



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

SUPPLEMENT FOR PROFESSIONAL PROGRAMME

- Advanced Company Law and Practice
- Corporate Restructuring, Valuation and Insolvency
- Ethics, Governance and Sustainability
- Secretarial Audit, Compliance Management and Due Diligence

This supplement is for the Professional Programme. The students are advised to read their Study Material along with these updates. These academic updates are to facilitate the students to acquaint themselves with the amendments in the Companies Act, 2013 up to 31st December, 2016, applicable for June 2017 Examination. The students are advised to read all the relevant regulatory amendments made and applicable up to 31st December, 2016 along with the study material. In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

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**The students may also refer to the E-book on Companies Act, 2013 on the MCA website (<http://ebook.mca.gov.in/default.aspx>); or ICSI website (<http://ebook.mca.gov.in/default.aspx>) for the updated Companies Act, 2013 and rules made thereunder.

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CHAPTER II-INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERE TO

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (Incorporation) Third Amendment Rules, 2016	27.07.2016	1
2	Companies (Incorporation) Fourth Amendment Rules, 2016	01.10.2016	1
3	Companies (Incorporation) Fifth amendment rules 2016 with effect from 01.01.2017	29.12.2016	1

A. COMPANIES (INCORPORATION) RULES, 2014 as amended up to 31st December, 2016

RULE 1. SHORT TITLE AND COMMENCEMENT

- (1) These rules may be called the Companies (Incorporation) Rules, 2014.
- (2) They shall come into force on the date 1st day of April, 2014

RULE 2. DEFINITIONS- THE COMPANIES (INCORPORATION) RULES, 2014

- (1) In these rules, unless the context otherwise requires,-
 - (a) **“Act”** means the Companies Act, 2013 (18 of 2013);
 - (b) **“Annexure”** means the Annexure to these rules;
 - (c) **“Form”** or **“e-Form”** means a form in the electronic form as specified under the Act or Rules made there under and notified by the Central Government under the Act;
 - (d) **“Fees”** means fees as specified in the Companies (Registration offices and fees) Rules, 2014;
 - (e) **“Regional Director”** means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;
 - (f) **“section”** means the section of the Act;
- (2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

RULE 3. ONE PERSON COMPANY

(1) Only a natural person who is an Indian citizen and resident in India-

(a) shall be eligible to incorporate a One Person Company;

(b) shall be a nominee for the sole member of a One Person Company.

Explanation.- For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding one calendar year.

(2) A natural person shall not be member of more than a One Person Company at any point of time and the said person shall not be a nominee of more than a One Person Company.

(3) Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the eligibility criteria specified in sub rule (2) within a period of one hundred and eighty days.

(4) No minor shall become member or nominee of the One Person Company or can hold share with beneficial interest.

(5) Such Company cannot be incorporated or converted into a company under section 8 of the Act.

(6) Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of any body corporates.

(7) No such company can convert voluntarily into any kind of company unless two years is expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

RULE 4. NOMINATION BY THE SUBSCRIBER OR MEMBER OF ONE PERSON COMPANY

For the purposes of first proviso to sub-section (1) of section 3 -

(1) The subscriber to the memorandum of a One Person Company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of that One Person Company.

(2) The name of the person nominated under sub-rule (1) shall be mentioned in the memorandum of One Person Company and 1[such nomination in Form No.INC-32 (SPICe) along with consent of such nominee obtained in Form No.INC-3] and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.

(3) The person nominated by the subscriber or member of a One Person Company may, withdraw his consent by giving a notice in writing to such sole member and to the One Person Company:

Provided that the sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No.INC.3.

(4) The company shall within thirty days of receipt of the notice of withdrawal of consent under sub-rule (3) file with the Registrar, a notice of such withdrawal of consent and the intimation of the name of another person nominated by the sole member in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and the written consent of such another person so nominated in Form No.INC.3.

(5) The subscriber or member of a One Person Company may, by intimation in writing to the company, change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person after obtaining the prior consent of such another person in Form No INC.3:

Provided that the company shall, on the receipt of such intimation, file with the Registrar, a notice of such change in Form No INC.4 along with fee as provided in the Companies (Registration offices and fees) Rules, 2014 and with the written consent of the new nominee in Form No.INC.3 within thirty days of receipt of intimation of the change.

(6) Where the sole member of One Person Company ceases to be the member in the event of death or incapacity to contract and his nominee becomes the member of such One Person Company, such new member shall nominate within fifteen days of becoming member, a person who shall in the event of his death or his incapacity to contract become the member of such company, and the company shall file with the Registrar an intimation of such cessation and nomination in Form No INC.4 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 within thirty days of the change in membership and with the prior written consent of the person so nominated in Form No.INC.3.

RULE 5. PENALTY

[OMITTED BY NOTIFICATION DATED 1ST MAY, 2015]

RULE 6. ONE PERSON COMPANY TO CONVERT ITSELF INTO A PUBLIC COMPANY OR A PRIVATE COMPANY IN CERTAIN CASES

(1) Where the paid up share capital of an One Person Company 1[exceeds fifty lakh rupees and its average annual turnover during the relevant period] exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company.

(2) Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees or the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act.

(3) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

(4) The One Person Company shall within period of sixty days from the date of applicability of sub-rule (1), give a notice to the Registrar in Form No.INC.5 informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down in sub-rule (1).

Explanation.-For the purposes of this rule,- "relevant period" means the period of immediately preceding three consecutive financial years;

(5) If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.

(6) A One Person company can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

RULE 7. CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY

(1) A private company other than a company registered under section 8 of the Act "having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period" two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.

(2) Before passing such resolution, the company shall obtain No objection in writing from members and creditors.

(3) The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.

(4) The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-

(i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be;

(ii) the list of members and list of creditors;

(iii) the latest Audited Balance Sheet and the Profit and Loss Account; and

(iv) the copy of No Objection letter of secured creditors.

(5) On being satisfied and complied with requirements stated herein the Registrar shall issue the Certificate.

RULE 7A. PENALTY

[Inserted by Notification Companies (Incorporation) Amendment Rules, 2015 Dated 1st may, 2015]

If a One Person Company or any officer of such company contravenes any of the provisions of these rules, the One Person Company or any officer of the such Company shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to five hundred rupees for every day after the first offence during which such contravention continues;

RULE 8. UNDESIRABLE NAMES

(1) In determining whether a proposed name is identical with another, the differences on account of the following shall be disregarded-

(a) the words like Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

(b) words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;

(c) plural version of any of the words appearing in the name;

(d) type and case of letters, spacing between letters and punctuation marks;

(e) joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;

(f) use of a different tense or number of the same word does not distinguish one name from another;

(g) using different phonetic spellings or spelling variations shall not be considered as distinguishing one name from another. Illustration (For example, P.Q. Industries limited is existing then P and Q Industries or Pee Que Industries or P n Q Industries or P & Q Industries shall not be allowed and similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;)

(h) misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;

(i) the addition of an internet related designation, such as .com, .net, .edu, .gov, .org, .in does not make a name distinguishable from another, even where (.) is written as 'dot';

(j) the addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name and similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed; such names may be allowed only if no objection from the existing company by way of Board resolution is submitted;

(k) different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" shall not be allowed unless it is change of name of existing company;

(l) if the proposed name is the Hindi or English translation or transliteration of the name of an existing company or limited liability partnership in English or Hindi, as the case may be.

(2) (a) The name shall be considered undesirable, if-

(i) it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);

(ii) it includes the name of a trade mark registered or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and the rules framed there under unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters.

(iii) it includes any word or words which are offensive to any section of the people;

(b) The name shall also be considered undesirable, if-

(i) the proposed name is identical with or too nearly resembles the name of a limited liability partnership,

(ii) [Omitted]

(iii) the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;

(iv) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

(v) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(vi) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

Explanation.- For the purposes of this sub-clause, it is hereby clarified that the name including phrase 'Electoral Trust' may be allowed for Registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT): Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

(vii) the proposed name contains the words 'British India';

(viii) the proposed name implies association or connection with embassy or consulate or a foreign government;

(ix) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in Government;

(x) [Omitted]

(xi) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years have not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action 1["or under section 560 of the Companies Act, 1956(1 of 1956)"] then the same shall not be allowed before the expiry of twenty years from the publication in the Official Gazette being so struck off;

(xii) it is identical with or too nearly resembles the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

(xiii) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(xiv) the proposed name includes the word "State", the same shall be allowed only in case the company is a government company;

(xv) the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited;

(xvi) the name is only a general one, like Cotton Textile Mills Ltd. or Silk Manufacturing Ltd., and not Lakshmi Silk Manufacturing Co. Ltd;

(xvii) [Omitted]

(xviii) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like Memorandum Of Understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country. Explanation.- For the purposes of this clause, enemy country means so declared by the Central Government from time to time.

(3)[Omitted]

(4) [Omitted]

(5) The applicant shall declare in affirmative or negative (to affirm or deny) whether they are using or have been using in the last five years , the name applied for incorporation of

company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not .

(6) The following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression-

- (a) Board;
- (b) Commission;
- (c) Authority;
- (d) Undertaking;
- (e) National;
- (f) Union;
- (g) Central;
- (h) Federal;
- (i) Republic;
- (j) President;
- (k) Rashtrapati;
- (l) Small Scale Industries;
- (m) Khadi and Village Industries Corporation;
- (n) Financial 8[Omitted] Corporation and the like;
- (o) Municipal;
- (p) Panchayat;
- (q) Development Authority;
- (r) Prime Minister or Chief Minister;

(s) Minister;

(t) Nation;

(u) Forest corporation;

(v) Development Scheme;

(w) Statute or Statutory;

(x) Court or Judiciary;

(y) Governor;

(z) the use of word Scheme with the name of Government (s) , State , India, Bharat or any government authority or in any manner resembling with the schemes launched by Central, state or local Governments and authorities; and

(za) Bureau

(7) For the Companies under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc. Every company incorporated as a "Nidhi" shall have the last word 'Nidhi Limited' as part of its name.

(8) The names released on change of name by any company shall remain in data base and shall not be allowed to be taken by any other company including the group company of the company who has changed the name for a period of three years from the date of change subject to specific direction from the competent authority in the course of compromise, arrangement and amalgamation.

RULE 9. RESERVATION OF NAME

An application for the reservation of a name shall be made in Form No. INC.1 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 which may be approved or rejected, as the case may be, by the Registrar, Central Registration Centre."

RULE 10. WHERE ARTICLES CONTAIN ENTRENCHMENT PROVISIONS

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No.INC-7 or Form No INC-32(SPICe) as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Note:

*Form No. INC.2 has been omitted w.e.f. 1st January, 2017 vide MCA Notification Dated 29th December 2016.

RULE 11. MODEL ARTICLES

The model articles as prescribed in Table F, G, H, I and J of Schedule I may be adopted by a company as may be applicable to the case of the company, either in totality or otherwise.

RULE 12. APPLICATION FOR INCORPORATION OF COMPANIES

An application shall be filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated, in "Form No.INC-7 (Part I company and company with more than seven subscribers) and Form No,INC-32 (SPICe)" along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company:

Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as Reserve Bank of India, Securities and Exchange Board, registration or approval, as the case may be, from such regulator shall be obtained by the company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the company."

RULE 13. SIGNING OF MEMORANDUM AND ARTICLES

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

(1) The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum, who shall add his name, address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise sign and add his name, address, description and occupation, if any and the witness shall state that "I witness to subscriber/subscriber(s), who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details (ID) for their identification and satisfied myself of his/her/their identification particulars as filled in"

(2) Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.

Explanation.- For the purposes of sub-rule (1) and sub-rule (2), the type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written by the

subscriber and witness respectively so long as the subscriber and the witness as the case may be appends his or her signature or thumb impression, as the case may be.

(3) Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.

(4) Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Provided that in either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

(5) Where subscriber to the memorandum is a foreign national residing outside India-

(a) in a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) in that part of the Commonwealth.

(b) in a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary (Public) of the country of his origin and be duly apostilled in accordance with the said Hague Convention.

(c) in a country outside the Commonwealth and which is not a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity, shall be notarized before the Notary (Public) of such country and the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (40 of 1948) or, where there is no such officer by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889 (52 and 53 Vic.C.10), or in any Act amending the same;

(d) visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

Explanation.- For the purposes of this clause, it is hereby clarified that, in case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.

RULE 14. DECLARATION BY PROFESSIONALS

For the purposes of clause (b) of sub-section (1) of section 7, the declaration by an advocate, a Chartered Accountant, Cost accountant or Company Secretary in practice shall be in Form No. INC.8.

Explanation (i) "chartered accountant" means a chartered accountant as defined in clause (b) of sub section 1 of section 2 of the Chartered Accountants Act, 1949 (ii) "Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and (iii) "company secretary" means a "company secretary" or "secretary" means as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980.

RULE 15. AFFIDAVIT FROM SUBSCRIBERS AND FIRST DIRECTORS

For the purposes of clause (c) of sub-section (1) of section 7, the affidavit shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No. INC.9

RULE 16. PARTICULARS OF EVERY SUBSCRIBER TO BE FILED WITH THE REGISTRAR AT THE TIME OF INCORPORATION

(1) The following particulars of every subscriber to the memorandum shall be filed with the Registrar-

- (a) Name (including surname or family name) and recent Photograph affixed and scan with MOA and AOA:
- (b) Father's/Mother's/ name:
- (c) Nationality:
- (d) Date of Birth:
- (e) Place of Birth (District and State):
- (f) Educational qualification:
- (g) Occupation:
- (h) Income-tax permanent account number:
- (i) Permanent residential address and also Present address (Time since residing at present address and address of previous residence address (es) if stay of present address is less than one year) similarly the office/business addresses :

(j) Email id of Subscriber;

(k) Phone No. of Subscriber;

(l) Fax no. of Subscriber (optional)

Explanation.- information related to (i) to (l) shall be of the individual subscriber and not of the professional engaged in the incorporation of the company;

(m) Proof of Identity:

For Indian Nationals:

PAN Card (mandatory) and any one of the following

Voter's identity card

Passport copy

Driving License copy

Unique Identification Number (UIN)

For Foreign nationals and Non Resident Indians

Passport

Explanation.- In case the subscriber is already holding a valid DIN, and the particulars provided therein have been updated as on the date of application, and the declaration to this effect is given in the application, the proof of identity and residence need not be attached.

(n) Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill:

Provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old;

(o) Proof of nationality in case the subscriber is a foreign national.

(p) If the subscriber is already a director or promoter of a company(s), the particulars relating to-

(i) Name of the company;

(ii) Corporate Identity Number;

(iii) Whether interested as a director or promoter;

(q)[Omitted]

(2) Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar-

(a) Corporate Identity Number of the Company or Registration number of the body corporate, if any

(b) GLN, if any;

(c) the name of the body corporate

(d) the registered office address or principal place of business;

(e) E-mail Id;

(f) if the body corporate is a company, certified true copy of the board resolution specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed by the body corporate, and the name, address and designation of the person authorized to subscribe to the Memorandum;

(g) if the body corporate is a limited liability partnership [Omitted], certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the memorandum of association of the proposed company and to make investment in the proposed company, the number of shares proposed to be subscribed in the body corporate, and the name of the partner authorized to subscribe to the Memorandum;

(h) the particulars as specified above for subscribers in terms of clause (e) of sub-section (1) of section 7 for the person subscribing for body corporate; in case of foreign bodies corporate, the details relating to-

(i) the copy of certificate of incorporation of the foreign body corporate; and

(ii) the registered office address.

RULE 17. PARTICULARS OFFIRST DIRECTORS OF THE COMPANY AND THEIR CONSENT TO ACT AS SUCH

The particulars of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent to act as director of the company shall be filed in Form No.DIR.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

RULE 18. CERTIFICATE OF INCORPORATION

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 of the company where if it is issued by the Income-tax Department.

RULE 19. LICENSE UNDER SECTION 8 FOR NEW COMPANIES WITH CHARITABLE OBJECTS ETC

(1) A person or an association of persons (hereinafter referred to in this rule as “the proposed company”), desirous of incorporating a company with limited liability under sub-section (1) of section 8 without the addition to its name of the word “Limited”, or as the case may be, the words “Private Limited”, shall make an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a license under sub-section (1) of section 8.

(2) The memorandum of association of the proposed company shall be in Form No.INC.13.

(3) The application under sub-rule (1) shall be accompanied by the following documents, namely:—

(a) the draft memorandum and articles of association of the proposed company;

(b) the declaration in Form No.INC.14 by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

(c) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;

(d) the declaration by each of the persons making the application in Form No. INC.15.

RULE 20. LICENSE FOR EXISTING COMPANIES

(1) A limited company registered under this Act or under any previous company law, with any of the objects specified in clause (a) of sub-section (1) of section 8 and the restrictions and prohibitions as mentioned respectively in clause (b) and (c) of that sub-section, and which is desirous of being registered under section 8, without the addition to its name of the word "Limited" or as the case may be, the words "Private Limited", shall make an application in Form No.INC.12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the Registrar for a licence under sub-section (5) of section 8.

(2) The application under sub-rule (1), shall be accompanied by the following documents, namely:-

- (a) the memorandum and articles of association of the company;
- (b) the declaration as given in Form No.INC.14 by an Advocate, a Chartered accountant, Cost Accountant or Company Secretary in Practice, that the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;
- (c) For each of the two financial years immediately preceding the date of the application, or when the company has functioned only for one financial year, for such year (i) the financial statements, (ii) the Board's reports, and (iii) the audit reports, relating to existing companies
- (d) a statement showing in detail the assets (with the values thereof), and the liabilities of the company, as on the date of the application or within thirty days preceding that date;
- (e) an estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
- (f) the certified copy of the resolutions passed in general/ board meetings approving registration of the company under section 8; and
- (g) a declaration by each of the persons making the application in Form No.INC.15.

(3) The company shall, within a week from the date of making the application to the Registrar, publish a notice at his own expense, and a copy of the notice, as published, shall be sent forthwith to the Registrar and the said notice shall be in Form No. INC.26 and shall be published-

- (a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district; and
- (b) on the websites as may be notified by the Central Government.

(4) The Registrar may require the applicant to furnish the approval or concurrence of any appropriate authority, regulatory body, department or Ministry of the Central Government or the State Government(s).

(5) The Registrar shall, after considering the objections, if any, received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of the Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

(6) The licence shall be in Form No.INC.16. or Form No.INC.17, as the case may be, and the Registrar shall have power to include in the licence such other conditions as may be deemed necessary by him.

(7) The Registrar may direct the company to insert in its memorandum, or in its articles, or partly in one and partly in the other, such conditions of the license as may be specified by the Registrar in this behalf.

RULE 21. CONDITIONS FOR CONVERSION OF A COMPANY REGISTERED UNDER SECTION 8 INTO A COMPANY OF ANY OTHER KIND

(1) A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

(2) The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion including the following, namely:-

(a) the date of incorporation of the company;

(b) the principal objects of the company as set out in the memorandum of association;

(c) the reasons as to why the activities for achieving the objects of the company cannot be carried on in the current structure i.e. as a section 8 company;

(d) if the principal or main objects of the company are proposed to be altered, what would be the altered objects and the reasons for the alteration;

(e) what are the privileges or concessions currently enjoyed by the company, such as tax exemptions, approvals for receiving donations or contributions including foreign contributions, land and other immovable properties, if any, that were acquired by the company at concessional rates or prices or gratuitously and, if so, the market prices prevalent at the time of acquisition and the price that was paid by the company, details of any donations or bequests received by the company with conditions attached to their utilization etc.

(f) details of impact of the proposed conversion on the members of the company including details of any benefits that may accrue to the members as a result of the conversion.

(3) A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee

(4) The company shall file an application in Form No.INC.18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for converting itself into a company of any other kind and the company shall also attach the proof of serving of the notice served to all the authorities mentioned in sub-rule (2) of rule 22.

(5) A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

RULE 22. OTHER CONDITIONS TO BE COMPLIED WITH BY COMPANIES REGISTERED UNDER SECTION 8 SEEKING CONVERSION INTO ANY OTHER KIND

(1) The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC.19 and shall be published-

(a) at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and

(b) on the website of the company, if any, and as may be notified or directed by the Central Government.

(2) The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application and all attachments by registered post or hand delivery, to the Chief Commissioner of Income Tax having jurisdiction over the company, Income Tax Officer who has jurisdiction over the company, the Charity Commissioner, the Chief Secretary of the State in which the registered office of the company is situated, any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating and if any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company.

(3) The copy of proof of serving such notice shall be attached to the application.

(4) The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise to persons who are or have been members of the company or to any one or more of them or to any persons claiming through any one or more of them.

(5) Where the company has obtained any special status, privilege, exemption, benefit or grant(s) from any authority such as Income Tax Department, Charity Commissioner or any organisation or Department of Central Government, State Government, Municipal Body or any recognized authority, a "No Objection Certificate" must be obtained, if required under the terms of the said special status, privilege, exemption, benefit or grant(s) from the concerned authority and filed with the Regional Director, along with the application.

(6) The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director and in the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.

(7) The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.

(8) The Regional Director may require the applicant to furnish the approval or concurrence of any particular authority for grant of his approval for the conversion and he may also obtain the report from the Registrar

(9). On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case including the following conditions, namely;-

(a) the company shall give up and shall not claim, with effect from the date its conversion takes effect, any special status, exemptions or privileges that it enjoyed by virtue of having been registered under the provisions of section 8;

(b) if the company had acquired any immovable property free of cost or at a concessional cost from any government or authority, it may be required to pay the difference between the cost at which it acquired such property and the market price of such property at the time of conversion either to the government or to the authority that provided the immovable property;

(c) any accumulated profit or unutilised income of the company brought forward from previous years shall be first utilized to settle all outstanding statutory dues, amounts due to lenders claims of creditors, suppliers, service providers and others including employees and lastly any loans advanced by the promoters or members or any other amounts due to them and the balance, if any, shall be transferred to the Investor Education and Protection Fund within thirty days of receiving the approval for conversion;

(10) Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director

(11) On receipt of the approval of the Regional Director,

(i) the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;

(ii) the Company shall thereafter file with the Registrar.-

(a) a certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form No.INC.20 along with the fee;

(b) amended memorandum of association and articles of association of the company.

(c) a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.

(12) On receipt of the documents referred to in sub rule (10) above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

RULE 23. INTIMATION TO REGISTRAR OF REVOCATION OF LICENCE ISSUED UNDER SECTION 8

Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in Form No.INC.20 along with the fee to convert its status and change of name accordingly.

RULE 24. DECLARATION AT THE TIME OF COMMENCEMENT OF BUSINESS

[OMITTED by notification Dated 29th May, 2015]

RULE 25. VERIFICATION OF REGISTERED OFFICE

(1) The verification of the registered office shall be filed in Form No.INC.22 along with the fee, and

(2) There shall be attached to said Form, any of the following documents, namely :-

(a) the registered document of the title of the premises of the registered office in the name of the company; or

(b) the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;

- (c) the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- (d) the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

RULE 26. PUBLICATION OF NAME BY COMPANY

(1) Every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website.

(2) The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.

RULE 27. NOTICE AND VERIFICATION OF CHANGE OF SITUATION OF THE REGISTERED OFFICE

The notice of change of the situation of the registered office and verification thereof shall be filed in Form No.INC.22 along with the fee and shall be attached to the said form, the similar documents and manner of verification as are specified for verification of Registered office on incorporation in terms of sub-section (2) of section 12.

RULE 28. SHIFTING OF REGISTERED OFFICE WITHIN THE SAME STATE

(1) An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form no.INC.23 along with the fee.

(2) The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.-

(a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and

(b) serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:

Provided that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be

deemed to have given his consent to the change of registered office proposed in the application:

Provided further that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

RULE 29. ALTERATION OF MEMORANDUM BY CHANGE OF NAME

(1) The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon:

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.

(2) An application shall be filed in Form No.INC.24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No.INC.25 shall be issued to the company consequent upon change of name.

RULE 30. SHIFTING OF REGISTERED OFFICE FROM ONE STATE OR UNION TERRITORY TO ANOTHER STATE

(1) An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents, namely:-

- (a) a copy of the memorandum and articles of association;
- (b) a copy of the notice convening the general meeting along with relevant Explanatory Statement;
- (c) a copy of the special resolution sanctioning the alteration by the members of the company;
- (d) a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
- (e) an affidavit verifying the application;
- (f) the list of creditors and debenture holders entitled to object to the application;
- (g) an affidavit verifying the list of creditors;

(h) the document relating to payment of application fee;

(i) a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.

(j) a copy of the No Objection Certificate from the Reserve Bank of India where the applicant is a registered Non-Banking Financial Company

(2) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details, namely:-

(a) the names and address of every creditor and debenture holder of the company;

(b) the nature and respective amounts due to them in respect of debts, claims or liabilities:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge.

(3) There shall also be attached to the application an affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory

(4) A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.

(5) There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

(6) The company shall at least fourteen days before the date of hearing-

(a) advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;

(b) serve, by registered post with acknowledgement due, individual notice(s), to the effect set out in clause (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar 2[Omitted] and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

(7) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government on or before the date of hearing.

(8) Where no objection has been received from any of the parties, who have been duly served, the application may be put up for orders without hearing.

(9) Before confirming the alteration, the Central Government shall ensure that, with respect to every creditor and debenture holder who, in the opinion of the Central government, is entitled to object to the alteration, and who signifies his objection in the manner directed by the Central government, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Central Government.

(10) The Central Government may make an order confirming the alteration on such terms and conditions, if any, as it thinks fit, and may make such order as to costs as it thinks proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

Explanation- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.

RULE 31. CERTIFIED COPY OF THE ORDER OF THE CENTRAL GOVERNMENT

The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No.INC.28 along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

RULE 32. CHANGE OF OBJECTS FOR WHICH MONEY IS RAISED THROUGH PROSPECTUS

(1) Where the company has raised money from public through prospectus and has any unutilised amount out of the money so raised, it shall not change the objects for which the money so raised is to be applied unless a special resolution is passed through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely:-

- (a) the total money received;
- (b) the total money utilized for the objects stated in the prospectus;
- (c) the unutilized amount out of the money so raised through prospectus,
- (d) the particulars of the proposed alteration or change in the objects;
- (e) the justification for the alteration or change in the objects;
- (f) the amount proposed to be utilised for the new objects;
- (g) the estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
- (h) the other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
- (i) the place from where any interested person may obtain a copy of the notice of resolution to be passed.

(2) The advertisement giving details of each resolution to be passed for change in objects which shall be published simultaneously with the dispatch of postal ballot notices to shareholders.

(3) The notice shall also be placed on the website of the company, if any.

RULE 33. ALTERATION OF ARTICLES

(1) For effecting the conversion of a private company into a public company or vice versa, the application shall be filed in Form No. INC.27 with fee.

(2) Subject to the provision of sub-rule (1), for effecting the conversion of a public company into a private company, a copy of order of the Tribunal approving the alteration, shall be filled with the Registrar in Form No. INC -27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Tribunal.

Explanation.- For the purposes of this sub-rule, the term “competent authority” means, the Central Government.

RULE 34. COPIES OF MEMORANDUM AND ARTICLES, ETC. TO BE GIVEN TO MEMBERS ON REQUEST BEING MADE BY THEM

A company shall on payment of fee, send a copy of each of the following documents to a member within seven days of the request being made by him-

- a. the memorandum;
- b. the articles;
- c. every agreement and every resolution referred to in sub-section (1) of section 117, if and so far as they have not been embodied in the memorandum and articles.

RULE 35. SERVICE OF DOCUMENTS

(1) A document may be served on a company or an officer thereof through electronic transmission.

(2) For the purposes of sub-rule (1), the term, "electronic transmission" means a communication—

(a) delivered by –

(i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the company or the officer has provided from time to time for sending communications to the company or the officer respectively;

(ii) posting of an electronic message board or network that the company or the officer has designated for such communications, and which transmission shall be validly delivered upon the posting; or

(iii) other means of electronic communication, in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission; and

(b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

(3) A document may be served on the Registrar or any member through electronic transmission.

(4) For the purposes of sub-rule (3), the term, "electronic transmission" means a communication –

(a) delivered by –

(i) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the Registrar or the member has provided from time to time for sending communications to the Registrar or the member respectively;

(ii) posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting; or

(iii) other means of electronic communication, in respect of which the Registrar or the member has put in place reasonable systems to verify that the sender is the person purporting to send the transmission, and

(b) that creates a record that is capable of retention, retrieval and review, and which may thereafter be rendered into clearly legible tangible form.

(5) For the purposes of sub-section (1) and (2) of section 20, "courier" means a document sent through a courier which provides proof of delivery.

(6) In case of delivery by post, such service shall be deemed to have been effected- (i) in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted; and (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

RULE 36. INTEGRATED PROCESS FOR INCORPORATION

Omitted by Notification Companies (Incorporation) 5th Amendment Rules, 2016 Dated 29th December, 2016. - Original Content (The Amendment shall come into force from 1st January, 2017)

RULE 37. CONVERSION OF UNLIMITED LIABILITY COMPANT INTO LIMITED LIABILITY COMPANY BY SHARES OR GUARANTEE

(1) Without prejudice to any other provision in the Companies Act for effecting the conversion of an unlimited liability company with or without share capital into limited liability company by shares or guarantee, such a company shall pass a special resolution in a general meeting and thereafter, an application shall be filed in Form No. INC- 27 in the manner provided in sub-rules (2) and (3).

(2)The Company shall within seven days from the date of passing of the special resolution in a general meeting, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debentures holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within twenty-one days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.

(3)The Company shall within forty five days of passing of the special resolution file an application as prescribed in sub rule (1) for its conversion into a company limited by shares or guarantee along with the fees as provided in the Companies (Registration offices and Fees) Rules, 2014, by attaching the following documents, namely:-

(a) notice of the general meeting along with explanatory statement.

(b) copy of the resolution passed in the general meeting;

(c) copy of the newspaper publication;

(d) a copy of altered Memorandum of Association as well as Articles of Association duly certified by any one of the Directors duly authorised in this behalf or Company Secretary of the Company, if any.

(e) declaration signed by not less two Directors of the Company, including Managing Director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).

(f) a complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:-

(i) the names and address of every creditor and debenture holder of the Company;

(ii) the nature and respective amounts due to them in respect of debts, claims or liabilities:

(iii) declaration by a Director of the Company that notice as required under sub-rule (2) has been dispatched to all the creditors and debenture holders with proof of dispatch.

(g) a declaration signed by not less than two Directors of the Company, one of whom shall be a Managing Director where there is one, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.

(h) a declaration of solvency signed by at least two Directors of the Company, one of whom shall be the Managing Director, where there is one to the effect that the Board of Directors of the Company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.

(i) The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause (h) above.

(j) No Objection Certificate from sectoral regulator, if applicable.

(k) No Objection Certificate from all secured creditors, if any.

(4) Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers.

(5)The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.

(6) The certificate of incorporation consequent to conversion of unlimited liability company into a company limited by shares or guarantee be in Form INC-11A issued to the company upon grant of approval for conversion.

(7) Conditions to be complied with subsequent to conversion.-

- a. Company shall not change its name for a period of one year from the date of such conversion.
- b. The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.

Explanation: For the purpose of this clause, past debts, liabilities, obligations or contracts does not include secured debts due to banks and financial institutions.

(8) An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-

- (a) its networth is negative, or
- (b) an application is pending under the provisions of the Companies Act 1956 or the Companies Act, 2013 for striking off its name, or
- (c) the company is in default of any of its Annual Returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or
- (d) a petition for winding up is pending against the company, or
- (e) the company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or
- (f) an inquiry, inspection or investigation is pending against the company.

(9) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects.

RULE 38. SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE)

(1) The Application for incorporation of a company under this rule shall be in FORM No. INC-32 (SPICE) alongwith e-Memorandum of Association (e-MOA) in Form No. INC-33 and e-Articles of association (e-AOA) in Form no. INC-34.

Provided that in case of incorporation of a company falling under section 8 of the Act, FORM No. INC-32 (SPICE) shall be filed along with FORM No. INCE-13 (Memorandum of Association) and FORM No. INCE-31 (Articles of Association) as attachments.

(2) For the purposes of sub-rule (1), the application for allotment of Director Identification Number upto three Directors, reservation of a name, incorporation of company and appointment of Directors of the proposed for One Person Company, private company, public company and a company falling under section 8 of the Act. Shall be filed in FORM No. INC-32 (SPICe),. with the Registrar, within whose jurisdiction the registered office of the company is proposed to be situated along with the fee of rupees five hundred in addition to the registration fee as specified in the Companies (Registration of Offices and Fees) Rules. 2014:

Provided that where an applicant has applied for reservation of a name under Rule 9 and which has been approved therein, he may fill the reserved name as proposed name of the company.

(3) For the purposes of filing SPICe Form, the particulars of maximum of three directors shall be allowed to be filled in FORM No. INC-32 (SPICe), and allotment of Director Identification Number of maximum of three proposed directors shall be permitted in FORM NO. INC-32 (SPICe) in case of proposed directors not having approved Director Identification Number.

(4) The promoter or applicant of the proposed company shall propose only one name in FORM NO. INC-32 (SPICe).

(5) The promoter or applicant of the proposed company shall prepare Memorandum of Association (e-MoA) in FORM No. INC-33 and Articles of Association (e-AoA) in FORM No. INC-34, in accordance with rule 13.

Provided that the subscribers and witness or witnesses shall affix their digital signatures to the e-MoA and e-AoA

(6) For incorporation using application as provided in this rule, provisions of the sub-clause (i) of sub-section (5) of section 4 of the Act. rule 9, and clause (a) of sub-rule (1) of rule 16 to the extent of affixing recent photograph shall not apply.

(7) A company using the provisions of this rule may furnish verification of its registered office under sub-section (2) of section 12 of the Act by filing FORM NO. INC-32 (SPICe) in which case the company shall attach along with such FORM No. INC-32 (SPICe), any of the documents referred to in sub-rule (2) of rule 25.

