

# MISCELLANEOUS PROVISIONS



## LEARNING OUTCOMES

After reading this chapter, you will be able to:

- ❑ Know the provisions of Registered Valuers and Valuation Rules.
- ❑ Know the provisions regarding Removal of names of companies from the Register of Companies.
- ❑ Identify the Government companies and their Annual Reports.
- ❑ Analyzing the concept of Nidhis and Dormant companies.
- ❑ Know about Miscellaneous Provisions.



## 1. INTRODUCTION

Ministry of Corporate Affairs vide Notifications dated 7<sup>th</sup> of December & 26<sup>th</sup> of December, 2016 notified various sections of the Companies Act, 2013. Besides, with the enforcement of the Insolvency and Bankruptcy Code, 2016, many substantial changes have also made in the Companies Act, 2013.



## 2. REGISTERED VALUER

Provisions related to the Registered Valuers are dealt under Section 247 read with the Companies (Registered Valuers and Valuation) Rules, 2017 of The Companies Act, 2013. Sections deals with what all property can be valued and by whom as per the prescribed term and conditions, role of the Registered Valuers and the consequences of contravention in the legal compliance by the valuer.

(i) **Nature of the assets for Valuation:** Valuation is required to be made in respect of any

- property,
- stocks,
- shares,
- debentures,
- securities,
- goodwill,
- any other assets (herein referred to as the assets) or
- net worth of a company or its liabilities under the provision of this Act.

**Appointment of valuer:** A Registered Vauer shall be appointed by a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

(ii) **Role of Valuer:** The valuer appointed under sub-section (1) shall,—

- (a) make an **impartial, true and fair valuation of any assets** which may be required to be valued;
- (b) **exercise due diligence** while performing the functions as valuer;
- (c) make the **valuation in accordance with such rules** as may be prescribed; and
- (d) **not undertake valuation of any assets in which he has a direct or indirect interest** or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

- (iii) **Contravention:** If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be liable to a penalty of fifty thousand rupees. However, if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 lakhs.
- (iv) **Levying penalties:** Where a valuer has been convicted under point (iii) above, he shall be liable to—
- refund the remuneration** received by him to the company; and
  - pay for damages** to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

### COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017

These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.

Explanation.- It is hereby clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules.

#### Rule 2: Definitions

- In these rules, unless the context otherwise requires —
  - “Act”** means the Companies Act, 2013 (18 of 2013);
  - “authority”** means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;
  - “asset class”** means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;
  - “certificate of recognition”** means the certificate of recognition granted to a registered valuers organisation under sub-rule (5) of rule 13 and the term “recognition” shall be construed accordingly;
  - “certificate of registration”** means the certificate of registration granted to a valuer under sub-rule (6) of rule 6 and the term “registration” shall be construed accordingly;
  - “partnership entity”** means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
  - “Annexure”** means an annexure to these rules;

- (h) **"registered valuers organisation"** means a registered valuers organization recognised under sub-rule (5) of rule 13;
- (i) **"valuation standards"** means the standards on valuation referred to in rule 18; and
- (j) **"valuer"** means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

### Rule 3: Eligibility for registered valuers

- (1) A person shall be **eligible to be a registered valuer if he-**
  - (a) is a **valuer member** of a registered valuers organisation;  
*Explanation—* For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;
  - (b) is **recommended by the registered valuers organisation** of which he is a valuer member for registration as a valuer;
  - (c) has **passed the valuation examination** under rule 5 **within three years** preceding the date of making an application for registration under rule 6;
  - (d) possesses the **qualifications and experience** as specified in rule 4;
  - (e) is **not a minor**;
  - (f) has **not been declared to be of unsound mind**;
  - (g) is **not an undischarged bankrupt**, or has not applied to be adjudicated as a bankrupt;
  - (h) is a **person resident in India**;  
*Explanation—* For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 as far as it is applicable to an individual;
  - (i) has **not been convicted** by any competent court for an offence punishable with imprisonment for a term exceeding 6 months or for an offence involving moral turpitude, and a period of 5 years has not elapsed from the date of expiry of the sentence;  
**Provided** that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be registered;
  - (j) has **not been levied a penalty** under section 271J of Income-tax Act, 1961 and time limit for filing appeal before Commissioner of Income-tax (Appeals) or

Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and 5 years have not elapsed after levy of such penalty; and

(k) is a fit and proper person;

**Explanation—** For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

- (i) integrity, reputation and character,
- (ii) absence of convictions and restraint orders, and
- (iii) competence and financial solvency.

(2) **No partnership entity or company shall be eligible to be a registered valuer if-**

- (a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;
- (b) it is undergoing an insolvency resolution or is an undischarged bankrupt;
- (c) all the partners or directors, as the case may be, are not eligible under clauses (c), (d), (e), (f), (g), (h), (i), (j) and (k) of sub-rule (1);
- (d) 3 or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or
- (e) none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.
- (f) it is not a member offer register valuers organisation: Provided that it shall not be a member of more than one such register valuers organization at a given point of time; provided further that the partnership entity on company, already registered as valuers, on the date of commencement of the companies (Register Valuers and Valuation) Amendment Rules, 2022, shall comply within six months of such commencement with the conditions specified under this clause.

**Example 1:** The Board of Directors of Tim Tim Ltd. proposes to appoint Mr. Nirala, an individual as the valuer for carrying out valuation of an immovable property as required under the provisions of the Companies Act, 2013. The approval of Audit Committee was not taken for such appointment.

In the given case, as there is audit committee in the company, Board of Director does not have right to appoint the valuer. It is against the said provision. In fact, valuer proposes to be appointed shall have such qualification and experience and registered as a valuer in such

manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

*Sagar Dattatray Goge., In re*, IBBI/VALUATION/DISC./3/2021, FEBRUARY 9, 2021, it was ordered that ,where 'G' was granted registration as valuer by IBBI but 'G' concealed information of pendency of criminal proceedings against him, registration of 'G' as Registered Valuer was to be cancelled for violation of rule 3 of Companies (Registered Valuers and Valuation) Rules, 2017.

#### Rule 4: Qualifications and experience

An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

- (a) **post-graduate degree or post-graduate diploma**, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
- (b) **a Bachelor's degree or equivalent**, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or
- (c) **membership of a professional institute** established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership.

**Explanation-** For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

#### Rule 5: Valuation Examination

- (1) **Conduct of Examination:** The authority shall, either on its own or through a designated agency, conduct valuation examination for one or more asset classes, for individuals, qualifications and experience as specified in rule 4, and have completed their educational courses as member of a registered valuers organisation, to knowledge, skills, values and ethics in respect of valuation:

Provided that the authority may recognise an educational course conducted by a registered valuers organisation before its recognition as adequate appearing for valuation examination:

Provided also that the authority may recognise an examination conducted as part of a master's or post graduate degree course conducted by equivalent to the valuation examination.

