 of the Companies (Court) Rules, 1959 then such cases are <u>transferred to NCLT</u>. Such petition shall be admitted by NCLT as per Section 7/8/9 of the Code on getting further information and <u>details of Insolvency professional by 15th July, 2017</u>, otherwise the petition shall stand abated.</p> <p>When a petition relating to winding up of the Company <u>which has been served on respondents</u> is done and hence it <u>will continue to be with High Court</u> and where there is another petition under section 433(e) of the Companies Act, 1956 for winding up against the same Company pending as on 15th December, 2016, and the petition <u>has not been served on the respondents</u> then also it <u>will continue to be with High Court</u> and such other petition <u>shall not be transferred to NCLT</u>.</p>

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Winding up on the ground other than inability to pay debt Rule 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016	When the petition filed under clause (a) and (f) of Section 433 of the Companies Act, 1956 before the High Court, and the petition has not been served to the respondent under Rule 26 of the Companies (Court) Rules, 1959 then such cases shall be transferred to NCLT as per Principal Rule issued by MCA on 7 th December 2016
Order Reserved by High Court for petitions other than winding up Rule 3 the Companies (Transfer of Pending Proceedings) Rules, 2016	In case of proceeding relating to Arbitration, Compromise, Arrangement and Reconstruction, which are reserved by the High Court for Orders for allowing the proceedings or otherwise, then such cases shall not be transfer to NCLT as per Principal Rule issued by MCA on 7 th December 2016

TRIAL OF PROCEEDINGS BY EITHER HIGH COURT OR NCLT

Sr No	Proceedings	Stages	Proceedings to be tried by High Court / NCLT
1	Voluntary Winding Up by Company Rule 4 of the Companies (Transfer of Pending Proceedings) Rules, 2016	Notice advertisement given but not dissolved	High Court
		Notice advertisement not given and not dissolved before 1 st April, 2017	NCLT
2	Winding up due on the ground of inability to debts. Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016	If petition has been served on the respondent.	High Court
		If petition has not been served on the respondent.	NCLT
3	Winding up on the ground other than inability to pay. Rule 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016	If petition has been served on the respondent	High Court
		Petition for winding up where notice is served and not transferred to NCLT and attached petition for winding up for inability to pay debt against the same company is pending as on 15th Dec, 2017 and notice is not served.	

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		If petition has not been served on the respondent	NCLT
4	Compromise, Arrangement, Arbitration and Reconstruction. Rule 3 of the Companies (Transfer of Pending Proceedings) Rules, 2016	Proceeding pending before 15 th December, 2017	High Court
		Proceeding pending after 15 th December, 2017	NCLT
		Proceedings reserved for order	High Court

III. APPLICATION FOR SURRENDER OF DIRECTOR IDENTIFICATION NUMBER (“DIN”) IN DIR-5:

MCA in its recent notice has stated that Form DIR-5 will be available as an E-form for filing purposes w.e.f June 21, 2017. Stakeholders who wish to surrender DINs are required to file this e-form DIR-5 instead of it being filed as an attachment to Form RD-1.

Currently Form DIR-5 is required to be filed under Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014 which deals with cancellation, surrender or deactivation of DIN.

Now, form DIR-5 will be a separate e-form instead of an attachment to existing Form RD-1 w.e.f. June 21, 2017.

IV. STANDARD OPERATING PROCEDURE (SOP) FOR PROCESSING FDI PROPOSALS

The Department of Industrial Policy and Promotion (“Department”) and Ministry of Commerce and Industry had issued a Circular dated 29th June, 2017 clarifying the new system for FDI approval after the abolition of Foreign Investment Promotion Board (FIPB). , which sets out the process and procedure for filing and processing of FDI proposals, time limits and internal mechanisms for monitoring the processing of FDI proposals.

The Department convened meeting with various ministries and approved the new system of Standard Operating Procedure (SOP) for FDI approval. As per SOP, the Government/ Competitive Authority of respective sectors will clear all FDI proposals requiring approval within a maximum of 10 weeks after the receipt of an application. Proposals for foreign investment in sectors/activities requiring Government approval would be filed online on the revamped FIPB portal.

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The link for the above circular is as below:

<http://fipb.gov.in/Forms/SOP.pdf>

Disclaimer

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