

Strike off Revival Extension of AGM



By

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STRIKE OFF

सुविधा

Corporate

BY COMPANY

suv i dha

Conditions before application for strike off

1. Close Bank account
2. Check whether the Company revenue from operation is NIL since atleast last 2 years
3. There is no open charge as on date
4. All liabilities to be extinguished
5. Company shall not file an application unless it has filed overdue financial statements under section 137 and overdue annual returns under section 92, up to the end of the financial year in which the company ceased to carry its business operations.

Reasons for strike off

- a. Failed to commence business within a one year of incorporation
- b. Not carrying on any business or operation for a period of 2 immediately preceding financial year and has not made any application within such period for obtaining the status of a dormant company
- c. The subscribers to the memorandum have not paid the subscription amount at the time of incorporation of a company
- d. The Company is not carrying on any business or operation as revealed after the physical verification carried out u/s 12(9)

Initial steps

- Pass BR for strike off in BM.
- In BM place statement of accounts and take consent from 75% of shareholders of paid up capital.
- In case failure in obtaining 75% of consent then pass SR and file MGT 14.
- Statement of Accounts to be taken in STK 8 made up to a day, not more than 30 days before the date of application and certified by a CA (WHICH MEANS FILING OF STK 2 WITHIN 30 DAYS OF STATEMENT).

Attachments in STK 2

Indemnity bond duly notarised by every director in STK 3

An affidavit in Form STK 4 by every director of the company

SR if passed / Consent

BR

Statement of Accounts in STK 8

KYC documents of Directors

Bank Account closure statement

Latest ITR acknowledgement

Declaration for Nil Creditors

DSC affixation in STK 2

1 Director,

1 CA (who has signed the stk 8)

1 practising professional

Filing fees – Rs. 5000/-

Corporate
BY ROC
Sudha

The ROC may remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act:

Except

- (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 206 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;

The ROC may remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act:

Except

- (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 officers 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) Section 8 Company.—before that conversion to be done

Corporate
WHEN THE **ROC** SHALL ISSUE NOTICE
in STK 1
suv dha

- The ROC shall give a notice in writing in Form STK 1 which shall be sent to all the directors of the company at the addresses available on record,
by registered post with acknowledgement due
or
by speed post
- 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 30 (thirty) days from the date of the notice

The ROC shall

- The notice under sub-section (1) of section 248 shall be in Form STK 5 and be
 - placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
 - published in the Official Gazette;
 - 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.
- Notice of striking off and dissolution of company. - The Registrar shall cause a notice under subsection (5) of section 248 of 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 7 and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

✓ Manner of publication of notice –

- The notice under sub-section (2) of section 248 shall be in Form STK 6, as the case may be, and be-
 - placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
 - published in the Official Gazette;
 - 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.

RE-STORATION OF STRIKE OFF COMPANY (252)

- ✓ If aggrieved from ROC then Company can apply to Tribunal within 3 years from the date of the order issued by ROC {252(1)}
- ✓ Then on satisfaction of the case Tribunal can order the ROC to Restore the name if there is no justified grounds found therein
- ✓ If Registrar itself satisfied that it was inadvertent mistake then also Company can file application to Tribunal.
- ✓ Before expiry of the Term of **20yrs** from the Publication of the Official Gazette by ROC as per Sec 248 the Company or Director can apply to the Tribunal as if aggrieved.

Corporate
REVIVAL
OR *suvijidha*
RESTORATION

WHO CAN FILE APPLICATION FOR RESTORATION OF NAMES?

1. Any person aggrieved by order under section 248,
2. Registrar of Company himself

If ROC satisfied that name struck off inadvertently / bcoz of incorrect information by
Co. / Director



Within 3 yrs from date of passing order for dissolving Co. u/s 248



File application to Tribunal seeking restoration of name



Filing of Tribunal Order to ROC within 30 days



ROC to restore name and issue fresh certificate of incorporation.

WHO CAN FILE APPLICATION FOR RESTORATION OF NAMES?

- by Company
- by member
- by creditor
- by workmen

If **Co. / member / Creditor / workman** aggrieved by struck off of Co. from ROC



Tribunal on application made by them **before expiry of 20 Yrs from publication of notice** u/s 248(5) in Official gazette on the following grounds



the company was, at the time of its name being struck off, carrying on business or in operation
or
otherwise it is just that the name of the company be restored to the register of companies

If satisfied, Order the name to be restored to ROC



Tribunal may by order give such directions and make such provisions for placing the Co. & other person in same position

APPEAL TO TRIBUNAL

Person aggrieved from ROC Order / ROC



File appeal to Tribunal within 3 yrs from ROC Order



And if Tribunal is of opinion, that removal not justified in view of absence of any ground



Give reasonable opportunity of being heard to ROC / Co./ any person concerned.