- (2) **Determination of Syllabus:** The authority shall determine the syllabus for various valuation specific subjects or assets classes for the valuation examination on the recommendation Committee of experts constituted by the authority in this regard.

- (3) **Publishing details on the website:** The syllabus, format and frequency of the valuation examination, including qualifying marks, shall be published on the website of the authority at least the examination.
- (4) **Acknowledgment of passing examination:** An individual who passes the valuation examination, shall receive acknowledgement of passing the examination.
- (5) **Number of attempts:** An individual may appear for the valuation examination any number of times.

### Rule 6: Application for certificate of registration

1. **Manner of applying for registration:** In the following manner an application can be applied for obtaining of certificate of registration from following class of person who are eligible for registration as a registered valuer under rule 3:

Class	Application filing
An individual	make an application to the authority in <b>Form A of Annexure-II</b> along with a non-refundable application fee of five thousand rupees in favour of the authority
A partnership entity or company	may make an application to the authority in <b>Form-B of Annexure-II</b> along with a non-refundable application fee of ten thousand rupees in favour of the authority

**Examination of application:** The authority shall examine the application, and may grant twenty one days to the applicant to remove the deficiencies, if any, in the application.

**Submission of documents:** The authority may require the applicant to submit additional documents or clarification within twenty- one days.

**Appearance of applicant before the authority:** The authority may require the applicant to appear, within twenty one days, before the authority in person, or through its authorised representative for explanation or clarifications required for processing the application.

**Grant of certificate:** If the authority is satisfied, after such scrutiny, inspection or inquiry as it deems necessary, that the applicant is eligible under these rules, it may grant a certificate of registration to the applicant to carry on the activities of a registered valuer for the relevant asset class or classes in **Form-C** of the **Annexure-II** within sixty days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.

**In case of denial of registration:** If, after considering an application made under this rule, the authority is of the *prima facie* opinion that the registration ought not be granted, it shall communicate the reasons for forming such an opinion within forty-five days of receipt of the

application, excluding the time given by it for removing the deficiencies, presenting additional documents or clarifications, or appearing in person, as the case may be.

**Call for an explanation:** The applicant shall submit an explanation as to why his/its application should be accepted within fifteen days of the receipt of the communication to enable the authority to form a final opinion.

**Consideration by authority:** After considering the explanation, if any, given by the applicant, the authority shall either -

- (a) accept the application and grant the certificate of registration; or
- (b) reject the application by an order, giving reasons thereof.

The authority shall communicate its decision to the applicant within thirty days of receipt of explanation.

### Rule 7: Conditions of Registration

The registration granted under rule 6 shall be **subject to the conditions** that the valuer shall -

- (a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;
- (b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;
- (c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;
- (d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;
- (e) take adequate steps for redressal of grievances;
- (f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;
- (g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;
- (h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;
- (i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership

- entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;
- (j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
  - (k) in case a company is the registered valuer, be liable along with director who signs and acts in respect of a valuation assignment on behalf of the company;
  - (l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and
  - (m) comply with such other conditions as may be imposed by the authority.

**Rule 7A: Intimation of changes in personal details etc., by register valuer to authority-**

A register valuer shall intimate the authority for change in the personal details, or any modification in the composition of partners or directors, or any modification in any clause of the partnership agreement or memorandum of association, which may affect registration of register valuer, after paying fee as per the Table-I in **Annexure V**.

**Rule 8: Conduct of Valuation**

- (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:  
  
Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-
  - (a) Internationally accepted valuation standards; or
  - (b) Valuation standards adopted by any registered valuers organisation.
- (2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.
- (3) The valuer shall, in his report, state the following:-
  - (a) Background information of the asset being valued;
  - (b) Purpose of valuation and appointing authority;
  - (c) Identity of the valuer and any other experts involved in the valuation;

- (d) Disclosure of valuer interest or conflict, if any;
- (e) Date of appointment, valuation date and date of report;
- (f) Inspections and/or investigations undertaken;
- (g) Nature and sources of the information used or relied upon;
- (h) Procedures adopted in carrying out the valuation and valuation standards followed;
- (i) Restrictions on use of the report, if any;
- (j) Major factors that were taken into account during the valuation;
- (k) Conclusion; and
- (l) Caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

#### **Rule 9: Temporary surrender**

- (1) A registered valuer may temporarily surrender his registration certificate in accordance **with the bye-laws or regulations**, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.
- (2) A registered valuers organisation shall **inform the authority if any valuer member has temporarily surrendered his/its membership** or revived his/ its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.
- (3) Every registered valuers organisation shall **place, on its website**, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

#### **Rule 12: Eligibility for registered valuers organisation**

- (1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if —
  - (i) it has been registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in **Annexure-III**;

- (ii) it is a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

**Provided** that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

- (a) an organisation registered as a society under the Societies Registration Act, 1860 or any relevant state law, or;
- (b) an organisation set up as a trust governed by the Indian Trust Act, 1882.
- (2) The organisation referred to in sub-rule (1) shall be recognised if it –
- (a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;
- (b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation;
- (c) conducts training for the individual members before a certificate of practice is issued to them;
- (d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in **Annexure-I**;
- (e) provides for continuing education of individuals who are its members;
- (f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and
- (g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.
- (3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in **Annexure- III**, within one year from the date of commencement of these rules.

### **Rule 16: Complaint against a registered valuer or registered valuers organisation**

A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of ₹ 1,000 in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

**Provided** that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

### **Rule 18: Valuation Standards**

The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.

#### **Composition of the committee as per Rule 19:**

- 1 Chairperson (well versed in valuation, finance, accountancy etc.);
- 1 member nominated by Ministry of Corporate Affairs;
- 1 member nominated by Insolvency and Bankruptcy Board of India;
- 1 member nominated by legislative department;
- Upto 4 members, nominated by Central Government representing authorities which are allowing valuations by registered valuers;
- Upto 4 members, representatives of registered valuer organization, nominated by Central Government;
- Upto 2 members to represent industry and other stakeholders nominated by the Central Government in consultation with the authority;
- President of ICAI, ICSI, Institute of Cost Accountants of India as ex-officio members

Chairperson and members of committee shall have a tenure of 3 years & maximum 2 tenures.

### **Rule 20: Punishment for contravention**

Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

### **Rule 21: Punishment for false statement**

If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

- (a) which is false in any material particulars, knowing it to be false; or
- (b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

**Example 2:** Mr. Bhola director of Bhandari Ltd. entered into an arrangement with his friend and acquired asset on the name of Bhandari Ltd. by passing resolution in the general meeting

of the company. The notice for approval of resolution by the company included the particulars of the arrangement along with the value of the asset duly calculated by a registered valuer. Later, the Board of company discovered the loss arising out of incorrect statement in the report made by the valuer.

