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## Companies (Incorporation) Amendment Rules, 2017

Ministry of Corporate Affairs vide its notification no G.S.R. (E) dated 25<sup>th</sup> January, 2017, in exercise of the powers conferred by sub-section (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) Amendment Rules, 2017

(2) They shall come into force on the 30<sup>th</sup> day of January, 2017

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the principal rules) for rule 18, the following rule shall be substituted namely:-

“18. The Certificate of Incorporation shall be issued by the Registrar in Form No.INC-11 and the Certificate of Incorporation shall mention Permanent Account Number (PAN) of the company where if it is issued by the Income-tax Department”.

3. In the principal rules, in Form No.INC-11, the Permanent Account Number (PAN) of the company shall also be mentioned below the Corporate Identity Number of the company.

## Transfer of pending proceedings, all proceedings under the Companies Act, 1956

Ministry of Corporate Affairs vide its order no S.O 3676 (E) dated 7<sup>th</sup> December, 2016 states that whereas clause (C) of sub-section (1) of section 434 of the Companies Act, 2013(hereinafter referred to as the 2013 Act) provides that on a date which may be notified by the Central Government for the purpose of transfer of pending

proceedings, all proceedings under the Companies Act, 1956 (hereinafter referred to as the 1956 Act) 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 Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.

- The provision further provides that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.
- And, whereas, clause (c) of sub-section (1) of section 434 of the Companies Act 2013 i.e Transfer of certain pending proceedings, shall come into force from the 15<sup>th</sup> December, 2016.

• And, whereas, it has been decided that:

(i) proceedings under the Companies Act 1956 with High Courts on all cases other than winding-up as on 15<sup>th</sup> December, 2016 shall stand transferred to the Benches of the Tribunals exercising respective territorial jurisdiction

(ii) all cases of winding up under the Companies Act 1956 which are pending before the High Courts as on 15<sup>th</sup> December, 2016 and wherein petitions have not been served to the respondents as per rule 26 of Companies (Court) Rules, 1959 shall be transferred to Tribunal, and

(iii) all remaining cases of winding up pending on that date would continue with the respective High Courts.

- And, whereas, difficulties have arisen regarding continuation of provisions of the Companies Act 1956 for:



(i) those proceedings relating to cases other than winding-up that are reserved for orders for allowing or otherwise and  
(ii) those winding up cases which would not be transferred to Tribunal and be proceeded with by High Courts on account of commencement of the corresponding provisions under the 2013 Act or under the Code.  
And, whereas, difficulties have also arisen regarding transfer of proceedings relating to cases other than winding-up where hearings have been completed and only pronouncement of order is pending or is reserved since their transfer to Tribunal may result into delay and rights of parties to the proceedings are likely to be affected prejudicially.

N - National  
C - Company  
L - Law  
T - Tribunal

Therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government passed the following Order to remove the above said difficulties, namely:-

1. Short title and commencement. (1) This Order may be called the Companies (Removal of Difficulties) Fourth Order, 2016.

(2) It shall come into force with effect from the 15th December, 2016.

2. In the Companies Act, 2013, in Section 434, in sub-section (1), in clause (c), after the proviso, the following provisos shall be inserted, namely:-

“Provided further that only such 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:

Provided further that:

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or  
(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

## Restoration of name of the company in the register maintained by the ROC

**VELAMATI CHANDRASEKHARA JANARDAN RAO**

**VS**

**SREE RAJA RAJESWARI PAPER MILLS LTD. ANS OTHERS**

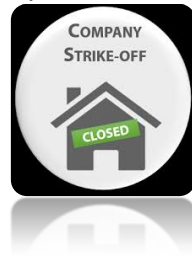
**Judgement Dated: 29<sup>TH</sup> July, 2016**

### Brief Facts of the case:

Velamti Chandrasekhara Janardan Rao, petitioner filled the petition under Section 560(6) of Companies Act, 1956 to cancel the striking off name of respondent company i.e Sree Raja Rajeshwari Paper Mills Ltd. and to restore the name of Company in the register maintained by the Registrar of Companies. Velamti Chandrasekhara Janardan Rao alleged that he was a shareholder of the company. The Managing Director Sri A.S.V.R.G.K Prasad passed away and thereafter the Board comprised of only two Directors of the company. However, the directors did not enjoy the confidence of majority of shareholders of the company.