(8) FORM No. INC-22 shall not be required to be filed in case the proposed company maintains its registered office at the given correspondence address.

(9) (a) Where the Registrar. on examining FORM No. INC-32 (SPICe), finds that it is necessary to call for further information or finds such application or document to be defective or incomplete in any respect, he shall give intimation to the applicant to remove the defects and re-submit the e-form within fifteen days from the date of such intimation given by the Registrar.

(b) After the resubmission of the document, if the registrar still finds that the document is defective or incomplete in any respect, he shall give one more opportunity of fifteen days to remove such defects or deficiencies.

Provided that the total period for re-submission of documents shall not exceed thirty days.

(10) The Certificate of Incorporation of company shall be issued by the Registrar in Form No. INC-11.”

RULE 39. CONVERSION OF A COMPANY LIMITED BY GUARANTEE INTO COMPANY LIMITED BY SHARES

(1) A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares.

(2) The company seeking conversion shall have a share capital equivalent to the guarantee amount.

(3) A special resolution is passed by its members authorising such a conversion omitting the guarantee clause in its Memorandum of Association and altering the Articles of Association to provide for the articles as are applicable for a company limited by shares.

(4) A copy of the special resolution shall be filed with the Registrar of Companies in Form no. MGT-14 within thirty days from the date of passing of the same along with fee as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

(5) An application in Form No. INC-27 shall be filed with the Registrar of Companies within thirty days from date of the passing of the special resolution enclosing the altered Memorandum of Association and altered Articles of Association and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee hither to provided by its members.

(6) The Registrar of Companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects and upon approval of Form No. INC-27, the company shall be issued with a certificate of incorporation in Form No. INC-11B.

CHAPTER-III: PROSPECTUS AND ALLOTMENT OF SECURITIES

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Issuance of rupee bonds to overseas by Indian Companies- Clarification regarding applicability of provisions of Chapter III	03.08.2016	3

Amendment through MCA Circular No./2016 dated 03rd August,2016 :

ISSUANCE OF RUPEE BONDS TO OVERSEAS BY INDIAN COMPANIES

In the circular it is clarified that unless otherwise provided in the circular/ directions/ regulations issued by Reserve Bank of India, provisions of Chapter III of the Act and rule 18 of Companies (Share Capital and Debenture) Rules, 2014 shall not apply to issue of rupee denominated bonds made exclusively to persons resident outside of India. The subject matter relating to issue of rupee denominated bonds to overseas investors is being regulated by RBI as part of ECB Policy framework.

CHAPTER-IV : SHARE CAPITAL AND DEBENTURES

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (Share Capital and Debentures) Third Amendment Rules, 2016	19.07.2016	4,5
2	Companies (Share Capital and Debentures) Fourth Amendment Rules, 2016	12.08.2016	4,5

MCA Companies (Share Capital and Debentures) Third Amendment Rules, 2016 **dated 19th July ,2016**

Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 is as under:

4. Equity Shares with Differential Rights

(1) No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

(a)...

(b)...

....

(g) the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government;

Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :

In rule 4, in sub-rule (1) after sub -clause (g), the following proviso shall be inserted, namely -

"Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good."

Rule 8 of Companies (Share Capital and Debentures) Rules, 2014 is as under:

8. Issue of Sweat Equity Shares.

(1)...

(2)...

....

(4) The company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher:

Provided that the issuance of sweat equity shares in the Company shall not exceed twenty five percent, of the paid up equity capital of the Company at any time.

Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :

In rule 8, in sub-rule (4), after the first proviso following proviso shall be inserted, namely -

“Provided further that a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty per cent of its paid up capital upto five years from the date of its incorporation or registration.”

Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 is as under:

12. Issue of Employee Stock Options.

A company, other than a listed company, which is not required to comply with Securities and Exchange Board of India Employee Stock Option Scheme Guidelines shall not offer shares to its employees under a scheme of employees’ stock option (hereinafter referred to as "Employees Stock Option Scheme"), unless it complies with the following requirements, namely:-

(1) the issue of Employees Stock Option Scheme has been approved by the shareholders of the company by passing a special resolution.

Explanation: For the purposes of clause (b) of sub-section (1) of section 62 and this rule “Employee” means-

(a) a permanent employee of the company who has been working in India or outside India;
or

(b) a director of the company, whether a whole time director or not but excluding an independent director; or

(c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company

but does not include-

(i) an employee who is a promoter or a person belonging to the promoter group; or

(ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :

In rule 12, in sub-rule (1), in clause (c), after sub-clause (ii), the following proviso shall be inserted, namely -

“Provided that in case of a startup company, as defined in notification number GSR 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry Government of India, Government of India, the conditions mentioned in sub-clause (i) and (ii) shall not apply up to five years from the date of its incorporation or registration.”

Rule 13 of Companies (Share Capital and Debentures) Rules, 2014 is as under:

13. Issue of Shares on Preferential Basis

(1)..

(2) Where the preferential offer of shares or other securities is made by a company whose share or other securities are listed on a recognized stock exchange, such preferential offer shall be made in accordance with the provisions of the Act and regulations made by the Securities and Exchange Board, and if they are not listed, the preferential offer shall be made in accordance with the provisions of the Act and rules made hereunder and subject to compliance with the following requirements, namely:-

(a) ..

(b) ..

...

(h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand on the basis of a valuation report of a registered valuer and also complied with the provisions of section 62 of the Act;"

(i) ..

Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :

In rule 13, in sub-rule (2),-

(i) clause (c) shall be omitted.

(ii) for clause (h), the following clause shall be substituted, namely:-

“(h) where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined –

(i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the stage of such offer, or

(ii) at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares:

Provided that the company shall take a decision on sub-clauses (i) or (ii) at the time of offer of convertible security itself and make such disclosure under sub-clause (v) of clause (d) of sub-rule (2) of this rule.”

Rule 15 of Companies (Share Capital and Debentures) Rules, 2014 is as under:

15. Notice to Registrar for Alteration of Share Capital

Where a company alters its share capital in any manner specified in sub-section (1) of section 61, or an order is passed by the Government increasing the authorized capital of the company in pursuance of sub-section (4) read with sub-section (6) of section 62 or a company redeems any redeemable preference shares, the notice of such alteration, increase or redemption shall be filed by the company with the Registrar in Form No. SH.7 along with the fee.

Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :

In rule 15, after the words “or a company redeems any redeemable preference shares”, the words “or a company not having share capital increases number of its members” shall be inserted.

The amended rule shall now be read as under-

“Where a company alters its share capital in any manner specified in sub-section (1) of section 61, or an order is passed by the Government increasing the authorized capital of the company in pursuance of sub-section (4) read with sub-section (6) of section 62 or a company redeems any redeemable preference shares or a company not having share capital increases number of its members, the notice of such alteration, increase or redemption shall be filed by the company with the Registrar in Form No SH -7 along with the fee.”

Rule 18 of Companies (Share Capital and Debentures) Rules, 2014 is as under:

18. Debentures

(1) The company shall not issue secured debentures, unless it complies with the following conditions, namely:-

(a) ..

(b) Such an issue of debentures shall be secured by the creation of a charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

(c) ...

(d) the security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee on -

(i) any specific movable property of the company; or

(ii)..

...

(7) The company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below-

(a) ..

(b) the company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions:-

(i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.

(ii) For NBFCs registered with the RBI under Section 45-IA of the RBI (Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :) Act, 1997, and for housing finance companies registered with the national housing bank] ‘the adequacy’ of DRR will be 25% of the value of outstanding debentures] issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

(iii) For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of outstanding debentures] issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of outstanding debentures.

Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :

In rule 18,-

(A) in sub-rule (1),-

(a) for clause (b), the following clause shall be substituted, namely:-

“(b) Such an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associate companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.”;

(b) in clause (d), for sub-clause (i), the following sub-clause shall be substituted, namely.-

“(i) any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise.”;

(B) in sub-rule (7),-

(a) in clause (b), in sub-clause (ii) and (iii) for the words “of the value of debentures” wherever they occur, the words “of the value of outstanding debentures” shall be substituted;

(b) in clause (b), after sub-clause (iii), the following proviso shall be inserted, namely:-

“Provided that where a company intends to redeem its debentures prematurely, it may provide for transfer of such amount in Debenture Redemption Reserve as is necessary for redemption of such debentures even if it exceeds the limits specified in this sub-rule.”

MCA Companies (Share Capital and Debentures) Fourth Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 : Rules, 2016 dated 12th August, 2016

Rule 18 of Companies (Share Capital and Debentures) Rules, 2014 is as under:

18. Debentures

Amendment through Companies (Share Capital and Debentures) Third Amendment Rules, 2016 :

In Rule 18, after Sub-Rule (10) of the Companies (Share Capital and Debentures) Rules, 2014, the following sub-Rule has been inserted as -

“(11) Nothing contained in this Rule shall apply to rupee denominated bonds issued exclusively to overseas investors in terms of A.P. (DIR Series) Circular No. 17 dated September 29, 2015 of the Reserve Bank of India.”

NOTE:- *The rules related to Procedure of reduction of share capital are provided by the Notification dated 15th December, 2016 under the NCLT (Procedure for reduction of share capital) Rules, 2016 provided under the Chapter XXVIII.*

CHAPTER-VII: MANAGEMENT AND ADMINISTRATION

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (Management and Administration) Amendment Rules, 2016	23.09.2016	10

MCA Companies (Management and Administration) Amendment Rules, 2016 dated 23rd September, 2016

RULE 3 of Companies (Management and Administration) Rules, 2014

3. Register of Members

(1) Every company limited by shares shall, from the date of its registration, maintain a register of its members in Form No. MGT.1:

"Provided that in the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules."

(2) In the case of a company not having share capital, the register of members shall contain the following particulars, in respect of each member, namely:-

(a)...

....

(f)....

"Provided that in the case of existing companies, registered under the Companies Act, 1956, particulars shall be compiled within six months from the date of commencement of these rules."

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

In Rule 3,-

(a) in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:-

"Provided that in the case of a company existing on the commencement of the Act, the particulars as available in the register of members maintained under the Companies Act, 1956 has been transferred to the new register of members in Form No.MGT-1 and in case

additional information, required as per provisions of the Act and these rules, is provided by the members, such information may also be added in the register as and when provided.”;

(b) in sub-rule (2), for the proviso, the following proviso shall be substituted, namely:-

“Provided that in the case of a company existing on the date of commencement of the Act, the particulars as available in the register of members maintained under the Companies Act, 1956 shall be transferred to the new register of members in Form No.MGT-1 and in case additional information, required as per provisions of the Act and these rules, is provided by the members, such information may also be added in the register as and when provided.”.

RULE 9 of Companies (Management and Administration) Rules, 2014

9. Declaration in Respect of Beneficial Interest in Any Shares

(1) A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares (hereinafter referred to as "the registered owner"), shall file with the company, a declaration to that effect in Form No.MGT.4 in duplicate, within a period of thirty days from the date on which his name is entered in the register of members of such company:

Provided that where any change occurs in the beneficial interest in such shares, the registered owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in Form No.MGT.4 in duplicate.

(2) Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name (hereinafter referred to as "the beneficial owner") shall file with the company, a declaration disclosing such interest in Form No. MGT.5 in duplicate, within thirty days after acquiring such beneficial interest in the shares of the company:

Provided that where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within a period of thirty days from the date of such change, make a declaration of such change to the company in Form No.MGT.5 in duplicate.

(3)

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

In the principal rules, in rule 9,-

(a) in sub-rule (1), the words “in duplicate” at both places where they occur, shall be omitted.

(b) in sub-rule (2, the words “in duplicate”), at both places where they occur, shall be omitted.

RULE 13 of Companies (Management and Administration) Rules, 2014

13 Return of Changes in Shareholding Position of Promoters and Top Ten Shareholders

Every listed company shall file with the Registrar, a return in Form No.MGT.10 along with the fee with respect to changes relating to either increase or decrease of two percent or more in the shareholding position of promoters and top ten shareholders of the company in each case, 1[Omitted] within fifteen days of such change.

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

For rule 13 the following rule shall be substituted, namely:-

*“13. Every listed company shall file with the Registrar, a return in **Form No. MGT.10**, with respect to changes in the shareholding position of promoters and top ten shareholders of the company, in each case, representing increase or decrease by two per cent or more of the paid-up share capital of the company, within fifteen days of such change.”*

RULE 17 of Companies (Management and Administration) Rules, 2014

17. Calling of Extraordinary general meeting by requisitionists.

(1) The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.

(2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.-

Explanation.- For the purposes of this sub-rule, it is here by clarified that requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on working day.

...

(8)...

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

In Rule 17, in sub-section (2), in the Explanation, for the words “on working day”, the words “on any day except national holiday” shall be substituted.

Thus the amended explanation shall be now read as –

“Explanation.- For the purposes of this sub-rule, it is here by clarified that requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on any day except national holiday.”

RULE 20 of Companies (Management and Administration) Rules, 2014

20. Voting Through Electronic Means

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

In Rule 20 the sub rule (2) has been substituted and shall now be read as -

“(2) Every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means:

Provided that a Nidhi, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means:

Explanation.- For the purpose of this sub-rule, “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.”.

RULE 22 of Companies (Management and Administration) Rules, 2014

22. Procedure to be Followed for Conducting Business Through Postal Ballot

(1)...

...

(16)...

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

In Rule 22, sub-rule (7) and sub-rule (14) shall be omitted

RULE 25 of Companies (Management and Administration) Rules, 2014

25. Minutes of Proceedings of General Meeting, Meeting of Board of Directors and Other Meetings and Resolutions Passed by Postal Ballot

(1) (a) A distinct minute book shall be maintained for each type of meeting namely:-

...

(e) The minute books of general meetings, shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board or such other place as may be approved by the Board.

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

In Rule 25, in sub-rule (1), in clause (e), the words “or such other place as may be approved by the Board” shall be omitted.

Annexure of Companies (Management and Administration) Rules, 2014

Amendment through MCA Companies (Management and Administration) Amendment Rules, 2016:

In Annexure,-

(a) Form MGT-6 shall be substituted.

CHAPTER-VIII: DECLARATION AND PAYMENT OF DIVIDEND

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016	05.09.2016	13
2	Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and Provision for offices and officers)Amendment Rules, 2016	05.09.2016	13

INVESTOR EDUCATION AND PROVIDENT FUND (ACCOUNTING, AUDIT, TRANSFER AND REFUND) RULES, 2016

The Central Government hereby, in exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125 and sub-section (6) of section 124 read with section 469 of the Companies Act, 2013 makes the following rules, namely:-

RULE 1. SHORT TITLE, EXTENT AND COMMENCEMENT

- (1) These rules may be called the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.
- (2) They shall come into force with effect from the **7th September 2016**.

RULE 2. DEFINITIONS

- (1) In these rules, unless the context otherwise requires,—
 - (a) “**Act**” means the Companies Act 2013;
 - (b) “**Authority**” means the Investor Education and Protection Fund Authority constituted under sub- section (5) of section 125 of the Act;
 - (c) “**Chairperson**” means the chairperson of the authority appointed under sub-section (6) of section 125 of the Act;
 - (d) “**Company**” means company as defined in sub-section (20) of section 2 of the Act and includes ‘corresponding new bank’ as defined in sub-section (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and clause (b) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);
 - (e) “**Existing IEPF**” means the Investor Education and Protection Fund (IEPF) constituted under section 205C of the Companies Act, 1956 (1 of 1956);
 - (f) “**Fund**” means the Investor Education and Protection Fund (IEPF) constituted under section 125 of the Act;
 - (g) “**Investor**” means any person, who has committed money in shares, or debentures, bond or deposits under a scheme or plan of a company registered under the Act;

(h) “**Member**” means member of the Authority appointed under sub-section (6) of section 125 of the Act; and

(i) “**Section**” means the section of the Act.

(2) Words and expressions used in these rules and not defined herein but defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

RULE 3.FUND

(1) The Authority shall administer the Fund.

(2) There shall be credited to the Fund, the following amounts, namely:-

(a) all amounts payable as mentioned in clause (a) to (n) of sub-section (2) of section 125 of the Act;

(b) all shares in accordance with sub-section (6) of section 124 of the Act;

(c) all the resultant benefits arising out of shares held by the Authority under clause (b);

(d) all grants, fees and charges received by the Authority under these rules;

(e) all sums received by the Authority from such other sources as may be decided upon by the Central Government;

(f) all income earned by the Authority in any year;

(g) all amounts payable as mentioned in sub-section (3) of section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and section 10B of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; and

(h) all other sums of money collected by the Authority as envisaged in the Act.

(3) In case of term deposits and debentures of companies, due unpaid or unclaimed interest shall be transferred to the Fund along with the transfer of the matured amount of such term deposits and debentures.

(4) (a) All the money, which accrue under sub section (2) [except clause (g)] of section 125 of the Act shall be deposited in the Consolidated Fund of India under the Major Head ‘0075- Miscellaneous General Services – 104 - Unclaimed and Unpaid dividends, deposits and debentures etc.’. Such sums along with amount deposited under section 205C of the Companies Act, 1956 shall be transferred to the Fund in the non-interest bearing Public Account after taking due approval of Parliament through Appropriation Act. This non-interest bearing Public Account shall be termed as IEPF Fund and shall be utilised for the purposes provided under sub-section (3) of section 125 of the Act.

(b) (i) All amounts remitted by the companies shall initially be accounted for under the following heads of Accounts:-

Major Head 0075 – Miscellaneous General Services Minor Head 104 - Unpaid dividend of Companies.

(ii) Grants and donations given to the Fund by the State Governments, Companies or any other institutions for the purpose of the Fund as also the interest or other income received out of the Investments made from the Fund shall be credited to a separate sub-head under “800 – Other Receipts” below the MH 0075 – Misc. General Services.

(iii) Amount booked under the above receipt head shall be transferred to the Fund account under Major Head ‘8235 – General and other Reserve Fund – 116 – IE & PF’ by the PAO, Ministry of Corporate Affairs after making suitable budget provision under Major Head ‘3451 – Secretariat Economic Services 797 – Transfer to Reserve Fund Deposit Account – Transfer to Investor’s Education and Protection Fund’. In case the amounts of receipts in a year is more than the budget provision made under Major Head 3451 transfer to the Fund, the difference shall be transferred to the Fund in subsequent year, after obtaining approval of the Budget Division of Department of Economic Affairs and after making adequate budget provision in the relevant year.

(iv) Budget provision in connection with the activities to be financed from the Fund shall be made under Major Head 3451 – Secretariat Economic Services 090 Secretariat – Investor’s Education and Protection Fund. Actual expenditure under the head shall be recouped from the Fund and the amount so recouped shall be accounted for under the Major Head ‘3451’ as Deduct entry below Minor Head ‘902 – Deduct – amount met from Investor’s Education and Protection Fund’ with contra debit to Major Head – ‘8235 – General and Other Reserve Funds -116 – Investor’s Education and Protection Fund’.

RULE 4. ACCOUNTS AND AUDIT

- (1) The Authority shall maintain proper accounts and other relevant records as given in Schedule to these rules and prepare an annual statement of accounts in such form as may be specified by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) The accounts of the Authority shall be audited annually by the Internal Audit Party of the office of Chief Controller of Accounts and Comptroller and Auditor-General of India at such intervals and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.
- (3) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts,

connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

- (4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

RULE 5. STATEMENT TO BE FURNISHED TO THE FUND

(1) Any amount required to be credited by the companies to the Fund as provided under clause (a) to (n) of sub-section (2) of section 125 of the Act shall be remitted into the specified branches of Punjab National Bank, which is the accredited Bank of the Pay and Accounts Office, Ministry of Corporate Affairs and other authorised banks engaged by the MCA-21 system, within a period of thirty days of such amounts becoming due to be credited to the Fund.

(2) The amount shall be tendered by the companies along with challan (in triplicate) to the specified Bank Branches of Punjab National Bank and other authorised banks under MCA-21 system who will return two copies of the challan, duly stamped in token of having received the amount, to the Company. The third copy of the challan will be forwarded along with the daily credit scroll by the receiving branch to its Focal Point Branch of the Bank for onward transmission to the Pay and Accounts Office, Ministry of Corporate Affairs.

(3) Every company shall file with the concerned Authority one copy of the challan referred to in sub-rule (2) indicating the deposit of the amount to the Fund and shall fill in the full particulars of the amount tendered, including the head of account to which it has been credited.

(4) The company shall, along with the copy of the challan as required under sub-rule (3), furnish a Statement in Form No. IEPF 1 containing details of such transfer to the Authority within thirty days of submission of challan.

(5) The amount may also be remitted by Electronic Fund Transfer in such manner, as may be specified by the Central Government.

(6) (a) On receipt of the statement, the Authority shall enter the details of such receipt in a Register maintained physically or electronically by it in respect of each company every year, and reconcile the amount so remitted and collected, with the concerned designated bank on monthly basis.

(b) Each designated bank shall furnish an abstract of such receipts during the month to the Authority within seven days after the close of every month.

(c) The company shall maintain record consisting of name, last known address, amount, folio number or client ID, certificate number, beneficiary details etc. of the persons in respect of whom unpaid or unclaimed amount has remained unpaid or unclaimed for a period of seven years and has been transferred to the Fund and the Authority shall have the powers to inspect such records.

(7) The provisions of this rule shall be applicable *mutatis mutandis* in respect of the amounts to be credited to the Fund in pursuance of clauses (h) to (m) of sub-section (2) of section 125.

(8) Every company shall within a period of ninety days after the holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act and every year thereafter till completion of the seven years period, identify the unclaimed amounts, as referred in sub-section 2 of section 125 of the Act, as on the date of holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act, separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information through Form No. IEPF 2, separately for each year, containing following information, namely:-

- (a) the names and last known addresses of the persons entitled to receive the sum;
- (b) the nature of amount;
- (c) the amount to which each person is entitled;
- (d) the due date for transfer into the Investor Education and Protection Fund; and
- (e) such other information as may be considered relevant for the purposes.

RULE 6. MANNER OF TRANSFER OF SHARES UNDER SUB-SECTION (6) OF SECTION 124 TO THE FUND

(1) The shares shall be credited to an IEPF suspense account (on the name of the company) with one of the depository participants as may be identified by the Authority within a period of thirty days of such shares becoming due to be transferred to the Fund:

Provided that, in case the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed.

(2) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.

(3) The company shall follow the following procedure, namely:-

- (a) The company shall inform at the latest available address, the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares and

also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation, and on their website giving details of such shareholders and shares due for transfer:

Provided that in cases, where the seven years as provided under sub-section (5) of section 124 have been completed or are being completed within three months from the date of coming into force of these rules, the company shall initiate the aforesaid procedure immediately and transfer the shares on completion of three months;

(b) In case, where there is a specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend, the company shall not transfer such shares to the Fund:

Provided that the company shall furnish details of such shares and unpaid dividend to the Authority in Form No. IEPF 3 within thirty days from the end of financial year;

(c) For the purposes of effecting the transfer where the shares are dealt with in a depository,-

(i) the Company Secretary or the person authorised by the Board shall sign on behalf of such shareholders, the delivery instruction slips of the depository participants where the shareholders had their accounts for transfer in favour of IEPF suspense account (name of the company);

(ii) on receipt of the delivery instruction slips, the depository shall effect the transfer of shares in favour of the Fund in its records.

(d) For the purposes of effecting the transfer where the shares are held in physical form,-

(i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholders, to the company, for issue of duplicate share certificates;

(ii) on receipt of the application under clause (a), a duplicate certificate for each such shareholder shall be issued and it shall be stated on the face of it and be recorded in the register maintained for the purpose, that the duplicate certificate is "Issued in lieu of share certificate No..... for purpose of transfer to IEPF" and the word "duplicate" shall be stamped or punched in bold letters across the face of the share certificate;

(iii) particulars of every share certificate issued as above shall be entered forthwith in a register of renewed and duplicate share certificates maintained in Form No. SH 2 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

(iv) after issue of duplicate share certificates, the Company Secretary or the person authorised by the Board, shall sign the necessary Form No. SH 4 i.e.,

securities transfer Form as specified in the Companies (Share Capital and Debentures) Rules, 2014, for transferring the shares in favour of the Fund;

- (v) on receipt of the duly filled transfer forms along with the duplicate share certificates, the Board or its Committee shall approve the transfer and thereafter the transfer of shares shall be effected in favour of the Fund in the records of the company.

(4) The company or depository, as the case may be, shall preserve copies of the depository instruction slips, transfer deeds and duplicate certificates for its records.

(5) While effecting such transfer, the company shall send a statement to the Fund in Form No. IEPF 4 containing details of such transfer.

(6) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares:

Provided that for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.

(7) Once the physical shares are transferred in the name of the Authority, the Authority shall dematerialise these shares and it shall keep only those shares in physical form, where dematerialisation of shares is not possible.

(8) The Authority shall maintain IEPF suspense account (name of the company) with depository participant on behalf of the shareholders who are entitled for the shares and all benefits accruing on such shares e.g. bonus shares, split, consolidation, fraction shares etc. except right issue shall also be credited to such IEPF suspense account (name of the company).

(9) The shares held in such IEPF suspense account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he approaches the Authority or in accordance with sub-rule (10) and (11).

(10) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.

(11) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds.

(12) Any further dividend received on such shares shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.

RULE 7. REFUNDS TO CLAIMANTS FROM FUND

(1) Any person, whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares, etc. has been transferred to the Fund, may claim the shares under provision to sub-section (6) of section 124 or apply for refund, under clause (a) of sub-section (3) of section 125 or under proviso to sub-section (3) of section 125, as the case may be, to the Authority by making an application in Form IEPF 5 online available on website www.iepf.gov.in along with fee, as decided by the Authority from time to time in consultation with the Central Government, under his own signature.

(2) The claimant shall after making an application online in Form IEPF-5 under rule (1), send the same duly signed by him along with, requisite documents as enumerated in Form IEPF-5 to the concerned company at its registered office for verification of his claim.

(3) The company shall, within fifteen days of receipt of claim form, send a verification report to the Authority in the format specified by the Authority along with all documents submitted by the claimant.

(4) After verification of the entitlement of the claimant-

(a) to the amount claimed, the Authority and then Drawing and Disbursement Officer of the Authority shall present a bill to the Pay and Accounts Office for e- payment as per the guidelines.

(b) to the shares claimed, the Authority shall issue a refund sanction order with the approval of the Competent Authority and shall either credit the shares which are lying with depository participant in IEPF suspense account (name of the company) to the demat account of the claimant to the extent of the claimant's entitlement or in case of the physical certificates, if any, cancel the duplicate certificate and transfer the shares in favour of the claimant.

(5) The Authority shall, in its records, cause a note to be made of all the payments made under sub- rule (4).

(6) An application received for refund of any claim under this rule duly verified by the concerned company shall be disposed of by the Authority within sixty days from the date of receipt of the verification report from the company, complete in all respects and any delay beyond sixty days shall be recorded in writing specifying the reasons for the delay and the same shall be communicated to the claimant in writing or by electronic means.

(7) In cases, where the application is incomplete, a communication shall be sent to the claimant by the Authority detailing deficiencies of the application.

(8) In case, claimant is a legal heir or successor or administrator or nominee of the registered security holder, he has to ensure that the transmission process is completed by the company before filing any claim with the Authority.

(9) The claimant shall file only one consolidated claim in respect of a company in a financial year.

(10) The company shall be solely liable under all circumstances whatsoever to indemnify the IEPF Authority in case of any dispute or lawsuit that may be initiated due to any incongruity or inconsistency or disparity in the verification report or otherwise. The IEPF Authority shall not be liable to indemnify the security holder or Company for any liability arising out of any discrepancy in verification report submitted etc leading to any litigation or complaint arising thereof.

RULE 8. POWER TO DIRECT PAYMENT OF AMOUNT DUE TO THE FUND

(1) The company shall furnish a statement to the Authority in Form No. IEPF 6 within thirty days of end of financial year stating therein the amounts due to be transferred to the Fund in next financial year.

(2) The company shall also furnish a statement to the authority within thirty days of the closure of its accounts for the financial year stating therein the reasons of deviation, if any, of amounts detailed in sub-rule (1) above and actual amounts transferred to the Fund.

(3) Authority shall furnish a report to the Central Government within sixty days of end of financial year giving details of companies who have failed to transfer the due amount to the Fund.

(4) Authority shall also furnish a report to the Central Government by end of next financial year giving details of companies who have failed to file information referred to in sub-rule (8) of rule 5.

RULE 9. TRANSFER OF ASSETS, LIABILITIES, ETC., OF THE EXISTING IEPF TO THE AUTHORITY

On and from the date of establishment of the Authority,—

- (a) any reference to the existing IEPF in any law other than these rules or in any contract or other instrument shall be deemed as a reference to the Authority;
- (b) all properties and assets, movable and immovable, of, or belonging to, the existing IEPF, shall vest in the Authority;
- (c) all rights and liabilities of the existing IEPF shall be transferred to, and be the rights and liabilities of the Authority;
- (d) without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing IEPF immediately before that date, for or in connection with the

purpose of the said existing IEPF shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Authority;

- (e) all sums of money due to the existing IEPF immediately before that date shall be deemed to be due to the Authority; and
- (f) all suits and other legal proceedings instituted or which could have been instituted by or against the existing IEPF, immediately before that date may be continued or may be instituted by or against the Authority.

RULE 10. RETURNS AND REPORTS

(1) The Authority shall furnish to the Central Government at such time and in such form and manner as may be specified or as the Central Government may direct, such returns and statements and such particulars with regard to its activity.

(2) Without prejudice to the provisions of sub-rule (1), the Authority shall, within one hundred and eighty days after the end of each financial year, submit to the Central Government a report in such form, as may be specified, giving a true and full account of its activities during the previous financial year.

RULE 11. PROTECTION OF ACTION TAKEN IN GOOD FAITH

No suit, prosecution or other legal proceedings shall lie against the Central Government or Authority or any officer of the Central Government or any member, officer or other employee of the Authority for anything which is in good faith done or intended to be done under these rules.

RULE 12. REPEAL AND SAVINGS

(1) The Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001 and Investor Education and Protection Fund (Uploading of information regarding unpaid and unclaimed amounts lying with companies) Rules, 2012 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the rules repealed by sub-rule (1) shall, in so far as it is not inconsistent with the provisions of these rules, be deemed to have been done or taken under the corresponding provisions of these rules.

SCHEDULE REGISTERS AND BOOKS OF ACCOUNT TO BE MAINTAINED BY THE AUTHORITY

- (i) Register of Shares transferred under sub-section (6) of section 124
- (ii) Central Cash Book
- (iii) Company wise Ledger
- (iv) General Ledger

- (v) Cashier's Cash Book
- (vi) Bank Ledger
- (vii) Register of Assets
- (viii) Investment Register
- (ix) Claim Register
- (x) Refund Register
- (xi) Suspense Register
- (xii) Documents Register
- (xiii) Any other register or Book as decided by Authority

INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (APPOINTMENT OF CHAIRPERSON AND MEMBERS, HOLDING OF MEETINGS AND PROVISION FOR OFFICES AND OFFICERS) AMENDMENT RULES, 2016.

In the Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016, after rule 3, the following rule shall be inserted, namely:-

RULE 3A - *“The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.”*

CHAPTER IX: ACCOUNTS OF COMPANIES

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (Accounts) Amendment Rules, 2016	27.07.2016	12

MCA Companies (Accounts) Amendment Rules, 2016 dated 27th July ,2016

Rule 6 of Companies (Accounts) Rules, 2014 is as under:

6. Manner of consolidation of accounts

The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards:

Provided that in case of a company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.

Amendment through MCA Companies (Accounts) Amendment Rules, 2016 :

In Rule 6, for the second proviso, the following proviso shall be substituted namely:-

“Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

(i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;

(ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and

(iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.”

Rule 8 of Companies (Accounts) Rules, 2014 is as under:

8. Matters to be included in Board’s report

(1) The Board’s Report shall be prepared based on the stand alone financial statements of the company and the report shall contain a separate section wherein a report on the

performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented.

(2)...

(3)..

....

Amendment through MCA Companies (Accounts) Amendment Rules, 2016:

In rule 8 of the principal rules, in sub-rule (1), for the words “and the report shall contain a separate section wherein a report on the performance and financial position of each of the subsidiaries, associates and joint venture companies included in the consolidated financial statement is presented”, the words “and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report” shall be substituted.

The amended rule shall now be read as under-

“The Board’s Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.”

Rule 13 of Companies (Accounts) Rules, 2014 is as under:

13. Companies required to appoint internal auditor

(1) The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors, namely:-

(a) every listed company;

....

Explanation.- For the purposes of this rule –

(i) the internal auditor may or may not be an employee of the company;

(ii) the term “Chartered Accountant” shall mean a Chartered Accountant whether engaged in practice or not.

(2)...

Amendment through MCA Companies (Accounts) Amendment Rules, 2016:

In rule 13 of the principal rules, in sub-rule (1), (a) in the opening portion, the words “or a firm of internal auditors”, the words “which may be either an individual or a partnership firm or a body corporate” shall be substituted;

(b) In the Explanation, for item (ii), the following item shall be substituted, namely:

‘(ii) the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not’.

The amended rule shall now be read as under-

“The following class of companies shall be required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate, namely:-

(a)...

Explanation.- For the purposes of this rule –

(i) the internal auditor may or may not be an employee of the company;

(ii) the term “Chartered Accountant” or “Cost Accountant” shall mean a “Chartered Accountant” or a “Cost Accountant”, as the case may be, whether engaged in practice or not’.

(2)...”

Annexure of Companies (Accounts) Rules, 2014 is as under:

Amendment through MCA Companies (Accounts) Amendment Rules, 2016:

In Annexure,-

(a) Form AOC-1 shall be substituted

[Form AOC – 1 : provides for a Statement containing salient features of the financial statement of subsidiaries or associate companies or joint ventures in pursuance of first proviso to sub-section(3) of section 129 read with Rule 5 of Companies (Accounts) Rules,2014.]