In this case, valuer is liable to be convicted for the incorrect statement given in the report made with an intent to defraud the company or its members.



### 3. REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

Provision related to removal of names of companies from the register of companies is covered in Chapter XVIII of the Companies Act, 2013. This chapter comprises of five sections being covered from Section 248 to 252.

#### [I] Power of Registrar to Remove Name of Company from Register of Companies [Section 248]

- (1) **Power of registrar:** Where the Registrar has reasonable cause to believe that—
- (a) a company has **failed to commence its business within one year** of its incorporation, or;
  - (b) omitted
  - (c) a company is **not carrying on any business or operation for a period of two immediately preceding financial years** and has **not made any application within such period for obtaining the status of a dormant company** under section 455, or;
  - (d) the **subscribers to the memorandum have not paid the subscription** which they had undertaken to pay at the time of incorporation of a company **and a declaration to this effect has not been filed within one hundred and eighty days** of its incorporation under sub-section (1) of section 10A; or
  - (e) the company is **not carrying on any business or operations, as revealed after the physical verification** carried out under sub-section (9) of section 12,

he shall **send a notice** to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

- (2) **Filing of application to registrar by company for removal of name:** A company may, after extinguishing all its liabilities, by-
- a special resolution, or

- consent of seventy-five per cent. members in terms of paid-up share capital,

file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

**Approval of the regulatory body, in case of a company regulated under a special Act:**

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

- (3) **Exemption to section 8 companies:** Nothing in sub-section (2) shall apply to a company registered under section 8.
- (4) **Publishing of notice for general public:** A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.
- (5) **Strike off of names from register of companies:** At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.
- (6) **Provisions for realisation of amount:** The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:  
  
Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.
- (7) **Existence of the liability:** The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.
- (8) **Not affecting on the power of tribunal:** Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

**Example 3:** The Registrar of Companies (ROC) was reviewing the financial statements of White Steam Pvt. Ltd which was incorporated 8 months ago. The ROC found that the subscribers to the Memorandum of Association of the company had not paid the subscription money nor had they filed a declaration to this effect. ROC strike off the name of the company from the register of companies. In this case there is non-compliance.

As per Section 248 (1)(b) of the Companies Act, where the Registrar has reasonable cause to believe that— the subscribers to the memorandum have not paid the subscription which they had undertaken to pay within a period of one hundred and eighty days from the date of incorporation of a company and a declaration under sub-section (1) of section 11 to this effect has not been filed within one hundred and eighty days of its incorporation; he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

Since the subscribers have not paid the subscription money within 180 days of incorporation, the ROC shall send to the Company a notice stating his intention to remove the name of the company from the Register of Companies and requesting them to send their representations within 30 days from date of notice. Such notice was not send by ROC to the company.

**Example 4:** ABC Life Insurance Company Ltd. was incorporated following all the legal procedures but the company cannot commence its operation for a period of one year since its incorporation. The members decided to get its name removed from the Registrar of Companies. Consent of eighty percent members in terms of paid-up share capital was taken for the removal of name. Thus, an application was filed for this purpose. Application is said to be invalid, as the approval of IRDA must be obtained first. As per Section 248(2), when a company is regulated as per a Special Act, the approval the regulatory authority is needed and should be enclosed with the application for removal of name.

1. In *HIFFCO Farming Ltd. v. Registrar of Companies*, Company Appeal (AT) No. 51 of 2022, April 21, 2022, it was held that where appellant company had not filed financial statement with Registrar of Companies from year 2006-07 onwards and its name was 'struck-off' from Register of Companies, in view of fact that company was carrying on business operation and right to seek restoration of name of company was not extinguished, name of company was to be restored in register of companies subject to filing of all pending statutory documents along with late fees.

2. In *Nirendra Nath Kar v. Gopal Navin Bhai Dave*, Civil Appeal No. 4448 of 2015, September 29, 2022, it was decided that where an application for restoration of company was made by one who was neither company nor a member nor a creditor, he could not be said to be a person aggrieved to question order of RoC striking off name of company from Register of Companies and, thus, he had no locus standi to file application for restoration of name of company

**[II] Restrictions on making application under section 248 in certain situations [Section 249]**

- (1) An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—
- has changed its name or shifted its registered office from one State to another;
  - has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
  - has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
  - has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or
  - is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.
- (2) **Violation of above conditions on filing of application:** If a company files an application in violation of restriction as given in sub-section (1) as given above, it shall be punishable with fine which may extend to one lakh rupees.
- (3) **Rights of registrar on non-compliance of conditions by the company:** An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

Application under section 248 is restricted, if at any time in the previous three months, the company-

- changed its name or shifted its registered office
- made a disposal for value of property or rights held by it
- engaged in any other activity except the one which is necessary or expedient
- made an application to the Tribunal for the sanctioning of a compromise or arrangement
- wound up

**Example 5:** A-Com is a private limited company incorporated in the year 2013. The company deals in manufacturing of glasses. Since May 2018, the company is not carrying any business operations. In April 2020, the company shifted its registered office from Jaipur to Ahmedabad. On 2nd May 2020, Company decided to file an application for Strike off. According to section 249, the said act of the company will not be valid because application can be filed only after 3 months from the date the company shifted its registered office.

**[III] Effect of Company Notified as Dissolved [Section 250]**

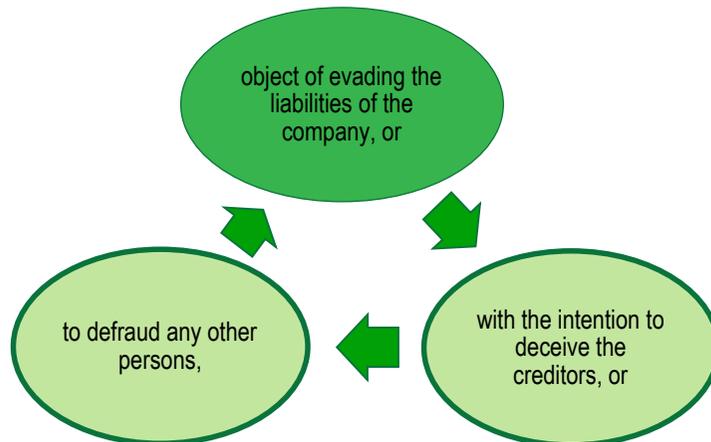
Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice –

- cease to operate as a company, and
- the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date.

For the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company, this sub-section shall not effect. The company shall be continued in existence.

**[IV] Fraudulent Application for Removal of Name [Section 251]**

- (1) **Intention of filing application:** Where it is found that an application by a company has been made with the-



the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

- be **jointly and severally liable** to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and
  - be **punishable for fraud** in the manner as provided in section 447.
- (2) **Recommendation for prosecution:** The Registrar may also recommend prosecution of the persons responsible for the filing of an application.

