

# Info Capsule

## **MCA NOTIFIES NATIONAL COMPANY LAW APPELLATE TRIBUNAL (AMENDMENT) RULES, 2017<sup>1</sup>**

Ministry of Corporate Affairs notifies **National Company Law Appellate Tribunal (Amendment) Rules' 2017** dated **August 23, 2017**. As per the notification following amendment has been made in the National Company Law Appellate Tribunal Rules, 2016 –

### **1. For Rule 63, the following rule has been substituted, namely:-**

#### **"63. Appearance of authorized representative-**

- (1) 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 or cost accountants or legal practitioners or any other person to present his case before the Appellate Tribunal.
- (2) The Central Government, the Regional Director or the Registrar Companies or Official Liquidator may authorise an officer or an Advocate represent in the proceedings before the Appellate Tribunal.
- (3) 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."

## **MCA NOTIFIED THE FOLLOWING IN RESPECT OF INVESTIGATION BY SERIOUS FRAUD INVESTIGATION OFFICE**

### **A. Ministry of Corporate Affairs has notified the sub-sections (8), (9) and sub-section (10) of Section 212 of the Companies Act, 2013 via Notification dated August 24, 2017<sup>2</sup>**

The above mentioned sub-sections come into force on the date of their publication in the Official Gazette i.e. August 24, 2017.

**Section 212 of the Companies Act, 2013** provides for the provisions with respect to Investigation into Affairs of Company by **Serious Fraud Investigation Office** and the sub-sections notified are stated as follows:-

"(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorized in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

<sup>1</sup>Available at: [http://www.mca.gov.in/Ministry/pdf/NCLATAmendmentRules2017\\_25082017.pdf](http://www.mca.gov.in/Ministry/pdf/NCLATAmendmentRules2017_25082017.pdf)

<sup>2</sup> Available at : [http://www.mca.gov.in/Ministry/pdf/Commencementnotification\\_25082017.pdf](http://www.mca.gov.in/Ministry/pdf/Commencementnotification_25082017.pdf)

(9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.

(10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court."

**B. Ministry of Corporate Affairs has also notified Companies (Arrests in Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 of the Companies Act, 2013 effective from August 24, 2017<sup>3</sup>**

**1. Short title and commencement.-**

(1) These rules may be called the **Companies (Arrests in connection with Investigation by serious Fraud Investigation Office) Rules, 2017**.

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

2. (1) Where the Director, Additional Director or Assistant Director of the Serious Fraud Investigation Office (herein after referred to as SFIO) investigating into the affairs of a company other than a Government company or foreign company has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under section 212 of the Act, he may arrest such person;

Provided that in case of an arrest being made by Additional Director or Assistant Director, the prior written approval of the Director SFIO shall be obtained.

(2) The Director SFIO shall be the competent authority for all decisions pertaining to arrest.

3. Where an arrest of a person is to be made in connection with a Government company or a foreign company under investigation, such arrest shall be made with prior written approval of the Central Government.

Provided that the intimation of such arrest shall also be given to the Managing Director or the person in-charge of the affairs of the Government Company and where the person arrested is the Managing Director or person in-charge of the Government Company, to the Secretary of the administrative ministry concerned, by the arresting officer.

4. The Director, Additional Director or Assistant Director, while exercising powers under sub-section (b) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.

5. The Director, Additional Director or Assistant Director shall forward a copy of the arrest order along with the material in his possession and all the other documents including personal search memo to the office of Director, SFIO in a sealed envelope with a forwarding letter after signing on each page of these documents, so as to reach the office of the Director, SFIO within twenty four hours through the quickest possible means.

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<sup>3</sup> Available at: [http://www.mca.gov.in/Ministry/pdf/companiesArrestsconnectionSFIORule\\_25082017.pdf](http://www.mca.gov.in/Ministry/pdf/companiesArrestsconnectionSFIORule_25082017.pdf)

6. An arrest register shall be maintained in the office of Director, SFIO and the Director or any officer nominated by Director shall ensure that entries with regard to particulars of the arrestee, date and time of arrest and other relevant information pertaining to the arrest are made in the arrest register in respect of all arrests made by the arresting officers.
7. The entry regarding arrest of the person and information given to such person shall be made in the arrest register immediately on receipt of the documents as specified under rule 5 in the arrest register maintained by the SFIO office.
8. The office of Director, SFIO shall preserve the copy of arrest order together with supporting materials for a period of five years
  - (a) from the date of judgment or final order of the Trial court, in cases where the said judgment has not been impugned in the appellate court; or
  - (b) from the date of disposal of the matter before the final appellate court, in cases where the said judgment or final order has been impugned, whichever is later.
9. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to arrest shall be applied mutatis mutandis to every arrest made under this Act.

\*\* A Form for the "Arrest Order" to be issued by the Director, Additional Director or Assistant Director as stated under rule 4 and 5, while exercising powers under sub-section (b) of section 212 of the Companies Act, 2013 has also been appended to these rules.

### **Team ICSI**

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