(b)Form AOC-4 shall be substituted

[Form AOC – 1 : provides for filing financial statement and other documents with the Registrar.]

CHAPTER X: AUDIT AND AUDITORS

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (cost records and audit) Amendment Rules, 2016	14.07.2016	

MCA Companies (cost records and audit) Amendment Rules, 2016 dated 14th July ,2016

Rule 2 of Companies (cost records and audit) Rules, 2014 is as under:

2. Definitions: In these rules, unless the context otherwise requires –

(d) “cost audit report” means the report duly audited and signed by the cost auditor including attachment, annexure, qualifications or observations etc. to cost audit report;

Amendment through MCA Companies (cost records and audit) Amendment Rules, 2016 :

In Rule 2, for clause (d), the following clause shall be substituted, namely:-

"cost audit report" means the duly signed cost auditor's report on the cost records examined and cost statements which are prepared as per these rules, including attachment, annexure, qualifications or observations attached with or included in such report."

Rule 3 of Companies (cost records and audit) Rules, 2014 is as under:

3. Application of Cost Records –

Amendment through MCA Companies (cost records and audit) Amendment Rules, 2016 :

In Rule 3, for Table (A) and Table (B), the following Tables shall be substituted, namely:-

Sl. No.	Industry/ Sector/ Product/ Service	Central Excise Tariff Act Heading (wherever applicable)
1.	Telecommunication services made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature and regulated by the Telecom Regulatory Authority of India under the Telecom Regulatory Authority of India Act, 1997 (24 of 1997); including activities that requires authorisation or license issued by the Department of Telecommunications, Government of India under Indian Telegraph Act, 1885 (13 of 1885);	Not applicable.

2.	Generation, transmission, distribution and supply of electricity regulated by the relevant regulatory body or authority under the Electricity Act, 2003 (36 of 2003);	Generation- 2716; Other Activity- Not Applicable
3.	Petroleum products; including activities regulated by the Petroleum and Natural Gas Regulatory Board under the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006);	2709 to 2715; Other Activity- Not Applicable
4.	Drugs and pharmaceuticals;	2901to 2942; 3001 to 3006.
5.	Fertilisers;	3102 to 3105.
6.	Sugar and industrial alcohol;	1701; 1703; 2207.

(A) Non-regulated Sectors

Sl. No.	Industry/ Sector/ Product/ Service	Central Excise Tariff Act Heading (wherever applicable)
1.	Machinery and mechanical appliances used in defence, space and atomic energy sectors excluding any ancillary item or items; Explanation. - For the purposes of this sub-clause, any company which is engaged in any item or items supplied exclusively for use under this clause, shall be deemed to be covered under these rules	8401; 8801 to 8805; 8901 to 8908.
2.	Turbo jets and turbo propellers;	8411
3.	Arms, ammunitions and Explosives;	3601 to 3603; 9301 to 9306.
4.	Propellant powders; prepared explosives (other than propellant powders); safety fuses; detonating fuses; percussion or detonating caps; igniters; electric detonators;	3601 to 3603
5.	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus;	8526
6.	Tanks and other armoured fighting vehicles, motorised, whether or not fitted with weapons and parts of such vehicles, that are funded (investment made in the company) to the extent of ninety per cent or more by the Government or Government agencies;	8710
7.	Port services of stevedoring, pilotage, hauling, mooring, re-mooring, hooking, measuring, loading and unloading services rendered by a Port in relation to a vessel or goods regulated by the Tariff Authority for Major Ports;	Not applicable.
8.	Aeronautical services of air traffic management, aircraft operations, ground safety services, ground handling, cargo facilities and supplying fuel rendered by airports and regulated by the Airports Economic Regulatory Authority under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008);	Not applicable
9.	Iron and Steel;	7201 to 7229; 7301 to 7326
10.	Roads and other infrastructure projects corresponding to para No. (1) (a) as specified in Schedule VI of the Companies Act, 2013 (18 of 2013);	Not applicable.

11.	Rubber and allied products; including products regulated by the Rubber Board constituted under the Rubber Act, 1947 (XXIV of 1947);	4001 to 4017
12.	Coffee and tea;	0901 to 0902
13.	Railway or tramway locomotives, rolling stock, railway or tramway fixtures and fittings, mechanical (including electro mechanical) traffic signalling equipment's of all kind;	8601 to 8608.
14.	Cement;	2523; 6811 to 6812
15.	Ores and Mineral products;	2502 to 2522; 2524 to 2526; 2528 to 2530; 2601 to 2617
16.	Mineral fuels (other than Petroleum), mineral oils etc.;	2701 to 2708
17.	Base metals;	7401 to 7403; 7405 to 7413; 7419; 7501 to 7508; 7601 to 7614; 7801 to 7802; 7804; 7806; 7901 to 7905; 7907; 8001; 8003; 8007; 8101 to 8113.
18.	Inorganic chemicals, organic or inorganic compounds of precious metals, rare-earth metals of radioactive elements or isotopes, and organic	2801 to 2853; 2901 to 2942; 3801 to 3807; 3402 to 3403; 3809 to

Rule 4 of Companies (cost records and audit) Rules, 2014 is as under:

4. Applicability for cost audit

(1)...

(2)...

(3) The requirement for cost audit under these rules shall not apply to a company which is covered in rule 3, and-

(i) whose revenue from exports, in foreign exchange, exceeds seventy five per cent of its total revenue; or

(ii) Which is operating from a special economic Zone.

...

Amendment through MCA Companies (cost records and audit) Amendment Rules, 2016 :

In Rule 4, in sub-rule (3), after clause (ii), following clause shall be inserted, namely:-

“(iii) which is engaged in generation of electricity for captive consumption through Captive Generating Plant. For this purpose, the term “Captive Generating Plant” shall have the same meaning as assigned in rule 3 of the Electricity Rules, 2005”;

Rule 6 of Companies (cost records and audit) Rules, 2014 is as under:

6. Cost Audit:

(1) The category of companies specified in rule 3 and the thresholds limits laid down in rule 4, shall within one hundred and eighty days of the commencement of every financial year, appoint a cost auditor

...

(3) Every cost auditor appointed as such shall continue in such capacity till the expiry of one hundred and eighty days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed.

....

(5) Every cost auditor shall forward his report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report particularly any reservation or qualification contained therein.

(6) Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein, in form CRA-4 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014.

Amendment through MCA Companies (cost records and audit) Amendment Rules, 2016 :

In Rule 6, in sub-rule (1), the following proviso shall be inserted, namely: —

“Provided that before such appointment is made, the written consent of the cost auditor to such appointment, and a certificate from him or it, as provided in sub-rule (1A), shall be obtained.”

In Rule 6, after sub-rule (1), the following sub-rule shall be inserted, namely:-

“(1A) The cost auditor appointed under sub-rule (1) shall submit a certificate that—

(a) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Cost and Works Accountants Act, 1959(23 of 1959) and the rules or regulations made thereunder;

(b) the individual or the firm, as the case may be, satisfies the criteria provided in section 141 of the Act, so far as may be applicable;

- (c) *the proposed appointment is within the limits laid down by or under the authority of the Act; and*
- (d) *the list of proceedings against the cost auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.”;*

In Rule 6, in sub-rule (3), the following provisos shall be inserted, namely: —

“Provided that the cost auditor appointed under these rules may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing;

Provided further that the Form CRA-2 to be filed with the Central Government for intimating appointment of another cost auditor shall enclose the relevant Board Resolution to the effect;

Provided also that nothing contained in this sub-rule shall prejudice the right of the cost auditor to resign from such office of the company.”

In Rule 6, after sub-rule (3A), following sub-rule shall be inserted, namely:-

“(3B) The cost statements, including other statements to be annexed to the cost audit report, shall be approved by the Board of Directors before they are signed on behalf of the Board by any of the director authorised by the Board, for submission to the cost auditor to report thereon”;

In Rule 6, for sub-rule (5), the following sub-rule shall be substituted, namely:-

“(5) Every cost auditor shall forward his duly signed report to the Board of Directors of the company within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report, particularly any reservation or qualification contained therein.”;

In Rule 6 for sub-rule (6), the following sub-rule shall be substituted, namely:-

“(6) Every company covered under these rules shall, within a period of thirty days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report alongwith full information and explanation on every reservation or qualification contained therein, in Form CRA-4 in Extensible Business Reporting Language format in the manner as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 alongwith fees specified in the Companies (Registration Offices and Fees) Rules, 2014.”.

CHAPTER XIII : APPONITMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016	30.06.2016	8

MCA Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016 dated 30th June,2016

Rule 3 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

3. Filing of Return of Appointment

A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, within sixty days of the appointment, with the Registrar in Form No. MR.1 along with such fee as may be specified for this purpose.

Amendment through MCA Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016:

In Rule 3, the expression “Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO)” shall be omitted -

*“A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, within sixty days of the appointment, with the Registrar in **Form No. MR.1** along with such fee as may be specified for this purpose.”*

Rule 5 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

5. Disclosure in Board’s Report

(1) Every listed company shall disclose in the Board’s report-

(i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;

....

(xii) ...

(2) The board's report shall include a statement showing the name of every employee of the company, who -

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

Amendment through MCA Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016:

In Rule 5 of the principal rules,-

(i) in sub-rule (1), "clauses (v), (vi), (vii) and (ix) to (xi)" shall be omitted.

(ii) in sub-rule (2),-

(a) for the words " the name of every employee of the company, who-", the words " the names of the top ten employees in terms of remuneration drawn and the name of every employee, who-" shall be substituted;

(b) in sub-clause (i) for the words "sixty lakh rupees", the words "one crore and two lakh rupees" shall be substituted;

(c) in sub-clause (ii) for the words "five lakh rupees per month", the words " eight lakh and fifty thousand rupees per month" shall be substituted;

"The board's report shall include a statement showing the names of the top ten employees in terms of remuneration drawn and the name of every employee, who-

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than one crore and two lakh rupees;

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than eight lakh and fifty thousand rupees per month;

(iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company."

Thus it is evident that after the aforesaid amendment data of every employee above the threshold limit will be required to be given otherwise data of at least top ten employees is required to be given and the aforesaid rules shall apply to all board reports prepared and adopted on or after date of publication of these rules in official gazette i.e. **30th June, 2016**.

Annexure of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Amendment through MCA Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2016:

In Annexure,-

(a) Form MR-1 shall be substituted

CHAPTER XV: COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY [CRVI]
1	Companies (Compromises, Arrangements and Amalgamations) Rules, 2016	14.12.2016	

MCA Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 dated 14th December, 2016 came into force with effect from 15th December, 2016

The Central Government hereby, in exercise of the powers conferred by sub-sections (1) and (2) of section 469 read with sections 230 to 233 and sections 235 to 240 of the Companies Act, 2013, makes the following rules, namely:-

RULE 1 - SHORT TITLE AND COMMENCEMENT

- (1) These rules may be called the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- (2) They shall come into force with effect from 15th December, 2016.

RULE 2 - DEFINITIONS

- (1) In these rules, unless the context otherwise requires.—
 - (a) “Act” means the Companies Act, 2013 (18 of 2013);
 - (b) “Annexure” means the annexure to these rules;
 - (c) “Form” means a form set forth in annexure “A” to these rules which shall be used for the matter to which it relates, and includes an electronic version thereof;
 - (d) “Liquidator” means the Liquidator appointed under the Act or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- (2) All other words and expressions used in these rules but not defined herein, and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014 or in the National Company Law Tribunal Rules, 2016, shall have the same meanings respectively assigned to them in the Act or in the said rules.

[Type text]

RULE 3 - APPLICATION FOR ORDER OF A MEETING

- (1) An application under sub-section (1) of section 230 of the Act may be submitted in Form no. NCLT-1 (appended in the National Company Law Tribunal Rules, 2016) along with:-
- (i) a notice of admission in Form No. NCLT-2 (appended in the National Company Law Tribunal Rules, 2016);
 - (ii) an affidavit in Form No. NCLT-6 (appended in the National Company Law Tribunal Rules, 2016);
 - (iii) a copy of scheme of compromise or arrangement, which should include disclosures as per sub-section (2) of section 230 of the Act; and
 - (iv) fee as prescribed in the Schedule of Fees.
- (2) Where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies, be filed as a joint-application.
- (3) Where the company is not the applicant, a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, not less than fourteen days before the date fixed for the hearing of the notice of admission.
- (4) The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

RULE 4 - DISCLOSURES IN APPLICATION MADE TO THE TRIBUNAL FOR COMPROMISE OR ARRANGEMENT — CREDITORS RESPONSIBILITY STATEMENT

For the purposes of sub-clause (i) of clause (c) of sub-section (2) of section 230 of the Act, the creditor's responsibility statement in **Form No. CAA. 1** shall be included in the scheme of corporate debt restructuring.

EXPLANATION:- For the purpose of this rule, it is clarified that a scheme of corporate debt restructuring as referred to in clause (c) of sub-section (2) of section 230 of the Act shall mean a scheme that restructures or varies the debt obligations of a company towards its creditors.

RULE 5 - DIRECTIONS AT HEARING OF THE APPLICATION

Upon hearing the application under sub-section (1) of section 230 of the Act, the Tribunal shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters:-

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- (a) determining the class or classes of creditors or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meetings for any class or classes of creditors in terms of sub-section (9) of section 230;
- (b) fixing the time and place of the meeting or meetings;
- (c) appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;
- (d) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronic means;
- (e) Explanation.— For the purposes of these rules, “voting through electronic means” shall take place, *mutatis mutandis*, in accordance with the procedure as specified in rule 20 of Companies (Management and Administration) Rules, 2014.
- (f) determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;
- (g) notice to be given of the meeting or meetings and the advertisement of such notice;
- (h) notice to be given to sectoral regulators or authorities as required under sub-section (5) of section 230;
- (i) the time within which the chairperson of the meeting is required to report the result of the meeting to the Tribunal; and
- (j) such other matters as the Tribunal may deem necessary.

RULE 6 - NOTICE OF MEETING

(1) Where a meeting of any class or classes of creditors or members has been directed to be convened, the notice of the meeting pursuant to the order of the Tribunal to be given in the manner provided in sub-section (3) of section 230 of the Act shall be in **Form No. CAA.2** and shall be sent individually to each of the creditors or members.

(2) The notice shall be sent by the Chairperson appointed for the meeting, or, if the Tribunal so directs, by the company (or its liquidator), or any other person as the Tribunal may direct, by registered post or speed post or by courier or by e-mail or by hand delivery or any other mode as directed by the Tribunal to their last known address at least one month before the date fixed for the meeting.

Explanation: - It is hereby clarified that the service of notice of meeting shall be deemed to have been effected in case of delivery by post, at the expiration of forty eight hours after the letter containing the same is posted.

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(3) The notice of the meeting to the creditors and members shall be accompanied by a copy of the scheme of compromise or arrangement and a statement disclosing the following details of the compromise or arrangement, if such details are not already included in the said scheme:-

(i) details of the order of the Tribunal directing the calling, convening and conducting of the meeting:-

- (a) date of the Order;
- (b) date, time and venue of the meeting.

(ii) details of the company including:

- (a) Corporate Identification Number (CIN) or Global Location Number (GLN) of the company;
- (b) Permanent Account Number (PAN);
- (c) name of the company;
- (d) date of incorporation;
- (e) type of the company (whether public or private or one-person company);
- (f) registered office address and e-mail address;
- (g) summary of main object as per the memorandum of association; and main business carried on by the company;
- (h) details of change of name, registered office and objects of the company during the last five years;
- (i) name of the stock exchange (s) where securities of the company are listed, if applicable;
- (j) details of the capital structure of the company including authorised, issued, subscribed and paid up share capital; and
- (k) names of the promoters and directors along with their addresses.

(iii) if the scheme of compromise or arrangement relates to more than one company, the fact and details of any relationship subsisting between such companies who are parties to such scheme of compromise or arrangement, including holding, subsidiary or of associate companies;

(iv) the date of the board meeting at which the scheme was approved by the board of directors including the name of the directors who voted in favour of the resolution, who voted against the resolution and who did not vote or participate on such resolution;

(v) explanatory statement disclosing details of the scheme of compromise or arrangement including:-

- (a) parties involved in such compromise or arrangement;
- (b) in case of amalgamation or merger, appointed date, effective date, share exchange ratio (if applicable) and other considerations, if any;

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- (c) summary of valuation report (if applicable) including basis of valuation and fairness opinion of the registered valuer, if any, and the declaration that the valuation report is available for inspection at the registered office of the company;
 - (d) details of capital or debt restructuring, if any;
 - (e) rationale for the compromise or arrangement;
 - (f) benefits of the compromise or arrangement as perceived by the Board of directors to the company, members, creditors and others (as applicable);
 - (g) amount due to unsecured creditors.
- (vi) disclosure about the effect of the compromise or arrangement on:
- (a) key managerial personnel;
 - (b) directors;
 - (c) promoters;
 - (d) non-promoter members;
 - (e) depositors;
 - (f) creditors;
 - (g) debenture holders;
 - (h) deposit trustee and debenture trustee;
 - (i) employees of the company:
- (vii) Disclosure about effect of compromise or arrangement on material interests of directors, Key Managerial Personnel (KMP) and debenture trustee.

EXPLANATION – For the purposes of these rules it is clarified that-

- (a) the term ‘interest’ extends beyond an interest in the shares of the company, and is with reference to the proposed scheme of compromise or arrangement.
- (b) the valuation report shall be made by a registered valuer, and till the registration of persons as valuers is prescribed under section 247 of the Act, the valuation report shall be made by an independent merchant banker who is registered with the Securities and Exchange Board or an independent chartered accountant in practice having a minimum experience of ten years.
- (viii) investigation or proceedings, if any, pending against the company under the Act.
- (ix) details of the availability of the following documents for obtaining extract from or for making or obtaining copies of or for inspection by the members and creditors, namely:
 - (a) latest audited financial statements of the company including consolidated financial statements;
 - (b) copy of the order of Tribunal in pursuance of which the meeting is to be convened or has been dispensed with;
 - (c) copy of scheme of compromise or arrangement;

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- (d) contracts or agreements material to the compromise or arrangement;
- (e) the certificate issued by Auditor of the company to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013; and
- (f) such other information or documents as the Board or Management believes necessary and relevant for making decision for or against the scheme;
- (x) details of approvals, sanctions or no-objection(s), if any, from regulatory or any other governmental authorities required, received or pending for the proposed scheme of compromise or arrangement.
- (xi) a statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, or where applicable, by voting through electronic means.

EXPLANATION- For the purposes of this rule, disclosure required to be made by a company shall be made in respect of all the companies, which are part of the compromise or arrangement.

RULE 7 - ADVERTISEMENT OF THE NOTICE OF THE MEETING

The notice of the meeting under sub-section (3) of Section 230 of the Act shall be advertised in **Form No. CAA.2** in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal and shall also be placed, not less than thirty days before the date fixed for the meeting, on the website of the company (if any) and in case of listed companies also on the website of the SEBI and the recognized stock exchange where the securities of the company are listed:

Provided that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

RULE 8 - NOTICE TO STATUTORY AUTHORITIES

(1) For the purposes of sub-section (5) of section 230 of the Act, the notice shall be in **Form No. CAA.3**, and shall be accompanied with a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures mentioned under rule 6, and shall be sent to:-

- (i) the Central Government, the Registrar of Companies, the Income-tax authorities, in all cases;
- (ii) the Reserve Bank of India, the Securities and Exchange Board of India, the Competition Commission of India, and the stock exchanges, as may be applicable ;

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- (iii) other sectoral regulators or authorities, as required by Tribunal.
- (2) The notice to the authorities mentioned in sub-rule (1) shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority.
- (3) If the authorities referred to under sub-rule (1) desire to make any representation under sub-section (5) of section 230, the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case no representation is received within the stated period of thirty days by the Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of compromise or arrangement.

RULE 9 - VOTING

The person who receives the notice may within one month from the date of receipt of the notice vote in the meeting either in person or through proxy or through postal ballot or through electronic means to the adoption of the scheme of compromise and arrangement.

EXPLANATION- For the purposes of voting by persons who receive the notice as shareholder or creditor under this rule—

- (a) “shareholding” shall mean the shareholding of the members of the class who are entitled to vote on the proposal; and
- (b) “outstanding debt” shall mean all debt owed by the company to the respective class or classes of creditors that remains outstanding as per the latest audited financial statement, or if such statement is more than six months old, as per provisional financial statement not preceding the date of application by more than six months.

RULE 10 - PROXIES

- (1) Voting by proxy shall be permitted, provided a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its registered office not later than 48 hours before the meeting.
- (2) Where a body corporate which is a member or creditor (including holder of debentures) of a company authorises any person to act as its representative at the meeting, of the members or creditors of the company, or of any class of them, as the case may be, a copy of the resolution of the Board of Directors or other governing body of such body corporate authorising such person to act as its representative at the meeting, and certified to be a true copy by a director, the manager, the secretary, or other authorised officer of such body corporate shall be lodged with the company at its registered office not later than 48 hours before the meeting.
- (3) No person shall be appointed as a proxy who is a minor.

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(4) The proxy of a member or creditor blind or incapable of writing may be accepted if such member or creditor has attached his signature or mark thereto in the presence of a witness who shall add to his signature his description and address : provided that all insertions in the proxy are in the handwriting of the witness and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the member or creditor before he attached his signature or mark.

(5) The proxy of a member or creditor who does not know English may be accepted if it is executed in the manner prescribed in the preceding sub-rule and the witness certifies that it was explained to the member or creditor in the language known to him, and gives the member's or creditor's name in English below the signature.

RULE 11 - COPY OF COMPROMISE OR ARRANGEMENT TO BE FURNISHED BY THE COMPANY

Every creditor or member entitled to attend the meeting shall be furnished by the company, free of charge, within one day on a requisition being made for the same, with a copy of the scheme of the proposed compromise or arrangement together with a copy of the statement required to be furnished under section 230 of Act.

RULE 12 - AFFIDAVIT OF SERVICE

(1) The Chairperson appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit before the Tribunal not less than seven days before the date fixed for the meeting or the date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

(2) In case of default under sub-rule (1), the application along with copy of the last order issued shall be posted before the Tribunal for such orders as it may think fit to make.

RULE 13 - RESULT OF THE MEETING TO BE DECIDED BY VOTING

(1) The voting at the meeting or meetings held in pursuance of the directions of the Tribunal under Rule 5 on all resolutions shall take place by poll or by voting through electronic means.

(2) The report of the result of the meeting under sub - rule (1) shall be in **Form No. CAA. 4** and shall state accurately the number of creditors or class of creditors or the number of members or class of members, as the case may be, who were present and who voted at the meeting either in person or by proxy, and where applicable, who voted through electronic means, their individual values and the way they voted.

RULE 14 - REPORT OF THE RESULT OF THE MEETING BY CHAIRPERSON

The Chairperson of the meeting (or where there are separate meetings, the Chairperson of each meeting) shall, within the time fixed by the Tribunal, or where no time has been fixed, within three days after the conclusion of the meeting, submit a report to the Tribunal on the result of the meeting in **Form No. CAA.4**.

RULE 15 - PETITION FOR CONFIRMING COMPROMISE OR ARRANGEMENT

(1) Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case may be, with or without modification, the company (or its liquidator), shall, within seven days of the filing of the report by the Chairperson, present a petition to the Tribunal in **Form No. CAA.5** for sanction of the scheme of compromise or arrangement.

(2) Where a compromise or arrangement is proposed for the purposes of or in connection with scheme for the reconstruction of any company or companies, or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 230 read with section 232 of the Act.

(3) Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or member as the case may be, with the leave of the Tribunal, to present the petition and the company shall be liable for the cost thereof.

RULE 16 - DATE AND NOTICE OF HEARING

(1) The Tribunal shall fix a date for the hearing of the petition, and notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised, or in such other newspaper as the Tribunal may direct, not less than ten days before the date fixed for the hearing.

(2) The notice of the hearing of the petition shall also be served by the Tribunal to the objectors or to their representatives under sub-section (4) of section 230 of the Act and to the Central Government and other authorities who have made representation under rule 8 and have desired to be heard in their representation.

RULE 17 - ORDER ON PETITION

(1) Where the Tribunal sanctions the compromise or arrangement, the order shall include such directions in regard to any matter or such modifications in the compromise or arrangement as the Tribunal may think fit to make for the proper working of the compromise or arrangement.

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(2) The order shall direct that a certified copy of the same shall be filed with the Registrar of Companies within thirty days from the date of the receipt of copy of the order, or such other time as may be fixed by the Tribunal.

(3) The order shall be in **Form No. CAA. 6**, with such variations as may be necessary.

RULE 18 - APPLICATION FOR DIRECTIONS UNDER SECTION 232 OF THE ACT

(1) Where the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and the matters involved cannot be dealt with or dealt with adequately on the petition for sanction of the compromise or arrangement, an application shall be made to the Tribunal under section 232 of the Act, by a notice of admission supported by an affidavit for directions of the Tribunal as to the proceedings to be taken.

(2) Notice of admission in such cases shall be given in such manner and to such persons as the Tribunal may direct.

RULE 19 - DIRECTIONS AT HEARING OF APPLICATION

Upon the hearing of the notice of admission given under rule 18 or upon any adjourned hearing thereof, the Tribunal may make such order or give such directions as it may think fit, as to the proceedings to be taken for the purpose of reconstruction or amalgamation, as the case may be, including, where necessary, an inquiry as to the creditors of the transferor company and the securing of the debts and claims of any of the dissenting creditors in such manner as the Tribunal may think just and appropriate.

RULE 20 - ORDER UNDER SECTION 232 OF THE ACT

An order made under section 232 read with section 230 of the Act shall be in **Form No. CAA.7** with such variation as the circumstances may require.

RULE 21 - STATEMENT OF COMPLIANCE IN MERGERS AND AMALGAMATIONS

For the purpose of sub-section (7) of section 232 of the Act, every company in relation to which an order is made under sub-section (3) of section 232 of the Act shall until the scheme is fully implemented, file with the Registrar of Companies, the statement in **Form No. CAA.8** along with such fee as specified in the Companies (Registration Offices and Fees) Rules, 2014 within two hundred and ten days from the end of each financial year.

RULE 22 - REPORT ON WORKING OF COMPROMISE OR ARRANGEMENT

At any time after issuing an order sanctioning the compromise or arrangement, the Tribunal may, either on its own motion or on the application of any interested person, make an order directing the company or where the company is being wound-up, its liquidator, to submit to the Tribunal within such time as the Tribunal may fix, a report on the working of the said compromise or arrangement and on consideration of the report, the Tribunal may pass such orders or give such directions as it may think fit.

RULE 23 - LIBERTY TO APPLY

(1) The company, or any creditor or member thereof, or in case of a company which is being wound-up, its liquidator, may, at any time after the passing of the order sanctioning the compromise or arrangement, apply to the Tribunal for the determination of any question relating to the working of the compromise or arrangement.

(2) The application shall in the first instance be posted before the Tribunal for directions as to the notices and the advertisement, if any, to be issued, as the Tribunal may direct.

(3) The Tribunal may, on such application, pass such orders and give such directions as it may think fit in regard to the matter, and may make such modifications in the compromise or arrangement as it may consider necessary for the proper working thereof, or pass such orders as it may think fit in the circumstances of the case.

RULE 24 - LIBERTY OF THE TRIBUNAL

(1) At any time during the proceedings, if the Tribunal hearing a petition or application under these Rules is of the opinion that the petition or application or evidence or information or statement is required to be filed in the form of affidavit, the same may be ordered by the Tribunal in the manner as the Tribunal may think fit.

(2) The Tribunal may pass any direction(s) or order or dispense with any procedure prescribed by these rules in pursuance of the object of the provisions for implementation of the scheme of arrangement or compromise or restructuring or otherwise practicable except on those matters specifically provided in the Act.

RULE 25 - MERGER OR AMALGAMATION OF CERTAIN COMPANIES

(1) The notice of the proposed scheme, under clause (a) of sub-section (1) of section 233 of the Act, to invite objections or suggestions from the Registrar and Official

Liquidator or persons affected by the scheme shall be in **Form No. CAA.9.**

(2) For the purposes of clause (c) of sub-section (1) of section 233 of the Act the declaration of solvency shall be filed by each of the companies involved in the scheme of merger or amalgamation in **Form No. CAA.10** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, before convening the meeting of members and creditors for approval of the scheme.

(3) For the purposes of clause (b) and (d) of sub-section (1) of section 233 of the Act, the notice of the meeting to the members and creditors shall be accompanied by -

- (a) a statement, as far as applicable, referred to in sub-section (3) of section 230 of the Act read with sub-rule (3) of rule 6 hereof;
- (b) the declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in **Form No. CAA.10**;
- (c) a copy of the scheme.

(4)(a) For the purposes of sub-section (2) of section 233 of the Act, the transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors or class of creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings in **Form No. CAA.11** with the Central Government, along with the fees as provided under the Companies (Registration Offices and Fees) Rules, 2014.

(b) Copy of the scheme shall also be filed, along with **Form No. CAA. 11** with -

- (i) the Registrar of Companies in **Form No. GNL-1** along with fees provided under the Companies (Registration Offices and Fees) Rules, 2014; and
- (ii) the Official Liquidator through hand delivery or by registered post or speed post.

(5) Where no objection or suggestion is received to the scheme from the Registrar of Companies and Official Liquidator or where the objection or suggestion of Registrar and Official Liquidator is deemed to be not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, the Central Government shall issue a confirmation order of such scheme of merger or amalgamation in **Form No. CAA.12.**

(6) Where objections or suggestions are received from the Registrar of Companies or Official Liquidator and the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may file an application before the Tribunal in **Form No. CAA.13** within sixty days of the receipt of the scheme stating its objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act.

(7) The confirmation order of the scheme issued by the Central Government or Tribunal under sub-section (7) of section 233 of the Act, shall be filed, within thirty days of the receipt of the order of confirmation, in **Form INC-28** along with the fees as provided under Companies (Registration Offices and Fees) Rules, 2014 with the Registrar of Companies having jurisdiction over the transferee and transferor companies respectively.

(8) For the purpose of this rule, it is clarified that with respect to schemes of

[Type text]

arrangement or compromise falling within the purview of section 233 of the Act, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the Act has not been met.

RULE 26 - NOTICE TO DISSENTING SHAREHOLDERS FOR ACQUIRING THE SHARES

For the purposes of sub-section (1) of section 235 of the Act, the transferee company shall send a notice to the dissenting shareholder(s) of the transferor company, in **Form No. CAA.14** at the last intimated address of such shareholder, for acquiring the shares of such dissenting shareholders.

RULE 27 - DETERMINATION OF PRICE FOR PURCHASE OF MINORITY SHAREHOLDING

For the purposes of sub-section (2) of section 236 of the Act, the registered valuer shall determine the price (hereinafter called as offer price) to be paid by the acquirer, person or group of persons referred to in sub-section (1) of section 236 of the Act for purchase of equity shares of the minority shareholders of the company, in accordance with the following rules:-

(1) In the case of a listed company,-

- (i) the offer price shall be determined in the manner as may be specified by the Securities and Exchange Board of India under the relevant regulations framed by it, as may be applicable; and
- (ii) the registered valuer shall also provide a valuation report on the basis of valuation addressed to the Board of directors of the company giving justification for such valuation.

(2) In the case of an unlisted company and a private company,

(i) the offer price shall be determined after taking into account the following factors:-

- (a) the highest price paid by the acquirer, person or group of persons for acquisition during last twelve months;
- (b) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies; and

(ii) the registered valuer shall also provide a valuation report on the basis of valuation addressed to the board of directors of the company giving justification for such valuation.

[Type text]

RULE 28 - CIRCULAR CONTAINING SCHEME OF AMALGAMATION OR MERGER

(1) For the purposes of clause (a) of sub-section (1) of section 238 of the Act, every circular containing the offer of scheme or contract involving transfer of shares or any class of shares and recommendation to the members of the transferor company by its directors to accept such offer, shall be accompanied by such information as set out in **Form No. CAA.15**.

(2) The circular shall be presented to the Registrar for registration.

RULE 29 - APPEAL UNDER SUB-SECTION (2) OF SECTION 238 OF THE ACT

Any aggrieved party may file an appeal against the order of the Registrar of Companies refusing to register any circular under sub-section (2) of section 238 of the Act and the said appeal shall be in the **Form No. NCLT.9** (appended in the National Company Law Tribunal Rules, 2016) supported with an affidavit in the **Form No. NCLT.6** (appended in the National Company Law Tribunal Rules, 2016).

CHAPTER XVIII: REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016	26.12.2016	17

MCA Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 dated 26th December, 2016

RULE 1. SHORT TITLE AND COMMENCEMENT

(1) These rules may be called the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

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

RULE 2. DEFINITIONS

(1) In these rules, unless the context otherwise requires, -

- (a) “**Act**” means the Companies Act, 2013 (18 of 2013);
- (b) “**Form**” or “**e-Form**” means a non-electronic form or an electronic form annexed to these rules.

(2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

RULE 3. REMOVAL OF NAME OF COMPANY FROM THE REGISTER ON SUO-MOTU BASIS

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

Provided that following categories of companies shall not be removed from the register of companies under this rule and rule 4, namely:-

- (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;
- (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) companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

Explanation.- For the purposes of clause (iii), the expression “vanishing company” means a company, registered under the Act or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

(2) For the purpose of sub-rule (1), the Registrar 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.

(3) 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 thirty days from the date of the notice.

RULE 4. APPLICATION FOR REMOVAL OF NAME OF COMPANY

(1) An application for removal of name of the company under sub-section (2) of section 248 shall be made in Form STK-2 along with the fee of five thousand rupees.

(2) Every application under sub-rule (1) shall accompany a no objection certificate from appropriate Regulatory Authority concerned in respect of following companies, namely :-

- (i) companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 (2 of 1934) or rules and regulations thereunder;
- (ii) housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987 (53 of 1987);
- (iii) insurance companies as referred to in the Insurance Act, 1938 (4 of 1938) or rules and regulations thereunder;
- (iv) companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
- (v) companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
- (vi) asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules and regulations thereunder;
- (vii) any other company which is regulated under any other law for the time being in force.