**[V] Appeal to Tribunal [Section 252]**

- (1) **Aggrieved person to file an appeal against the order of registrar:** Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the

register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies.

**Reasonable opportunity of representations given to registrar:** Before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to-

- the Registrar,
- the company and
- all the persons concerned.

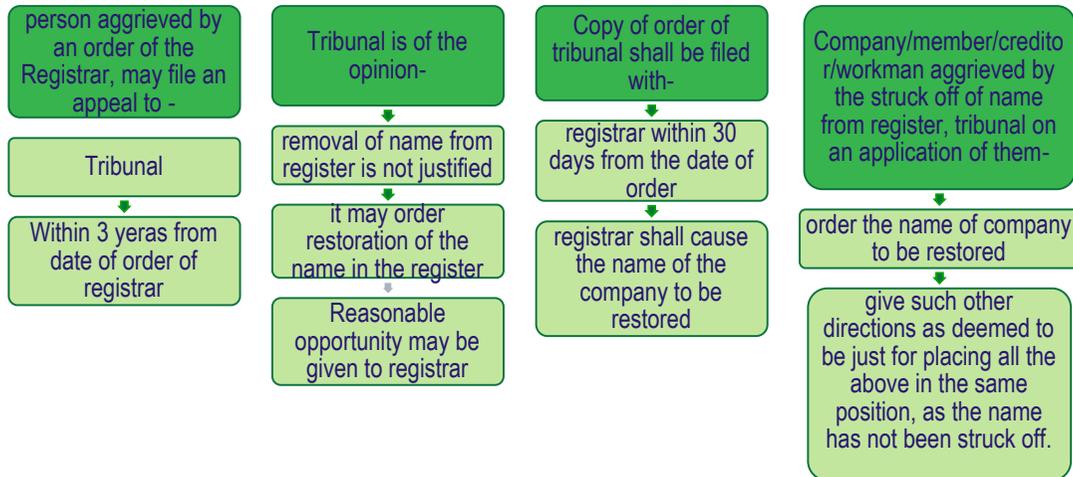
**Restoration of name of company:** If the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

- (2) **Order of tribunal to be filed with register:** A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.
- (3) **Order of tribunal as it may deem just:** If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by-
- the company,
  - member,
  - creditor or
  - workman

before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies,

- order the name of the company to be restored to the register of companies,
- and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same

position as nearly as may be as if the name of the company had not been struck off from the register of companies.



In a decided case law *Nirendra Nath Kar v. Gopal Navin Bhai Dave*, Civil Appeal No. 4448 of 2015 September 29, 2022, where under Section 252 of the Companies Act, 2013 an appeal to Tribunal was filed on an order of removal of name of company from the Register of companies. Where an application for restoration of company was made by appellant who was neither company nor a member nor a creditor, he could not be said to be a person aggrieved to question order of RoC to strike off name of company from Register of Companies and, thus, appellant had no locus standi to file application for restoration of name of company. Order passed by Division Bench of High Court setting aside order of Single Judge for restoring name of company was held to be justified.



## 4. GOVERNMENT COMPANIES

### [I] Annual reports on Government companies [Section 394]

As per section 2(45) of the Companies Act, 2013, “Government Company” means any company in which not less than 51% of the paid-up share capital (equity & preference) is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

**Explanation:** Here “paid up share capital” shall be construed as “total voting power”, where shares with differential voting rights have been issued.

Section 394 of the Companies Act, 2013 provides for Annual reports on Government companies.

It provides for Annual reports on Government companies in the cases where the Central Government and the State Government is a member of the Government Company. According to this section:

- (1) **Where the Central Government is a member of a Government company**, the Central Government shall cause an annual report on the working and affairs of that company to be—
  - (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report are placed under the proviso to sub-section (6) of section 143; and
  - (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.
- (2) **Where in addition to the Central Government, any State Government is also a member of a Government company**, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.

#### Example 6:

- (i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.
- (ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Position of MN Limited and PQ Limited as a Government Company.

**In this case, MN Limited is not a Government company** because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

Whereas in the second case, **PQ Limited is a government company** as the definition of Government Company clearly specifies that a Government Company includes a company which is a subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).

### [III] **Annual reports where one or more State Governments are members of companies** [Section 395]

Section 395 of the Companies Act, 2013 seeks to provide that where central Government is not a member of Government Company, but one or more state Government(s) are member, then state Government shall prepare annual reports on the working and affairs of the company. According to this section:

- (1) **Where the Central Government is not a member of a Government company**, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—
  - (a) Prepared within the time specified in sub-section (1) of section 394; and
  - (b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.
- (2) **Application of the provisions to the Government Company in liquidation:** The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as it applies to any other Government company.



## 5. NIDHIS

### Power to Modify Act in its Application to Nidhis [Section 406 of the Companies Act, 2013]

Section 406 of the Companies Act, provides power to the Central Government to modify Act in its application to *Nidhis*. According to this section:

- (1) **"Nidhi" or "Mutual Benefit Society"** means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.
- (2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—
  - (a) shall not apply to any Nidhi or Mutual Benefit Society; or
  - (b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.
- (3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.
- (4) In reckoning any such period of thirty days as is referred to in sub-section (3), no account shall be taken of any period during which the House referred to in sub-section (3) is prorogued or adjourned for more than four consecutive days.
- (5) The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

**The Nidhi Rules, 2014** [As amended by Nidhi (Amendment) Rules 2022], shall apply in relation to the following:

**Application (Rule 2):** These rules shall apply to-

- (a) **every company** which had been declared as a Nidhi or Mutual Benefit Society under sub - section (1) of Section 620A of the Companies Act, 1956,
- (b) **every company functioning on the lines of a Nidhi company or Mutual Benefit Society** but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub- Section (1) of Section 620A of the Companies Act, 1956; and
- (c) **every company incorporated** as a Nidhi pursuant to the provisions of Section 406 of the Act.
- (d) **every company declared as Nidhi or Mutual Benefit Society** under sub-section (1) of section 406 of the Act.

