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REMOVAL OF NAME OF COMPANIES FROM THE REGISTRAR OF COMPANIES (i.e. STRIKING OFF)

The Article is all about the procedure of Striking off the Company.

Striking off a Company is an alternative to Winding up of Company subject to provisions specified under Section 248 of the Companies Act, 2013, (erstwhile Section – 560 of Companies Act, 1956).

There are two modes of Striking off a Company:-

1. Strike off by Registrar of Company under Section 248(1) of the Companies Act, 2013;
2. Strike off by Company by its own under Section 248(2) of the Companies Act, 2013.

GROUND OF STRIKE OFF A COMPANY UNDER COMPANIES ACT, 2013

There are two grounds on which striking off a Company can be made:-

- If a Company has failed to commence its business within one year of its incorporation;
- If the Company is not carrying out business or operation for a period of two years immediately preceding financial years and has not made any application within such period for obtaining the status of a Dormant Company under Section 455 of the Act.

STRIKE OFF BY REGISTRAR OF COMPANY UNDER SECTION 248(1) OF THE COMPANIES ACT, 2013

Where the Registrar having a reasonable cause to believe the above grounds then, he shall send a notice in Form no. **STK- 1** to the

- Company and
- all the Directors of Company

Stating his intention to remove the name of the Company from the Registrar of Companies and requesting them to send their representations along with relevant document, if any within a period of 30 days from the date of notice.

On non-receipt of any communication from the Company, its Authorised Representatives, Directors etc. the Registrar has the authority to remove the name of the Company from its Register and its status will be changed from “Active” to “Strike Off”.

STRIKE OFF A COMPANY BY ITS OWN UNDER SECTION 248(2) OF THE COMPANIES ACT, 2013

A Company may after extinguishing all its liabilities, by a Special Resolution or by consent of seventy-five of its member in terms of its paid up share capital can file an application in **e-Form no. STK- 2** to the Register for removing the name of the Company from the Registrar of Companies on all or any of the above mentioned grounds and the Registrar shall on the receipt of such application cause a public notice to be issued in the prescribed manner.

Provided that in the case of a Company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

This Section shall not apply to the Companies registered under Section 8 of the Companies Act, 2013(i.e. Charitable Company). A Notice under Section 248(1) and Section 248(2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

PROCESS FOLLOWED BY COMPANY FOR STRIKE OFF A COMPANY BY ITS OWN UNDER SECTION 248(2) OF THE COMPANIES ACT, 2013

The following process will be followed by Company for Strike off a Company by its own:-

- The Company will hold a Board Meeting for passing a Board Resolution to authorize Director(s) of the Company to apply to Registrar of Companies for Striking off the name of the Company;
- After the Board Resolution is passed, the Company will extinguish all the liabilities, if any;
- The Company will hold a General Meeting of Shareholders by passing a Resolution or with the approval of 75 percent of members in terms of paid up share capital for Striking off the name of the Company from the Registrar of Companies and file **e-form MGT- 14** within 30 days;
- In case if any other authority regulates the Company, then the approval of such authority shall also be required;
- Form STK- 2 to be filed by Company to Registrar of Companies along with the fees of Rupees five thousand (RS. 5000/-) and relevant documents. The following documents are required to be attached in Form no. STK- 2:-
 - (i) A Statement of Accounts containing assets and liabilities of the Company made up for a day, not more than 30 days before the date of application and certified by a Chartered Accountant;
 - (ii) An Affidavit in Form no. STK- 4 by every Director of the Company;
 - (iii) Indemnity Bond duly notarized by every Director in Form STK- 3;
 - (iv) Income Tax Return of the Assessment year;
 - (v) A Declaration by every Director for Nil Assets and Liabilities;
 - (vi) A Declaration by every Director for Nil Bank Accounts;

NOTE:-

It is necessary to do Annual filing before making an application for Strike off the Company.

PROCESS FOLLOWED BY REGISTRAR OF COMPANIES

- After receiving an application, Registrar of Companies shall publish a public notice in STK- 6, any objection if any on proposed strike off shall be sent within 30 days;
- The notice shall be published in the Official Gazette and published in a leading English newspaper and at least in one vernacular newspaper where the Registered office of the Company is situated;

- Registrar of Company shall intimate the concerned regulatory authorities i.e. the Income-tax authorities, Central Excise authorities having jurisdiction over the Company, about the proposed action of Striking off the names of such Companies and seek objections if any.
- After complying all the process, Registrar of Company shall Strike off the name and dissolve the Company by sending notice in the Official Gazette in form STK-7.
- On the publication in the Official Gazette of this notice, the Company shall stand dissolved in effect from the date mentioned therein. The same shall also be placed on the official website of the Ministry of Corporate Affair.

COMPANIES WHICH CANNOT BE STRIKED OFF

There are following categories of Companies which cannot be Strike off:-

- Listed Companies;
- Companies that has been delisted due to non-compliance of listing agreement or listing regulations or any other statutory laws;
- Vanishing Companies;
- 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;
- 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;
- Companies against which any prosecution for an offence is pending in any court;
- 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;
- Companies which have accepted public deposits which are either outstanding or the Company is in default in repayment of the same;
- Companies having charges which are pending for satisfaction; and
- Companies registered under Section 8 of the Companies Act, 2013.

RESTRICTIONS ON MAKING APPLICATION UNDER SECTION 248 IN CERTAIN SITUATIONS

An application under Section 248(2) on the behalf of Company shall not be made if, at any time in the previous months, the Company-

1. has change its name or shifted its registered office from one state to another;
2. has made a disposal for value of property or rights held by it, immediately before it ceases its trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
3. has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that Section, or deciding whether to do so or concluding the affairs of the Company, or complying with any statutory requirement;
4. has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
5. is being wound up

If Company fails to comply with the provision of Section 248 of the Companies Act, 2013, it shall be punishable with ***fine which may extend to one lakhs rupees.***