

DRAFT RULES UNDER THE COMPANIES ACT, 2013

CHAPTER -XXIX

MISCELLANEOUS

Adjudication of penalties.

29.1 (1) For the purposes of sub-section (1) of section 454, the Central Government may, by an order published in the Official Gazette, appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice to the company and every other person alleged to have made the non compliance or default in question, to show cause, within such period as may be specified in the notice (not being less than fourteen days from the date of service thereon), why the inquiry should not be held against him.

Provided that every notice issued under this clause, shall clearly indicate the nature of non compliance or default alleged to have been committed or made_by such company and/or person, as the case may be.

Provided further that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fourteen days if the company or person (as applicable) satisfies the said officer that it has sufficient cause for not responding to the notice within the stipulated period.

(3) If, after considering the cause, if any, shown by such company and/or person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of such company and/or person whether personally or through his authorised representative.

(4) On the date fixed for hearing, after giving a reasonable opportunity of being heard to the person(s) concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

(5) Every order passed under sub-rule (4) shall be dated and signed by the adjudicating officer.

(6) The Adjudicating Officer shall send a copy of the order passed by it to the concerned company and/ or officer who is in default and the Central Government.

(7) While holding an inquiry, the adjudicating officer shall have the following powers:

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.

(8) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors or creditors as a result of the default;
- (c) the repetitive nature of the default.

(9) All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

(10) The provisions of the Code of Civil Procedure, 1908, Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 shall not be applicable to such adjudication proceedings.

Appeal against the order of adjudicating officer.

29.2. (1) For the purposes of sub-section (6) of section 454, every appeal against the order of the adjudicating officer passed under sub-section (3) of section 454 shall be filed in writing with the Regional Director having jurisdiction in the matter within sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form No. 29.1 setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought:

Provided that where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal:

Provided further that an appeal in Form No. 29.1 shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.

(2) Every appeal filed under this rule shall be accompanied by such fee as provided in Annexure C.

29.3. (1) On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number:

Provided that where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than fourteen days following the date of receipt of intimation by the appellant from the Regional Director about the nature of the defects, to rectify the defects and if the appellant fails to rectify such defects within the time period allowed as above, the Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within seven days thereof.

Provided further that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in the first proviso above by a further period of fourteen days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred in the first proviso above.

29.4. (1) On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding twenty-

one days, as may be stipulated by the Regional Director in the said notice.

Provided that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in sub-rule (1) above for a further period of twenty-one days, if the adjudicating officer satisfies the Regional Director that he had sufficient cause for not being able to file his reply to the appeal within the above-said period of twenty-one days.

(2) On the receipt of any reply, application or written representation filed by the adjudicating officer, the Regional Director shall forthwith serve the same on the appellant along-with a notice requiring the appellant and the relevant adjudicating officer to appear before the Regional Director on a date to be specified in such notice (which date shall not be a date earlier than thirty days following the date of issuance of such notice) for hearing of the appeal.

(3) On the date fixed for hearing, after giving a reasonable opportunity of being heard to the persons concerned, the Regional Director may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

(4) In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal *ex-parte*:

Provided that where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his non-appearance, the Regional Director may make an order setting aside the *ex-parte* order and restore the appeal.

(5) Every order passed under this rule shall be dated and signed by the Regional Director.

(6) A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.

Application for obtaining status of dormant company.

29.5. For the purposes of sub-section (1) of section 455, a company may make an application in Form No. 29.2 along with such fee as provided in Annexure 'B' to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company.

Certificate of status of dormant company.

29.6 For the purposes of sub section (2) of section 455, the Registrar shall, after considering the application filed in Form No. 29.2, issue a certificate in Form No. 29.3 allowing the status of a Dormant Company to the applicant.

Register of dormant companies.

29.7. For the purposes of sub-section (3) of section 455, the Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

Minimum number of directors for dormant company.

29.8. For the purposes of sub-section (5) of section 455, a dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company:

Provided that the provisions of the Act in relation to the rotation of directors shall not apply on dormant companies.

Return of dormant companies.

29.9. For the purposes of sub-section (5) of section 455, a dormant company shall file a declaration annually in Form No. 29.4 along with such annual fee as provided in Annexure 'B' within thirty days from the end of each financial year.

Provided that the company shall continue to file the return(s) of allotment in the manner and within the time specified in the Act whenever the company allots any security to any person.

29.10.(1) Application under sub-section (5) of section 455 for obtaining the status of an active company shall be made in Form No. 29.5 along with such fee as may be provided in Annexure 'B' and shall be accompanied by a return in Form No. 29.4 in respect of the financial year in which the application for obtaining the status of an active company is being filed.

Provided that the Registrar shall initiate the process of striking off of the name of the company if the company remains as a dormant company for a period of consecutive five years.

(2) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form no. 29.2 submitted to ROC for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, under sub rule (1) of this rule, for obtaining the status of an active company.

(3) If it comes to the knowledge of the Registrar that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may

- (i) remove the name of such company from register of dormant companies and treat it as an active company; or
- (ii) take action under chapter XVIII of the Act

Fees for application to Central Government or Tribunal.

29.11. For the purposes of sub-section (2) of section 459, every application which may be, or is required to be, made to the Central Government or the Tribunal under any provision of the Act-

- (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or the Tribunal to, or in relation to, any matter; or
- (b) in respect of any direction or exemption to be given or granted by that Government or the Tribunal in relation to any matter; or

(c) in respect of any other matter,
shall be accompanied by such fee as provided in Annexure 'C'.

Association or partnership of persons exceeding certain number.

29.12. For the purposes of sub-section (1) of section 464, no association or partnership shall be formed, consisting of more than fifty persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Act or is formed under any other law for the time being in force.

Dissolution of Company Law Board and consequential provisions.

29.13. For the purposes of fifth proviso to sub section (1) of section 466, the monies in the provident fund, superannuation fund, welfare fund or other fund established by the Company Law Board and relating to the officers and other employees who have become the officers or employees of the Tribunal or Appellate Tribunal shall be transferred to, and vest in, the Tribunal or Appellate Tribunal, as the case may be, and the same shall be utilised by the Tribunal or Appellate Tribunal for settling the claims of such officers or employees or their nominees as per the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 or the Superannuation fund or welfare fund or any other fund Scheme.