**Definitions (Rule 3)**

- (a) **“Act”** means the Companies Act, 2013;
- (aa) **“Branch”** means a place other than the registered office of Nidhi”
- (b) **“Doubtful Asset”** means a borrowal account which has remained a non performing asset for more than two years but less than three years;
- (c) **“Loss Asset”** means a borrowal account which has remained a nonperforming asset for more than three years or where in the opinion of the Board, a shortfall in the recovery of the loan account is expected because the documents executed may become invalid if subjected to legal process or for any other reason;
- (d) **“Net Owned Funds”** means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet:  
  
Provided that the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.
- (da) **“Nidhi”** means a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the central Government for regulation of such class of companies.
- (e) **“Non-Performing Asset”** means a borrowal account in respect of which interest income or instalment of loan towards repayment of principal amount has remained unrealised for twelve months;

- (f) **“Standard Asset”** means the asset in respect of which no default in repayment of principal or payment of interest has occurred or is perceived and which has neither shown signs of any problem relating to repayment of principal sum or interest nor does it carry more than normal risk attached to the business;
- (g) **“Sub-Standard Asset”** means a borrowal account which is a non performing asset:  
 Provided that reschedulement or renegotiation or rephasing of the loan instalment or interest payment shall not change the classification of an asset unless the borrowal account has satisfactorily performed for at least twelve months after such reschedulement or renegotiation or rephasing.

#### **Incorporation and incidental matters (Rule 4)—**

- (a) A Nidhi shall be a **public company** and shall have a **minimum paid up equity share capital of 10 lakh rupees**.

Provided that every Nidhi existing as on the date of commencement of the Nidhi Amendment Rules, 2022, shall comply with this requirement within a period of eighteen months from the date of such commencement.

- (b) On and after the commencement of the Act, **no Nidhi shall issue preference shares**.
- (c) If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.
- (d) Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than 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.

**Exception as provided under the proviso to sub-rule (e) to rule 6:** Nidhis which have adhered to all the provisions of these rules may provide **locker facilities on rent to its members** subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

- (e) Every “Nidhi” shall have the last words **‘Nidhi Limited’ as part of its name**.

#### **Requirements for minimum number of members, net owned fund etc. (Rule 5):**

- (1) Every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has—
- (i) not less than two hundred members;
  - (ii) Net Owned Funds of ten lakh rupees or more;
  - (iii) unencumbered term deposits of not less than ten per cent of the outstanding deposits as specified in rule 14; and
  - (iv) ratio of Net Owned Funds to deposits of not more than 1:20.

- (2) Within ninety days from the close of the first financial year after its incorporation and where applicable, the second financial year, Nidhi shall file a return of statutory compliances in Form NDH-1 along with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 with the Registrar duly certified by a company secretary in practice or a chartered accountant in practice or a cost accountant in practice.
- (3) If a Nidhi is not complying with clauses (i) or (iv) of sub-rule (1) above, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form NDH-2 along with fee specified in Companies (Registration Offices and Fees) Rules, 2014 for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application.

Provided that the Regional Director may extend the period upto one year from the date of receipt of application.

**Explanation**—For the purpose of this rule "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;

- (4) If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1), and gets itself declared under sub-section (1) of section 406 besides being liable for penal consequences as provided in the Act.
- (5) The provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi (Amendment) Rules, 2022.

#### **General restrictions or prohibitions (Rule 6)—**

No Nidhi shall—

- (a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;
- (b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;
- (c) open any current account with its members;
- (d) acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management.

**Explanation**—For the purposes of this sub-rule, "control" shall have the same meaning assigned to it in section 2(27) of the Act;

- (e) carry on any business other than the business of borrowing or lending in its own name:

However, Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

- (f) accept deposits from or lend to any person, other than its members;
- (g) pledge any of the assets lodged by its members as security;
- (h) take deposits from or lend money to any body corporate;
- (i) enter into any partnership arrangement in its borrowing or lending activities;
- (j) issue or cause to be issued any advertisement in any form for soliciting deposit:

However private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words “for private circulation to members only” shall not be considered to be an advertisement for soliciting deposits.

- (k) pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.
- (l) <sup>1</sup>raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi

**Example 7:** Sunshine Benefit Fund Limited, incorporated as a Nidhi Company under the Companies Act, 2013. The Board of Directors have decided to provide Locker Facilities on rent to its members and have estimated that rental income from such letting would be around 25% of the gross income of the company. In the given case, the Board of Directors cannot provide locker facilities on rent to its member in the light of the requirement of the Rule 6 (e) of the Nidhi Rules, 2014. According to the rule, Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

### Share capital and allotment (Rule 7)

- (a) Every Nidhi shall issue fully paid up equity shares of the nominal value of not less than ten rupees each:  
  
Provided that this requirement shall not apply to a company referred to in sub-rules (a) and (b) of rule 2.
- (b) No service charge shall be levied for issue of shares.
- (c) Every Nidhi shall allot to each deposit holder at least a minimum of ten equity shares or shares equivalent to one hundred rupees:

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<sup>1</sup> Inserted by the Nidhi (Amendment) Rules, 2022

Provided that a savings account holder and a recurring deposit account holder shall hold at least one equity share of rupees ten.

### Membership (Rule 8)—

- (1) A Nidhi shall not admit a body corporate or trust as a member.
- (2) Except as otherwise permitted under the rules, every Nidhi shall ensure that its membership is not reduced to less than 200 members at any time.
- (3) A minor shall not be admitted as a member of Nidhi:  
However, deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.
- (4) A member shall not transfer more than fifty percent of his shareholding (as on the date of availing of loan or making of deposit) during the subsistence of such loan or deposit, as the case may be.

Provided that the member shall retain the minimum number of shares required under sub-rule (3) of rule 7 at all times.

### Net owned funds (Rule 9)

Every *Nidhi* shall maintain Net Owned Funds (excluding the proceeds of any preference share capital) of not less than twenty lakh rupees or such higher amount as the Central Government may specify from time to time.

Provided that every Nidhi existing as on the date of commencement of the Nidhi (Amendment) Rules, 2022 shall comply with this requirement within a period of eighteen months from the date of such commencement.

### Acceptance of Deposits by Nidhis (Rule 11)

- (a) A *Nidhi* shall not accept deposits exceeding twenty times of its Net Owned Funds (NOF) as per its last audited financial statements.
- (b) In the case of companies covered under clauses (a) and (b) of rule 2 and existing on or before 26th July, 2001 and which have accepted deposits in excess of the aforesaid limits, the same shall be restored to the prescribed limit by increasing the Net Owned Funds position or alternatively by reducing the deposit according to the table given below:

Ratio of Net Owned Funds to Deposits (as on 31.3. 2013)	Date by which the company has to achieve prescribed ceiling of 1:20
(a) More than 1:20 but upto 1:35	By 31.3. 2015
(b) More than 1:35 but upto 1:45	By 31.3. 2016
(c) More than 1:45	By 31.3. 2017

- (c) The companies which are covered under the Table above shall not accept fresh deposits or renew existing deposits if such acceptance or renewal leads to violation of the prescribed ratio.
- (d) The ratio specified in table above shall also apply to incremental deposits.

