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News Alert on following three notifications/ order issued by MCA on December 7, 2016

1. Enforcement of certain sections of Companies Act, 2013 related to National Company Law Tribunal (“NCLT”)
2. Companies (Transfer of Pending Proceedings) Rules, 2016
3. Companies (Removal of Difficulties) Fourth Order, 2016



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A. Enforcement of certain sections of Companies Act, 2013 related to National Company Law Tribunal

In continuation of phrased implementation of National Company Law Tribunal (“**Tribunal**”) Ministry of Corporate Affairs (“MCA”) has issued notification no. S.O 3677 (E) dated December 7, 2016 enforcing certain more section and provision of Companies Act, 2013 (“the Act”) empowering Tribunal with respect to matters related **Winding up, Reduction of Capital, Compromise or arrangement , Merger and Amalgamation.**

With aforesaid notification below mentioned section of the Act will be enforced with effect from **December 15, 2016:**

Sr. No.	Section	Particulars	Description
1	2 (23)	Definition of Company Liquidator	Company Liquidator means a person appointed by <u>a) the Tribunal in case of winding up by Tribunal b) the Company or creditor in case of voluntary winding up.</u>
2	7(7)(c) and (d)	Incorporation of Company	If it is found that the Company is incorporated by furnishing any false or incorrect information or by suppressing any material fact or information the Tribunal may <u>remove the name of the Company from Register of Company or may pass an order for winding up</u>
3	8 (9)	Formation Companies with Charitable Objects (Section 8 Company)	Tribunal may impose conditions for transfer of Assets remaining after the satisfaction of its debts and liabilities of Section 8 Company to another section 8 Company having similar objects in case of winding up or dissolution of a Company
4	48	Variation of Shareholders’ Rights	Where a Company is having different class of shareholders and has passed special resolution for variation of shareholders’ rights of any particular class. <u>Tribunal may pass order for confirmation/ cancellation of variation of rights in case application is made by not less than 10% of issued shares of that class.</u>
5	66	Reduction of Share Capital	<u>Application can be made to the Tribunal for Reduction of share capital</u> which was earlier to be made to the High Court under section 100 of Companies Act 1956.
6	224 (2)	Actions to be taken in pursuance of Inspector’s report	On the basis of the inspector’s report, the Central Government may if required cause any person, to file a petition for winding up of the Company or Body Corporate to the Tribunal on just and equitable grounds or in case of oppression mismanagement.
7	226	Voluntary winding up of Company , etc not to stop investigation proceedings	<u>Investigation shall not be stopped or suspended where:-</u> a) an application has been made for oppression and mismanagement b) special resolution is passed for voluntary winding up c) any proceeding for winding up is pending before tribunal

8	230 (except subsection 11 and 12) and section 231 to 233 and 235 to 240	Compromise, Arrangement and Amalgamation	Tribunal may pass order with respect to Compromise, Arrangements, Merger and Amalgamation. However, section and provisions pertaining to Takeover and Mergers of foreign Companies are not yet enforced.
9	270 to 288 , 290 to 303 and 326 to 365	Winding up	Winding up orders can be passed by Tribunal for Winding up by Tribunal. Provisions pertaining to voluntary winding up are not yet enforced. Also the Tribunal is not yet empowered to pass an order for staying the proceeding of winding up.
10	324	Debts of all descriptions to be admitted to proof	In mode every winding up all debts payable on contingency and all claim against the Company bearing certain value shall be admissible only after furnishing the proof
11	370	Continuation of pending legal proceedings	For the purpose of Companies Authorised to register under the Act, in case all suits and other legal proceedings, execution cannot be issued against the property or person of any individual member on any decree or order obtain in any suit or proceedings but if the Company property is insufficient to satisfy decree or order, order may be obtained for winding of Company
12	372 to 373	Power or court to stay or restrain proceedings	During the pendency of winding up petition the Court has power to stay or restrain suits and other legal proceeding against the Company registered in pursuance of Part XXI Company. Also, no suits or legal proceedings may be initiated against the Company or any contributory of the Company for debt of the Company without leave of Tribunal.
13	375 to 378	Winding up of Unregistered Companies	Unregistered Company may be wound up by the Tribunal in case it ceases to carry business or unable to pay its debts or on just an equitable grounds including Body Corporate incorporated outside India.
14	391 (2)	Winding up of foreign Companies	In case of mis-statement in prospects by a foreign Company having place of business in India may be wound by Tribunal as if it were a Company incorporated in India.
15	434 (2) (c)	Transfer of certain proceedings	All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of Companies, pending before any District Court or High Court will be transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer

The link of the above Notification is as under:

<http://egazette.nic.in/WriteReadData/2016/172973.pdf>

B. Companies (Transfer of Pending Proceedings) Rules, 2016

MCA has issued notification no. G.S.R 1119 (E) dated December 7, 2016 introducing Companies (Transfer of Pending Proceedings) Rules, 2016. It shall come into force with effect from December 15, 2016 except rule 4 relating to pending proceedings of voluntary winding up.

Transfer of pending proceedings relating to cases other than Winding up:

All proceedings under the Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up will be transferred to the Benches of the Tribunal exercising respective territorial jurisdiction except reserved for orders for allowing or otherwise of such proceedings which shall not be transferred.

Pending proceeding relating to Voluntary Winding up:

All applications and petitions relating to voluntary winding up of Companies pending before a High Court shall **continue with and dealt with by the High Court in accordance with provisions of the Act.**

Transfer of pending proceedings of Winding up on the ground of inability to pay debts:

All petitions relating to winding up under clause (e) of section 433 of the Companies Act, 1956 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 will be transferred to the Bench of the Tribunal exercising territorial jurisdiction.

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.

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 will be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Act.

The link of the above Notification is as under:

<http://egazette.nic.in/WriteReadData/2016/172976.pdf>

C. Companies (Transfer of Pending Proceedings) Rules, 2016

MCA has issued notification no. S.O. 3676(E) dated December 7, 2016 introducing Companies (Removal of Difficulties) Fourth Order, 2016.

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:**

The proceedings relating to winding up of Companies which have not been transferred from the High Courts will be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

The link of the above Notification is as under:

<http://egazette.nic.in/WriteReadData/2016/172971.pdf>

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