



Inside this edition

- Closure of place of business by a Foreign Company
- Companies (Transfer of Pending Proceedings) Rules, 2016.
- Non-shareholder of the company/ companies who has no commercial interest in the company/companies is not entitled to file petition seeking inspection and supply of copies of statutory documents claiming as 'any other person' under section 163.
- 2 Lacs penalty for accounts not legibly scanned.

Closure of place of business by a Foreign Company

Ministry of Corporate Affairs vide its general circular no 01/2017. F.No. 1/23/2013-CL-V dated 22nd February, 2017 to all Regional Directors, Registrar of Companies and the stakeholders. Sub-section (2) of Section 391 of the Companies Act, 2013 states that the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India.



The matter has been examined by Ministry and it has been noted that sub-section (1) and sub-section (2) of section 391 needs to be read harmoniously.

Accordingly it is clarified that provision of sub-section (2) of section 391 of the Companies Act, 2013 would apply only in case a foreign company which has issued prospectus or IDRs pursuant to provisions of Chapter XXII of Companies Act, 2013.

Companies (Transfer of Pending Proceedings) Rules, 2016

Ministry of Corporate Affairs vide its notification no G.S.R. (E) dated 28th February, 2017, in exercise of the powers conferred by sub-section (1) and (2) of Section 434 of the Companies Act, 2013 (18 of 2013) read with sub section (1) of section 239 of the Insolvency and Bankruptcy Code (31 of 2016) (hereinafter referred to as the Code) the Central Government hereby makes the following rules further to amend the Companies (Transfer of Pending Proceedings) Rules, 2016 namely:-

1. Short title and Commencement:-

(1) These rules may be called the Companies (Transfer of Pending Proceedings) Amendment Rules, 2017.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Transfer of Pending Proceedings) Rules, 2016, in rule 5, in sub-rule (1) in the proviso for the words “sixty days” the words “six months” shall be substituted.



Non-shareholder of the company/companies who has no commercial interest in the company/companies, is not entitled to file petition seeking inspection and supply of copies of statutory documents claiming as ‘any other person’ under section 163

Anil Kumar Poddar Vs. Darshan Securities (P) LTD

Case: TCP Nos. 5, 7 & 9 of 2013

Judgement Dated: 7TH November, 2016

Brief Facts of the case:

Anil Kumar Poddar, the petitioner has e-mailed the company (respondent) for inspection of the documents i.e. member register from the date of incorporation of the company till date and last annual returns and supply of copies thereof. But the company has not provided inspection of the above mentioned documents. In another mail sent by him for copies



of the same along with a cheque for ₹ 200 towards advance against statutory fee for supply of copies, then also the company failed to provide the same. He further submitted that the company being involved in insider trading and to save the culprits involved in the insider trading, the company has not provided copies till date as asked by him. Anil Kumar Poddar, the petitioner further stated that the company has indulged in gross irregularities in maintenance of member register, therefore he asked for copies of the same for the company is under statutory obligation to furnish the documents to him within 10 working days from the date of requisition in the light of Section 163 of the Companies Act 1956.



Further he also asked for the above reliefs and also for exemplary costs to be paid by respondent-companies to Anil Kumar Poddar, the petitioner.

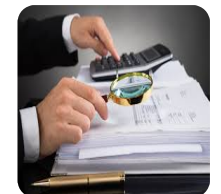
The company filed replies for the petitions with a common defence stating that Anil Kumar Poddar is neither a member nor a debenture-holder in company nor is a person having any commercial interest in company therefore the company is not required to provide either inspection or copies of the documents sought by Anil Kumar Poddar.

The company submitted that Anil Kumar Poddar, the petitioner had filed the petition claiming that he, though not a shareholder, is entitled to seek these reliefs as any other person, since Section 163 confers right upon “any person” to seek inspection and supply of the

documents on payment of fees as mandated under Section 163 of the Act.

The company further submitted that the phrase “any other person” in sub-section 2(b) of Section 163 has to be read in tandem with preceding persons mentioned in sub-section 2(a) of the same section. The persons mentioned in sub-section 2(a) being any member or debenture-holder, it is evident that the entitlement of inspection is extended to “any other person” having interest in the company. The only difference between member or debenture-holder and “any other person” is, first category of persons are entitled for inspection without fee and as to second category “any other person”, is entitled to inspection on payment of fee as prescribed. For the sake of payment only, it was split into (a) and (b). Since many other persons, apart from member and debenture-holder, are happened to have commercial interest in a company, such as banker, creditor, customer, etc., this clause “any other person” has to be read as of the same kind. Saying so, it was submitted that Anil Kumar Poddar, the petitioner being not a banker, creditor nor any other person having commercial interest in the company, the right provided for inspection and copies thereof to “any other person” cannot be invoked by Anil Kumar Poddar, the petitioner herein.