### Deposits (Rule 13)

- (1) The fixed deposits shall be accepted for a minimum period of six months and a maximum period of sixty months.
- (2) Recurring deposits shall be accepted for a minimum period of twelve months and a maximum period of sixty months.
- (3) In case of recurring deposits relating to mortgage loans, the maximum period of recurring deposits shall correspond to the repayment period of such loans granted by *Nidhi*.
- (4) The maximum balance in a savings deposit account at any given time qualifying for interest shall not exceed one lakh rupees at any point of time and the rate of interest shall not exceed two per cent. above the rate of interest payable on savings bank account by nationalised banks.
- (5) A *Nidhi* may offer interest on fixed and recurring deposits at a rate not exceeding the maximum rate of interest prescribed by the Reserve Bank of India which the Non-Banking Financial Companies can pay on their public deposits.
- (6) A fixed deposit account or a recurring deposit account shall be foreclosed by the depositor subject to the following conditions, namely:-
  - (a) a *Nidhi* shall not repay any deposit within a period of three months from the date of its acceptance;
  - (b) where at the request of the depositor, a *Nidhi* repays any deposit after a period of three months, the depositor shall not be entitled to any interest up to six months from the date of deposit;
  - (c) where at the request of the depositor, a *Nidhi* makes repayment of a deposit before the expiry of the period for which such deposit was accepted by *Nidhi*, the rate of interest payable by *Nidhi* on such deposit shall be reduced by two per cent. from the rate which *Nidhi* would have ordinarily paid, had the deposit been accepted for the period for which such deposit had run:

Provided that in the event of death of a depositor, the deposit may be repaid prematurely to the surviving depositor or depositors in the case of joint holding with survivor clause, or to the nominee or to legal heir with interest up to the date of repayment at the rate which the company would have ordinarily paid, had such deposit been accepted for the period for which such deposit had run.

### Un-encumbered Term Deposits (Rule 14)

Every Nidhi shall invest and continue to keep invested, in unencumbered term deposits with a scheduled commercial bank (other than a co-operative bank or a regional rural bank), or post office deposits in its own name an amount which shall not be less than ten per cent. of the deposits outstanding at the close of business on the last working day of the second preceding month:

Provided that in cases of unforeseen commitments, temporary withdrawal may be permitted with the prior approval of the Regional Director by making application in Form NDH- 2 alongwith fee specified in the Companies (the Registration Offices and Fees) Rules, 2014 for the purpose of repayment to depositors, subject to such conditions and time limit which may be specified by the Regional Director to ensure restoration of the prescribed limit of ten per cent.

### Loans (Rule 15)

- (1) A *Nidhi* shall provide loans only to its members.

Provided that in case of joint shareholders, the loan shall be provided to the member whose name appears first in the Register of members.

- (2) The loans given by a *Nidhi* to a member shall be subject to the following limits, namely:-

- (a) two lakh rupees, where the total amount of deposits of such *Nidhi* from its members is less than two crore rupees;
- (b) seven lakh fifty thousand rupees, where the total amount of deposits of such *Nidhi* from its members is more than two crore rupees but less than twenty crore rupees;
- (c) twelve lakh rupees, where the total amount of deposits of such *Nidhi* from its members is more than twenty crore rupees but less than fifty crore rupees; and
- (d) fifteen lakh rupees, where the total amount of deposits of such *Nidhi* from its members is more than fifty crore rupees:

Provided that where a *Nidhi* has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding fifty per cent. of the maximum amounts of loans specified in clauses (i), (ii), (iii) or (iv).

Provided further that a member shall not be eligible for any further loan if he has borrowed any earlier loan from the *Nidhi* and has defaulted in repayment of such loan.

- (3) For the purposes of sub-rule (2), the amount of deposits shall be calculated on the basis of the last audited annual financial statements.
- (4) A *Nidhi* shall give loans to its members only against the following securities, namely:-
- (a) gold, silver and jewellery:

Provided that the repayment period of such loan shall not exceed one year.

- (b) immovable property:

Provided that the total loans against immovable property [excluding mortgage loans granted on the security of property by registered mortgage, being a registered mortgage under section 69 of the Transfer of Property Act, 1882] shall not exceed fifty per cent. of the overall loan outstanding on the date of approval by the board, the individual loan shall not exceed fifty per cent. of the value of property offered as security and the period of repayment of such loan shall not exceed seven years.

- (c) fixed deposit receipts, National Savings Certificates, other Government Securities and insurance policies:

Provided that such securities duly discharged shall be pledged with *Nidhi* and the maturity date of such securities shall not fall beyond the loan period or one year whichever is earlier:

Provided further that in the case of loan against fixed deposits, the period of loan shall not exceed the unexpired period of the fixed deposits.

#### Rate of Interest (Rule 16)

The rate of interest to be charged on any loan given by a *Nidhi* shall not exceed seven and half per cent. above the highest rate of interest offered on deposits by *Nidhi* and shall be calculated on reducing balance method:

Provided that *Nidhi* shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of *Nidhi*.

#### Rules relating to Directors (Rule 17)—

- (1) The Director shall be a member of *Nidhi*.
- (2) The Director of a *Nidhi* shall hold office for a term up to 10 consecutive years on the Board of *Nidhi*.
- (3) The Director shall be eligible for re-appointment only after the expiration of 2 years of ceasing to be a Director.
- (4) Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.
- (5) The person to be appointed as a Director shall comply with the requirements of sub-section (4) of Section 152 of the Act and shall not have been disqualified from appointment as provided in section 164 of the Act.

#### Dividend (Rule 18)—

A *Nidhi* shall not declare dividend exceeding twenty five per cent in a financial year.

**Auditor (Rule 19)—**

- (1) No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years.
- (2) No Nidhi shall appoint or re-appoint an audit firm as auditor for more than 2 terms of 5 consecutive years:

Provided that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of 2 years from the completion of his or its term.

*Explanation:* For the purposes of this proviso:

- (a) in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these rules shall be taken into account in calculating the period of 5 consecutive years or 10 consecutive years, as the case may be;
- (b) appointment includes re-appointment.

**Filing of Half Yearly Return (Rule 21)**

Every company covered Rule 2 shall file half yearly return with the Registrar in Form NDH-3 along with such fees as provided in Companies (Registration Office & fees) Rules, 2014 within thirty days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice or cost accountant in practice.

**Auditor's certificate (Rule 22)**

The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

**Penalty for non-compliance (Rule 24)**

If a company to which the Nidhi Rules, 2014 applies contravenes any of the provisions of the prescribed rules, the company and every officer of the company who is in default shall be punishable with fine which may extend to 5,000 rupees, and where the contravention is a continuing one, with a further fine which may extend to 500 rupees for every day after the first during which the contravention continues.

**Example 8:** Suhani Nidhi Limited proposes to reappoint Mr. Hemant, a director who has completed a term of 10 consecutive years as a director of Nidhi. According to **Rule 17** of the Nidhi Rules 2014, the director of a nidhi company shall hold office for a term upto 10 consecutive years on the board of Nidhi and he shall be eligible for re-appointment only after expiration of two years of ceasing to be a director.

