



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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March 16, 2026

Ms. Deepti Gaur Mukerjee
Hon'ble Secretary
Ministry of Corporate Affairs
Government of India
Kartavya Bhawan-1
New Delhi – 110 001

Recd.
16/03/26

Subject: Representation regarding issuance of notices by Regional Directors and application of Section 12(8) of the Companies Act, 2013 – Request for adherence to principles of natural justice

Respected Madam,

Greetings from the Institute of Company Secretaries of India

At the outset, we express our sincere appreciation for the continued efforts of the Ministry in fostering a transparent, fair, and facilitative regulatory environment. In furtherance of our commitment to strengthening corporate governance and addressing practical challenges faced by stakeholders, we respectfully wish to bring to your kind attention concerns arising from proceedings initiated for alleged non-maintenance of registered office under Section 12 of the Companies Act, 2013, particularly in situations where notices issued to companies are returned undelivered and penal consequences under Section 12(8) are initiated solely on such basis.

The provisions of Section 12 of the Act require every company to maintain a registered office capable of receiving communications and notices, and Section 12(9) specifically empowers the Registrar of Companies, where he has reasonable cause to believe that the company is not carrying on business or operations, to cause a physical verification of the registered office and take appropriate action in accordance with law.

Further, Sections 206 and 207 empower the Registrar of Companies to call for information, seek explanations, and conduct inspection and inquiry to ascertain compliance with the provisions of the Act. Section 454 of the Act, read with the Companies (Adjudication of Penalties) Rules, 2014, provides that the Registrar of Companies acts as the Adjudicating Officer for determining non-compliance and imposing penalties after providing a reasonable opportunity of being heard. The statutory framework thus clearly envisages that verification, inquiry, and adjudication must be preceded by proper examination of facts and compliance with due process.

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Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर।
इष्टकारे त्रेह त्प्राप्ते. शोभते ह्यु त्रेह त्रिव।

Mission

"To develop high calibre professionals facilitating good corporate governance"



It has, however, been represented that in certain cases, adverse conclusions regarding non-maintenance of registered office and consequential penal action under Section 12(8) are being initiated merely on account of non-delivery or return of notices, without undertaking statutory verification as contemplated under Section 12(9) and without providing an effective opportunity to the company to explain the circumstances leading to such non-delivery. It is respectfully submitted that non-delivery of a notice, by itself, cannot be conclusively presumed to establish non-maintenance of registered office, particularly when there may be bona fide and genuine reasons beyond the control of the company, including operational disruptions, change in occupancy arrangements, postal inefficiencies, incomplete address / name or administrative constraints.

It is a settled principle of law that service of notice is a condition precedent for the validity of any proceedings. The Hon'ble Supreme Court in *Y. Narayan Chetty v. Income Tax Officer (AIR 1959 SC 213)* held that where a statute mandates issuance and service of notice before initiating proceedings, failure to properly serve such notice renders the entire proceedings void and without jurisdiction. Similarly, in the case of *State of Orissa v. Dr. (Miss) Binapani Dei (1967) 2 SCR 625*, the Hon'ble Supreme Court held that any order having civil consequences must be preceded by a reasonable opportunity of hearing, even where the power exercised is administrative in nature. This principle was reiterated in *Canara Bank v. Debasis Das (2003) 4 SCC 557*, wherein the Court held that adherence to principles of natural justice is fundamental to fairness and cannot be dispensed with.

It is further respectfully submitted that Section 12(8) is a penal provision and must be invoked cautiously and strictly in accordance with law. The Hon'ble Supreme Court in *Hindustan Steel Ltd. v. State of Orissa (1970) 25 STC 211 (SC)* held that penalty should not be imposed merely because it is lawful to do so, and that penalty is not to be levied unless the default is deliberate, contumacious, or in conscious disregard of legal obligation. The Court observed that even where a minimum penalty is prescribed, the authority competent to impose penalty must exercise discretion judicially and consider the surrounding circumstances. Further, in *Tolaram Relumal v. State of Bombay AIR 1954 SC 496*, the Hon'ble Supreme Court held that penal statutes must be strictly construed and any ambiguity or doubt must be resolved in favour of the person against whom penalty is sought to be imposed.

The Hon'ble Supreme Court has also emphasized the necessity of reasoned and fair adjudication in quasi-judicial proceedings. In *Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan (2010) 9 SCC 496*, the Court held that quasi-judicial authorities must pass reasoned orders reflecting due application of mind, and mechanical orders passed without proper consideration of facts are unsustainable in law. Similarly, in *Siemens Engineering & Manufacturing Co. v. Union of India (1976) 2 SCC 981*, the Hon'ble Supreme Court held that recording of reasons is an essential requirement of natural justice and ensures fairness, transparency, and accountability in decision-making.

It is also pertinent to note that the statutory scheme under Sections 12(9), 206, 207, and 454 of the Companies Act, 2013 contemplates that any conclusion regarding non-maintenance of registered office must be based on proper verification, inquiry, and examination by the Registrar of Companies, and not merely on presumptions arising from non-delivery of notices. The mere return of a notice, without conducting statutory verification or affording an opportunity to the company to explain, cannot be treated as conclusive evidence of default warranting penal consequences under Section 12(8).



In view of the above statutory provisions and settled legal principles laid down by the Hon'ble Supreme Court, it is humbly submitted that penal consequences under Section 12(8) should not be invoked solely on the ground of non-delivery or return of notice, unless supported by proper statutory verification, inquiry, and examination of facts by the competent authority, and after providing reasonable opportunity of being heard to the company concerned. Imposition of strict penalties without following due process and without establishing deliberate and conscious default would be inconsistent with the statutory framework and principles of natural justice.

Also, to establish the settled principle of ease of doing business, it is respectfully submitted and requested that suitable clarification or guidance may be issued to ensure that proceedings under Section 12(8) are undertaken strictly in accordance with the provisions of Sections 12(9), 206, 207, and 454 of the Companies Act, 2013, and that penal consequences are imposed only after proper verification, inquiry, and adherence to principles of natural justice. Such clarification would promote uniformity in regulatory practice, prevent undue hardship to compliant companies, and further strengthen confidence in the fairness and transparency of the corporate regulatory framework.

We shall be grateful for your kind consideration of this representation in the interest of justice, fairness, and ease of doing business.

Thanking you.

Yours faithfully,


(CS Pawan G. Chandak)

President

The Institute of Company Secretaries of India

CC: Sh. Sanjay Shorey, Director General of Inspection & Investigation