Anil Kumar Poddar, the petitioner further submitted that section 610B of the Companies Act, 1956 says that the inspection of the memorandum of association, articles of association, register, index, balance sheet, return or any other document maintained in the electronic form is available to any person as



specified in the Rules. Since the section being subsequently included in the year 2006 by making most of the documents of the company available to the public for inspection, Anil Kumar Poddar, the petitioner need not bother the company or this Tribunal for seeking this relief by filing this petition. Since section 610B starts with a non-obstante clause giving free access to any person to obtain inspection and since Rules carved out under section 610B confer access to the general public, Anil Kumar Poddar, the petitioner should not be allowed to bully the companies to provide inspection of the records of the company and supply copies thereof. It is also further submitted that Anil Kumar Poddar, the petitioner is in the habit of filing cases sometimes seeking inspection, sometimes seeking copies, or both against various companies across India causing problems to many of the listed companies claiming that he is entitled to inspection under section 163 or section 219 of the Companies Act, 1956. This issue has come up several times before various High Courts, in one of the cases filed by him, the Hon'ble High Court of Calcutta passed an order in Philips Carbon Black Ltd. v. Anil Kumar Poddar [2011] 100 CLA 209 (Cal.)/[2010] 104 SCL 113 holding that the Company Law Board can refuse to pass an order if the request is for corrupt purpose, if the requisite is shown to have caused serious prejudice to the company or its members or officers, or if the request otherwise appears to be immoral and oppose to public policy.



The company further submits that there are more than 100 petitions filed by Anil Kumar Poddar, the petitioner under section 163 or under section 219 of the Companies Act, 2013 pending before this Bench

alone. All the petitions are more or less without any reason, it is a unique tactic devised by Anil Kumar Poddar, the petitioner to bully the companies in the country.

In all the submissions made by the company request is made to dismiss these petitions by imposing heavy costs against Anil Kumar Poddar, the petitioner deprecating him not to file such frivolous petitions any further.

Taking into consideration the submissions of the company vis-a-vis the pleadings of Anil Kumar Poddar, the petitioner, it is admitted that Anil Kumar Poddar is not a shareholder in the company nor did he claim any commercial interest in the company, therefore, he is not entitled to file these petitions claiming for section 163 permits any other person to seek inspection and supply of copies. Because the word any other person, if read along with the preceding words member and debentures, that the word "any other person" has to be taken into count as person having commercial interest in the company.



Since the company is a private limited company, the parties can only get limited information, however, these petitions being decided on the ground that he is not qualified under section 163 to seek inspection and copies thereof, the effect of section 610B of the Act 1956 has not been dealt with.

Accordingly, these petitions are hereby dismissed without costs making it clear that the petitioner i.e. Anil Kumar Poddar is not

qualified to file these petitions under section 163 of the Companies Act, 1956.

Conclusion

Where the petitioner is not a shareholder in any of the companies nor did he claim any commercial interest in any of these companies, he is not entitled to file petitions seeking inspection and supply of copies of statutory documents claiming that section 163 permits 'any other person' to seek inspection and supply of copies.

2 Lacs penalty for accounts not legibly scanned National Company Law Tribunal – New Delhi Bench Case: CP No. 16/119/16

Name of the Company: M/s MVM Metal and Alloys Pvt. Ltd.
Order Dated: 7TH October, 2016
Section: 621A of Companies Act 2013

Brief Facts of the case:

M/s MVM Metal and Alloys Pvt. Ltd which was incorporated on 29.05.2017 had been charged with the offence under section 220 of the Companies Act, 1956. The Company had filed its annual report for the financial year 2011-12 alongwith the Board's report dated 01.09.2012. During the scrutiny it was observed that the financial accounts for the year ending 2011-12 were not legible and hence not accepted.

The company further alleged that the non-compliance was totally unintentional and without any malafide intention, on account of bad

quality of scanning. On being put to notice, physical copies were submitted in the office of Registrar of Companies.

The offence is punishable u/s 162 of the Companies Act, 1956 which provides for an imposition of fine which may extend to Rs 500/- for each day's default on the company and every officer of the company who is in default, if a company fails to comply with the provision contained in section 159 (Annual return to be made by company having share capital), 160 (Annual return to be made by company not having share capital) or 161 (Further provisions regarding annual return and certificate to be annexed thereto).

Accordingly the office of Registrar of Companies had calculated and recommended the imposition of the maximum fine of Rs 5,83,500/- on the company and its three directors till resubmission of the documents in hard copies on 03.12.2013.

Therefore the company filed compounding application. Given the facts of the case as there is no legal impediment in compounding, the offence and the fact that the said default appears to be unintentional, it would be sufficient to impose a fine of Rs. 50,000/- on each of the petitioners, i.e. on the company and its below mentioned three directors. Accordingly, the fine is imposed as under for the entire period of default.



Name of the Applicant	Penalty
M/s MVM Metal and Alloys Pvt. Ltd	Rs. 50,000/-
Mr. Vijay Singla, Director	Rs. 50,000/-

Mr. Ajay Budhiraja, Director	Rs. 50,000/-
Ms. Pooja Gupta, Director	Rs. 50,000/-
Total	Rs. 2 Lacs

Subject to the remittance of the aforesaid fine within 30 days, the offence shall stand compounded. Compliance Report be placed on record with due intimation to the office of the Registrar of Companies.

Conclusion

It is also the duty and responsibility of officer of the company engaged in the filing and submission of e-form to Registrar of Companies or Ministry of Corporate Affairs and also of the director digitally signing the respective e-form to thoroughly read the requirements of the provisions of the Act, the Rules made there under and familiarize himself with the actual practices that are followed while filing the e-forms at Ministry of Corporate Affairs and also to ensure that all relevant documents and attachments are legible and visible.

[Faint, illegible text, possibly a watermark or bleed-through from the reverse side of the page.]

VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com



© 2016 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.