Hence, in the instant case, Suhani Nidhi Limited cannot re-appoint Mr. Hemant as a director for a period of two years after completion of 10 consecutive years.



## 6. MISCELLANEOUS PROVISIONS

### [I] Punishment for fraud [Section 447]

Section 447 of the Companies Act, 2013 provides for Punishment for fraud. According to this section:

- (i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, **any person who is found to be guilty of fraud** involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.
- (ii) Where the **fraud in question involves public interest**, the term of imprisonment shall not be less than 3 years.
- (iii) Where the **fraud involves an amount less than ₹ 10 Lakhs or one per cent of the turnover** of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to <sup>2</sup>₹ 50 Lakhs or with both.

**Explanation**—For the purposes of this section—

- (a) “**fraud**” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (b) “**wrongful gain**” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (c) “**wrongful loss**” means the loss by unlawful means of property to which the person losing is legally entitled.

### [II] Punishment where no specific penalty or punishment is provided [Section 450]

- (i) **Applicability of section 450:** The penalty under this section applies only in those cases where penalty or punishment is not provided elsewhere in this Act.

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<sup>2</sup>Substituted for "twenty lakh rupees" by the Companies (Amendment) Second Ordinance, 2019, w.r.e.f. 2-11-2018.

- (ii) **Penalty under this section:** The company and every officer of the company who is in default or such other person:
- shall be liable to a penalty of ₹ 10,000, and
  - Where the contravention is continuing one, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person
- (iii) **List of contraventions:** If a company or any officer of a company or any other person contravenes:
- any of the provisions of this Act; or
  - the rules made thereunder; or
  - any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted.

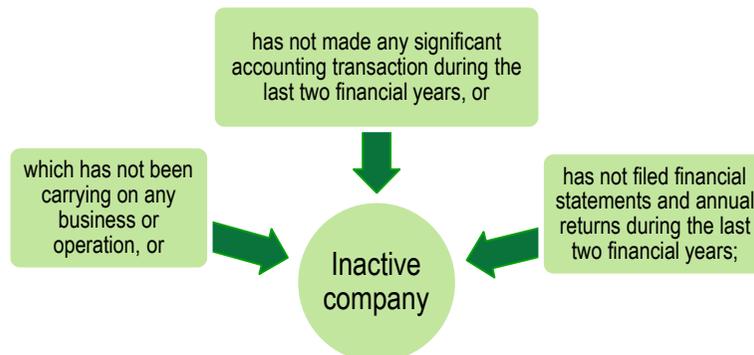
### [III] Dormant company [Section 455]

Section 455 of the Companies Act, 2013 provides for Dormant Company. According to this section:

- (i) **Status as a dormant company:** Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

*Explanation*—For the purposes of this section,—

- (a) **“inactive company”** means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;



- (b) “**significant accounting transaction**” means any transaction other than—
- (1) payment of fees by a company to the Registrar;
  - (2) payments made by it to fulfill the requirements of this Act or any other law;
  - (3) allotment of shares to fulfill the requirements of this Act; and
  - (4) payments for maintenance of its office and records.

According to the Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company may make an application in Form *MSC-1* along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 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 or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4<sup>th</sup> shareholders (in value).

**A company shall be eligible to apply under this rule only, if-**

- (a) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
  - (b) no prosecution has been initiated and pending against the company under any law;
  - (c) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;
  - (d) the company is not having any outstanding loan, whether secured or unsecured:  
However if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form *MSC-1*;
  - (e) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form *MSC-1*;
  - (f) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
  - (g) the company has not defaulted in the payment of workmen’s dues;
  - (h) the securities of the company are not listed on any stock exchange within or outside India.
- (ii) **Certificate of status of dormant company:** The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

According to the Rule 4 of the Companies (Miscellaneous) Rules, 2014, the Registrar shall, after considering the application filed in Form *MSC-1*, issue a certificate in Form *MSC-2* allowing the status of a Dormant Company to the applicant.

- (iii) **Register of dormant company:** The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

According to the Rule 5 of the Companies (Miscellaneous) Rules, 2014, the Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site [www.mca.gov.in](http://www.mca.gov.in) or any other website notified by the Central Government, shall be the register for dormant companies.

- (iv) **Consequences of non-filing of annual returns or financial statements:** In case of a company which has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

According to the Rule 7 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall file a "Return of Dormant Company" annually, *inter alia*, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of 30 days from the end of each financial year.

The company shall also continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

**Example 9:** ABC Company was incorporated in the year 2010. The Company did not file its financial statement with Registrar of Companies for the year 2018-19. Due to financial losses the Company is neither carrying on any business nor did any significant account transactions from the past one and half year. In July 2020 the company decided to file the application for obtaining the status of inactive company.

As per section 455(1), such an inactive company (company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years) may make an application to the Registrar for obtaining the status of a dormant company.

- (v) **Directors of dormant company:** A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

According to Rule 6 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.

**Rotation of auditors:** According to Rule 6 the Companies (Miscellaneous) Rules, 2014, the provisions of the Act in relation to the rotation of auditors shall not be applicable to dormant companies.

**Application for seeking status of an active company:** According to the Rule 8 of the Companies (Miscellaneous) Rules, 2014,

- (a) **Filing of an application:** An application for obtaining the status of an active company shall be made in Form *MSC-4* along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form *MSC-3* in respect of the financial year in which the application for obtaining the status of an active company is being filed:
- However, the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive 5 years.
- (b) **Issue of certificate by Registrar:** The Registrar shall, after considering the application filed for obtaining the status of an active company, issue a certificate in Form *MSC-5* allowing the status of an active company to the applicant.
- (c) **Filing of an application by Directors on doing or omission of act by dormant company:** Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form *MSC-1* submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application for obtaining the status of an active company.
- (d) **Initiation of proceedings for enquiry:** Where the Registrar has reasonable cause to believe 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 remove the name of such company from register of dormant companies and treat it as an active company.
- (vi) **Striking off the name by the Registrar:** The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