(3) The application in Form STK 2 shall be accompanied by -

- (i) indemnity bond duly notarised by every director in Form STK 3;
- (ii) a statement of accounts containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant;
- (iii) An affidavit in Form STK 4 by every director of the company;
- (iv) a copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application;
- (v) a statement regarding pending litigations, if any, involving the company.

RULE 5. MANNER OF FILING OF APPLICATION

(1) The application in Form STK 2 shall be signed by a director duly authorised by the Board in their behalf.

(2) Where the director concerned does not have a registered digital signature certificate, a physical copy of the form duly filled in shall be signed manually by the director duly authorised in that behalf and shall be attached with the Form STK 2 while uploading the form.

RULE 6. FORM TO BE CERTIFIED

The Form STK 2 shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time Practice or Cost Accountant in whole time practice, as the case may be.

RULE 7. MANNER OF PUBLICATION OF NOTICE

(1) The notice under sub-section (1) or sub-section (2) of section 248 shall be in Form STK 5 or STK 6, as the case may be, and be-

- (i) placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
- (ii) published in the Official Gazette;
- (iii) 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.

(2) The Registrar of Companies shall, simultaneously intimate the concerned regulatory authorities regulating the company, viz, the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over the company, about the proposed action of removal or striking off the names of such companies and seek objections, if any, to be furnished within a period of thirty days from the date of issue of the letter of intimation and if no objections are received within thirty days from the respective authority, it shall be presumed that they have no objections to the proposed action of striking off or removal of name.

RULE 8. MANNER OF NOTARISATION, APOSTILISATION OR CONSULARISATION OF INDEMNITY BOND AND DECLARATION IN CASE OF FOREIGN NATIONALS OR NON-RESIDENT INDIANS

For the purposes of these rules, if the person is a foreign national or non-resident Indian, the indemnity bond, and declaration shall be notarised or apostilised or consularised.

RULE 9. NOTICE OF STRIKING OFF AND DISSOLUTION OF COMPANY

The Registrar shall cause a notice under sub-section (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.

RULE 10. APPLICATIONS OR FORMS PENDING BEFORE CENTRAL GOVERNMENT

Any application or pending proceeding for striking off or Form-FTE filed with the Registrar of Companies prior to the commencement of these rules but not disposed of by such authority for want of any information or document shall, on its submission, to the satisfaction of the authority, be disposed of in accordance with the rules made under the Companies Act, 1956 (1 of 1956).

CHAPTER XXII: COMPANIES INCORPORATED OUTSIDE INDIA

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	In exercise of the powers conferred by sub- section (1) of section 381 of the Companies Act, 2013 (18 of 2013)	19.07.2016	11

Notification No. S.O. 2463(E) dated 19.07.2016- on the subject with respect to the foreign company which is an airlines company

EXEMPTIONS TO AIRLINES COMPANY FROM PREPAIRING FINANCIAL STATEMENTS

The provisions of sub-section (1) of Section 381 of the Companies Act,2013 provides that every foreign company shall, in every calendar year,—

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents as may be prescribed; and

(b) deliver a copy of those documents to the Registrar:

Provided that the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

Thus the Central Government, in exercise of provisions of sub-section (1) of section 381 of the Companies Act,2013 hereby directs that the requirement of clause (a) of sub-section (1) of section 381 of the Companies Act,2013 shall apply to a foreign company which is an airlines company (hereinafter referred to as “the company”) having a share capital, subject to the following exceptions and modifications -

1. It shall be deemed sufficient compliance of the provisions of clause (a) of sub-section (1) of section 381 of the Act, if in respect of the period ending on or after the 31st March, 2016, a company submits to the appropriate Registrar of Companies in India,—
 - (i) documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country:

Provided that where such documents are not in English language, there shall be annexed to it a certified translation thereof in the English language.

- (ii) in respect of its Indian Business operations, a statement of receipts and payments for the financial year, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India.
- (iii) the documents required to be filed with Registrar of Companies under sub-rule (2) of rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014.

2. Notwithstanding anything contained in the above paragraphs, the company shall, if so required by notice in writing from the Central Government, furnish to the Central Government such information with regard to its accounts as the Central Government may require.

CHAPTER XXIV: REGISTRATION OFFICES AND FEES

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Companies (Registration Offices and Fees) Second Amendment Rules, 2016	07.11.2016	-

MCA Companies (Registration Offices and Fees) Second Amendment Rules, 2016 **dated 7th November, 2016**

Rule 8 of Companies (Registration Offices and Fees) Rules, 2014 is as under:

8. Authentication of Documents

(1)...

....

(12)(a) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely:-

INC-21, INC-22, INC-28, PAS-3, SH-7, CHG-1, CHG-4, CHG-9, MGT- 14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNL-3, ADT-1, NDH-1, NDH-2, NDH-3;

(b) The following e-forms filed by companies, other than one person companies and small companies, under sub-rule (1) of rule 9, shall be pre-certified in the following manner, namely:—

(i)...

....

(iv) AOC-4- certification by a Chartered Accountant in whole-time practice;

(c) ...

Amendment through MCA Companies (Registration Offices and Fees)Amendment Rules, 2016:

In the Companies (Registration Offices and Fees) Rules, 2014, (herein after refer to as the principle rules), in the principle rules, in rule 8, in sub-rule (12), in clause (b) for sub-clause (iv), the following shall be substituted, namely:-

*“(iv) **AOC-4** certification by the Chartered Accountant or the Company Secretary or as the case may be by the Cost Accountant, in whole- time practice.”*

Annexure of Companies (Registration Offices and Fees) Rules, 2014 is as under:

Amendment through MCA Companies (Registration Offices and Fees)Amendment Rules, 2016:

In Annexure, in item II, for sub-item (vi), the following sub-items shall be substituted, namely;-

For Application made	Other than OPCs and Small Companies	OPC and Small Companies
“(vi) For allotment of Director Identification Number (DIN) under section 153 of the Act	500	500
(vii) For surrender of Director Identification Number under rule 11(f) of the Companies (Appointment and Qualification of Directors) Rules 2014	1000	1000”

CHAPTER XXVII: NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

S NO.	AMENDMENT – RULES/NOTIFICATION/CIRCULAR/ORDERS AND PARTICULAR	NOTIFIED DATE	IMPACT ON VARIOUS CHAPTERS OF ACLP AND CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY [CRVI]
1	Notification constituting the National Company Law Tribunal and National Company Law Appellate Tribunal under Sections 408 and 410 respectively of the Companies Act, 2013	01.06.2016	
2	Commencement Notification under Section 1(3) of the Companies Act, 2013 and Notification constituting the Benches of National Company Law Tribunal	01.06.2016	
3	Transfer of matters or proceedings or cases pending before the Company Law Board to National Company Law Tribunal	01.06.2016	
4	National Company Law Tribunal Rules, 2016	21.07.2016	
5	National Company Law Appellate Tribunal Rules, 2016	21.07.2016	
6	Companies (Transfer of Pending Proceedings) Rules 2016	07.12.2016	
7	NCLT (Procedure for reduction of share capital of company) Rules, 2016	15.12.2016	
8	NCLT (Amendment) Rules,2016	20.12.2016	

1. ESTABLISHMENT OF NCLT - Notification No. S.O. 1932(E) dated 1st June, 2016

The Central Government hereby, in exercise of the powers conferred by section 408 of the Companies Act, 2013, constitutes the National Company Law Tribunal to exercise and discharge the powers and functions as are, or may be, conferred on it by or under the said Act with effect from the 1st day of June, 2016.

2. ESTABLISHMENT OF NCLAT - Notification No. S.O. 1933(E) dated 1st June, 2016

The Central Government hereby, in exercise of the powers conferred by section 410 of the Companies Act, 2013, constitutes the National Company Law Appellate Tribunal for hearing appeals against the orders of the National Company Law Tribunal with effect from the 1st day of June, 2016.

3. TRANSFER OF PENDING PROCEEDINGS TO NCLT - Notification No. S.O. 1936(E) dated 1st June, 2016

The Central Government hereby, in exercise of the powers conferred by clause (a) of sub-section (1) of section 434 of the Companies Act, 2013, appoints the 01st day of June, 2016, on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the

provisions of the Companies Act, 2013 or the Companies Act, 1956.

4. COMMENCEMENT NOTIFICATION OF SECTIONS - Notification No. S.O. 1934(E) dated 1st June, 2016

The Central Government hereby, in exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013, appoints the 01st day of June, 2016 as the date on which the following provisions of the said Act shall come into force, namely :—

Sl. No.	Section
1.	Sub-section (7) of section 7 [except clause (c) and (d)]
2.	Second proviso to sub-section (1) of section 14
3.	Sub-section (2) of section 14
4.	Sub-section (3) of section 55
5.	Proviso to Clause (b) of sub-section (1) of section 61
6.	Sub-sections (4) to (6) of section 62
7.	Sub-sections (9) to (11) of section 71
8.	Section 75
9.	Section 97
10.	Section 98
11.	Section 99
12.	Sub-section (4) of section 119
13.	Section 130
14.	Section 131
15.	Second proviso to sub-section (4) and sub-section (5) of section 140
16.	Sub-section (4) of section 169
17.	Section 213
18.	Sub-section (2) of Section 216
19.	Section 218
20.	Section 221
21.	Section 222
22.	Sub-sections (5) of section 224
23.	Sections 241, 242 [except clause (b) of sub-section (1), clause (c) & (g) of sub-section (2)], 243, 244, and 245
24.	Reference of word 'Tribunal' in sub-section (2) of section 399
25.	Sections 415 to 433 (both inclusive)
26.	Sub-section (1)(a) and (b) of section 434
27.	Sub-section (2) of section 434
28.	Section 441
29.	Section 466

5. CONSTITUTION OF BENCHES OF NCLT - Notification No. S.O. 1935(E) dated 1st June, 2016

The Central Government hereby, in exercise of the powers conferred by sub-section (1) of section 419 of the Companies Act, 2013, constitutes the following Benches of the National Company Law Tribunal mentioned in column (2) of the table below, located at the place mentioned in column (3) and to exercise the jurisdiction over the area mentioned in column (4), namely:—

TABLE

Serial Number	Title of the Bench	Location	Territorial Jurisdiction of the Bench
(1)	(2)	(3)	(4)
1.	(a) National Company Law Tribunal, Principal Bench. (b) National Company Law Tribunal, New Delhi Bench.	New Delhi	(1) State of Haryana. (2) State of Rajasthan. (3) Union territory of Delhi.
2.	National Company Law Tribunal, Ahmedabad Bench.	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh. (3) Union territory of Dadra and Nagar Haveli. (4) Union territory of Daman and Diu.
3.	National Company Law Tribunal, Allahabad Bench.	Allahabad	(1) State of Uttar Pradesh. (2) State of Uttarakhand.
4.	National Company Law Tribunal, Bengaluru	Bengaluru	(1) State of Karnataka.
5.	National Company Law Tribunal, Chandigarh	Chandigarh	(1) State of Himachal Pradesh. (2) State of Jammu and Kashmir. (3) State of Punjab. (4) Union territory of Chandigarh.
6.	National Company Law Tribunal, Chennai Bench.	Chennai	(1) State of Kerala. (2) State of Tamil Nadu. (3) Union territory of Lakshadweep. (4) Union territory of Puducherry.
7.	National Company Law Tribunal, Guwahati Bench.	Guwahati	(1) State of Arunachal Pradesh. (2) State of Assam. (3) State of Manipur. (4) State of Mizoram. (5) State of Meghalaya. (6) State of Nagaland. (7) State of Sikkim. (8) State of Tripura.
8.	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	(1) State of Andhra Pradesh. (2) State of Telangana.
9.	National Company Law Tribunal, Kolkata Bench.	Kolkata	(1) State of Bihar. (2) State of Jharkhand. (3) State of Odisha. (4) State of West Bengal. (5) Union territory of Andaman and Nicobar Islands.
10.	National Company Law Tribunal, Mumbai Bench.	Mumbai	(1) State of Chhattisgarh. (2) State of Goa. (3) State of Maharashtra.

6. MCA National Company Law Tribunal Rules, 2016

Following stated are the amended National Company Law Tribunal Rules, 2016

The Central Government in exercise of the powers conferred by section 469 of the Companies Act, 2013, made the National Company Law Tribunal Rules, 2016 which came into force on the date of their publication in the Official Gazette i.e. 21st July 2016. Thereafter an amendment rule was passed by the MCA called as the National Company Law Tribunal (Amendment) Rules, 2016 dated 20th December, 2016.

Thus the presently applicable rules are as follows :-

[RULE 1- states the short title and the commencement date of the rule published in the Official Gazette.]

PART – I

DEFINITIONS AND

FORMS ETC. RULE

2: DEFINITIONS

In these rules, unless the context otherwise requires,

- (1) **“Act”** means the Companies Act, 2013 (18 of 2013);
- (2) **“address for service”** shall mean the address furnished by a party or his authorised representative at which service of summons, notices or other processes may be effected under these rules;
- (3) **“advocate”** means a person who is entitled to practise as such under the Advocates Act, 1961 (25 of 1961);
- (4) **“applicant”** means a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Act;
- (5) **“application”** means any application or proceedings filed under the provisions of the Act. including any transferred application or transferred petition as defined under sub-rule (29);

(6) **“authorised representative”** means a person authorised in writing by a party to present his case before the Tribunal as the representative of such party as provided under section 432 of the Act;

(7) **“Bench”** means a Bench of the Tribunal constituted under section 419 of the Act and includes Circuit Benches constituted by the President with prior approval of the Central Government to sit at such other geographical locations as may be necessary having regard to requirements;

(8) **“Central Registry”** means the registry in which all the applications or petitions and documents are received by the Registrar for allocation to the concerned Bench of the Tribunal for disposal;

(9) **“certified”** means in relation to a copy of a document as hereunder;-

(a) certified as provided in section 76 of the Indian Evidence Act, 1872; or

(b) certified as provided in section 6 of Information Technology Act, 2000;

(c) certified Copy issued by the Registrar of Companies under the Act;

(d) copy of document as may be downloaded from any online portal prescribed under section 398 of the Act or a photo copy of the original pertaining to any company registered with the Office of the Registrar of Companies of the concerned State duly certified by a legal practitioner or a chartered accountant in practice or a cost accountant in practice or a company secretary in practice;

(10) **“certified by Tribunal”** means in relation to a Copy of a document, certified to be a true copy issued by the Registry or of a Bench of the Tribunal under its hand and seal and as provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872);

(11) **“creditor”** means any person to whom a debt is owed;

(12) **“fee”** means the amount payable in pursuance of the provisions of the Act and these rules for any petition or application or interlocutory application or a document or for certified copy of document or order of the Tribunal or such other paper as may be specified in Schedule of Fees to these rules and includes any modifications as may be made thereto or any fee as prescribed for filing of documents to the Tribunal by these rules;

(13) **“filer”** means an authorised representative of that person or any party to the

proceedings who files any document with the Tribunal in relation to a case filed under the Act, or any rules thereunder;

(14) **“filed”** means filed in the office of the Registry of the Tribunal;

(15) **“interlocutory application”** means an application in any appeal Or original petition on proceeding already instituted in the Tribunal, but not being a proceeding for execution of the order ordirection of Tribunal;

(16) **“party”** means a person who prefers an appeal or application or petition before the Tribunal and includes respondent or any person interested in the said appeal or application or petition including the Registrar of Companies or the Regional Director or Central Government or State Government or official liquidator and any person who has a right under the Act, or the Reserve Bank of India Act 1934 (2 of 1934) to make suggestions or submissions or objections or reply;

(17) **“petition”** means a petition or an application or an appeal or a complaint in pursuance of which any proceeding is commenced before the Tribunal;

(18) **“person interested”** means a shareholder, creditor, employee, transferee Company and other company concerned in relation to the term or Context referred to in the relevant provisions of the Act or any person aggrieved by any order or action of any company or its directors;

(19) **“pleadings”** means and includes application including interlocutory application, petition, appeal, revision, reply, rejoinder, statement, counter claim, additional statement supplementing the original application and reply statement under these rules and as may be permitted by the Tribunal;

(20) **“reference”** means a reference within the meaning of rule 88 of these rules;

(21) **“Registrar”** means Registrar of the Tribunal and includes such other officer of the Tribunal or Bench to whom the powers and functions of the Registrar is delegated;

(22) **“Registry”** means the Registry of the Tribunal or any of its Benches, as the Case may be, which keeps records of the applications and documents relating thereto;

(23) **“Reserve Bank”** means the Reserve Bank of India and includes its branches and agencies as defined in the Reserve Bank of India Act, 1934 (2 of 1934);

(24) **“Sealed”** means sealed with the seal of the Tribunal;

(25) **“Secretary”** means Secretary of the Tribunal and in the absence of Secretary, such other officer of the Tribunal to whom the powers and functions Of the Secretary are delegated.

(26) **“secured creditor”** means a creditor in whose favour a security interest is created;

(27) **“security interest”** means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee.

(28) **“section”** means a section of the Act;

(29) **“transferred application” or “transferred petition”** means any proceeding which has been transferred to the Tribunal from the Company Law Board, the High Court, District Court, Board for Industrial and Financial Reconstruction as provided in clause (a), (c) and (d) of sub-section(1) of section 434 of the Act;

(30) words and expressions used herein and not defined but defined in the Act shall have the respective meanings assigned to them in the Act.

RULE 3: Computation of time period

Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Tribunal is closed, that day and any succeeding days on which the Tribunal remains closed shall also be excluded.

RULE 4: Forms

The forms annexed as Annexure ‘A’ to these rules with such modifications or variations as the circumstances Of each case may require shall be used for the purpose mentioned therein and where no form is prescribed to cover a contingency, a form as may be approved by the Registrar, shall be used.

RULE 5: Format Of order or direction or rule

Every rule, direction, order, summons, warrant or other mandatory process shall be issued in the name of the President and shall be signed by the Registrar or any other officer specifically authorised in that behalf by the President, with the day, month and year Of signing and shall be sealed with the seal Of the Tribunal.

RULE 6: Official seal of the Tribunal

The official seal and emblem of the Tribunal shall be such, as the Central Government may from time to time specify and shall be in the custody of the Registrar.

RULE 7: Custody of the records

The Registrar shall have the custody of the records of the Tribunal and no record or document filed in any cause or matter shall be allowed to be taken out of the custody of the Tribunal without the leave of the Tribunal:

Provided that the Registrar may allow any other officer of the Tribunal to remove any official paper or record for administrative purposes from the Tribunal.

RULE 8: Sitting of the Tribunal

The Tribunal shall hold its sittings either at its headquarter or at such Other place falling within its territorial jurisdiction as it may consider convenient.

RULE 9: Sitting hours The sitting hours of the Tribunal shall ordinarily be from 10:30 AM to 1 PM and 2:00 P.M. to 4:30 PM, subject to any order made by the President.

RULE 10: Working hours

(1) Except on Saturdays, Sundays and other National Holiday, the office of the Tribunal shall remain open on all working days from 09.30 A.M. to 6.00 P.M.

(2) The Filing Counter of the Registry shall be open on all working days from 10.30 AM to 5.00 P.M.

RULE 11: Inherent Powers

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

RULE 12: Calendar

The calendar of days of working of Tribunal in a year shall be as decided by the President of the Tribunal.

RULE 13: Listing of cases

An urgent matter filed before 12 noon shall be listed before the Tribunal on the following working day, if it is complete in all respects as provided in these rules and in exceptional cases, it may be received after 12 noon but before 3.00 P.M. for listing on the following day, with the specific permission of the Bench.

RULE 14: Power to exempt

The Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.

RULE 15: Power to extend time

The Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

PART-II

Power and functions of President, Registrar and Secretary

RULE 16: Functions of the President

In addition to the general powers provided in the Act and in these rules the President shall exercise the following powers, namely: –

- (a) preside over the consideration of cases by the Tribunal;
- (b) direct the Registry in the performance of its functions;
- (c) prepare an annual report on the activities of the Tribunal;
- (d) transfer any case from one Bench to other Bench when the circumstances so warrant; to withdraw the work or case from the court of a member.
- (f) perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal.

RULE 17: Functions of the Registrar

(1) The Registrar shall have the following functions, namely:-

- (a) registration of appeals, petitions and applications;
- (b) receive applications for amendment of appeal or the petition or application or subsequent proceedings.
- (c) receive applications for fresh summons or notices and regarding services thereof;
- (d) receive applications for fresh summons or notices and for short date summons and notices;
- (e) receive applications for substituted service of summons or notices;
- (f) receive applications for seeking orders concerning the admission and inspection of documents;
- (g) transmission of a direction or order to the civil court as directed by Tribunal with the prescribed certificates for execution etc., and

(h) such other incidental or matters as the President may direct from time to time.

(2) All adjournments shall normally be sought before the concerned Bench in court and in extraordinary circumstances, the Registrar may, if so directed by the Tribunal in chambers, at any time adjourn any matter and lay the same before the Tribunal in chambers.

RULE 18: Functions Of the Secretary

(1) There shall be a Secretary at the Principal Bench of the Tribunal, New Delhi,

(2) The Secretary shall, under the general superintendence and control of the President, discharge such duties, functions and exercise such powers as are prescribed under these rules and as assigned by the President from time to time.

(3) Secretary shall—

(a) be in charge of the long term projects and initiatives of the Tribunal;

(b) supervise the divisions and sections of the Human Resources;

(c) prepare, monitor and manage budgetary allocations and financial managements of the Tribunal and the Benches;

(d) provide all necessary support in the day to day operations Of the Tribunal;

(e) manage and supervise the facilities and administrative services of the Tribunal;

(f) manage and administer the public grievances mechanism of the Tribunal;

(g) coordinate with authorised representatives and other professionals in the smooth functioning of the Tribunal;

(h) oversee information and communication technology and other technological facilities in the Tribunal;

(i) manage and facilitate communication and services of the Tribunal;

(j) manage, monitor and administer the public affairs and public safety provisions within the premises of the Tribunal; and

(k) supervise library and research wings of the Tribunal.

RULE 19: Delegation of powers by the President

The President may assign or delegate to any suitable officer all or some Of the functions required by these rules to be exercised by the Registrar.

PART – III

Institution of proceedings, petition, appeals etc.

RULE 20: Procedure

(1) Every appeal or petition or application or caveat petition or objection or counter presented to the Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5. cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form;

(2) The cause title shall state “Before the National Company Law Tribunal” and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.

(3) Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.

(4) Where Saka Or other dates are used, corresponding dates of Gregorian Calendar shall also be given.

(5) Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.

(6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party.

(7) These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his legal heirs or representative, as the case may be, if more than one shall be shown by sub- numbers.

(8) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.

(9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

RULE 21: Particulars to be set out in the address for service

The address for service of summons shall be filed with every appeal or petition or application or caveat on behalf of a party and shall as far as possible contain the following items namely:-

- (a) the name Of the road, street, lane and Municipal Division or Ward, Municipal Door and other number Of the house;
- (b) the name of the town or village;
- (c) the post office, postal district and PIN Code, and
- (d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e- mail address, if any.

RULE 22: Initialling alteration

Every interlineations, eraser or correction or deletion in any appeal or petition or application or document shall be initialled by the party or his authorised representative presenting it.

RULE 23: Presentation Of petition or appeal

(1) Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.

(3) All the documents filed in the Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number Of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.

(5) In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.

(6) The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum of appeal.

RULE 23A: Presentation of joint petition

(1) The Bench may permit more than one person to join together and present a single petition if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter.

(2) Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Act.

RULE 24: Number of copies to be filed

The appellant or petitioner or applicant Or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each Of the opposite party.

RULE 25: Lodging of caveat

(1) Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before this Tribunal by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the Form No. NCLT 3C and contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant which full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up:

Provided, that the Tribunal may pass interim orders in case of urgency.

(2) The Caveat shall remain valid for a period of ninety days from the date of its filing.

RULE 26: Endorsement and Verification

(1) At the foot Of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.

(2) Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules.

RULE 27: Translation Of document

(1) A document other than English language intended to be used in any proceeding before the Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf Of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.

(2) Appeal or petition or Other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed into Tribunal.

RULE 28: Endorsement and scrutiny Of petition or appeal or document

(1) The person in charge of the filing-counter shall immediately on receipt of petition or appeal or application or document affix the date stamp of Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal Or petition or application or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

(3) The Registrar may for sufficient cause return the said document for rectification Or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

(4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document.

RULE 29: Registration Of proceedings admitted

On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.

RULE 30: Calling for records

On the admission of appeal or petition or application the Registrar shall, if so directed by the Tribunal, call for the records relating to the proceedings from any adjudicating authority and retransmit the same.

RULE 31: Production of authorisation for and on behalf of an association

Where an appeal or application or petition or other proceeding purported to be instituted by or On behalf of an association, the person or persons who sign (s) or verify (ies) the same shall produce along with such application, for verification by the Registry, a truecopy of the resolution of the association empowering such person(s) to do so:

Provided that the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization;

Provided further that it shall set Out the list of members for whose benefit the proceedings are instituted.

RULE 32: Interlocutory applications

Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

RULE 33: Procedure on production of defaced, torn or damaged documents

When a document produced along with any pleading appears to be defaced, torn, or in any way damaged or otherwise its condition or appearance requires special notice, a mention regarding its condition and appearance shall be made by the party producing the same in the Index of such a pleading and the same shall be verified and initialed by the officer authorized to receive the same.

PART- IV

General procedure

RULE 34: General Procedure

(1) In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.

(2) The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in **Form No. NCLT. 4.**

(3) Every petition or application or reference shall be filed in form as provided in **Form No. NCLT. 1** with attachments thereto accompanied by **Form No. NCLT.2** and in case of an interlocutory application, the same shall be filed in **Form NO. NCLT. 1** accompanied by such attachments thereto along with **Form No. NCLT. 3.**

(4) Every petition or application including interlocutory application shall be verified by an affidavit in **Form No.NCLT.6.** Notice to be issued by the Tribunal to the opposite party shall be in **Form NCLT-5.**

RULE 35: Advertisement detailing petition

(1) Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in **Form NCLT-3A**, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office Of the company is situate, and at least once in English language in an English newspaper circulating in that district.

(2) Every such advertisement shall state;-

(a) the date on which the application, petition or reference was presented;

(b) the name and address of the applicant, petitioner and his authorised representative, if any,

(c) the nature and substance of application, petition or reference; (d) the date fixed for hearing;

(e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition Or reference at the hearing shall send a notice of his intention to the concerned Bench and the petitioner or his authorised representative, if any, indicating the nature of interest and grounds of opposition so as to reach him not later than two days previous to the day fixed for hearing.

(3) Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.

(4) An affidavit shall be filed to the Tribunal, not less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served:

Provided that the affidavit shall be accompanied with such proof Of advertisement or of the service, as may be available.

(5) Where the requirements of this rule or the direction Of the Tribunal, as regards the advertisement and service Of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

(6) The Tribunal may, if it thinks fit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.

RULE 36: Maintenance of Cash Register

(1) If any payment has been received by way of Indian postal orders or demand drafts or in cash by the Registry, the transaction shall be entered immediately by the Registration Clerk on their receipt side in a Cash Register kept for the purpose.

(2) On every next working day or the last working day Of the week, the payments received during such day or week by way of Indian postal orders or demand drafts shall be transmitted by the Registration Clerk to the concerned official vested with the work pertaining to the Cashier who after scrutiny and verification shall acknowledge the receipt Of all moneys in the Cash Register.

(3) The official referred to in sub-rule (2) shall deposit all payments received by way of Indian postal order or demand draft or cash in the Bank account of the Tribunal.

RULE 37: Notice to Opposite Party

(1) The Tribunal shall issue notice to the respondent to show cause against the application or petition on a date Of hearing to be specified in the Notice. Such notice in Form No. NCLT.5 shall be accompanied by a copy of the application with supporting documents.

(2) If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, the Tribunal, after according reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application.

(3) If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.

RULE 38: Service of Notices and processes

(1) Any notice or process to be issued by the Tribunal may be served by post or by courier or at the e-mail address as provided in the petition or application or in the reply;

(2) The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal; –

(a) by hand delivery through a process server or respective authorised representative;

(b) by registered post or speed post with acknowledgment due or by courier; or

(c) service by the party himself.

Explanation.—For the purposes of sub-rules (1) and (2), the term “courier” means a person or agency which delivers the document and provides proof of its delivery.

(3) Where a notice issued by the Tribunal is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such Other person duly authorised by the Registrar in this behalf, an affidavit Of service of notice alongwith the proof of delivery,

(4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

(5) A notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice Or a process, and such service on the authorised representative shall be deemed to be a proper service.

(6) Where the Tribunal directs a service under sub-rule (4), such amount Of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with theregistry of the Tribunal bythepetitioneror applicant.

RULE 38A: Multiple remedies

A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another.

RULE 39: Production of Evidence by Affidavit

(1) The Tribunal may direct the parties to give evidence, if any, by affidavit.

(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary, in the interest of natural justice, it may order cross -examination of any deponent on the points Of conflict either through information and communication facilities such as video conferencing or otherwise as may be decided by the Tribunal, on an application moved by anyparty.

(3) Every affidavit to be filed before the Tribunal shall be in **Form No.NCLT.7**.

RULE 40: Production of additional evidence before the Bench

(1) Notwithstanding anything contained in rule 39, the parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector,

appointed by the Central Government for the purpose Of investigating the affairs of the concerned Company, during investigation under Chapter XIV of the Act, but if the Bench requires any additional evidence Or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be produced.

(2) Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.

(3) If the document is directed to be produced or witness examined or evidence adduced before any authority, the party shall comply with the direction of the Bench and after compliance, send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.

(4) Additional evidence Or document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they shall be afforded an opportunity to rebut the contents of the said additional evidence.

RULE 41: Filing of Reply and other Documents by the Respondents

(1) Each respondent may file his reply to the petition or the application and copies of the documents, either in person or through an authorised representative, with the registry as specified by the Tribunal.

(2) A copy of the reply Or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.

(3) To the reply or documents filed under sub-rule (1), the respondent shall specifically admit, deny or rebut the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

RULE 42: Filing of Rejoinder

Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.

RULE 43: Power of the Bench to call for further information or evidence

(1) The Bench may, before passing orders on the petition or application, require the parties or any one Or more Of them, to produce such further documentary or other evidence as it may consider necessary:-

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary' and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode Of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.

(3) Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication Of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded. either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.

RULE 44: Hearing of petition Or applications

(1) The Tribunal shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

(2) Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or Otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interests of the justice.

RULE 45: Rights of a party to appear before the Tribunal

- (1) Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.
- (2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in **Form No. NCLT. 12** representing the respective parties to the proceedings.
- (3) The Central Government, the Regional Director or the Registrar Of Companies or Official Liquidator may authorise an officer Or an Advocate to represent in the proceedings before the Tribunal.
- (4) The officer authorised by the Central Government Or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.
- (5) During any proceedings before the Tribunal, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs Of the company on the basis of information available in the MCA21 portal. Reasons for such directions shall be recorded in writing.
- (6) There shall be no audio or video recording of the Bench proceedings by the parties or their authorised representatives.

RULE 46: Registration of authorised representative's interns

- (1) No intern employed by an authorised representative shall act as such before the Tribunal or be permitted to have access to the records and obtain copies Of the orders Of a Bench of the Tribunal in which the authorised representative ordinarily appears, unless his name is entered in the register of interns maintained by the Bench.
- (2) An authorised representative desirous of registering his intern shall make a petition or an application to the Registrar in **Form NCLT 10** and on such application being allowed by the Registrar, his name shall be entered in the register of interns.

RULE 47: Oath to the witness

The Bench Officer or the Court Officer, as the case may be, shall administer the following oath to awitness:-

“I do swear in the name of God / solemnly affirm that what I shall state shall be the truth and nothing but the truth.”

RULE 48: Consequence of non-appearance of applicant

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.

RULE 49: Ex-parte Hearing and disposal

(1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.

Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.

RULE 50: Registry to send certified copy

The Registry shall send a certified copy of final Order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.

RULE 51: Power to regulate the procedure

The Tribunal may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Act.

RULE 52: Summoning of witnesses and recording Evidence

(1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.

(2) Where summons are issued by the Tribunal under sub-rule (1) to any Witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.

RULE 53: Substitution of legal representatives

(1) Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties Or by Or against the assignee, receiver Or liquidator, as the case may be.

(2) In the case Of death of a party during the pendency of the proceedings before the Tribunal, the legal representative Of the deceased party may apply within ninety days of the date of such death for being brought on record.

(3) Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:
Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased at any time before disposing the petition on merits.

RULE 54: Assessors or valuers

(1) In any enquiry into a claim, the Tribunal may call in the aid of assessor or valuer, not exceeding two in number, who possess any technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal.

(2) An assessor or valuer shall perform such functions as the Tribunal may direct.

(3) The remuneration, if any, to be paid to an assessor or valuer shall in every case be determined by the Tribunal and be paid by it in the manner as may be specified by the Tribunal.

RULE 55: Pleadings before the Tribunal

No pleadings, subsequent to the reply, shall be presented except by the leave Of the Tribunal upon such terms as the Tribunal may think fit.

RULE 56: Application for execution

For execution Of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in **Form NCLT.8**.

RULE 57: Issue of process of execution

(1) On receipt of an application under rule 56 the Tribunal shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Tribunal shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such form as provided in the Code of Civil Procedure, 1908 (5 of 1908), as the case may be.

RULE 58: Effect Of non-compliance

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice.

RULE 59: Procedure for imposition Of penalty under the Act

(1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings Of the Bench, has been given a show cause notice and reasonable opportunity to represent his Or her or its case before the Bench or any officer authorised in this behalf.

(2) In case the Bench decides to issue show cause notice to any person or company or a party to the proceedings, as the case may be, under sub-rule (1), the Registrar shall issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Bench shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.