The Company Law Board, with the expiry of the term of these two directors appointed Chairman to conduct meeting of shareholders of the company. In the meeting convened by the Chairman, new Board of directors of the company was constituted. The persons after ceasing to be the directors of the company have continued to hold books and vital documents of the company. The retention of books and documents resulted in filing of a complaint under section 630 of the Companies Act, 1956 i.e Penalty for wrongful withholding of property by the company in the Court of Special Judge. In the further proceedings, the court ordered dismissal of the case, as the company failed to prove that the said directors continued to hold documents or records of the company. Velamti Chandrasekhara Janardan Rao, petitioner having been left with no option, applied under section 560 of the Act to strike off the name of the company and the Registrar struck off the name of the Company.



Later on Velamti Chandrasekhara Janardan Rao, petitioner further alleged that the landed property of the company was not in the knowledge of the petitioner though he was the Chairman of the company. Therefore, even without selling the available assets and distributing the sale proceeds to the shareholders, request for striking off the name of the company from the register was made and was accepted in routine course. The petitioner specifically alleged that the restoration of name of company in the register of the Registrar of Companies is mandatory to deal with the available, but undisclosed, assets of the company. Therefore, he prayed for striking off the cancellation order and restoration of the name of the company in the register of Registrar of Companies. The restoration

does not prejudice the cause of any one, on the other hand, enables the legal entity to protect the property and if necessary realize consideration by sale of these properties.

The petitioner request to cancel the name of the company in the register of Registrar of Companies was made in bona fide belief that the company had no asset and liability, the shareholders have no objection for striking off the name of the company and accordingly the application for strike off was made. Now, from the material available on record, it is contended that there is necessity in law and fact to restore the name of company in the register maintained by the Registrar of Companies, for reasons that if the company is not restored and the entity is not revived, the properties of the company either will be lost or taken over by persons who cannot and could not claim title from the company. Further, the shareholders of the company did not get money from the assets of the company. Therefore, restoration of name in register is in the interest of one and all. He further contends that even if third party have any claim enforceable in law against the company, unless and until the entity is restored, they cannot proceed against a non-existing company.

The additional material papers filed by Velamti Chandrasekhara Janardan Rao (petitioner) discloses that the petitioner in bona fide belief applied for striking off name of the company on the ground that company had no assets and liabilities and the company was not carrying on business or in operation. Further, what remained was the share capital of the members of the company. Therefore, in bona fide belief that the company had no business or was not in operation, Velamti Chandrasekhara Janardan Rao (petitioner) would have, in the peculiar facts and circumstances of this



case, requested for striking off the name of the company. Further, the pleadings and other materials filed in the petition show that the assets owned and held by the company were not within the knowledge of the persons who were on the Board when the resolution was passed to request for striking off the name of the company. Velamti Chandrasekhara Janardan Rao (petitioner) was the chairman when a request was made. Therefore, on coming to know full details and information on the assets of company with a view to enabling company to claim its assets or administer for the benefit of shareholders prays for restoration of the name in the register. In the considered view of the court, with the striking off the name of the company, the legal and corporate entity enjoyed by the company under the Act is completely denuded. Therefore, for all purposes, it became dead or non-existing in the eye of law. Therefore, either to claim the assets of company or answer the claims of third parties against the company, the restoration of company in the register of companies is otherwise just. Therefore, the court held that Velamti Chandrasekhara Janardan Rao (petitioner), though was not an aggrieved party on the day when the application was made, but with the acquisition of subsequent knowledge or information about the assets of the company, the petitioner being the ex-chairman/shareholder of the company is a person aggrieved against the striking off the name of company from the register and can apply for cancelling the striking off and restoring the name in the register. Hence, a case is made out that otherwise it is just and proper to restore the name of the company in register.



## Conclusion

Though sub-section (6) of section 560 deals with striking off the name by the Registrar, still the absence of the words restricting the applicability only to sub-sections (1) to (5) of the section, and providing the right to a company, member or creditor thereof, it can be construed that sub-section (6) is applicable to voluntary striking off the name from register and gives sufficient discretion to the court. Thus, where name of company was struck off from register on petition of chairman of company under bona fide belief that company had no assets, ex-chairman and shareholder can apply for restoring name of company in register on subsequent acquisition of knowledge about assets of company.

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