**TEST YOUR KNOWLEDGE****Multiple Choice Questions**

1. *With an Authorised Capital of ₹ 45,00,000 (divided into 4,50,000 equity shares of ₹ 10 each) and issued and paid-up capital of ₹ 25,00,000 (divided into 2,50,000 equity shares of ₹ 10 each), Amber Prabhat Nidhi Limited incorporated in 2018 at Balaghat, Madhya Pradesh by Loknath, Premnath and other trusted people, wants to issue a certain number of preference shares to its members. Being the Financial Advisor of Amber Prabhat Nidhi Limited, you are required to advise regarding the quantum of Preference shares which can issued to the members by choosing the correct option from those given below:*
  - (a) *Amber Prabhat Nidhi Limited can issue Preference Shares equivalent to Authorised Equity Share Capital after carrying out due amendment in the Capital Clause.*
  - (b) *Amber Prabhat Nidhi Limited cannot issue Preference Shares.*
  - (c) *Amber Prabhat Nidhi Limited can issue Preference Shares upto 50% of the Authorised Equity Share Capital after carrying out due amendment in the Capital Clause*
  - (d) *Amber Prabhat Nidhi Limited can issue Preference Shares upto 75% of the Authorised Equity Share Capital after carrying out due amendment in the Capital Clause*
2. *Who amongst the following may file an application for the restoration of the name of the company in the register of company and within the period of:*
  - (a) *The Company itself and within 2 years from the date of passing of the order dissolving the company*
  - (b) *The authorised officials of the company and within 2 years from the date of passing of the order dissolving the company*
  - (c) *NCLT and within 3 years from the date of passing of the order dissolving the company*
  - (d) *Any person aggrieved by an order of the Registrar and within 3 years from the date of passing of the order dissolving the company*
3. *Within how many days authority will grant certificate of registration to the applicant to carry on the activities of a registered valuer?*
  - (a) *within 30 days of the receipt of application, including the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.*
  - (b) *within 45 days of receipt of the application, including the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.*

- (c) *within 60 days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be.*
  - (d) *within 90 days of receipt of the application, excluding the time given by the authority for presenting additional documents, information or clarification, or appearing in person, as the case may be*
4. *A workman aggrieved by the company having its name struck off from the register of companies, applies to Tribunal for after 15 years of the publication of strikeoff of the name of the company in the gazette. Comment on the validity of filing of application by workman in the light of the companies Act, 2013:*
- (a) *Workman is not eligible to file an application for restoration of name of the company in the register of companies.*
  - (b) *Only Company is eligible to file an application for restoration of name of the company in the register of companies but before expiry of 20 years of the notice from the publication in the Official Gazette.*
  - (c) *Workman is eligible to file an application for restoration of name of the company in the register of companies but before expiry of 20 years of the notice from the publication in the Official Gazette.*
  - (d) *Company, member, creditor or a workman are eligible to file an application for restoration of name of the company in the register of companies but after expiry of 20 years of the notice from the publication in the Official Gazette.*
5. *Pankaj Nidhi Limited, incorporated under section 406 of the Companies Act, 2013. Pankaj Nidhi Limited wants to enter into an agreement for acquiring another company by purchase of its securities. Now the management of the Pankaj Nidhi Limited is in dilemma with respect to the requirement of entering into such an agreement. Pankaj Nidhi Limited approached you to provide with the best course of action considering the provisions of the Companies Act, 2013.*
- (a) *As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi.*
  - (b) *As per the Nidhi Rules, 2014, Nidhi Company can acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management.*
  - (c) *As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a*

special resolution in its general meeting and have obtained the previous approval of the Registrar of Companies (Roc) having jurisdiction over such Nidhi.

- (d) As per the Nidhi Rules, 2014, Nidhi company can enter into an agreement for acquiring other company by purchase of its securities provided the Nidhi company has passed a special resolution in its general meeting or have obtained the previous approval of the Registrar of Companies (Roc) having jurisdiction over such Nidhi.

## Descriptive Questions

1. Explain the meaning of 'Fraud' in relation to the affairs of a company and the punishment provided for the same in Section 447 of the Companies Act, 2013.
2. JKL Research Development Limited is a registered Public Limited Company. The company has a unique business idea emerging from research and development in a new area. However, it is a future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard.
3. Gulmohar Ltd. is a company registered in India for last 5 years. Since last 2 financial years, it has not been carrying on any business or operations and has not filed financial statements and annual returns saying that it has not made any significant accounting transaction during the last two financial years. Considering the current situation, Directors of the Company is contemplating to apply to Registrar of Companies to obtain status of dormant or inactive company. Advise them on:

Whether Gulmohar Ltd. is eligible to apply to Registrar of Companies to obtain dormant status for the company?

- (i) Will your answer be different if Gulmohar Ltd is continuing payment of fees to Registrar of Companies and payment of rentals for its office and accounting records for last two financials years?
- (ii) Is special resolution in general meeting a pre-requisite to make an application to Registrar of Companies for obtaining the status of dormant company?
- (iii) What will be your answer if it is found after making an application of dormant company to Registrar of Companies that an investigation is pending against the company which was ordered 6 months ago?

## ANSWERS

### Answer to Multiple Choice Questions

1.	b	2.	d	3.	c	4.	c	5.	b
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## Answer to Descriptive Questions

1. As per the explanation given to section 447 of the Companies Act, 2013, 'Fraud' in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

"Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss" means, the loss by unlawful means of property to which the person losing is legally entitled.

### **Punishment:**

- (i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
  - (ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
  - (iii) However, where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.
2. The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions-
    1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.
    2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
    3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after consideration of the application.

4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a 'Dormant Company'.

3. (i) According to section 455 of the Companies Act, 2013, an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Here, "*inactive company*" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

Gulmohar Ltd., since from last two years is not carrying on business or operations and has not filed financial statements and annual returns saying it has not made any significant accounting transaction during the last two financial years. Thus, it falls within the definition of inactive company as stated above and hence is eligible to apply to Registrar of Companies to obtain the status of Dormant Company.

- (ii) According to Explanation to section 455, "*significant accounting transaction*" means any transaction other than—

- (1) payment of fees by a company to the Registrar;
- (2) payments made by it to fulfill the requirements of this Act or any other law;
- (3) allotment of shares to fulfill the requirements of this Act; and
- (4) payments for maintenance of its office and records.

Thus, Gulmohar Ltd. is still eligible to apply to the Registrar of Companies to obtain the status of Dormant company even if it has continued 'payment of fees to Registrar of Companies and payment of rentals for its office and accounting records' for last

two years, as these transactions have been kept outside the purview of significant accounting transactions.

- (iii) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014*, a company may make an application in prescribed form 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 or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4<sup>th</sup>shareholders (in value).

Thus, special resolution is a pre- requisite to make an application to Registrar of Companies for obtaining the status of dormant company.

- (iv) According to the Rule 3 of the *Companies (Miscellaneous) Rules, 2014*, a company shall be eligible to apply under this rule only, if no inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

According to section 455(6), the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of section 455.

In the given case, Gulmohar Ltd. was not eligible to apply for the status of a dormant company as an investigation was pending against the company which was ordered 6 months ago. But since, it has already made an application and then it came to the light about the pending investigation against the company, the Registrar shall not register it as a dormant company and if already registered as a dormant company, strike off the name of a dormant company from the register of dormant companies as the company has contravened the necessary requirements.