PART-V

Issuance of Orders and Disposal of Cases

RULE 60: Matters relating to the Judgments or Orders of the Tribunal

(1) Once the final text of the judgment has been approved and adopted, the judgment shall be signed and dated by the President or the concerned Members or Member and the Registrar, and shall contain the names of the Members who have taken part in the decision.

(2) Any Member differing as to the grounds upon which the judgment was based or some of its conclusions, or dissenting from the judgment, may append a separate or dissenting opinion.

(3) In case the members who have heard the case are equally divided in passing the Order or judgment, then the President shall constitute a Bench as referred in sub-section (5) of section 419 of the Act,

RULE 61: Amicus Curiae

(1) The Tribunal may, as its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to the Tribunal as amicus curiae on any point or points or legal issues as the Case may be assigned to such amicus curiae.

(2) The Tribunal may permit amicus curiae to have access to the pleadings of the parties and the Tribunal shall enable the parties to submit timely observations on brief provided by the amicus curiae.

(3) The Tribunal shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion Of the amicus curiae has been sought, to bear such expenses or fee as may be ordered by the Tribunal.

(4) The judgment and any appended opinions shall be transmitted to the parties and to amicus curiae.

RULE 62: Recusal

(1) For the purpose of maintaining the high standards and integrity of the Tribunal, the President or a Member of the Tribunal shall recuse himself:-

(a) in any cases involving persons with whom the President or the Member has or had a personal, familial or professional relationship;

(b) in any cases concerning which the President or the Member has previously been called upon in another capacity, including as advisor, representative, expert or witness; or

(c) if there exists other circumstances such as to make the President or the Member's participation seem inappropriate

(2) The President or any Member recusing himself may record reasons for recusal:

Provided that no party to the proceedings or any other person shall have a right to know the reasons for recusal by the President or the Member in the case.

PART-VI

Other Procedures

RULE 63: Presentation and scrutiny of petitions or applications

In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved Of the decision of the Registrar Or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.

PART- VII

Procedures in respect Of matters earlier dealt by other quasi-judicial bodies, courts and tribunals

RULE 64: Matter earlier dealt by Company Law Board

(1) Notwithstanding anything contained in any other law for the time being in force, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act dealing with the Tribunal have been given effect, or the Company Law Board has been dissolved in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective Benches of the Tribunal exercising corresponding territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it Was actually filed in the Company Law Board or its Bench from which it was transferred:

Provided that the Tribunal shall consider any action taken under the regulations of the Company Law Board as deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings, except in a case where the order is reserved by the Company Law Board or its Bench and in such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place.

Provided further that the Tribunal is at liberty to call upon the parties in a Case to produce

further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice.

(2) It shall be lawful for the President Or such Member to whom the powers are so delegated, to provide that matters falling under all other sections of the Act, shall be dealt with by such Benches consisting of one or more members as may be constituted in exercising of such power as enshrined in the Act:

Provided that matters pending before the Principal Bench Of the Company Law Board as on the date of constitution of Tribunal shall continue and be disposed of by a bench consisting Of not less than two Members of the Tribunal having territorial jurisdiction.

(3) It shall be lawful for the Tribunal to dispose of any case transferred to it wherever the Tribunal decides that further continuance of such application or petition transferred before the Tribunal shall be an unnecessary proceeding on account of changes which have taken place in the Act either upon an application filed by either of the parties to the proceedings or suo motu.

(4) A fresh petition or an application may also be filed in **Form NCLT 1** corresponding to those provisions of the Act, if both the parties thereto so consent with the approval Of the Tribunal while withdrawing the proceedings as already continued before the Company Law Board and serve a copy of the petition on the parties thereto including the Central Government, Regional Director, Registrar Of Companies, Official Liquidator or Serious Fraud Investigation Office, as the case may be, as provided in the Act, in the manner as provided under Part III.

(5) Upon an application to the Tribunal if the permission is granted to file a petition or an application in physical form, then the same shall be filed accompanied with the documents or papers to be attached thereto as required to prove the case subject to the provisions of the Act, and rules hereto.

(6) The same procedure shall also apply to other parties to application or petition for filing reply or counter thereto.

(7) Notwithstanding the above and subject to section 434 of the Act, the Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases.

RULE 65: Petition or Application under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934)

Provisions of these rules shall apply, mutatis mutandis, to the application or petition made under subsection

(2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934) or under such other analogous provision of the other Act(s).

PART- VIII

Special Procedure

RULE 66: Application under sub- section (7) of section 7

(1). An application under sub-section (7) of section 7 Of the Act shall be filed to the Tribunal in **Form NCLT-I** and shall be accompanied by such documents as are mentioned in Annexure -B.

(2) Every application filed under sub rule (1) shall also set out the following particulars, namely:-

(a) Name of the company and other details including date of incorporation, name and address of the subscribers, promoters and first directors; and (b) details of false or incorrect information or representation or material facts or information suppressed.

(c) details of such documents in or declaration filed or made for incorporating such company,

(d). involvement of promoters, subscribers and first directors in committing fraud during the course of incorporation;

(3) Subject to the provisions contained in Proviso to sub-section (7) of Section 7, the Tribunal may pass such orders, as it may think fit in accordance with clauses (a) to (e) of said sub-section (7).

RULE 67: Petition under sub-section (41) of section 2

The Petition under the sub-section (41) of Section 2 be filed to the Tribunal in **Form NCLT-I** and shall be accompanied by such documents as are mentioned in Annexure -B.

RULE 68: Petition under section 14

(1) A petition under the second provision to sub-section (l) of section 14 of the Act for the conversion of a public company into a private company, shall, not less than three months from the date of passing of Special resolution, be filed to the Tribunal in **Form No. NCLT. 1** and shall be accompanied by such documents as are mentioned in Annexure B.

(2) Every petition filed under sub-rule (1) shall set out the following particulars :

- (a) the date of the Board meeting at which the proposal for alteration of Articles was approved;
- (b) the date of the general meeting at which the proposed alteration was approved;
- (c) State at which the registered office of the company was situated;
- (d) number of members in the company, number of members attended the meeting and number of members of voted for and against;
- (e) reason for conversion into a private company, effect Of such conversion on shareholders, creditors, debenture holders and other related parties.
- (f) listed Or unlisted publiccompany;
- (g) the nature of the company, that is, a company limited by shares, a company limited by guarantee (having share capital or not having share capital) and unlimited company;
- (h) details as to whether a company registered under section 8 of the Act.

(3) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of petition by not more than two months, setting forth the following details, namely:-

- (a) the names and address of every creditor and debenture holder of the company;
- (b) the nature and respective amounts due to them in respect of debts, claims or liabilities;
- (c) in respect of any contingent or unascertained debt or any such claim admissible to proof in winding up of the company, the value, so far as can be justly estimated of such debt or claim:

Provided that the petitioner company shall file an affidavit, signed by the company secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list Of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge.

(4) A duly authenticated copy Of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(5) The company shall at least fourteen days before the date of hearing;

(a) advertise the petition in accordance with rule 35;

(b) serve, by registered post with acknowledgement due, individual notice in **Form NCLT. No. 3B** to the effect set out in sub-rule (a) on each debenture-holder and creditor of the company; and

(c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of Companies and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any other Act.

(6) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registration or before the date of hearing.

(7) While passing an order, the Tribunal may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid complying with the provisions of the Act, disallow the conversion with reasons to be recorded in writing.

RULE 68A: Application to cancel variation of rights under sub-section (2) of section 48

(1) Where an application to cancel a variation of the rights attached to the shares of any class is made on behalf of the shareholders of that class entitled to apply for cancellation under sub-section (2) of section 48 by the letter of authority signed by

the shareholders so entitled, authorising the applicant or applicants to present the application on their behalf, such letter of authority shall be annexed to the application, and the names and addresses of all the shareholders, the number of shares held by each of them, aggregate number of such shares held and percentage of the issued shares of that class shall be set out in the Schedule to the application.

- (2) The application in **Form No. NCLT. 1** shall be accompanied by documents required for the purposes of the case and shall set out –
- (a) the particulars of registration;
 - (b) the capital structure, the different classes of shares into which the share capital of the company is divided and the rights attached to each class of shares;
 - (c) the provisions of the memorandum or articles authorising the variation of the rights attached to the various classes of shares;
 - (d) the total number of shares of the class whose rights have been varied;
 - (e) the nature of the variation made, and so far as may have been ascertained by the applicants, the number of shareholders of the class who gave their consent to the variation or voted in favour of the resolution for variation and the number of shares held by them;
 - (f) the number of shareholders who did not consent to the variation or who voted against the resolution, and the number of shares held by them;
 - (g) the date on which the consent was given or the resolution was passed; and
 - (h) the reasons for opposing the variation.
- (3) The applicant shall at least fourteen days before the date of the filing of the petition advertise the application in accordance with rule 35.
- (4) Where any objection of any person whose interest is likely to be affected by the proposed application is received by the applicant, a copy thereof shall be served to the Registrar of Companies and Regional Director on or before the date of hearing.
- (5) On any application, the Tribunal, after hearing the applicant and any other person, as appears to it, to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case that the variation would unfairly prejudice to the shareholders of the class represented by the applicant, cancel the variation and shall, if not so satisfied, confirm the variation for reasons to be recorded:
- Provided that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.

RULE 69: Petition under sub-section (3) of section 55

(l) The petition under sub-section (3) of section 55 of the Act shall be in **Form No. NCLT. 1** and shall be accompanied by documents mentioned in Annexure B and setting out:

- (a) particulars of registration
- (b) capital structure, the different classes of shares into which the share capital of the company is divided;
- (c) the provisions of the memorandum or articles authorizing the issue of preference shares;
- (d) total number of preference shares issued;
- (e) details of such preference shares that are not redeemed or unable to pay dividend;
- (f) terms and conditions of issue of such existing preference shares;
- (g) total number of such preference shares (unredeemed) and number of holders consented for with value of such preference shares and percentage of holders who have consented for, and
- (h) date or dates on which the consent was given or the resolution was passed.

(2) On petition under sub-section (1), the Tribunal, after hearing the petitioner and any other person as appears to it to be interested in the petition, may, if it is satisfied, having regard to all the circumstances of the case, approve for issue of further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of unredeemable preference shares:

Provided that the Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares:

Provided further that the Tribunal may, at its discretion, make such orders as to costs as it thinks fit.

RULE 70: Appeal under sections 58 and 59

(1) The appeals against the refusal for registration of transfer Or transmission of securities under section 58 or for rectification of register of members under section 59 shall be made to the Tribunal by way of a petition in **Form No. NCLT. 1** and shall be accompanied by such documents as are mentioned in Annexure B:

Provided that a copy of the appeal shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal.

(2) The petitioner shall at least fourteen days before the date of hearing advertise the petition in accordance with rule 35.

(3) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar on or before the date of hearing:

(4) The Tribunal may, while dealing with a petition under section 58 or 59, at its discretion, make-

(a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(5) On any petition under section 59, the Tribunal may-

(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.

RULE 71: Application under proviso to clause (b) of sub-section (1) of section 61

(1) An application for Obtaining the approval of the Tribunal for the consolidation and division of all or any of the share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders shall be filed in **Form No. NCLT. 1** and shall be accompanied by such documents as are mentioned in Annexure B.

(2) The application shall, inter alia, set forth the following:-

- (a) provision of articles authorising such consolidation or division;
- (b) existing capital structure Of the company;
- (c) new capital structure of the compa.ny after the consolidation or division;
- (d) class of shares being consolidated or divided;
- (e) face value of shares pre and post consolidation or division;
- (f) justification for such consolidation or division;

(3) The company shall at least fourteen days before the date of hearing

- (a) advertise the petition in accordance with rule 35; and
- (b) serve, by registered post with acknowledgement due, a notice together with the Copy of the application to the Central Government, Registrar of Companies and to the Securities and Exchange Board of India, in the case Of listed companies and to the regulatory body, if the company is regulated under any other Act.

(4) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central Government, Registrar of Companies and the Securities Exchange Board of India, in the case of listed companies and to any regulator, if the company is regulated under any other Act on or before the date of hearing.

(5) Upon hearing the application Or any adjourned hearing thereof, the Tribunal may pass such order, subject to such terms and conditions, as it thinks fit.

RULE 72: Appeal against the order of the Government under Section 62(4)

(1) Where any Government by virtue of provisions of sub-section (4) of section 62, in public interest, Converts the debentures or loan or any part thereof into shares in the company On such terms and conditions as appear to the Government to be reasonable in the circumstances of the case even in terms of the issue of such debentures or the raising of such loans do not include a term for providing for an option for such conversion.

If such terms and conditions of conversion are not acceptable to the company, it may, within sixty days from the date Of communication of such order, appeal to the Tribunal, in **Form – NCLT-9**, which shall after hearing the company and the Government, pass such order as it deems fit.

RULE 73: Application under sections 71(9), 71(10), section 73(4) or section 74(2) and 76(2)

(1)Where a company fails to redeem the debentures or repay the deposits or any part thereof or any interest thereon, an application under sub-section (10) of section 71 or under sub-section (4) of section 73 of the Act Or section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934), shall be filed to the Tribunal, in **Form No. NCLT. 11** in duplicate and shall be accompanied by such documents as are mentioned in Annexure B, by-

(a) in case Of debentures, all or any of the debenture holders concerned, or debenture trustee; or

(b) in case of deposits, all or any of the depositors concerned, or where the deposits are secured, by the deposit trustee,

(2) There shall be attached to the application, a list of depositors or debenture holders, as the case may be, setting forth the following details in respect of every such depositor or debenture holder:-

(a) full name, age, father's/ mother's/ spouse's name, occupation and full residential address;

(b) fixed deposit receipt number or debenture certificate number, as the case may be;

(c) date of maturity;

(d) amount due to the person by the company;

(e) amount already paid by the company, if any;

(f) total amount due as on the date on the application:

Provided that where the company is the applicant, it shall file an affidavit stating that the list of depositors or debenture holders, as the case may be, is correct, and that the estimated values as given in the list of the amount payable to such depositors or debenture holders are proper estimates of the values of such debts and claims.

(3) The Tribunal shall pass an appropriate order within a period Of sixty days from the date of receipt of application under sub-rule (1):

Provided that the Tribunal shall, before making any order under this rule, give a reasonable opportunity of being heard to the company and any other person interested in the matter.

(4) The Tribunal may, if it is satisfied, on the application filed under sub-rule (1), that it is necessary so to do, to safeguard the interests of the company, the debenture holders or the depositors, as the case may be, or in the public interest, direct, by order, the company to make repayment of such deposit or debenture or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that while passing the order, the Tribunal shall consider the financial condition of the company, the amount Or deposit or debenture or part thereof and the interest payable thereon.

(5) The application under sub-section (2) of section 74 and sub-section (2) of section 76 read with section 74(2) shall be in **Form NCLT-I** and shall accompanied with the documents as per Annexure B.

(6) A copy of application under sub-section (2) of section 76 and under subsection (2) of section 74 shall be served on the Regional Director and the Registrar of Companies before the date of hearing.

(7) The Registrar of Companies in consultation with Regional Director shall submit before the Tribunal, the report on the affairs of the company within thirty days from the date of the receipt of the application and Tribunal may consider any Observation made by the Registrar of Companies before passing an order.

RULE 74: Application for calling or obtaining a direction to call annual general meeting

(1) An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company in **Form No. NCLT. 1** and shall be accompanied by the documents specified in Annexure B.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

RULE 75: Application for obtaining an order for calling of general meeting (other than Annual General Meeting)

(1) An application under section 98 for obtaining an order for calling of a general meeting (other than Annual General Meeting) shall be made by any director or member of the company in **Form No. NCLT. 1** and shall be accompanied by the documents specified in Annexure B.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

RULE 76: Inspection of minute-books Of general meeting

Where any member has requested the company for inspection of minute-book of general meeting on payment of requisite fee and the company refused to give such inspection, he may apply to the Tribunal in Form No NCLT-9 for direction to the company for inspection of minute- book of general meeting.

RULE 76A: Application under section 130

The Central Government, the Income-tax authorities, the Securities and Exchange Board of India, any other statutory regulatory body or authority or any person concerned may file an application in **Form No. NCLT. 9** for re-opening of books of accounts and for re-casting of financial statement of a company under section 130 of the Act and such application shall be accompanied by such documents as mentioned in Annexure-B.

RULE 77: Application under section 131 (1) Where it appears to the directors of a company that the financial statement of the company or the report of the Board do not comply with the provisions of section 129 or section 134, the application shall be filed in Form No. NCLT-I within fourteen days of the decision taken by the Board.

(2) In case the majority of the directors of company Or the auditor Of the company has been changed immediately before the decision is taken to apply under section 131, the company shall disclose such facts in the application.

(3) The application shall, inter alia, set forth the following particulars, namely'-

(a) financial year or period to which such accounts relates;

(b) the name and contact details of the Managing Director, Chief Financial Officer, directors, Company Secretary and officer of the company responsible for making and maintaining such books of accounts and financial statement;

(c) where such accounts are audited, the name and contact details of the auditor or any former auditor who audited such accounts;

(d) copy of the Board resolution passed by the Board of Directors;

(e) grounds for seeking revision of financial statement or Board's Report.

(4) The company shall at least fourteen days before the date of hearing advertise the application in accordance with rule 35.

(5) The Tribunal shall issue notice and hear the auditor of the original financial statement, if present auditor is different and after considering the application and hearing the auditor and any Other person as the Tribunal may deem fit, may pass appropriate order in the matter.

(6) A certified copy of the order of the Tribunal shall be filed with the Registrar of Companies within thirty days of the date of receipt of the certified copy..

(7) On receipt of approval from Tribunal a general meeting may be called and notice of such general meeting along with reasons for change in financial statements may be published in newspaper in English and in vernacular language.

(8) In the general meeting, the revised financial statements, statement of directors and the statement of auditors may be put up for consideration before a decision is taken on adoption Of the revised financial statements.

(9) On approval of the general meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be, shall be filed with the Registrar of Companies within thirty days of the date of approval by the general meeting.

RULE 78: Application under Section 140

(1) An application may be filed by the director on behalf of the company or the aggrieved auditor to the Tribunal in **Form NCLT- 1** and shall be accompanied by such documents as are mentioned in Annexure

(2) Where the Tribunal is satisfied on an application of the company or the aggrieved person that the rights conferred by the provisions of section 140 are being abused by the auditor, then, the copy of the representation need not be sent and the representation need not be read out at the meeting,

(3) If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application make an order that the auditor shall not function as an auditor and the Central Government may appoint another auditor in his place.

RULE 79: Application under section 169

The Company or any other person who claims to be aggrieved may make an application to the Tribunal in **Form NCLT- I** and shall be accompanied with such documents as are mentioned in Annexure B.

RULE 80: Application under section 213 for investigation

An application under section 213 may be made in **Form NCLT- I** and shall be accompanied with such documents as are mentioned in Annexure B.

RULE 81: Application under section 241

(1) An Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall be filed in the **Form NCLT- I** and shall be accompanied with such documents as are mentioned in Annexure B.

(2) Where an application is presented under section 241 on behalf of any members of a company entitled to apply under sub-section (1) of the said section, by any one or more of them, the letter of consent signed by the rest of the members so entitled authorising the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares.

(3) A copy of every application made under this rule shall be served on the company, other respondents and all such persons as the Tribunal may direct.

RULE 82: Withdrawal of Application filed under section 241

(1) An application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall not be withdrawn without the leave of the Tribunal.

(2) An Application for withdrawal under sub-rule (1) shall be filed in the **Form NCLT-9**.

RULE 83: Application under section 243

(1) An application under clause (b) of sub-section (1) of section 243 of the Act for leave to any of the persons mentioned therein to be appointed or to act as the managing director or other director or manager of the company, shall be filed as per the appropriate **Form NCLT-1** and shall be accompanied with such documents as are mentioned in Annexure B.

(2) An application under sub - rule (1) shall state whether a notice of intention to apply for such leave, as required under the proviso to sub-section (1) of section 243 of the Act, has been given to the Central Government and such application shall also be accompanied by a copy of such notice.

(3) The notice of the date of hearing of the application together with a copy of the application shall be served on the Central Government not less than fifteen days before the date fixed for the hearing.

RULE 84: Right to apply under section 245

(1) An application under sub-section (1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filled in **Form NCLT-9**.

(2) A copy of every application under sub-rule (1) shall be served on the company, other respondents and all such persons as the Tribunal may direct.

RULE 85: Conducting a class action suit

- (1) Without prejudice to the generality of the provisions of sub-section (4) of section 245 of the Act, the Tribunal may, while considering the admissibility of an application under the said section, in addition to the grounds specified therein, take into account the following:
- (a) whether the class has so many members that joining them individually would be impractical, making a class action desirable;
 - (b) whether there are questions of law or fact common to the class;
 - (c) whether the claims or defences of the representative parties are typical of the claims or defences of the class;
 - (d) whether the representative parties will fairly and adequately protect the interests of the class.
- (2) For the purposes of clause (c) of sub-section (4) of section 245, while considering the desirability of an individual or separate action as opposed to a class action, the Tribunal may take into account, in particular, whether admitting separate actions by member or members or depositor or depositors would create a risk of:-
- (a) inconsistent or varying adjudications in such separate actions; or
 - (b) adjudications that, as a practical matter, would be dispositive of the interests of the other members;
 - (c) adjudications which would substantially impair or impede the ability of other members of the class to protect their interests.

RULE 86: Rule of opt-out

- (1) A member of a class action under section 245 of the Act is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of the Tribunal, as per **Form No. NCLT-1**.
- (2) For the purposes of this rule, a class member who receives a notice under clause (a) of sub-section (5) of section 245 of the Act shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by the Tribunal in accordance with rule 38.
- (3) A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by the Tribunal.

RULE 87: Publication of notice

(1) For the purposes of clause (a) of sub section (5) of section 245 of the Act, on the admission of an application filed under sub-section (1) of section 245 of the Act, a public notice shall be issued by the Tribunal as per **Form No. NCLT-13** to all the members of the class by-

a. publishing the same within seven days of admission of the Application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

b. requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under sub-clause (a):

Provided that such notice shall also be placed on the websites of the Tribunal and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the Tribunal.

(2) The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

(3) The public notice shall, *inter alia*, contain the following-

(a) name of the lead applicant;

(b) brief particulars of the grounds of application;

(c) relief sought by such application;

(d) statement to the effect that application has been made by the requisite number of members/depositors;

(e) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and these rules and it is satisfied that the application may be admitted;

(f) date and time of the hearing of the said application;

(g) time within which any representation may be filed with the Tribunal on the application;

(h) the details of the admission of the application and the date by which the form of opt out has to be completed and sent as per **Form NCLT-1** and shall be accompanied with such documents as are mentioned in Annexure "B", and such other particulars as the Tribunal thinks fit.

(4) The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

RULE 88: Reference to the Tribunal

Any reference to the Tribunal by the Registrar of Companies under section 441 of the Act, or any reference to the Tribunal by the Central Government under proviso to sub-section (5) of section 140, 221, sub-section (2) of section 224, sub-section (5) of section 224, sub-section (2) of section 241 of the Act, or reference under sub-section (2) of section 75 or any complaint by any person under sub-section (1) of section 222, or any reference by a company under clause (c) of sub-section (4) of section 22A of the Securities Contracts (Regulations) Act, 1956 shall be made by way of a petition or application in **Form No. NCLT- 9** in Annexure A and shall be accompanied by documents mentioned in Annexure-B.

PART IX CAUSE LIST

RULE 89: Preparation and publication of daily cause list

(1) The Registry shall prepare and publish on the notice board of the Registry before the closing of working hours on each working day the cause list for the next working day and subject to the directions of the President, listing of cases in the daily cause list shall be in the following order of priority, unless otherwise ordered by the concerned Bench; namely;-

- a. cases for pronouncement of orders;
- b. cases for clarification;
- c. cases for admission;
- d. cases for orders or directions;
- e. part-heard cases, latest part-heard having precedence; and
- f. cases posted as per numerical order or as directed by the Bench;

(2) The title of the daily cause list shall consist of the number of the appeal or petition, the day, date and time of the court sitting, court hall number and the coram indicating the names of the President, Judicial Member and Technical Member constituting the Bench.

(3) Against the number of each case listed in the daily cause list, the following shall be shown, namely;-

- (a) names of the legal practitioners appearing for both sides and setting out in brackets the rank of the parties whom they represent;
- (b) names of the parties, if unrepresented, with their ranks in brackets.

(4) The objections and special directions, if any, of the Registry shall be briefly indicated in the daily cause list in remarks column, whenever compliance is required.

RULE 90: Carry forward of cause list and adjournment of cases on account of non-sitting of a Bench

(1) If by reason of declaration of holiday or for any other unforeseen reason, the Bench does not function for the day, the daily cause list for that day shall, unless otherwise directed, be treated as the daily cause list for the next working day in addition to the cases already posted for that day.

(2) When the sitting of a particular Bench is cancelled for the reason of inability of a Member of the Bench, the Registrar shall, unless otherwise directed, adjourn the cases posted before that Bench to a convenient date and the adjournment or posting or directions shall be notified on the notice board of the Registry.

PART X

RECORD OF PROCEEDINGS

RULE 91: Diaries

(1) Diaries shall be kept by the clerk-in-charge in such form as may be specified in each appeal or petition or application and they shall be written legibly.

(2) The diary in the main file shall contain a concise history of the appeal or petition or application, the substance of the order passed thereon and in execution proceedings, it shall contain a complete record of all proceedings in execution of order or direction or rule and shall be checked by the Deputy Registrar and initialed once in a fortnight.

RULE 92: Order sheet

(1) The Court Master of the Bench shall maintain order sheet in every proceedings and shall contain all orders passed by the Tribunal from time to time .

(2) All orders passed by the Tribunal shall be in English and the same shall be signed by the Members of the Tribunal constituting the Bench:

Provided that the routine orders, such as call for of the records, put up with records, adjourned and any other order as may be directed by the Member of the Tribunal shall be signed by the Court Master of the Bench.

(3) The order sheet shall also contain the reference number of the appeal or petition or application, date of order and all incidental details including short cause title thereof.

RULE 93: Maintenance of court diary

(1) The Court Master of the Bench shall maintain legibly a Court Diary, wherein he shall record the proceedings of the court for each sitting with respect to the applications or petitions or appeals listed in the daily cause list.

(2) The matters to be recorded in the court Diary shall include details as to whether the case is adjourned, or part-heard or heard and disposed of or heard and orders reserved, as the case may be, along with dates of next sitting wherever applicable.

RULE 94: Statutes or citations for reference

The parties or legal practitioners shall, before the commencement of the proceedings for the day, furnish to the Court Master a list of law journals, reports, statutes and other citations, which may be needed for reference or photocopy of full text thereof.

RULE 95: Calling of cases in court.—Subject to the orders of the Bench, the Court Master shall call the cases listed in the cause list in the serial order.

RULE 96: Regulation of court work (1) When the Tribunal is holding a sitting, the Deputy Registrar shall ensure –

- a. that no inconvenience or wastage of time is caused to the Bench in making available the services of Court Master or stenographer or peon or attendant;
- b. the Court Master shall ensure that perfect silence is maintained in and around the Court Hall and no disturbance whatsoever is caused to the functioning of the Bench and that proper care is taken to maintain dignity and decorum of the court.

(2) When the Bench passes order or issues directions, the Court Master shall ensure that the records of the case along with proceedings or orders of the Bench are transmitted immediately to the Registry and the Registry shall verify the case records received from the Court Master with reference to the cause list and take immediate steps to communicate the directions or orders of the Bench.

PART XI MAINTENANCE OF REGISTERS

RULE 97: Registers to be maintained

The following Registers shall be maintained and posted on a day to day basis by the Registry of the Tribunal by such ministerial officer or officers as the Registrar may, subject to any order of the President, direct –

- a. register of petitions;
- b. register of unnumbered petitions or appeals;
- c. register of caveats lodged; and
- d. register of interlocutory applications;

RULE 98: Arrangement of records in pending matters

The record of appeal or petition shall be divided into the following four parts and shall be collated and maintained –

- a. main file : (Petition being kept separately);
- b. miscellaneous application file;
- c. process file; and
- d. execution file

RULE 99: Contents of main file

The main file shall be kept in the following order and it shall be maintained as permanent record till ordered to be destroyed under the rules –

- a. index;
- b. order sheet;
- c. final order or judgment;
- d. memo of appeal or petition, as the case may be, together with any schedule annexed thereto;
- e. counter or reply or objection, if any;
- f. (i) oral evidence or proof of affidavit;
- i. evidence taken on commission; and
- ii. documentary evidence;
- g. written arguments.

RULE 100: Contents of process file

The process file shall contain the following items; namely –

- a. index;
- b. power of attorney or vakalatnama;
- c. summons and other processes and affidavits relating thereof;
- d. applications for summoning witness;
- e. letters calling records; and
- f. all other miscellaneous papers such as postal acknowledgements.

RULE 101: Execution file

The execution file shall contain the following items, namely-

- a. index;
- b. the order sheet;
- c. the execution application;
- d. all processes and other papers connected with such execution proceedings;
- e. transmission of order to civil court, if ordered; and
- f. result of execution;

RULE 102: File for miscellaneous applications

For all miscellaneous applications there may be only one file with a title page prefixed to it and immediately after the title page, the diary, the miscellaneous applications, supporting affidavit, the order sheet and all other documents shall be filed.

RULE 103: Preservation of Record

(1) All necessary documents and records relating to petitions or applications dealt with by the Tribunal shall be stored or maintained as provided in these rules and other physical records kept in a record room shall be preserved for a period of five years after the passing of the final order.

(2) Notwithstanding anything contained in sub-rule (1) the record of the petitions or applications dealt with by the Tribunal including the orders and directions passed by the Tribunal, shall be maintained by the Registry of the Tribunal for a period of fifteen years after the passing of the final order.

RULE 104: Retention, Preservation and Destruction of Records

(1) The Record Keeper or any other officer so designated shall be responsible for the records consigned to the Record Room. He shall scrutinize the records received by him within three days and prepare an index.

(2) On the expiry of the period for preservation of the records specified under rule 103, the Registrar shall weed out the record.

PART XII

Service of Process / Appearance of Respondents And Objections

RULE 105: Issue of notice

(1) Where notice of an appeal or petition for caveat or interlocutory application is issued by the Tribunal, copies of the same, the affidavit in support thereof and if so ordered by the Tribunal, the copy of other documents filed therewith, if any, shall be served along with the notice on the otherside.

(2) The aforesaid copies shall show the date of presentation of the appeal or petition for caveat or interlocutory application and the name of the authorised representative, if any, of such party with his full address for service and the interim order, if any, made thereon.

(3) The Tribunal may order for issuing notice in appropriate cases and also permit the party concerned for service of the said notice on the other side by *Dasti* and in such case, deliver the notice to such party and it is for such party to file affidavit of service with proof.

(4) Acknowledgement under sub-rule (3) shall be filed by the party with the Registry before the date fixed for return of notice.

RULE 106: Summons

Whenever summons or notice is ordered by private service, the appellant or applicant or petitioner, as the case may be, unless already served on the other side in advance, shall arrange to serve the copy of all appeals or petition or application by registered post or courier service and file affidavit of service with its proof of acknowledgement before the date fixed for hearing.

RULE 107: Steps for issue of fresh notice

(1) If any notice issued under rule 105 is returned unserved, that fact and the reason thereof shall be notified immediately on the notice board of the Registry.

(2) The applicant or petitioner or his authorised representative shall within seven days from the date of the notification, take steps to serve the notice afresh.

RULE 108: Consequence of failure to take steps for issue of fresh notice

Where, after a summon has been issued to the other side, and returned unserved, and the

applicant or petitioner or appellant, as the case may be, fails to take necessary steps within a period as ordered by the Tribunal from the date of return of the notice on the respondent, the Registrar shall post the case before the Bench for further directions or for dismissal for non-prosecution.

RULE 109: Entries regarding service of notice or process

The judicial branch of the Registry shall record in the column in the order sheet 'Notes of the Registry', the details regarding completion of service of notice on the respondents, such as date of issue of notice, date of service, date of return of notice, if unserved, steps taken for issuing fresh notice and date of completion of services, etc.

RULE 110: Default of appearance of respondent and consequences.—Where the respondent, despite effective service of summons or notice on him does not appear before the date fixed for hearing, the Tribunal may proceed to hear the appeal or application or petition *ex-parte* and pass final order on merits:

Provided that it is open to the Tribunal to seek the assistance of any counsel as it deems fit in case the matter involves intricate and substantial questions of law having wide ramifications.

RULE 111: Filing of objections by respondent, form and consequences (1) The respondent, if so directed, shall file objections or counter within the time allowed by the Tribunal.

(2) The objections or counter shall be verified as an appeal or petition and wherever new facts are sought to be introduced with the leave of the Tribunal for the first time, the same shall be affirmed by a supporting affidavit.

(3) The respondent, if permitted to file objections or counter in any proceeding shall also file three copies thereof after serving copies of the same on the appellant or petitioner or their Counsel on record or authorised representative, as the case may be.

PART XIII

Fee on Petition or Appeal, Process Fee And Award of Costs

RULE 112: Fees

(1) In respect of the several matters mentioned in the Annexures, there shall be paid fees as prescribed in the Schedule of Fees appended to these rules;

Provided that no fee shall be payable or shall be liable to be collected on a petition or application filed or reference made by the Registrar of Companies, Regional Director or by any officer on behalf of the Central Government.

(2) In respect of every interlocutory application, there shall be paid fees as prescribed in Schedule of Fees of these rules:

Provided that no fee shall be payable or shall be liable to be collected on an application filed by the Registrar of Companies, Regional Director or by an officer on behalf of the Central Government.

(3) In respect of a petition or appeal or application filed or references made before the Principal Bench or the Bench of the Tribunal, fees referred to in this Part shall be paid by means of an Indian Postal Order or by a bank draft drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/Kolkata/Chennai /Mumbai, as the case may be or as decided by the President.

RULE 113: Award of costs in the proceedings

(1) Whenever the Tribunal deems fit, it may award cost for meeting the legal expenses of the respondent of defaulting party.