Order restoration- filing of INC 28 (30 days of Order)

➤ **Application in NCLT.9 (earlier...)**

List of Documents to be Accompanied with NCLT.9



- ✓ **Heading as per NCLT 4**
- ✓ **NCLT.2-Notice of Admission**
- ✓ **Master Data and Signatory Details of Co.**
- ✓ **Latest Audited Balance Sheet**

Attachments

- ✓ **Last Filed Balance Sheet**
- ✓ **MOA & AOA**
- ✓ **Board Resolution**
- ✓ **Notice or Letter u/s. 560 (if Received)**
- ✓ **Affidavit Verifying Application in NCLT 6**
- ✓ **NCLT.12 (Memorandum of Appearance)**

➤ A copy of the appeal or application, 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

➤ Tribunal makes an Order:-

the applicant shall deliver a CTC copy to the ROC within 30 days from the date of the order;

on such delivery, the ROC do, in his official name and seal,
publish the order in the Official Gazette;

The applicant pay to the ROC his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise;

and

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

- Then ROC will submit their report to Tribunal
- Then Tribunal makes final Order
- File that Order in INC 28

TRIBUNAL ORDER SHALL DIRECT

(a) shall deliver a CTC to the ROC in 30 days from the Dt of Order;

(b) On delivery of order ROC

-----in his official name and seal, publish order in the Official Gazette;

(c) the appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and

(d) The Co File pending B/S & A/R – to ROC & comply other rules as directed by NCLT

CO. -APPEAL TO TRIBUNAL

ROC SAID CO. NOT COMPLETED ANNUAL FILLING FOR PRECEEDING YEARS

THEN TRIBUNAL ORDERED FOR COMPLETION OF THE FILLINGS WITH COST REPRESENTED BY ROC WITHIN 30DAYS+RESTORATION COST+NOT TO CHANGE EXISTING SHAREHOLDER AND MANAGEMENT FOR 2YEARS FROM THE DATE OF ORDER

THEN CO. HAVE TO COMPLETE THE FILLING AND THEN RESTORATION CAN BE ORDERED ON THEIR SATISFACTION

Provision of Appeal Vs Restoration

Restoration

Time limit – 20 years

Application can be made by - the company, member, creditor or workman.

The company is restored -- the company and all other persons are deemed to be in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

The provision is silent on providing fresh Certificate of Incorporation.

Appeal

- Time limit – 3 years

- Application can be made by (1) ROC itself; (2) Any person aggrieved by the order of ROC.

- The law is silent about restoring the rights of the company and the persons involved in the same position as it was before striking of.

- Fresh Certificate of Incorporation is provided

Extension of AGM - 97

For Newly Incorporated Company and the First Annual General Meeting-

9 months from the date of end of financial year. After that "No Extension"

For Other Companies and subsequent Annual General Meeting-

6 months from the date of end of financial year

Maximum Gap between two annual General Meeting shall not be more than 15 Months

If Company unable to hold AGM within due date of period of 6 Months from the Closing of the F.Y?

Solution

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graph TD; A[Solution] --> B[Within 3 months]; B --> C[Sec 96- Registrar can extend the timelimit of AGM by a period not exceeding 3 Months on application by the Company];
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Within 3 months

Sec 96- **Registrar** can extend the timelimit of AGM by a period not exceeding **3 Months** on application by the **Company**

Solution

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graph TD; A[Solution] --> B[Beyond 3 months]; B --> C[Sec 97- Petition by any Member of the company to the Tribunal. If found satisfactory grounds, then NCLT may call/direct calling of AGM];
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Beyond 3 months

Sec 97- Petition by any **Member** of the company to the Tribunal.
If found satisfactory grounds, then **NCLT** may call/direct calling of AGM

Procedure for Petition to NCLT under Section 97

Petition by **member** of the company in NCLT Portal by paying requisite fees and submit hard copy.

Serve the copy of petition to ROC and the respondent Company

Submit Affidavit of service to the NCLT

Hearing at NCLT

Order by NCLT

Procedure for Petition to NCLT under Section 97

Filing of Order in INC-28 within 30 days of receiving Order by the respondent Company

Filing of GNL-1 for extension of AGM with the Registrar by the respondent company

Company to

- convene AGM as per the directions of the tribunal,
- Hold BM for approval of Notice
- Dispatch/mail AGM notice to shareholders
- Filing of RoC forms (AOC-4, MGT-7 etc)

NCLT-2,
NCLT-3 List of
dates, brief
synopsis

Memorandum
of Appearance
in NCLT-12
along with PoA

Annual return
evidencing the
shareholding of
the applicant/
Share
certificate

Annexures to Petition

Affidavit
verifying
Petition in
NCLT-6

Last filed audited
financial
statements

Supporting
paper of the
grounds of
inability to
convene AGM
within time

Extension under extraordinary circumstances Allowable or Not ?

Whether Co. struck off by ROC for non operations can apply for extension ? HOW ?

Co. filed BS for 31.03.2023 , but did not filed for F.Y. 2019, 2020, 2021, 2022 ? What to do?

Balance sheet not audited for previous 2 or more years?

Extension under extraordinary circumstances Allowable or Not ?

Co. struck off for non filing of INC 20A?

Co. active but audit not done for 8 years- Auditor term expired 17-22 ?

Sec. 241-242 case resolved, more than 7 year non filing pending ?

Co. under management dispute?

Company restored but status still strike off?

Possible grounds for extension of AGM

→ **Non-readiness of the financial statements due to natural calamity, due to loss of financial data, non-presence of members due to valid grounds.**

→ **Non-availability of directors on the valid grounds**

→ **The sudden death of Directors and consequence of this the limit of directors goes below the minimum requirements of directors i.e. 2 in case of Private limited and 3 in case of Public Limited.**

→ **Due to non-signing of financial statements due to non-availability of Auditors due to resignation, death, incapacity to sign or such other valid reason.**

→ **Merger or amalgamation.**

→ **Such other special reasons if such reasons are valid and justified.**

Possible grounds for extension of AGM

Company name struck-off

Case of oppression and mismanagement under section 241 - 246

Medical grounds of the director/their dependents, accountant, auditor etc

Such other valid reason if such reason is valid and justified

THANK YOU
Corporate

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**Have a Good Day
ahead !!!!!**