(2) The Tribunal may in suitable cases direct appellant or respondent to bear the cost of litigation of the other side, and in case of abuse of process of court, impose exemplary costs on defaulting party.

PART XIV INSPECTION OF RECORD

RULE 114: Inspection of the records

(1) The parties to any case or their authorised representative may be allowed to inspect the record of the case by making an application in writing to the Registrar and by paying the fee prescribed thereof.

(2) Subject to such terms and conditions as may be directed by the President by a general or special order, a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.

RULE 115: Grant of inspection

Inspection of records of a pending or decided case before the Tribunal shall be allowed only on the order of the Registrar.

RULE 116: Application for grant of inspection

(1) Application for inspection of record under sub-rule (1) and (2) of rule 114, shall be presented at Registry between 10.30 AM and 3.00 PM on any working day and two days before the date on which inspection is sought, unless otherwise permitted by the Registrar.

- (2) The Registry shall submit the application with its remarks before the Registrar, who shall, on consideration of the same, pass appropriate orders.
- (3) Inspection of records of a pending case shall not ordinarily be permitted on the date fixed for hearing of the case or on the preceding day.

RULE 117: Mode of inspection

- (1) On grant of permission for inspection of the records, the Deputy Registrar shall arrange to procure the records of the case and allow inspection of such records on the date and time fixed by the Registrar between 10.30 AM and 12.30 PM and between 2.30 PM and 4.30 PM in the immediate presence of an officer authorised in that behalf by the Registrar.
- (2) The person inspecting the records shall not in any manner cause dislocation, mutilation, tampering or damage to the records in the course of inspection.
- (3) The person inspecting the records shall not make any marking on any record or paper so inspected and taking notes, if any, of the documents or records inspected may be done only in pencil.
- (4) The person supervising the inspection, may at any time prohibit further inspection, if in his opinion, any of the records are likely to be damaged in the process of inspection or the person inspecting the records has violated or attempted to violate the provisions of these rules and shall immediately make a report about the matter to the Registrar and seek further orders from the Registrar and such notes shall be made in the Inspection Register.

RULE 118: Maintenance of register of inspection

The Deputy Registrar shall cause to maintain a Register for the purpose of inspection of documents or records and shall obtain therein the signature of the person making such inspection on the Register as well as on the application on the conclusion of inspection.

PART XV

Appearance of authorised representative

RULE 119: Appearance of authorised representative

Subject to as hereinafter provided, no legal practitioner or authorised representative shall be entitled to appear and act, in any proceeding before the Tribunal unless he files into Tribunal vakalatnama or Memorandum of Appearance as the case may, duly executed by or on behalf of the party for whom he appears.

RULE 120: Consent for engaging another legal practitioner

A legal practitioner proposing to file a Vakalatnama or Memorandum of Appearance as the case may be, in any pending case or proceeding before the Tribunal in which there is already a legal practitioner or authorised representative on record, shall do so only with the written consent of the legal practitioner or the authorised representative on record or when such consent is refused, with the permission of the Tribunal after revocation of Vakalatnama or Memorandum of Appearance as the case may be, on an application filed in this behalf, which shall receive consideration only after service of such application on the counsel already on record.

RULE 121: Restrictions on appearance

A legal practitioner or the authorised representative as the case may be, who has tendered advice in connection with the institution of any case or other proceeding before the Tribunal or has drawn pleadings in connection with any such matter or has during the progress of any such matter acted for a party, shall not, appear in such case or proceeding or other matter arising therefrom or in any matter connected therewith for any person whose interest is opposed to that of his former client, except with the prior permission of the Tribunal.

RULE 122: Restriction on party's right to be heard

The party who has engaged a legal practitioner or authorised representative to appear for him before the Tribunal may be restricted by the Tribunal in making presentation before it.

RULE 123: Empanelment of special authorised representatives by the Tribunal

- (1) The Tribunal may draw up a panel of authorised representatives or valuers or such other experts as may be required by the Tribunal to assist in proceedings before the Tribunal.
- (2) The President may call upon any of the persons from panel under sub-rule (1) for assistance in the proceedings before the Bench, if so required.
- (3) The remuneration payable and other allowances and compensation admissible to such persons shall be specified in consultation with the Tribunal.

RULE 124: Professional dress for the authorised representatives

While appearing before the Tribunal, the authorised representatives shall wear the same professional dress as prescribed in their Code of Conduct.

PART XVI AFFIDAVITS

RULE 125: Title of affidavits

Every affidavit shall be titled as 'Before the National Company Law Tribunal.' followed by the cause title of the appeal or application or other proceeding in which the affidavit is sought to be used.

RULE 126: Form and contents of the affidavit The affidavit shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 (5 of 1908).

RULE 127: Persons authorised to attest Affidavits shall be sworn or affirmed before an advocate or notary, who shall affix his official seal.

RULE 128: Affidavits of illiterate, visually challenged persons Where an affidavit is sworn or affirmed by any person who appears to be illiterate, visually challenged or unacquainted with the language in which the affidavit is written, the attester shall certify that the affidavit was read, explained or translated by him or in his presence to the deponent and that he seemed to understand it, and made his signature or mark in the presence of the attester in **Form NCLT-14**.

RULE 129: Identification of deponent

If the deponent is not known to the attester, his identity shall be testified by a person known to him and the person identifying shall affix his signature in token thereof.

RULE 130: Annexures to the affidavit

(1) Document accompanying an affidavit shall be referred to therein as Annexure number and the attester shall make the endorsement thereon that this is the document marked putting the Annexure number in the affidavit.

(1) The attester shall sign therein and shall mention the name and his designation.

PART XVII

DISCOVERY, PRODUCTION AND RETURN OF DOCUMENTS

RULE 131: Application for production of documents, form of summons

(1) Except otherwise provided hereunder, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) An application for summons to produce documents shall be on plain paper setting out the document the production of which is sought, the relevancy of the document and in case where the production of a certified copy would serve the purpose, whether application was made to the proper officer and the result thereof.

(3) A summons for production of documents in the custody of a public officer other than a court shall be in **Form NCLT-15** and shall be addressed to the concerned Head of the Department or such other authority as may be specified by the Tribunal.

RULE 132: *Suo motu* summoning of documents

Notwithstanding anything contained in these rules, the Tribunal may, *suo motu*, issue summons for production of public document or other documents in the custody of a public officer.

RULE 133: Marking of documents

(1) The documents when produced shall be marked as follows:

- a. If relied upon by the appellant's or petitioner's side, they shall be numbered as 'A' series.
- b. If relied upon by the respondent's side, they shall be marked as 'B' series.
- c. The Tribunal exhibits shall be marked as 'C' series.

(2) The Tribunal may direct the applicant to deposit with the Tribunal by way of Demand Draft or Indian Postal Order drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi, a sum sufficient to defray the expenses for transmission of the records before the summons is issued.

RULE 134: Return and transmission of documents

(1) An application for return of the documents produced shall be numbered and no such application shall be entertained after the destruction of the records.

(2) The Tribunal may, at any time, direct return of documents produced subject to such conditions as it deems fit.

PART XVIII

EXAMINATION OF WITNESSES AND ISSUE OF COMMISSIONS

RULE 135: Procedure for examination of witnesses, issue of Commissions

The provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall *mutatis mutandis* apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.

RULE 136: Examination in camera

The Tribunal may in its discretion examine any witness in camera.

RULE 137: Form of oath or affirmation to witness

Oath shall be administered to a witness in the following form :

“ I do swear in the name of God/solemnly affirm that what I shall state shall be truth, the whole truth and nothing but the truth”.

RULE 138: Form of oath or affirmation to interpreter

Oath or solemn affirmation shall be administered to the interpreter in the following form before the Bench Officer or the Court Officer as the case may be, as taken for examining a witness:

“I do swear in the name of God/solemnly affirm that I will faithfully and truly interpret and explain all questions put to and evidence given by witness and translate correctly and accurately all documents given to me for translation.”

RULE 139: Officer to administer oath

The oath or affirmation shall be administered by the Court Master.

RULE 140: Form recording of deposition

- (1) The Deposition of a witness shall be recorded in **Form NCLT-16**.
- (2) Each page of the deposition shall be initialed by the Members constituting the Bench.
- (3) Corrections, if any, pointed out by the witness may, if the Bench is satisfied, be carried out and duly initialed. If not satisfied, a note to the effect be appended at the bottom of the deposition.

RULE 141: Numbering of witnesses

The witnesses called by the applicant or petitioner shall be numbered consecutively as PWs and those by the respondents as RWs.

RULE 142: Grant of discharge certificate Witness discharged by the Tribunal may be granted a certificate in **Form NCLT-17** by the Registrar.

RULE 143: Witness allowance payable

(1) Where the Tribunal issues summons to a Government servant to give evidence or to produce documents, the person so summoned may draw from the Government travelling and daily allowances admissible to him as per rules.

(2) Where there is no provision for payment of Travelling Allowances and Daily Allowance by the employer to the person summoned to give evidence or to produce documents, he shall be entitled to be paid as allowance, (a sum in the opinion of the Registrar sufficient to defray the travelling and other expenses), having regard to the status and position of the witness.

(3) The party applying for the summons shall deposit with the Registrar the amount of allowance as estimated by the Registrar well before the summons is issued.

(4) If the witness is summoned as a court witness, the amount estimated by the Registrar shall be paid as per the directions of the Tribunal.

(5) The aforesaid provisions would govern the payment of batta to the interpreter as well.

RULE 144: Records to be furnished to the Commissioner

(1) The Commissioner shall be furnished by the Tribunal with such of the records of the case as the Tribunal considers necessary for executing the Commission.

(2) Original documents shall be furnished only if a copy does not serve the purpose or cannot be obtained without unreasonable expense or delay and delivery and return of records shall be made under proper acknowledgement.

RULE 145: Taking of specimen handwriting, signature etc.

The Commissioner may, if necessary, take specimen of the handwriting, signature or fingerprint of any witness examined before him.

PART XIX

DISPOSAL OF CASES AND PRONOUNCEMENT OF ORDERS

RULE 146: Disposal of Cases

On receipt of an application, petition, appeal etc, the Tribunal, after giving the parties a reasonable opportunity of being heard, pass such orders thereon as it thinks fit:

Provided that the Tribunal, after considering an appeal, may summarily dismiss the same, for reasons to be recorded, if the Tribunal is of opinion that there are no sufficient grounds for proceedings therewith.

RULE 147: Operative portion of the order

All orders or directions of the Bench shall be stated in clear and precise terms in the last paragraph of the order.

RULE 148: Corrections

Every Member of the Bench who has prepared the order shall initial all corrections and affix his initials at the bottom of each page.

RULE 149: Power to impose Costs

The Tribunal may, in its discretion, pass such order in respect of imposing costs on the defaulting party as it may deem fit.

RULE 150: Pronouncement of Order

(1) The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.

(2) Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.

(3) A certified copy of every order passed by the Tribunal shall be given to the parties.

(4) The Tribunal, may transmit order made by it to any court for enforcement, on

application made by either of the parties to the order or *suo motu*.

(5) Every order or judgment or notice shall bear the seal of the Tribunal.

RULE 151: Pronouncement of order by any one member of the Bench

(1) Any Member of the Bench may pronounce the order for and on behalf of the Bench.

(2) When an order is pronounced under this rule, the Court Master shall make a note in the order sheet, that the order of the Bench consisting of President and Members was pronounced in open court on behalf of the Bench.

RULE 152: Authorising any member to pronounce order

(1) If the Members of the Bench who heard the case are not readily available or have ceased to be Members of the Tribunal, the President may authorise any other Member to pronounce the order on his behalf after being satisfied that the order has been duly prepared and signed by all the Members who heard the case.

(2) The order pronounced by the Member so authorised shall be deemed to be duly pronounced.

(3) The Member so authorised for pronouncement of the order shall affix his signature in the order sheet of the case stating that he has pronounced the order as provided in this rule.

(4) If the order cannot be signed by reason of death, retirement or resignation or for any other reason by any one of the Members of the Bench who heard the case, it shall be deemed to have been released from part- heard and listed afresh for hearing.

RULE 153: Enlargement of time

Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.

RULE 154: Rectification of Order

(1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.

(2) An application under sub-Rule (1) may be made in **Form No. NCLT. 9** within two years from the date of the final order for rectification of the final order not being an interlocutory order.

RULE 155: General power to amend

The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

RULE 156: Making of entries by Court Master

Immediately on pronouncement of an order by the Bench, the Court Master shall make necessary endorsement on the case file regarding the date of such pronouncement, the nature of disposal and the constitution of the Bench pronouncing the order and he shall also make necessary entries in the court diary maintained by him.

RULE 157: Transmission of order by the Court Master

(1) The Court Master shall immediately on pronouncement of order, transmit the order with the case file to the Deputy Registrar.

(2) On receipt of the order from the Court Master, the Deputy Registrar shall after due scrutiny, satisfy himself that the provisions of these rules have been duly complied with and in token thereof affix his initials with date on the outer cover of the order.

(3) The Deputy Registrar shall thereafter cause to transmit the case file and the order to the Registry for taking steps to prepare copies and their communication to the parties.

RULE 158: Format of order

(1) All orders shall be neatly and fairly typewritten in double space on one side only on durable foolscap folio paper of metric A-4 size (30.5 cm long and 21.5 cm wide) with left side margin of 5 cm and right side margin of 2.5 cm. Corrections, if any, in the order shall be carried out neatly and sufficient space may be left both at the bottom and at the top of each page of the order to make its appearance elegant.

(2) Members constituting the Bench shall affix their signatures in the order of their seniority from right to left.

RULE 159: Indexing of case files after disposal

After communication of the order to the parties or legal practitioners, the official concerned shall arrange the records with pagination and prepare in the Index Sheet in Form no. to be prescribed by the Tribunal. He shall affix initials and then transmit the records with the Index initials to the records room.

RULE 160: Transmission of files or records or orders

Transmission of files or records of the cases or orders shall be made only after obtaining acknowledgement in the movement register maintained at different sections or levels as per the directions of the Registrar.

RULE 161: Filing of Order of the Tribunal with the Registrar of Companies

The certified copy of the order passed by the Tribunal shall be filed by the company in form INC-28 alongwith fee of Rupees five hundred with the Registrar of Companies within the time specified in the Act or specified by the Tribunal. Where no time limit is prescribed by the Tribunal, such order shall be filed within thirty days from the date of receipt of certified copy of the order.

RULE 162: Copies of orders in library

- (1) The officer in charge of the Registry shall send copies of every final order to the library of the Tribunal.
- (2) Copies of all orders received in each month shall be kept at the library in a separate folder, arranged in the order of date of pronouncement, duly indexed and stitched.
- (3) At the end of every year, a consolidated index shall also be prepared and kept in a separate file in the library.
- (4) The order folders and the indices may be made available for reference in the library to the legal practitioners.

PART XX

National Company Law Tribunal Orders

RULE 163: Register of Appeals, Petitions, etc

(1) A Register in **Form NCLT-18** shall be maintained in regard to appeals, petitions, etc., against the orders of the Tribunal to the National Company Law Appellate Tribunal and necessary entries therein be promptly made by the judicial branch.

(2) The register shall be placed for scrutiny by the President in the first week of every month.

RULE 164: Placing of National Company Law Appellate Tribunal orders before Tribunal

Whenever an interim or final order passed by the National Company Law Appellate Tribunal in an appeal or other proceeding preferred against a decision of the Tribunal is received, the same shall forthwith be placed before the President and Members for information and kept in the relevant case file and immediate attention of the Registrar shall be drawn to the directions requiring compliance.

RULE 165: Registrar to ensure compliance of National Company Law Appellate Tribunal orders

It shall be the duty of the Registrar to take expeditious steps to comply with the directions of the National Company Law Appellate Tribunal.

7. MCA National Company Law Appellate Tribunal Rules, 2016 dated 21st July 2016

The Central Government hereby, in exercise of the powers conferred by section 469 of the Companies Act, 2013, makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the **National Company Law Appellate Tribunal Rules, 2016.**

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

Chapter-I Definitions, forms etc.

2. Definitions.- In these rules, unless the context otherwise requires,—

- (a) **“Act”** means the Companies Act, 2013 (18 of 2013);
- (b) **“advocate”** means a person who is entitled to practise the profession of law under the Advocates Act, 1961 (25 of 1961);
- (c) **“Appeal”** means an appeal preferred under sub-section (1) of section 421 of the Act;
- (d) **“authorised representative”** means a person authorised in writing by a party to present his case before the Appellate Tribunal as provided under section 432 of the Act;
- (e) **“form”** means a form set forth in Annexure ‘A’ to these rules.
- (f) **“interlocutory application”** means an application in any appeal already instituted in the Appellate Tribunal, but not being a proceeding for execution of the order or direction of the Appellate Tribunal;
- (g) **“party”** means a person who prefers an appeal before the Appellate Tribunal and includes respondent of any person interested in the appeal;
- (h) **“Registrar”** means the Registrar of the Appellate Tribunal;
- (i) **“section”** means a section of the Act;
- (j) All other words and expressions used in these rules but not defined herein and defined in the Act and National Company Law Tribunal Rules, 2016 shall have the meanings respectively assigned to them in the Act and in the said rules.

3. Computation of time period – Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Appellate Tribunal for doing any act, in computing the time, the day from which the said period is to be reckoned shall be

excluded, and if the last day expires on a day when the office of the Appellate Tribunal is closed, that day and any succeeding day on which the Appellate Tribunal remains closed shall also be excluded

4. Forms – The forms prescribed by these rules with such modifications or variations as the circumstances of each case may require shall be used for the purpose mentioned therein.

5. Format of order or direction or rule – Every rule, direction, order, summons, warrant or other mandatory process shall be issued in the name of the Chairperson and shall be signed by the Registrar or any other officer specifically authorised in that behalf by the Chairperson, with the day, month and year of signing and shall be sealed with the official seal of the Appellate Tribunal.

6. Official seal of the Appellate Tribunal – The official seal and emblem of the Appellate Tribunal shall be such, as the Central Government may from time to time specify and shall be in the custody of the Registrar.

7. Custody of the records.- The Registrar shall have the custody of the records of the Appellate Tribunal and no record or document filed in any cause or matter shall be allowed to be taken out of the custody of the Appellate Tribunal without the leave of the Appellate Tribunal.

Provided that the Registrar may allow any other officer of the Appellate Tribunal to remove any official paper or record for administrative purposes from the Appellate Tribunal.

8. Sitting of Appellate Tribunal – The Appellate Tribunal shall hold its sitting at its headquarters in New Delhi.

9. Sitting hours of the Appellate Tribunal – The sitting hours of the Appellate Tribunal shall ordinarily be from 09.30 AM. to 01.00 P.M. and from 2.15 P.M. to 5.00 P.M. subject to any order made by the Chairperson and this shall not prevent the Appellate Tribunal to extend its sitting as it deems fit.

10. Working hours of office – (1) The office of the Appellate Tribunal shall remain open on all working days from 09:30 A.M. to 6.00 P.M.

(2) The filing counter of the Registry shall be open on all working days from 10.30 AM to 5.00 P.M.

11. **Inherent powers** – Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.
12. **Calendar** – The Calendar of days of working of Appellate Tribunal in a year shall be as decided by the Chairperson and Members of the Appellate Tribunal.
13. **Listing of cases** – All urgent matters filed before 12 noon shall be listed before the Appellate Tribunal on the following working day, if it is complete in all respects as provided in these rules and in exceptional cases, it may be received after 12 noon but before 3.00 P.M. for listing on the following day, with the specific permission of the Appellate Tribunal or Chairperson.
14. **Power to exempt** – The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.
15. **Power to extend time** – The Appellate Tribunal may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not **made until after the** expiration of **the time** appointed or allowed.

Part -II

Powers of the Registrar

16. **Powers and functions of the Registrar** – The Registrar shall have the following powers and functions, namely:-
 - (a) registration of appeals, petitions and applications;
 - (b) receive applications for amendment of appeal or the petition or application or subsequent proceedings.
 - (c) receive applications for fresh summons or notices and regarding services thereof;
 - (d) receive applications for fresh summons or notice and for short date summons and notices;
 - (e) receive applications for substituted service of summons or notices;

- (f) receive applications for seeking orders concerning the admission and inspection of documents;
- (g) transmission of a direction or order to the civil court as directed by Appellate Tribunal with the prescribed certificate for execution etc; and
- (h) such other incidental or matters as the Chairperson may direct from time to time.

17. Power of adjournment — All adjournments shall normally be sought before the concerned Bench in court and in extraordinary circumstances, the Registrar may, if so directed by the Tribunal in chambers, at any time adjourn any matter and lay the same before the Tribunal in chambers.

18. Delegation powers of the Chairperson – The Chairperson may assign or delegate to a Deputy Registrar or to any other suitable officer all or some of the functions required by these rules to be exercised by the Registrar.

Part – III

Institution of appeals – Procedure.

- 19. Procedure for proceedings** – (1) Every appeal to the Appellate Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type-written or printed in double spacing on one side of standard paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.
- (2) The cause title shall state “In the National Company Law Appellate Tribunal” and also set out the proceedings or order of the authority against which it is preferred.
 - (3) Appeal shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.
 - (4) Where *Saka* or other dates are used, corresponding dates of Gregorian calendar shall also be given.
 - (5) Full name, parentage, description of each party and address and in case a party sue or being sued in a representative character, shall also be set out at the beginning of the appeal and need not be repeated in the subsequent proceedings in the same appeal.
 - (6) The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party and these numbers shall not be

changed and in the event of the death of a party during the pendency of the appeal, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.

- (7) Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.
- (8) Every proceeding shall state immediately after the cause title and the provision of law under which it is preferred.

20. Particulars to be set out in the address for service – The address for service of summons shall be filed with every appeal on behalf of a party and shall as far as possible contain the following items namely:-

- (a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;
- (b) the name of the town or village;
- (c) the post office, postal district and PIN Code; and
- (d) any other particular necessary to identify the addressee such as fax number, mobile number and e-mail address, if any.

21. Initialling alteration – Every interlineation, eraser or correction or deletion in any appeal shall be initialled by the party or his authorised representative.

22. Presentation of appeal – (1) Every appeal shall be presented in **Form NCLAT-1** in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

- (2) Every appeal shall be accompanied by a certified copy of the impugned order.
- (3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
- (4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.
- (5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.
- (6) The processing fee prescribed by the rules, with required number of envelopes of

sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

23. Number of copies to be filed – The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

24. Endorsement and verification – At the foot of every appeal or pleading there shall appear the name and signature of the authorised representative and every appeal or pleadings shall be signed and verified by the party concerned in the manner provided by these rules.

25. Translation of document – (1) A document other than English language intended to be used in any proceeding before the Appellate Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by the authorised representative engaged on behalf of parties in the case.

(2) The Registrar may order translation, certification and authentication by a person approved by him for the purpose on payment of such fee to the person, as specified by the Chairperson.

(3) Appeal or other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed with the Appellate Tribunal.

26. Endorsement and scrutiny of petition or appeal or document (1) The person in charge of the filing-counter shall immediately on receipt of appeal or document affix the date and stamp of the Appellate Tribunal thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

(2) If, on scrutiny, the appeal or document is found to be defective, such document shall, after notice to the party, be returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

- (3) The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.
- (4) Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the appeal or pleading or document.

27. Registration of proceedings admitted – On admission of appeal, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.

28. Ex-parte amendments – In every appeal or application, arithmetical, grammatical, clerical and such other errors may be rectified on the orders of the Registrar without notice to Parties.

29. Calling for records – On the admission of appeal, the Registrar shall, if so directed by the Appellate Tribunal, call for the records relating to the proceedings from the respective Bench of Tribunal or adjudicating authority and retransmit the same at the conclusion of the proceedings or at any time.

30. Production of authorisation for and on behalf of an association – Where an appeal purported to be instituted by or on behalf of an association, the person who signs or verifies the same shall produce along with such appeal, for verification by the Registry, a true copy of the resolution of the association empowering such person to do so:

Provided that the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization:

Provided further that it shall set out the list of members for whose benefit the proceedings are instituted.

31. Interlocutory applications – Every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in **Form NCLAT-2** and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

32. Procedure on production of defaced, torn or damaged documents – When a document produced along with any pleading appears to be defaced, torn, or in any way damaged or otherwise its condition or appearance requires special notice, a mention regarding its condition and appearance shall be made by the party producing the same in the Index of such a pleading and the same shall be verified and initialed by the officer authorized to receive the same.

Part IV Cause list

33. Preparation and publication of daily cause list – (1) The Registry shall prepare and publish on the notice board of the Registry before the closing of working hours on each working day the cause list for the next working day and subject to the directions of the Chairperson, listing of cases in the daily cause list shall be in the following order of priority, unless otherwise ordered by the concerned Bench; namely; –

(a) cases for pronouncement of orders;

(b) cases for clarification;

(c) cases for admission;

(d) cases for orders or directions;

(e) part-heard cases, latest part-heard having precedence; and

(f) cases posted as per numerical order or as directed by the Bench;

(2) The title of the daily cause list shall consist of the number of the appeal, the day, date and time of the sitting Bench hall number and the coram indicating the names of the Chairperson, Judicial member and Technical members constituting the Bench.

(3) Against the number of each case listed in the daily cause list, the following shall be shown, namely; –

(a) names of the legal practitioners or authorised representative appearing for both sides and setting out in brackets the designation of the parties whom they represent;

(b) names of the parties, if unrepresented, with their ranks in brackets.

(4) the objections and special directions, if any, of the Registry shall be briefly indicated in the daily cause list in remarks' column, whenever compliance is required.

34. Carry forward of cause list and adjournment of cases on account of non-sitting of an Appellate Tribunal – (1) If by reason of declaration of holiday or for any other unforeseen reason, the Appellate Tribunal does not function for the day, the daily cause list for that day shall, unless otherwise directed, be treated as the daily cause list for the next working day in addition to the cases already posted for that day.

(2) When the sitting of a particular Bench is cancelled for the reason of inability of any Member of the Bench, the Registrar shall, unless otherwise directed, adjourn the cases posted before that Bench to a convenient date.

(3) The adjournment or posting or directions shall be notified on the notice board.

Part-V

RECORD OF PROCEEDINGS

35. Diaries – (1) Diaries shall be kept by the clerk-in-charge in such form as may be specified by the Registrar in each appeal and they shall be written legibly.

(2) The diary in the main file shall contain a concise history of the appeal, the substance of the order passed thereon and in execution proceedings it shall contain a complete record of all proceedings in execution of order or direction or rule and shall be checked by the Deputy Registrar and initialed once in a fortnight.

36. Order sheet – (1) Order sheet shall be maintained in every proceedings by the Court Master and shall contain all orders passed by the Appellate Tribunal from time to time

(2) All orders passed by the Appellate Tribunal shall be in English and the same shall be signed by the Members of the Appellate Tribunal constituting the Bench:

Provided that the routine orders, such as call for of the records, put up with records, adjourned and any other order as may be directed by the Member of the Appellate Tribunal shall be signed by the Court Master.

(3) The order sheet shall also contain the reference number of the appeal or petition or application, date of order and all incidental details including short cause title thereof.

37. Maintenance of diary – (1) The Court Master of the Bench concerned shall maintain legibly a Diary, wherein he shall record the proceedings of the Bench for each sitting with respect to the applications or petitions or appeals listed in the daily cause list.

(2) The matters to be recorded in the Diary shall include details as to whether the case is adjourned, or part-heard or heard and disposed of or heard and orders reserved, as the case may be, along with dates of next sitting wherever applicable.

38. Statutes or citations for reference – The parties or authorised representatives shall, before the commencement of the proceedings for the day, furnish to the Court Master a list of law journals, reports, statutes and other citations, which may be needed for reference or photocopy of full text thereof.

39. Calling of cases in Bench – Subject to the orders of the Bench, the Court Master shall call the cases listed in the cause list in the serial order.

40. Regulation of Bench work – (1) When a Bench is holding a sitting, the Deputy Registrar shall ensure :-

- (a) that no inconvenience or wastage of time is caused to the Bench in making available the services of Court Master or Stenographer or Peon or Attender;
- (b) the Court Master shall ensure that perfect silence is maintained in and around the Bench hall and no disturbance whatsoever is caused to the functioning of the Appellate Tribunal and that proper care is taken to maintain dignity and decorum of the Appellate Tribunal.

(2) When the Appellate Tribunal passes order or issues directions, the Court Master shall ensure that the records of the case along with proceedings or orders of the Court are transmitted immediately to the Registry and the Registry shall verify the case records received from the Court Master with reference to the cause list and take immediate steps to communicate the directions or orders of the Court.

Part VI Maintenance of Registers

41. Registers to be maintained – The following Registers shall be maintained and posted on a day to day basis by the Registry of the Appellate Tribunal by such ministerial officer or officers as the Registrar may, subject to any order of the Chairperson, direct:-

- (a) register of appeals;
- (b) register of unnumbered appeals; and
- (c) register of Interlocutory applications;

42. Arrangement of records in pending matters – The record of appeal shall be divided into the following four parts and shall be collated and maintained.

- (a) Main file: (Appeal being kept separately);
- (b) miscellaneous application file;
- (c) process file; and
- (d) execution file

43. Contents of main file – The main file shall be kept in the following order and it shall be maintained as permanent record till ordered to be destroyed under the rules:-

- (a) Index;
- (b) order Sheet;
- (c) Final order or judgment;
- (d) memo of appeal or petition as the case may be together with any schedule annexed thereto;
- (e) counter or reply or objection, if any;
- (f) (i) oral evidence or proof of affidavit
(ii) evidence taken on commission; and
(iii) documentary evidence.
- (g) written arguments.

44. Contents of process file – The process file shall contain the following items; namely, –

- (a) index;
- (b) powers of attorney or vakalatnama or memo of appearance;
- (c) summons and other processes and affidavits relating thereof;
- (d) applications for summoning witness;
- (e) letters calling records; and
- (f) all other miscellaneous papers such as postal acknowledgements

45. Execution file – The execution file shall contain the following items, namely, –

- (a) index;
- (b) the order sheet;
- (c) the execution application;
- (d) all processes and other papers connected with such execution proceedings;
- (e) transmission of order to civil court, if ordered; and
- (f) result of execution;

46. File for miscellaneous applications – For all miscellaneous applications there may be only one file with a title page prefixed to it and immediately after the title page, the diary, the miscellaneous applications, supporting affidavit, the order sheet and all other documents shall be filed.

47. Destruction of record – Record of Appellate Tribunal, except permanent record, shall be ordered to be destroyed by the Registrar or Deputy Registrar after six years from the final conclusion of the proceedings after obtaining prior order of the Chairperson. **Explanation:** For the purpose of this rule, permanent record shall include order; appeal register, petition register and such other record as may be ordered to be included by the Chairperson.

Part-VII

SERVICE OF PROCESS/APPEARANCE OF ESPONDENTS AND OBJECTIONS

- 48. Issue of notice** – (1) Where notice of an appeal or petition or interlocutory application is issued by the Appellate Tribunal, copies of the same, the affidavit in support thereof and if so ordered by the Appellate Tribunal the copy of other documents filed therewith, if any, shall be served along with the notice on the other side.
- (2) The copies of the documents referred to sub-rule (1) shall show the date of presentation of the appeal or interlocutory application and the name of the authorised representative, if any, of such party with his full address for service and the interim order, if any, made thereon.
- (3) The Appellate Tribunal may order for issuing notice in appropriate cases and also permit the party concerned for service of said notice on the other side by *Dosti* and in such case, deliver the notice to such party and it is for such party to file affidavit of service with proof.
- 49. Summons** – Whenever summons or notice is ordered by private service, the appellant or applicant or petitioner as the case may be, unless already served on the other side in advance, shall arrange to serve the copy of all appeals or petitions or applications by registered post or courier service and file affidavit of service with its proof of acknowledgement before the date fixed for hearing.
- 50. Steps for issue of fresh notice** – (1) If any notice issued under rule 46 is returned unserved, that fact and the reason thereof shall be notified immediately on the notice board of the Registry.
- (2) The applicant or petitioner or his authorised representative shall within seven days from the date of the notification, take steps to serve the notice afresh.
- 51. Consequence of failure to take steps for issue of fresh notice**
- Where, after a summon has been issued to the other side, and returned unserved, and the applicant or petitioner or appellant, as the case may be, fails to take necessary steps within the period as ordered by the Appellate Tribunal from the date of return of the notice on the respondent(s), the Registrar shall post the case before the Appellate Tribunal for further directions or for dismissal for non-prosecution.
- 52. Entries regarding service of notice or process** – The Judicial Section of the Registry shall record in the column in the order sheet 'Notes of the Registry', the details regarding

completion of service of notice on the respondents, such as date of issue of notice, date of service, date of return of notice, if unserved, steps taken for issuing fresh notice and date of completion of services etc.

53. Non-appearance of respondent and consequences – Where the respondent, despite effective service of summons or notice on him does not appear before the date fixed for hearing, the Appellate Tribunal may proceed to hear the appeal *ex-parte* and pass final order on merits.

Provided that it is open to the Appellate Tribunal to seek the assistance of any authorised representative as it deems fit in case the matter involves intricate and substantial questions of law having wide ramifications.

54. Filing of objections by respondent, form and consequences – (1) The respondent, if so directed, shall file objections or counter within the time allowed by the Appellate Tribunal. (2) The objections or counter shall be verified as an appeal and wherever new facts are sought to be introduced with the leave of the Appellate Tribunal for the first time, the same shall be affirmed by a supporting affidavit.

(3) The respondent if permitted to file objections or counter in any proceeding shall also file three copies thereof after serving copies of the same on the appellant or petitioner or their authorised representatives, as the case may be.

Part VIII

FEE FOR APPEAL, PROCESS FEE AND AWARD OF COSTS

55. Fee – (1) Fee for filing appeal or interlocutory application, and process fee shall be, as prescribed in the Schedule of fee to these rules.

(2) The fee and process fee shall be deposited by separate demand draft or Indian Postal Order favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi.

(3) The Appellate Tribunal may, to advance the cause of justice and in suitable cases, waive payment of such fee or portion thereof, taking into consideration the economic condition or indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be.

56. Award of costs in the proceedings – (1) Whenever the Appellate Tribunal deems fit,

it may award cost for meeting the legal expenses of the respondent or defaulting party. (2) The Appellate Tribunal may in suitable cases direct appellant or respondent to bear the cost of litigation of the other side, and in case of abuse of process of court, impose exemplary costs on defaulting party.

Part IX INSPECTION OF RECORD

57. Inspection of the records – (1) The parties to any case or authorised representative may be allowed to inspect the record of the case by making an application in writing to the Registrar and fee prescribed therein.

(2) Subject to such terms and conditions as may be prescribed by the Chairperson by a general or special order, a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.

58. Grant of inspection – inspection of records of a pending or decided case before the Appellate Tribunal shall be allowed only on the order of the Registrar.

59. Application for grant of inspection – (1) Application for inspection of record under rule 58 shall be in the **Form NCLAT-3** and presented at the filing counter of the Registry between 10.30 AM and 3.00 PM on any working day and two days before the date on which inspection is sought, unless otherwise permitted by the Registrar.

(2) The Registry shall submit the application with its remarks before the Registrar, who shall on consideration of the same, pass appropriate orders.

(3) Inspection of records of a pending case shall not ordinarily be permitted on the date fixed for hearing of the case or on the preceding day.

60. Fee payable for inspection – Fee as given in the Schedule of the fees appended to these rules shall be payable by way of Demand Draft or Indian Postal Order to be drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi on any application for inspection of records of a pending or decided case.

61. Mode of inspection – (1) On grant of permission for inspection of the records, the Deputy Registrar shall arrange to procure the records of the case and allow inspection of such records on the date and time fixed by the Registrar between 10.30 AM and 12.30 PM and between 2.30 PM and 4.30 PM in the immediate presence of an officer authorized in that behalf.

- (2) The person inspecting the records shall not in any manner cause dislocation, mutilation, tampering or damage to the records in the course of inspection.
- (3) The person inspecting the records shall not make any marking on any record or paper so inspected and taking notes, if any, of the documents or records inspected may be done only in pencil.
- (4) The person supervising the inspection, may at any time prohibit further inspection, if in his opinion, any of the records are likely to be damaged in the process of inspection or the person inspecting the records has violated or attempted to violate the provisions of these rules and shall immediately make a report about the matter to the Registrar and seek further orders from the Registrar and such notes shall be made in the Inspection Register.

62. Maintenance of register of inspection – The Deputy Registrar shall cause to maintain a Register for the purpose of inspection of documents or records and shall obtain therein the signature of the person making such inspection on the Register as well as on the application on the conclusion of inspection.

Part X

Appearance of authorised representative

63. Appearance of authorised representative — Subject to provisions of Section 432 of the Act, a party to any proceedings or appeal before the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries of cost accountants or legal practitioners or any other person to present his case before the Appellate Tribunal.

64. Proof of engagement – (1) Where an advocate is engaged to appear for and on behalf of the parties, he shall submit Vakalatnama.

(2) The professionals like chartered accountants or company secretaries or cost accountants shall submit Memorandum of Appearance.

65. Restriction on party's right to be heard – The party who has engaged a authorised representative to appear for him before the Appellate Tribunal shall not be entitled to be heard in person unless permitted by the Appellate Tribunal.

66. Professional dress for the authorised representative – While appearing before the Appellate Tribunal, the authorised representative shall wear the same professional dress as prescribed in their Code of Conduct.

Part XI AFFIDAVITS

- 67. Title of affidavits** – Every affidavit shall be titled as “Before the National Company Law Appellate Tribunal.” followed by the cause title of the application or other proceeding in which the affidavit is sought to be used.
- 68. Form and contents of the affidavit** – The affidavit as per **Form NCLAT-4** shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 (5 of 1908).
- 69. Persons authorised to attest** – Affidavits shall be sworn or affirmed before an Advocate or Notary, who shall affix his official seal.
- 70. Affidavits of illiterate, visually challenged persons** – Where an affidavit is sworn or affirmed by any person who appears to be illiterate, visually challenged or unacquainted with the language in which the affidavit is written shall be in **Form NCLAT-5**, the attester shall certify that the affidavit was read, explained or translated by him or in his presence to the deponent and that he seemed to understand it, and made his signature or mark in the presence of the attester.
- 71. Identification of deponent** —If the deponent is not known to the attester, his identity shall be testified by a person known to him and the person identifying shall affix his signature in token thereof.
- 72. Annexures to the affidavit** – (1) Document accompanying an affidavit shall be referred to therein as Annexure number and the attester shall make the endorsement thereon that this is the document marked putting the Annexure number in the affidavit.
- (2) The attester shall sign therein and shall mention the name and his designation.

Part XII

DISCOVERY, PRODUCTION AND RETURN OF DOCUMENTS

- 73. Application for production of documents, form of summons** – (1) Except otherwise provided hereunder, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
- (2) An application for summons to produce documents shall be on plain paper setting out the documents the production of which is sought, the relevancy of the documents and in case where the production of a certified copy would serve the purpose, whether application was made to the proper officer and the result thereof.

(3) A summons for production of documents in the custody of a public officer other than a court shall be addressed to the concerned Head of the Department or such other authority as may be specified by the Appellate Tribunal.

74. *Suo motu* summoning of documents – Notwithstanding anything contained in these rules, the Appellate Tribunal may, *suo motu*, issue summons for production of public document or other documents in the custody of a public officer in **Form NCLAT-6**.

75. Marking of documents – (1) The documents when produced shall be marked as follows:

(a) if relied upon by the appellant's or petitioner's side, they shall be numbered as 'A' series.

(b) if relied upon by the respondent's side, they shall be marked as 'B' series.

(c) The Appellate Tribunal exhibits shall be marked as 'C' series.

(2) The Appellate Tribunal may direct the applicant to deposit with Appellate Tribunal by way of Demand Draft or Indian Postal Order drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi, a sum sufficient to defray the expenses for transmission of the records before the summons is issued.

76. Return and transmission of documents – (1) An application for return of the documents produced shall be numbered and such application shall be entertained after the destruction of the records.

(2) The Appellate Tribunal may, at any time, direct return of documents produced subject to such conditions as it deems fit.

Part XIII

EXAMINATION OF WITNESSES AND ISSUE OF COMMISSIONS

77. Procedure for examination of witnesses, issue of Commissions – The provisions of section 424 of the Act and relevant provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.

78. Examination in camera – The Appellate Tribunal may in its discretion examine any witness in camera.

79. Form of oath or affirmation to witness – Oath shall be administered to a witness in the following form : " I do swear in the name of God/solemnly affirm that what I shall state shall be truth, the whole truth and nothing but the truth".

80. Form of oath or affirmation to interpreter – Oath or solemn affirmation shall be administered to the Interpreter in the following form before his assistance as taken for examining a witness:

"I do swear in the name of God/solemnly affirm that I will faithfully and truly interpret and explain all questions put to and evidence given by witness and translate correctly and accurately all documents given to me for translation."

81. Officer to administer oath – The oath or affirmation shall be administered by the Branch Officer or Court Master.

82. Recording of deposition – (1) The deposition of a witness shall be recorded in **Form NCLAT-7**.

(2) Each page of the deposition shall be initialed by the Members constituting the Bench.

(3) Corrections, if any, pointed out by the witness may, if the Bench is satisfied, be carried out and duly initialled, and if not satisfied, a note to the effect be appended at the bottom of the deposition.

83. Numbering of witnesses – The witnesses called by the applicant or petitioner shall be numbered consecutively as 'PWs' and those by the respondents as 'RWs'.

84. Grant of discharge certificate – Witness discharged by the Appellate Tribunal may be granted a certificate in **Form IMCLAT-8** by the Registrar.

85. Witness allowance payable – (1) Where the Appellate Tribunal issues summons to a Government servant to give evidence or to produce documents, the person so summoned may draw from the Government travelling and daily allowances admissible to him as per rules.

(2) Where there is no provision for payment of Travelling Allowance and Daily Allowance by the employer to the person summoned to give evidence or to produce documents, he shall be entitled to be paid as allowance, (a sum found by the Registrar sufficient to defray the traveling and other expenses), having regard to the status and position of the witness.

(3) The party applying for the summons shall deposit with the Registrar the amount of allowance as estimated by the Registrar well before the summons is issued.

(4) If the witness is summoned as a court witness, the amount estimated by the Registrar shall be paid as per the directions of the Appellate Tribunal.

(5) The aforesaid provisions shall govern the payment of allowance to the interpreter as well.

86. Records to be furnished to the Commissioner – (1) The Commissioner shall be furnished by the Appellate Tribunal with such of the records of the case as the Appellate Tribunal considers necessary for executing the Commission.

(2) Original documents shall be furnished only if a copy does not serve the purpose or cannot be obtained without unreasonable expense or delay.

(3) Delivery and return of records shall be made under proper acknowledgement.

87. Taking of specimen handwriting, signature etc..-The Commissioner may, if necessary, take specimen of the handwriting, signature or fingerprint of any witness examined before him.

Part XIV PRONOUNCEMENT OF ORDERS

88. Order – The final decision of the Appellate Tribunal on an appeal or proceedings before the Appellate Tribunal shall be delivered by way of Judgment.

89. Operative portion of the order – All orders or directions of the Bench shall be stated in clear and precise terms in the last paragraph of the order.

90. Corrections – The Member of the Bench who has prepared the order shall initial all corrections and affix his initials at the bottom of each page.

91. Pronouncement of order – (1) The Appellate Tribunal shall as far as possible pronounce the order immediately after the hearing is concluded.

(2) When the orders are reserved, the date for pronouncement of order shall be notified in the cause list which shall be a valid notice of intimation of pronouncement.

(3) Reading of the operative portion of the order in the open court shall be deemed to be pronouncement of the order.

92. Pronouncement of order by any one member of the Bench – (1) Any Member of the Appellate Tribunal may pronounce the order for and on behalf of the Bench.

(2) When an order is pronounced under this rule, the Court Master shall make a note in the order sheet, that the order of the Bench consisting of Chairperson and Members was pronounced in open court on behalf of the Bench .

93. Authorizing any Member to pronounce order – (1) If the Members of the Bench who heard the case are not readily available or have ceased to be Members of the

Appellate Tribunal, the Chairperson may authorise any other Member to pronounce the order on his behalf after being satisfied that the order has been duly prepared and signed by all the Members who heard the case and the order pronounced by the Member so authorised shall be deemed to be duly pronounced.

- (2) The Member so authorised for pronouncement of the Order shall affix his signature in the Order sheet of the case stating that he has pronounced the order as provided in this rule.
- (3) If the Order cannot be signed by reason of death, retirement or resignation or for any other reason by any one of the Members of the Appellate Tribunal who heard the case, it shall be deemed to have been released from part-heard and listed afresh for hearing.

94. Making of entries by Court Master – Immediately on pronouncement of an order by the Appellate Tribunal, the Court Master shall make necessary endorsement on the case file regarding the date of such pronouncement, the nature of disposal and the constitution of the Bench pronouncing the order and he shall also make necessary entries in the court diary maintained by him.

95. Transmission of order by the Court Master – (1) The Court Master shall immediately on pronouncement of order, transmit the order with the case file to the Deputy Registrar.

- (2) On receipt of the order from the Court Master, the Deputy Registrar shall after due scrutiny, satisfy himself that the provisions of these rules have been duly complied with and in token thereof affix his initials with date on the outer cover of the order.
- (3) The Deputy Registrar shall thereafter cause to transmit the case file and the order to the Registry for taking steps to prepare copies and their communication to the parties.

96. Format of order – (1) All orders shall be neatly and fairly typewritten in double space on one side only on durable foolscap folio paper of metric A-4 size (30.5 cm long and 21.5 cm wide) with left side margin of 5 cm and right side margin of 2.5 cm and corrections, if any, in the order shall be carried out neatly and sufficient space may be left both at the bottom and at the top of each page of the order to make its appearance elegant.

(2) Members constituting the Bench shall affix their signatures in the order of their seniority from right to left.

97. Indexing of case files after disposal – After communication of the order to the parties or legal representative, the official concerned shall arrange the records with pagination

and prepare in the Index Sheet in Form no. to be prescribed by the Appellate Tribunal and he shall affix initials and then transmit the records with the Index initials to the records room.

98. Transmission of files or records or orders – Transmission of files or records of the cases or orders shall be made only after obtaining acknowledgement in the movement register maintained at different sections or levels as per the directions of the Registrar.

99. Copies of Orders in library – (1) The officer in charge of the Registry shall send copies of every final order to the library.

(2) Copies of all Orders received in each month shall be kept at the library in a separate folder, arranged in the order of date of pronouncement, duly indexed and stitched.

(3) At the end of every year, a consolidated index shall also be prepared and kept in a separate file in the library.

(4) The Order folders and the indices may be made available for reference in the library to the legal practitioners.

Part XV SUPREME COURT ORDERS

100. Register of Special Leave Petitions/Appeal – (1) A Register in **Form NCLAT-9** shall be maintained in regard to Special Leave Petitions or Appeals against the orders of the Appellate Tribunal to the Supreme Court and necessary entries therein be promptly made by the Judicial Branch.

(2) The register shall be placed for scrutiny by the Chairperson in the first week of every month.

101. Placing of Supreme Court orders before Appellate Tribunal – Whenever an interim or final order passed by the Supreme Court of India in an appeal or other proceeding preferred against a decision of the Appellate Tribunal is received, the same shall forthwith be placed before the Chairperson or Members for information and kept in the relevant case file and immediate attention of the Registrar shall be drawn to the directions requiring compliance.

102. Registrar to ensure compliance of Supreme Court orders – It shall be the duty of the Registrar to take expeditious steps to comply with the directions of the Supreme Court.

Part XVI Miscellaneous

103. Filing through electronic media – The Appellate Tribunal may allow filing of appeal or proceedings through electronic mode such as online filing and provide for

rectification of defects by e-mail or internet and in such filing, these rules shall be adopted as nearly as possible on and from a date to be notified separately and the Central Government may issue instructions in this behalf from time to time.

104. Removal of difficulties and issue of directions – Notwithstanding anything contained in the rules, wherever the rules are silent or not provisions is made, the Chairperson may issue appropriate directions to remove difficulties and issue such orders or circulars to govern the situation or contingency that may arise in the working of the Appellate Tribunal.

SCHEDULE OF FEES			
S.No	Section of the Companies Act, 2013/ Rule	Nature of Appeal etc	Fees (in Rupees)
1.	Sec. 218(3))	Protection of employee during investigation	1,000/-
2.	Section 421(1)	Appeals to National Company Law Appellate Tribunal	5,000/-

8. MCA Companies (Transfer Of Pending Proceedings) Rules, 2016 Dated 7th December,2016

The Central Government hereby, in exercise of the powers conferred under sub section (1) and (2) of section 434 of the Companies act,2013 read with sub-section (1) of section 239 of the Insolvency and Bankruptcy Code,2016, makes the following rules, namely :-

RULE 1. Short title and Commencement.

- (1) These rules may be called the Companies (Transfer of Pending Proceedings) Rules, 2016.
- (2) They shall come into force with effect from the 15th December, 2016, except rule 4, which shall come into force from 1st April,2017.

RULE 2. Definitions

(1) In these rules, unless the context otherwise requires-

- (a) **“Code”** means the **Insolvency and Bankruptcy Code, 2016** ;`
- (b) **“Tribunal”** means the National Company Law Tribunal constituted under section 408 of the Companies Act,

(2) Words and expressions used in these rules and not defined, but defined in the Companies Act, 1956 (1 of 1956) (herein referred to as the Act), the Companies Act, 2013 (18 of 2013) or the Companies (Court) Rules, 1959 or the Code shall have the meanings respectively assigned to them in the respective Act or rules or the Code, as the case may be.

RULE 3. 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 on the date of coming into force of these rules shall stand transferred to the Benches of the Tribunal exercising respective territorial jurisdiction:

Provided that all those proceedings which are reserved for orders for allowing or otherwise of such proceedings shall not be transferred.

RULE 4. Pending proceeding relating to Voluntary Winding up: All applications and petitions relating to voluntary winding up of companies pending before a High Court on the date of commencement of this rule, shall continue with and dealt with by the High Court in accordance with provisions of the Act.

RULE 5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.—(1) All petitions relating to winding up under clause (e) of section 433 of the Act 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 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9 of the Code, as the case may be, and dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with Rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details

of the proposed insolvency professional to the Tribunal within sixty days from date of this notification, failing which the petition shall abate.

- (2) 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.

RULE 6. 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 shall be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Companies Act, 2013 (18 of 2013).

RULE 7. Transfer of Records.—Pursuant to the transfer of cases as per these rules the relevant records shall also be transferred by the respective High Courts to the National Company Law Tribunal Benches having jurisdiction forthwith over the cases so transferred.

RULE 8. Fees not to be paid.— Notwithstanding anything contained in the National Company Law Tribunal Rules, 2016 , no fee shall be payable in respect of any proceedings transferred to the Tribunal in accordance with these rules.

9. MCA National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016 dated 15th December, 2016

The Central Government hereby, in exercise of the powers conferred by sub-section (1) and (2) of section 469 read with section 66 of the Companies Act, makes the following rules namely:-

RULE 1. Short title and Commencement.—(1) These rules may be called the National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016.

- (2) They shall come into force on the date of their publication in the Official Gazette i.e. 15th December, 2016.
- (3) The words and expressions used in these rules but not defined and defined in the Companies Act, 2013 (hereinafter referred to as the Act) or in the Companies (Specification of Definitions Details) Rules, 2014 or the National Company Law Tribunal Rules, 2016 shall have the meanings respectively assigned to them in the Act or the said rules.

RULE 2. Form of application or petition for Reduction of share capital under section 66.—(1) An application to the Tribunal to confirm a reduction of share capital of a company shall be in **Form No. RSC-1** and fee shall be, as prescribed in the Schedule of fee to these rules.

- (2) An application to confirm a reduction of share capital of a company shall be accompanied with –
 - (a) the list of creditors duly certified by the Managing Director, or in his absence, by two directors, as true and correct, which is made as on a date not earlier than fifteen days prior to the date of filing of an application showing the details of the creditors of the company, class-wise, indicating their names, addresses and amounts owed to them;
 - (b) a certificate from the auditor of the company to the effect that the list of creditors referred to in clause (a) is correct as per the records of the company verified by the auditor;
 - (c) a certificate by the auditor and declaration by a director of the company that the company is not, as on the date of filing of the application, in arrears in the repayment of the deposits or the interest thereon; and
 - (d) a certificate by the company's auditor to the effect that the accounting treatment proposed by the company for the reduction of share capital is in conformity with the accounting standards specified in section 133 or any other provisions of Act.
- (3) Copies of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees fifty for inspection and for taking extracts on payment of the sum of rupees ten per page to the company.

RULE 3. Issue of notice and directions by the National Company Law Tribunal.—(1) The Tribunal shall, within fifteen days of submission of the application under rule 2, give notice, or direct that notice be given to –

- (i) the Central Government, Registrar of Companies, in all cases, in **Form No. RSC-2**;
 - (ii) the Securities and Exchange Board of India, in the case of listed companies in **Form No. RSC-2**;
 - (iii) the creditors of the company, in all cases in **Form No. RSC-3**; seeking their representations and objections, if any.
- (2) The notice under clause (iii) of sub-rule (1) shall be sent, within seven days of the direction given under that sub-rule or such other period as may be directed by the Tribunal, to each creditor whose name is entered in the list of creditors submitted by the company about the presentation of the application and of the said list, stating the amount of the proposed reduction of share capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time within which the creditor may send his representations and objections.
 - (3) The Tribunal shall along with directions under sub-rule (1) give directions for the notice to be published, in **Form No. RSC-4** within seven days from the date on which the directions are given, in English language in a leading English newspaper and in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated, or such newspapers as may be directed by the Tribunal and for uploading on the website of the company (if any) seeking objections from the creditors and intimating about the date of hearing.
 - (4) The notice under sub-rule (3) shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company may send their objections:

Provided that the objections, if any, shall be filed in the Tribunal within three months from the date of publication of the notice with a copy served on the company.

- (5) The company or the person who was directed to issue notices and the publication in the newspaper under this rule shall, as soon as may be, but not later than seven days from the date of issue of such notices, file an affidavit in **Form No. RSC- 5** confirming the despatch and publication of the notice.
- (6) Where the Tribunal is satisfied that the debt or claim of every creditor has been discharged or determined or has been secured or his consent is obtained, it may dispense with the requirement of giving of notice to creditors or publication of notice under this rule or both.

RULE 4. Representation by Central Government, Registrar etc. under sub-section (2) of section 66.—If the authorities or the creditors of the company referred to in clause (i), clause (ii) and clause (iii) of sub-rule (1) of rule 3 desire to make any representation under sub-section (2) of section 66, the same shall be sent to the Tribunal within a period of three months from the date of receipt of notice and copy of such representation shall simultaneously be sent to the company and in case no representation has been received within the said period by the Tribunal it shall be presumed that they have no objection to the reduction.

RULE 5. Procedure with regard to representations and objections received.—(1) The company shall submit to the Tribunal, within seven days of expiry of period upto which representations or objections were sought, the representations or objections so received along with the responses of the company thereto.

- (2) The Tribunal may give such directions as it may think fit with respect to holding of any enquiry or adjudication of claims or for hearing the objection or otherwise.
- (3) At the hearing of the application, the Tribunal may, if it thinks fit, give such directions as may deem proper with reference to securing the debts or claims of creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

RULE 6. Order on application and Minute thereof.—(1) Where the Tribunal makes an order confirming a reduction, the order confirming the reduction and approving the minute may include such directions or terms and conditions as the Tribunal deems fit

- (2) The order confirming the reduction of share capital and approving the minute shall be in **Form No. RSC - 6** on such terms and conditions as may be deemed fit.
- (3) The Certificate issued by the Registrar under sub-section (5) of section 66 shall be in **Form No. RSC -7**.

SCHEDULE OF FEES			
Sl. No.	Section of the Companies Act, 2013	Nature of application / petition	Fees in Rs.
1.	Sub-Section (1) of Section 66.	Application for reduction of share capital.	5,000/-

CHAPTER XXVIII: SPECIAL COURTS

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE	IMPACT ON CHAPTERS OF ACLP
1	Special Court under section 435 of the Companies Act, 2013	27.07.2016	-
2	Designation of Special Court	01.09.2016	-
3	Designation of Special Court	17.11.2016	-
4	Companies (Mediation and Conciliation) Rules,2016	09.09.2016	9

ESTABLISHMENT OF SPECIAL COURT

The provisions of sub section (1) of Section 435 of the Companies Act,2013 states that The Central Government may for the purpose of providing speedy trial of offences under the Companies Act,2013, by notification establish or designate Special Courts.

Notification No. S.O. 2554(E) dated 27th July, 2016

Thus by the issue of ***Notification No. S.O. 2554(E) dated 27th July, 2016***, the Central Government, in exercise of the powers conferred by sub-section (1) of section 435 of the Companies Act, 2013 and with the concurrence of the Chief Justice of the High Court of Delhi, designates the following Court as Special Court for the purposes of providing speedy trial of offences punishable under the Companies Act, 2013 with imprisonment of two years or more under the Companies Act, 2013, namely:-

Sl. No. (1)	Existing Court (2)	Jurisdiction as Special Court (3)
1	Additional Sessions Judge-03, South-West District, Dwarka	National Capital Territory of Delhi

- The aforesaid Court mentioned in column number (2) shall exercise the jurisdiction as Special Court in respect of jurisdiction mentioned in column number (3).

Notification No. S.O. 2843(E) dated 1st September, 2016

Similarly, as aforesaid by the issue of **Notification No. S.O. 2843(E) dated 1st September, 2016** the Central Government, in exercise of the powers conferred by sub-section (1) of Section 435 of the Companies Act, 2013 and with the concurrence of the Chief Justice of the High Courts of Chhattisgarh, Rajasthan, Punjab and Haryana, Madras and Manipur, designates the following Courts as Special Courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013, namely:-

TABLE

Sl. No.	Existing Court	Jurisdiction as Special Court
(1)	(2)	(3)
1.	Sessions Judge, Bilaspur	State of Chhattisgarh
2.	Court of Special Judge, (Sati Niwaran), Jaipur	State of Rajasthan
3.	Court of Sessions Judge and 2 nd Additional Sessions Judge, S.A.S. Nagar	State of Punjab
4.	Court of Sessions Judge and 2 nd Additional Sessions Judge, Gurgaon	State of Haryana
5.	Court of Sessions Judge and 2 nd Additional Sessions Judge, Chandigarh	Union Territory of Chandigarh
6.	I Additional District and Sessions Court, Coimbatore	Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur.
7.	II Additional District and Sessions Court, Puducherry	Union Territory of Puducherry
8.	Sessions Judge, Imphal East	State of Manipur

1. The aforesaid Courts mentioned in column number (2) shall exercise the jurisdiction as Special Courts in respect of jurisdiction mentioned in column number (3).

Notification No. S.O. 3464(E) dated 17th November, 2016

Similarly, as aforesaid by the issue of **Notification No. S.O. 3464(E) dated 17th November, 2016** the Central Government, in exercise of the powers conferred by sub-section (1) of Section 435 of the Companies Act, 2013 and with the concurrence of the Chief Justice of the High Court of Meghalaya, hereby designates the following Court as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013, namely:-

TABLE

Sl. No.	Existing Court	Jurisdiction as Special Court
(1)	(2)	(3)
1	Court of District and Sessions Judge, Shillong.	State of Meghalaya

2. The aforesaid Court mentioned in column number (2) shall exercise the jurisdiction as Special Court in respect of jurisdiction mentioned in column number (3).

MCA Companies (Mediation and Conciliation) Rules, 2016 dated 9th September, 2016

The Central Government hereby, in exercise of the powers conferred under section 442 read with section 469 of the Companies Act, 2013, makes the following rules, namely:

RULE 1 : SHORT TITLE AND COMMENCEMENT

- (1) These rules may be called the Companies (Mediation and Conciliation) Rules, 2016.
- (2) They shall come into force on the date of their publication in the Official Gazette i.e. 9th September, 2016.

RULE 2 : DEFINITIONS

- (1) In these rules, unless the context otherwise requires,—
 - (a) **“Act”** means the Companies Act, 2013 (18 of 2013);
 - (b) **“Regional Director”** means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;
 - (c) **“Annexure”** means the annexure attached to these rules ;
 - (d) **“Form”** or **“e-Form”** means a form set forth in the Annexure which shall be used for the matter to which it relates ;
 - (e) **“Panel”** means the Mediation and Conciliation Panel.
- (2) The words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or the rules.

RULE 3 : PANEL OF MEDIATORS OR CONCILIATORS

- (1) Regional Director shall prepare a panel of experts willing and eligible to be appointed as mediators or conciliators in the respective regions and such panel shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be notified by the Central Government.
- (2) The Regional Director may invite applications from persons interested

in getting empanelled as mediator or conciliator and possessing the requisite qualifications specified in Rule 4.

(3) A person who intends to get empanelled as mediator or conciliator and possesses the requisite qualifications shall apply to the Regional Director in Form MDC-1.

(4) Application received under sub-rule (3), if rejected by the Regional Director, the Regional Director shall record the reasons in writing for the same.

(5) The Regional Director shall invite applications from persons interested in getting empanelled as mediator or conciliator every year during the month of February and update the Panel which shall be effective from 1st of April of every year:

Provided that for Financial Year 2016-17, the Regional Director may call for applications from the persons interested in getting empanelled as mediator or conciliator, within 60 days from the date of publication of these rules and prepare the panel for the current financial year within a period of 30 days.

RULE 4 : QUALIFICATIONS FOR EMPANELMENT

A person shall not be qualified for being empanelled as mediator or conciliator unless he –

- (a) has been a Judge of the Supreme Court of India ; or
- (b) has been a Judge of a High Court ; or
- (c) has been a District and Sessions Judge ; or
- (d) has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force ; or
- (e) has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years experience ; or
- (f) is a qualified legal practitioner for not less than ten years ; or
- (g) is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary ; or
- (h) has been a Member or President of any State Consumer Forum ; or
- (i) is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

RULE 5 : DISQUALIFICATIONS FOR EMPANELMENT

A person shall be disqualified for being empanelled as mediator or conciliator, if he –

- (a) is an undischarged insolvent or has applied to be adjudicated as an insolvent and his application is pending ;
- (b) has been convicted for an offence which, in the opinion of the Central Government, involves moral turpitude ;
- (c) has been removed or dismissed from the service of the Government or the Corporation owned or controlled by the Government ;
- (d) has been punished in any disciplinary proceeding, by the appropriate disciplinary authority ; or
- (e) has, in the opinion of the Central Government, such financial or other interest in the subject matter of dispute or is related to any of the parties, as is likely to affect prejudicially the discharge by him of his functions as a mediator or conciliator.

RULE 6 : APPLICATION FOR APPOINTMENT OF MEDIATOR OR CONCILIATOR AND HIS APPOINTMENT

- (1) (a) Parties concerned may agree on the name of the sole mediator or conciliator for mediation or conciliation between them;
- (b) Where, there are two or more sets of parties and are unable to agree on a sole mediator or conciliator, the Central Government or the Tribunal or the Appellate Tribunal may ask each party to nominate the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal may appoint the mediator or conciliator, as may be deemed necessary for mediation or conciliation between the parties.
- (2) The application to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, for referring the matter pertaining to any proceeding pending before it for mediation or conciliation shall be in Form MDC-2 and shall be accompanied with a fee of one thousand rupees.
- (3) On receipt of an application under sub-rule (2), the Central Government or the Tribunal or the Appellate Tribunal shall appoint one or more experts from the panel.
- (4) The Central Government or the Tribunal or the Appellate Tribunal, as the case may be, before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel, if it deems fit in the interest of parties.

RULE 7 : DELETION FROM THE PANEL

The Regional Director may by recording reasons in writing and after giving him an opportunity of being heard, remove any person from the Panel.

RULE 8 : WITHDRAWING NAME FROM PANEL

Any person who intends to withdraw his name from the Mediation and Conciliation Panel may make an application to the Regional Director indicating the reasons for such withdrawal and the Regional Director shall take a decision on such application within fifteen days of receipt of such application and update the Panel accordingly.

RULE 9 : DUTY OF MEDIATOR OR CONCILIATOR TO DISCLOSE CERTAIN FACTS

(1) It shall be the duty of a mediator or conciliator to disclose to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, about any circumstances which may give rise to a reasonable doubt as to his independence or impartiality in carrying out his functions.

(2) Every mediator or conciliator shall from the time of his appointment and throughout continuance of the mediation or conciliation proceedings, without any delay, disclose to the parties about existence of any circumstance referred to in sub-rule (1).

RULE 10 : WITHDRAWAL OF APPOINTMENT

The Central Government or the Tribunal or the Appellate Tribunal as the case may be, upon receiving any disclosure furnished by the mediator or conciliator under rule 9, or after receiving any other information from a party or other person in any proceeding which is pending and on being satisfied that such disclosures or information has raised a reasonable doubt as to the independence or impartiality of such mediator or conciliator, may withdraw his appointment and in his place, appoint any other mediator or conciliator in that proceeding :

Provided that the mediator or conciliator may, offer to withdraw himself from such proceeding and request the Central Government or the Tribunal or the Appellate Tribunal as the case may be to appoint any other mediator or conciliator.

RULE 11 : PROCEDURE FOR DISPOSAL OF MATTERS

(1) For the purposes of mediation and conciliation, the mediator or conciliator shall follow the following procedure, namely :-

- (i) he shall fix, in consultation with the parties, the dates and the time of each mediation or conciliation session, where all parties have to be present ;

(ii) he shall hold the mediation or conciliation at the place decided by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, or such other place where the parties and the mediator or conciliator jointly agree ;

(iii) he may conduct joint or separate meetings with the parties ;

(iv) each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which need to be resolved, and his position in respect of those issues and all information reasonably required for the mediator or conciliator to understand the issue and a copy of such memorandum shall also be given to the opposite party or parties:

Provided that in suitable or appropriate cases, the above mentioned period may be reduced at the discretion of the mediator or conciliator;

(v) each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved.

(2) Where there is more than one mediator or conciliator, the mediator or conciliators may first concur with the party that agreed to nominate him and thereafter interact with the other mediator or conciliator, with a view to resolve the dispute.

RULE 12: MEDIATOR OR CONCILIATOR NOT BOUND BY THE INDIAN EVIDENCE ACT, 1872 OR THE CODE OF CIVIL PROCEDURE, 1908

The mediator or conciliator shall not be bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908 while disposing the matter, but shall be guided by the principles of fairness and natural justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute.

RULE 13 : REPRESENTATION OF PARTIES

The parties shall ordinarily be present personally or through an authorised attorney at the sessions or meetings notified by the mediator or conciliator:

Provided that the parties may be represented by an authorised person or counsel with the permission of the mediator or conciliator in such sessions or meetings and the mediator or conciliator or the Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall be entitled to direct or ensure the presence of any party to appear in person:

Provided further that the party not residing in India may, with the permission of the mediator or conciliator, be represented by his or her authorised representative at the sessions or meetings.

RULE 14 : CONSEQUENCES OF NON-ATTENDANCE OF PARTIES AT SESSIONS OR MEETINGS ON DUE DATES

If a party fails to attend a session or a meeting fixed by the mediator or conciliator deliberately or wilfully for two consecutive times, the mediation or conciliation shall be deemed to have failed and mediator or conciliator shall report the matter to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

RULE 15 ADMINISTRATIVE ASSISTANCE

In order to facilitate the conduct of mediation or conciliation proceedings, the mediator or conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

RULE 16 OFFER OF SETTLEMENT BY PARTIES

(1) Any party to the proceeding may, “without prejudice” offer a settlement to the other party at any stage of the proceedings, with a notice to the mediator or conciliator.

(2) Any party to the proceeding may make a, “with prejudice” offer to the other party at any stage of the proceedings with a notice to the mediator or conciliator.

RULE 17 : ROLE OF MEDIATOR OR CONCILIATOR

The mediator or conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to resolve the dispute, emphasising that it is the responsibility of the parties to take decision which affect them and he shall not impose any terms of settlement on the parties :

Provided that on consent of both the parties, the mediator or conciliator may impose such terms and conditions on the parties for early settlement of the dispute as he may deem fit.

RULE 18 : PARTIES ALONE RESPONSIBLE FOR TAKING DECISION

The parties shall be made to understand that the mediator or conciliator facilitates in arriving a decision to resolve the dispute and that he shall not and cannot impose any settlement nor the mediator or conciliator give any assurance that the mediation or conciliation shall result in a settlement and the mediator or conciliator shall not impose any decision on the parties.

RULE 19 : TIME LIMIT FOR COMPLETION OF MEDIATION OR CONCILIATION

(1) The process for any mediation or conciliation under these rules shall be completed within a period of three months from the date of appointment

of expert or experts from the Panel.

(2) On the expiry of three months from the date of appointment of expert from the Panel, the mediation or conciliation process shall stand terminated.

(3) In case of mediation or conciliation in relation to any proceeding before Tribunal or Appellate Tribunal which could not be completed within three months, the Tribunal or as the case may be, the Appellate Tribunal, may on the application of mediator or conciliator or any of the party to the proceedings, extend the period for mediation or conciliation by such period not exceeding three months.

RULE 20 : PARTIES TO ACT IN GOOD FAITH

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute.

RULE 21 : CONFIDENTIALITY, DISCLOSURE AND INADMISSIBILITY OF INFORMATION

(1) When a mediator or conciliator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate :

Provided that when a party gives information to the mediator or conciliator subject to a specific condition that the information may be kept confidential, the mediator or conciliator shall not disclose that information to the other party.

(2) The receipt or perusal, or preparation of records, reports or other documents by the mediator or conciliator, while serving in that capacity shall be confidential and the mediator or conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the mediation or conciliation before the Central Government or the Tribunal or the Appellate Tribunal or as the case may be, or any other authority or any person or group of persons.

(3) The parties shall maintain confidentiality in respect of events that transpired during the mediation and conciliation and shall not rely on or introduce the said information in other proceedings as to –

(i) views expressed by a party in the course of the mediation or conciliation proceedings ;

(ii) documents obtained during the mediation or conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the mediator or conciliator.

- (iii) proposals made or views expressed by the mediator or conciliator ;
- (iv) admission made by a party in the course of mediation or conciliation proceedings.
- (4) There shall be no audio or video recording of the mediation or conciliation proceedings.
- (5) No statement of parties or the witnesses shall be recorded by the mediator or conciliator.

RULE 22 :PRIVACY

The mediation or conciliation sessions or meetings shall be conducted in privacy where the persons as mentioned in rule 13 shall be entitled to represent parties but other persons may attend only with the permission of the parties and with the consent of the mediator or conciliator.

RULE 23 : PROTECTION OF ACTION TAKEN IN GOOD FAITH

No mediator or conciliator shall be held liable for anything, which is done or omitted to be done by him, in good faith during the mediation or conciliation proceedings for civil or criminal action nor shall be summoned by any party to the suit or proceeding to appear before the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, to testify regarding information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation or conciliation proceedings.

RULE 24 : COMMUNICATION BETWEEN MEDIATOR OR CONCILIATOR AND THE CENTRAL GOVERNMENT OR THE TRIBUNAL OR THE APPELLATE TRIBUNAL

In order to preserve the confidence of parties in the Central Government or the Tribunal or the Appellate Tribunal as the case may be and the neutrality of the mediator or conciliator, there shall be no communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in the subject matter :

Provided that, if any communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is necessary, it shall be in writing and copies of the same shall be given to the parties or the authorised representative :

Provided further that communication between the mediator or conciliator and the Central Government or the Tribunal or the Appellate Tribunal, as

the case may be, shall be limited to communication by the mediator or conciliator:

- (i) about the failure of the party to attend ;
- (ii) about the consent of the parties ;
- (iii) about his assessment that the case is not suited for settlement through the mediation or conciliation;
- (iv) about settlement of dispute between the parties.

RULE 25 : SETTLEMENT AGREEMENT

(1) Where an agreement is reached between the parties in regard to all the issues or some of the issues in the proceeding, the same shall be reduced to writing and signed by the parties and if any counsel has represented the parties, the conciliator or mediator may also obtain the signature of such counsel on the settlement agreement.

(2) The agreement of the parties so signed shall be submitted to the mediator or conciliator who shall, with a covering letter signed by him, forward the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(3) Where no agreement is reached at between the parties, before the time limit specified in rule 19, or where the mediator or conciliator is of the view that no settlement is possible, he shall report the same to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in writing.

RULE 26 : FIXING DATE FOR RECORDING SETTLEMENT AND PASSING ORDER

(1) The Central Government or the Tribunal or the Appellate Tribunal as the case may be, shall fix a date of hearing normally within fourteen days from the date of receipt of the report of the mediator or conciliator under rule 25 and on such date of hearing, if the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, is satisfied that the parties have settled their dispute, it shall pass an order in accordance with terms thereof.

(2) If the settlement disposes of only certain issues arising in the proceeding, on the basis of which any order is passed as stated in sub-rule (1), the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall proceed further to decide the remaining issues.

RULE 27 : EXPENSES OF THE MEDIATION AND CONCILIATION

- (1) At the time of referring the matter to the mediation or conciliation, the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, may fix the fee of the mediator or conciliator and as far as possible, a consolidated sum may be fixed rather than for each session or meeting.
- (2) The expense of the mediation or conciliation including the fee of the mediator or conciliator, costs of administrative assistance and other ancillary expenses concerned, shall be borne equally by the various contesting parties or as may be otherwise directed by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- (3) Each party shall bear the costs for production of witnesses on his side including experts or for production of documents.
- (4) The mediator or conciliator may, before the commencement of the mediation or conciliation, direct the parties to deposit equal share of the probable costs of the mediation or conciliation including the fees to be paid to the mediator or conciliator.
- (5) If any party or parties do not pay the amount referred to sub-rule (4), the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, shall on the application of the mediator or conciliator, or any party, issue appropriate directions to the concerned parties.
- (6) The mediation or conciliation shall commence only on the deposit of amount referred to in sub-rule (4) and in case amount is not paid before such commencement, the mediation or conciliation shall be deemed to have terminated.

RULE 28 : ETHICS TO BE FOLLOWED BY MEDIATOR OR CONCILIATOR

The mediator or conciliator shall—

- (a) follow and observe the rules strictly and with due diligence ;
- (b) not carry on any activity or conduct which shall reasonably be considered as conduct unbecoming of a mediator or conciliator ;
- (c) uphold the integrity and fairness of the mediation or conciliation process;
- (d) ensure that the parties involved in the mediation or conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- (e) satisfy himself or herself that he or she is qualified to undertake and complete the assignment in a professional manner ;
- (f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias ;

- (g) avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- (h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator or conciliator;
- (i) conduct all proceedings related to the resolutions of a dispute, in accordance with the relevant applicable law ;
- (j) recognise that the mediation or conciliation is based on principles of self-determination by the parties and that the mediation or conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement ; and
- (k) maintain the reasonable expectations of the parties as to confidentiality and refrain from promises or guarantees of results.

Provided that if any party finds conduct of mediator or conciliator violative of ethics laid down in this rule, the party may immediately bring it to the notice of the Regional Director.

RULE 29 : RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

The parties shall not initiate, during the mediation or conciliation under these rules, any arbitral or judicial proceedings in respect of a matter that is the subject-matter of the mediation or conciliation, except that a party may initiate arbitral or Judicial proceedings, where, in his, opinion, such proceedings are necessary for protecting his rights.

RULE 30 : MATTERS NOT TO BE REFERRED TO THE MEDIATION OR CONCILIATION

The following matters shall not be referred to mediation or conciliation, namely:—

- (a) the matters relating to proceedings in respect of inspection or investigation under Chapter XIV of the Act; or the matters which relate to defaults or offences for which applications for compounding have been made by one or more parties.
- (b) cases involving serious and specific allegations of fraud, fabrication of documents forgery, impersonation, coercion etc.
- (c) cases involving prosecution for criminal and non-compoundable offences.
- (d) cases which involve public interest or interest of numerous persons who are not parties before the Central Government or the Tribunal or the Appellate Tribunal as the case may be.

CHAPTER XXIX: MISCELLANEOUS

S NO.	AMENDMENT – RULES/NOTIFICATION/CIRCULAR/ORDERS AND PARTICULAR	NOTIFIED DATE	IMPACT ON CHAPTER – OF ACLP
1	Notification: Sub-section (3) of section 1 of the Companies Act, 2013(18 of 2013)	05.09.2016	13
2	commencement notification dated 09.09.2016	09.09.2016	Various
3	Commencement notification dated 07.12.2016	07.12.2016	Various
4	Delegations of Powers to Regional Directors under section 458 of CA, 2013	19.12.2016	-
5	Notification- Commencement of sections 248 to 252 of Companies Act, 2013	26.12.2016	17

Notification No. S.O. 2866(E) dated 5th September, 2016

The Central Government, in exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 hereby appoints 7th September, 2016 as the date on which the provisions of section 124, sub-sections (1) to (4), (6) [with respect to the manner of administration of the Investor Education and Protection Fund] and (8) to (11) of section 125 of the Companies Act, 2013 shall come into force.

Notification No. S.O. 2912(E) dated 9th September, 2016

The Central Government, in exercise of the powers conferred by sub-section (3) of section 1 of the In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013, hereby appoints 9th September, 2016 as the date on which the provisions of section 227, clause (b) of sub-section (1) of section 242, clauses (c) and (g) of sub-section (2) of section 242, section 246 and sections 337 to 341 (to the extent of their applicability for section 246), of the Companies Act, 2013 shall come into force.

Notification No. S.O. 3677(E) dated 7th December, 2016

The Central Government hereby, in exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013, appoints the 15th day of December, 2016 as the date on which the following provisions of the said Act shall come into force, namely:-

SL.No.	Section
1.	Clause (23) of section 2
2.	Clause (c) and (d) of sub-section (7) of section 7
3.	Sub-section (9) of section 8
4.	Section 48
5.	Section 66
6.	Sub-section (2) of section 224
7.	Section 226
8.	Section 230 [except sub-section (11) and (12)], and Sections 231 to 233
9.	Sections 235 to 240
10.	Sections 270 to 288
11.	Sections 290 to 303
12.	Section 324
13.	Sections 326 to 365
14.	Proviso to section 370
15.	Sections 372 to 373
16.	Sections 375 to 378
17.	Sub-section (2) of section 391
18.	Clause (c) of sub-section (1) of section 434

Notification No. S.O. 4090(E) dated 19th December, 2016

1. The Central Government hereby, in exercise of the powers conferred by Section 458 of the Companies Act, 2013, delegates to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under the following sections of the said Act, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest, namely:—

- (a) clause (i) of sub-section (4) of section 8 (for alteration of memorandum in case of conversion into another kind of company);
- (b) sub-section (6) of section 8;
- (c) sub-sections (4) and (5) of section 13;
- (d) section 16;
- (e) section 87;
- (f) sub-section (3) of section 111;
- (g) sub-section (1) of section 140;
- (h) sub-section (5) of section 230;
- (i) sub-sections (2), (3), (4), (5) and (6) of section 233;
- (j) first and second proviso of sub-section (3) of section 272;
- (k) sub-section (1) of section 348;
- (l) sections 361, 362, 364 and 365
- (m) clause (i) of the proviso to sub-section (1) of section 399 and
- (n) section 442.

2. This notification shall come into force with effect from the date of its publication in the Official Gazette i.e. **19th December, 2016.**

Notification No. S.O. 4167(E) dated 26th December, 2016

The Central Government, in exercise of the powers conferred by sub-section (3) of Section 1 of the Companies Act, 2013, hereby appoints the 26th December, 2016 as the date on which the provisions of section 248 to 252 i.e. the Chapter XVIII: REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES, of the Companies Act, 2013, shall come into force.

SCHEDULES

S NO.	AMENDMENTS- RULES/NOTIFICATIONS/CIRCULARS/ORDERS	NOTIFIED DATE
1	Notification for amendment to Schedule V of Companies Act, 2013	12.09.2016
2	Amendment of Schedule II to the Companies Act, 2013	17.11.2016

Notification No. S.O. 2922(E) dated 12th September, 2016

The Central Government hereby, in exercise of the powers conferred by sub-sections (1) and (2) of section 467 of the Companies Act, 2013, makes the following amendments to amend Schedule V of the said Act, namely:—

1. In Schedule V of the Companies Act, 2013,-

(a) in Part I, in Appointments,-

(i) in para (a), for sub-paragraph (vi), the following sub-paragraph shall be substituted, namely;- “(vi) the Companies Act,2013 (18 of 2013) or any previous company law”

(b) in part II, for section II, the following section shall be substituted, namely:-

“Section II - Remuneration payable by companies having no profit or inadequate profit without Central Government approval

Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the limits under (A) and (B) given below:-

(A) :

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	60 lakhs
(ii) 5 crores and above but less than 100 crores	84 lakhs
(iii) 100 crores and above but less than 250 crores	120 lakhs

(iv) 250 crores and above	120 lakhs <i>plus</i> 0.01% of the effective capital in excess of Rs. 250 crores :
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Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation.- It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

- (B) In case of a managerial person who is functioning in a professional capacity, no approval of Central Government is required, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company:

Provided further that the limits specified under items (A) and (B) of this section shall apply, if-

- (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;
- (ii) the company has not committed any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person and in case of a default, the company obtains prior approval from secured creditors for the proposed remuneration and the fact of such prior approval having been obtained is mentioned in the explanatory statement to the notice convening the general meeting;
- (iii) an ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per the limits laid down in item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years.
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:-
 - I. General information:
 - (1) Nature of industry
 - (2) Date or expected date of commencement of commercial production
 - (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus

- (4) Financial performance based on given indicators
- (5) Foreign investments or collaborations, if any.

II. Information about the appointee:

- (1) Background details
- (2) Past remuneration
- (3) Recognition or awards
- (4) Job profile and his suitability
- (5) Remuneration proposed
- (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin)
- (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

III. Other information:

- (1) Reasons of loss or inadequate profits
- (2) Steps taken or proposed to be taken for improvement
- (3) Expected increase in productivity and profits in measurable terms

IV. Disclosures

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:

- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- (ii) details of fixed component and performance linked incentives along with the performance criteria;
- (iii) service contracts, notice period, severance fees; and
- (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Explanation : For the purposes of Section II of this part, "Statutory Structure" means any entity which is entitled to hold shares in any company formed under any statute. "

2. This notification shall come into force from the date of its publication in the official gazette i.e. **12th September, 2016.**

Notification No. G.S.R. 1075(E) dated 17th November, 2016 applicable for accounting period commencing on or after 01st April, 2016.

The Central Government, in exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 hereby makes the following further amendments to amend Schedule II -

1. Under Part 'A', in para 3, in sub-paragraph (ii), the following has been substituted -

“(ii) For intangible assets, the relevant Indian Accounting Standards (Ind AS) shall apply. Where a company is not required to comply with the Indian Accounting Standards (Ind AS), it shall comply with relevant Accounting Standards under Companies (Accounting Standards) Rules, 2006, except in case of intangible assets (Toll Roads) created under ‘Build, Operate and Transfer’, ‘Build, Own, Operate and Transfer’ or any other form of public private partnership route in case of road projects.

IMPORTANT ANNOUNCEMENT FOR STUDENT ON SUBJECT

CORPORATE RESTRUCTURING, VALUATION & INSOLVENCY

The provisions relating to the Compromise, Arrangements and Amalgamation, winding up under the Companies Act, 2013 are notified w.e.f. - 7th December, 2016.

Accordingly, the relevant provisions of the Companies Act, 2013 along with the rules made thereunder will be applicable for the June, 2017 Examination and the related provisions of the Companies Act, 1956 will not apply.

Further, provisions (including Rules/Regulations made there under) relating to Corporate Insolvency Resolution Process, liquidation process, insolvency professional agencies, insolvency professionals, insolvency and bankruptcy board of India etc are notified under the Insolvency and Bankruptcy Code, 2016.

The Students are advised to read the notified provisions of Companies Act 2013 and Insolvency and Bankruptcy Code 2016

Further, MCA has also notified the NCLT & NCLAT Rules. Students are advised to read the rules as amended upto December, 2016 for June, 2017 Examinations.

Student are advised the refer the follow index for preparation of June, 2017 Examinations

**PROFESSIONAL PROGRAMME
MODULE I - PAPER 3:
CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY**

Important Update for June, 2017 Examinations

PART A - Corporate Restructuring

Lesson No.		Key Updates
1	Corporate Restructuring – Introduction & Concepts	Students are advised to read Section 230 to 240* of the Companies Act, 2013 Notified on 07.12.2016 along with the rules made there under. <u>The provisions of Companies Act, 1956 relating to the Corporate Restructuring will not apply</u>
2	Mergers and Amalgamations – Legal and	(i) Students are advised to read Section 230 to 240* of the Companies Act, 2013 Notified on

	Procedural Aspects	07.12.2016 along with the rules made there under, (ii) NCLT & NCLAT Rules notified on 21.07.2016 <u>The provisions of Companies Act, 1956 relating to the Corporate Restructuring will not apply</u>
3	Economic and Competition Law Aspects of Mergers and Amalgamations	Students are advised to also refer CCI (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2016.
4	Accounting Aspects of Amalgamations	Students are advised to read Companies (Accounting Standards) Amendment Rules, 2016 specially with regard to AS-14.
6	Interest of the Small Investors in Mergers	Students are advised to read the Section 244 of the Companies Act, 2013 along with Section 230 & 231 of the Act. (ii) NCLT & NCLAT Rules notified on 21.07.2016 The provisions of Companies Act, 1956 relating to the Corporate Restructuring will not apply.
7	Amalgamation of Banking and Government Companies	Students are advised to also read Section 237 read with rules made there under along with the Master Direction issued by the RBI on 21st April, 2016 or such further amendments. (ii) NCLT & NCLAT Rules notified on 21.07.2016
8	Corporate Demergers and Reverse Mergers	Students are advised to also read Section 230 to 240* of the Companies Act, 2013 Notified on 07.12.2016 along with the rules made there under. (ii) NCLT & NCLAT Rules notified on 21.07.2016 The provisions of Companies Act, 1956 relating to the Corporate Restructuring will not apply.
9	Takeovers	Students are also advised to read Section 230 to 240* and other applicable provisions of the Companies Act, 2013 along with the rules made there under. (ii) Amendments in SEBI (SAST) Regulations, 2011

		up to December, 2016 along with the other SEBI Regulations.
10	Funding of Mergers and Takeovers	Students are advised to also read the RBI Master Direction on the External Commercial Borrowing, SEBI ICDR Regulations along with the Provisions of the Companies Act, 2013.
11	Financial Restructuring	Students are advised to also read the Rules notified for Section 66 for Reduction of Share Capital along with the other relevant provisions of under the Companies Act, 2013. (ii) NCLT & NCLAT Rules notified on 21.07.2016
PART B – Valuation		
14	Valuation Introduction and Techniques	Students are expected to also have understanding of Section 247 of the Companies Act, 2013.
15	Regulatory Aspects of Valuation with reference to Corporate Strategies	Students are advised to have updated knowledge of the valuation requirement under Various Corporate Law.
PART C – Insolvency		
16	Insolvency – Concepts and Evolution	Students are also advised to read the Chartered Secretary September, 2016 Edition. Provisions of SICA will not apply.
17	Revival and Restructuring – Under companies Act, 2013 and Insolvency & Bankruptcy Code, 2016	(i) Students are also advised to read the Chartered Secretary September, 2016 Edition. (ii) Notified Sections under the Insolvency and Bankruptcy Code, 2016 (iii) Regulations made under the Insolvency and Bankruptcy Code, 2016 notified by Insolvency and Bankruptcy Board of India (IBBI).
18	Securitization	(i) Students are advised to refer the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016. (ii) Students are advised to also refer Security

		Interest (Enforcement) (Amendment) Rules, 2016.
19	Debt Recovery	(i) Students are advised to refer Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.
20	Winding Up	(i) Insolvency and Bankruptcy Code, 2016 (ii) NCLT & NCLAT Rules notified on 21.07.2016 (iii) Chartered Secretary September, 2016 edition

*Section 234 is yet to be notified,

Note:

(i) Students are advised to refer the e-book on the Companies Act, 2013 for easy reference of the Sections and the rules made there under.

(ii) For regular updates it is advised to visit the following website:

1. www.mca.gov.in
2. www.sebi.gov.in
4. www.ibbi.gov.in

(iii) Students are advised to refer MCA website for details of the sections notified under the Insolvency and Bankruptcy Code, 2016.

TABLE SHOWING DATE OF ENFORCEMENT OF PROVISIONS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016		
<i>Sections of The Insolvency and Bankruptcy Code, 2016</i>	<i>Description of Sections</i>	<i>Date of Enforcement</i>
PART I : PRELIMINARY		
1	Short title, extent and commencement	----
2	Application [Except clause (e)]	1 st December, 2016
3	Definitions	
3(1)	Board	19 th August, 2016
3(2)	Bench	1 st November, 2016
3(3)	Bye-laws	1 st November, 2016
3(4)	Charge	1 st November, 2016
3(5)	Chairperson	19 th August, 2016
3(6)	Claim	1 st November, 2016
3(7)	Corporate Person	1 st November, 2016
3(8)	Corporate Debtor	1 st November, 2016

3(9)	Core Services	1 st November, 2016
3(10)	Creditor	1 st November, 2016
3(11)	Debt	1 st November, 2016
3(12)	Default	1 st November, 2016
3(13)	Financial Information	1 st November, 2016
3(14)	Financial Institution	1 st November, 2016
3(15)	Financial Product	1 st November, 2016
3(16)	Financial Service	1 st November, 2016
3(17)	Financial Service Provider	1 st November, 2016
3(18)	Financial Sector Regulator	1 st November, 2016
3(19)	Insolvency Professional	1 st November, 2016
3(20)	Insolvency Professional Agency	1 st November, 2016
3(21)	Information Utility	1 st November, 2016
3(22)	Notification	19 th August, 2016
3(23)	Person	1 st November, 2016
3(24)	Person Resident in India	1 st November, 2016
3(25)	Person Resident outside India	1 st November, 2016
3(26)	Prescribed	19 th August, 2016
3(27)	Property	1 st November, 2016
3(28)	Regulations	19 th August, 2016
3(29)	Schedule	1 st November, 2016
3(30)	Secured Creditor	1 st November, 2016
3(31)	Security Interest	1 st November, 2016
3(32)	Specified	1 st November, 2016
3(33)	Transaction	1 st November, 2016
3(34)	Transfer	1 st November, 2016
3(35)	Transfer of property	1 st November, 2016
3(36)	Workman	1 st November, 2016
3(37)	Meaning of Words & Expressions	19 th August, 2016
PART II: INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS		
Chapter I : Preliminary		
4	Application of this Part	1 st December, 2016
5	Definitions	1 st December, 2016

5(1)	Adjudicating Authority	1 st December, 2016
5(2)	Audio	1 st December, 2016
5(3)	Chapter	1 st December, 2016
5(40)	Constitutional Document	1 st December, 2016
5(5)	Corporate Applicant	1 st December, 2016
5(6)	Dispute	1 st December, 2016
5(7)	Financial Creditor	1 st December, 2016
5(8)	Financial Debt	1 st December, 2016
5(9)	Financial Position	1 st December, 2016
5(10)	Information Memorandum	1 st December, 2016
5(11)	Initiation Date	1 st December, 2016
5(12)	Insolvency Commencement Date	1 st December, 2016
5(13)	Insolvency Resolution Process Costs	1 st December, 2016
5(14)	Insolvency Resolution Process Period	1 st December, 2016
5(15)	Interim Finance	1 st December, 2016
5(16)	Liquidation Cost	1 st December, 2016
5(17)	Liquidation commencement date	1 st December, 2016
5(18)	Liquidator	1 st December, 2016
5(19)	Officer	1 st December, 2016
5(20)	Operational Creditor	1 st December, 2016
5(21)	Operational Debt	1 st December, 2016
5(22)	Personal Guarantor	1 st December, 2016
5(23)	Personnel	1 st December, 2016
5(24)	Related Party	1 st December, 2016
5(25)	Resolution Applicant	1 st December, 2016
5(26)	Resolution Plan	1 st December, 2016
5(27)	Resolution Professional	1 st December, 2016
5(28)	Voting Share	1 st December, 2016
Chapter II : Corporate Insolvency Resolution Process		
6	Persons who may initiate Corporate Insolvency Resolution Process	1 st December, 2016
7	Initiation of Corporate Insolvency Resolution Process by Financial Creditor	1 st December, 2016

8	Insolvency Resolution by Operational Creditor	1 st December, 2016
9	Application for initiation of Corporate Insolvency Resolution Process by Operational Creditor	1 st December, 2016
10	Initiation of Corporate Insolvency Resolution Process by Corporate Applicant	1 st December, 2016
11	Persons not entitled to make applications	1 st December, 2016
12	Time-limit for completion of Insolvency Resolution Process	1 st December, 2016
13	Declaration of moratorium and public announcement	1 st December, 2016
14	Moratorium	1 st December, 2016
15	Public announcement of corporate insolvency resolution process	1 st December, 2016
16	Appointment and tenure of interim resolution professional	1 st December, 2016
17	Management of affairs of corporate debtor by interim resolution professional	1 st December, 2016
18	Duties of interim resolution professional	1 st December, 2016
19	Personnel to extend co-operation to interim resolution professional	1 st December, 2016
20	Management of operations of corporate debtor as going concern	1 st December, 2016
21	Committee of creditors	1 st December, 2016
22	Appointment of Resolution Professional	1 st December, 2016
23	Resolution Professional to conduct corporate insolvency resolution process	1 st December, 2016
24	Meeting of Committee of Creditors	1 st December, 2016
25	Duties of Resolution Professional	1 st December, 2016
26	Application for avoidance of transactions not to affect proceedings	1 st December, 2016
27	Replacement of Resolution Professional by Committee of Creditors	1 st December, 2016
28	Approval of Committee of Creditors for certain actions	1 st December, 2016

29	Preparation of Information Memorandum	1 st December, 2016
30	Submission of Resolution Plan	1 st December, 2016
31	Approval of Resolution Plan	1 st December, 2016
32	Appeal	1 st December, 2016
Chapter III :Liquidation Process		
33	Intimation of Liquidation	15 th December, 2016
34	Appointment of Liquidator and fee to be paid	15 th December, 2016
35	Power and duties of Liquidator	15 th December, 2016
36	Liquidation estate	15 th December, 2016
37	Power of Liquidator to access information	15 th December, 2016
38	Consolidation of claims	15 th December, 2016
39	Verification of claims	15 th December, 2016
40	Admission or rejection of claims	15 th December, 2016
41	Determination of valuation of claims	15 th December, 2016
42	Appeal against the decision of Liquidator	15 th December, 2016
43	Preferential transactions and relevant time	15 th December, 2016
44	Orders in case of preferential transactions	15 th December, 2016
45	Avoidance of undervalued transactions	15 th December, 2016
46	Relevant period for avoidable transactions	15 th December, 2016
47	Application by creditor in case of undervalued transactions	15 th December, 2016
48	Order in cases of undervalued transactions	15 th December, 2016
49	Transactions defrauding creditors	15 th December, 2016
50	Extortionate credit transactions	15 th December, 2016
51	Orders of Adjudicating Authority in respect of extortionate credit transactions	15 th December, 2016
52	Secured creditor in liquidation proceedings	15 th December, 2016
53	Distribution of assets	15 th December, 2016

54	Dissolution of corporate debtor	15 th December, 2016
Chapter VI : Adjudicating Authority for Corporate Persons		
60	Adjudicating Authority for Corporate Persons	1 st December, 2016
61	Appeals and Appellate Authority	1 st December, 2016
62	Appeal to Supreme Court	1 st December, 2016
63	Civil court not to have jurisdiction	1 st December, 2016
64	Expeditious disposal of applications	1 st December, 2016
65	Fraudulent or malicious initiation of proceedings	1 st December, 2016
66	Fraudulent trading or wrongful trading	1 st December, 2016
67	Proceedings under Section 66	1 st December, 2016
Chapter VII : Offences and Penalties		
68	Punishment for concealment of property	1 st December, 2016
69	Punishment for transactions defrauding creditors	1 st December, 2016
70	Punishment for misconduct in course of corporate insolvency resolution process	1 st December, 2016
71	Punishment for falsification of books of corporate debtor	1 st December, 2016
72	Punishment for wilful and material omissions from statements relating to affairs of corporate debtor	1 st December, 2016
73	Punishment for false representations to creditors	1 st December, 2016
74	Punishment for contravention of moratorium or the Resolution Plan	1 st December, 2016
75	Punishment for false information furnished in application	1 st December, 2016
76	Punishment for non-disclosure of dispute or repayment of debt by operational creditor	1 st December, 2016
77	Punishment for providing false information in application made by corporate debtor	1 st December, 2016
PART IV: REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES		

Chapter I: The Insolvency and Bankruptcy Board of India		
188	Establishment and incorporation of Board	5 th August, 2016
189	Constitution of Board	5 th August, 2016
190	Removal of member from office	5 th August, 2016
191	Powers of Chairperson	5 th August, 2016
192	Meetings of Board	5 th August, 2016
193	Member not to participate in meetings in certain cases	5 th August, 2016
194	Vacancies etc. Not to invalidate proceedings of Board, Officers and employees of Board	5 th August, 2016
Chapter II: Powers and Functions of the Board		
196	Powers and Functions of the Board	1 st November, 2016
197	Constitution of advisory committee, executive committee or other committee	1 st November, 2016
198	Condonation of delay	1 st December, 2016
Chapter III: Insolvency Professional Agencies		
199	No person to function as insolvency professional agency without valid certificate of registration	15 th November, 2016
200	Principles governing registration of insolvency professional agency	15 th November, 2016
201	Registration of insolvency professional agency	15 th November, 2016
202	Appeal to National Company Law Appellate Tribunal	15 th November, 2016
203	Governing Board of insolvency professional agency	15 th November, 2016
204	Functions of insolvency professional agencies	15 th November, 2016
205	insolvency professional agencies to make bye-laws	15 th November, 2016
Chapter IV: Insolvency Professionals		
206	Enrolled and registered persons to act as Insolvency Professionals	15 th November, 2016
207	Registration of Insolvency Professionals	15 th November, 2016

208	Functions and obligations of Insolvency Professionals	
	<ul style="list-style-type: none"> sub-section (1) of section 208- (i) clause (c); (ii) clause (e); 	15 th November, 2016
	<ul style="list-style-type: none"> sub-section (2) of section 208 	15 th November, 2016

Chapter V: Information Utilities

Chapter VI: Inspection and Investigation		
217	Complaints against insolvency professional agency or its member or information utility	15 th November, 2016
218	Investigation of insolvency professional agency or its member or information utility	15 th November, 2016
219	Show cause notice to insolvency professional agency or its member or information utility	15 th November, 2016
220	Appointment of disciplinary committee	15 th November, 2016

Chapter VII: Finance, Accounts and Audit

221	Grants by Central Government	19 th August, 2016
222	Board's Fund	19 th August, 2016
223	Accounts and Audit	1 st November, 2016
PART V: MISCELLANEOUS		
225	Power of Central Government to issue directions	19 th August, 2016
226	Power of Central Government to supersede Board	19 th August, 2016
230	Delegation	19 th August, 2016
231	Bar of jurisdiction	1 st December, 2016
232	Members, officers and employees of Board to the public servants	19 th August, 2016
233	Protection of action taken in good faith	19 th August, 2016
236	Trial of offences by Special Court	1 st December, 2016
237	Appeal and revision	1 st December, 2016
238	Provisions of this Code override other laws	1 st December, 2016
	<ul style="list-style-type: none"> sub-section (1) and clause (zd) of sub-section (2) of section 239 	19 th August, 2016

	<ul style="list-style-type: none"> sub-section (2) of section 239- (i) clause (ze) to (zh); (ii) clause (zl) to (zm) 	1 st November, 2016
	<ul style="list-style-type: none"> clause (a) to clause (f) of sub-section (2) of section 239 	1 st December, 2016
240	Power to make regulations	
	<ul style="list-style-type: none"> sub-section (1) and clause (zt) of sub-section (2) of section 240; 	19 th August, 2016
	<ul style="list-style-type: none"> sub-section (2) of section 240- (i) clause (a) to (zm); (ii) clause (zu) to (zzzc); 	1 st November, 2016
241	Rules and Regulations to be laid before Parliament	19 th August, 2016
242	Power to remove difficulties	19 th August, 2016
244	Transitional provisions	1 st November, 2016
246	Amendments To The Central Excise Act, 1944	1 st November, 2016
247	Amendments To The Income-Tax Act, 1961	1 st November, 2016
248	Amendments To The Customs Act, 1962	1 st November, 2016
250	Amendments To The Finance Act, 1994	1 st November, 2016
251	Amendments To The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002	15 th November, 2016
252	Amendments To The Sick Industrial Companies (Special Provisions) Repeal Act, 2003	1 st November, 2016
253	Amendments To The Payment and Settlement Systems Act, 2007	15 th November, 2016
254	Amendments To The Limited Liability Partnership Act, 2008	15 th November, 2016
255	Amendments To The Companies Act, 2013	15 th November, 2016

Regulations Notified by IBBI:

- Insolvency and Bankruptcy Board of India(Procedure For Governing Boards Meetings) Regulations, 2017.
- Insolvency and Bankruptcy Board of India(Advisory Committee) Regulations, 2017.
- Insolvency and Bankruptcy Board of India(Engagement Of Research Associates And Consultants) Regulations, 2017.
- Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.
- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process For Corporate Persons) Regulations, 2016.

- Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.
- Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016