Strike Off and Restoration of Name of the Company and LLP

Lesson 26

KEY CONCEPTS

■ Striking off Company ■ Striking off LLP ■ Restoration of Name

Learning Objectives

To understand:

- Circumstances under which name of the company Struck off from the Register
- Circumstances under which name of the LLP is Struck off from the Register
- Procedure for Striking off the Name
- Procedure for Restoration of the Name

Lesson Outline

- Introduction
- Ways of Striking off of Companies
- Strike off by ROC
- Strike off by the Company
- Striking off the name of the LLP from the Register of LLP
- Procedure of Striking Off
- Liabilities of partners to continue after Strike Off
- Restoration of LLP
- Procedure for making Application to NCLT
- Lesson Round-Up
- Gossary
- Test Yourself
- List of Further Readings
- Other References (Including Websites/Video Links)

REGULATORY FRAMEWORK

- Companies Act, 2013
- Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016
- Limited Liability Partnership Act, 2008
- Limited Liability Partnership Rules , 2009

INTRODUCTION

The Ministry of Corporate Affairs ("MCA") vide Notification dated 26th December, 2016 notified Sections 248 to 252 of the Companies Act, 2013 ("Act") dealing with the provision for Removal of Names of Companies from the Register of Companies ("ROC"). The provisions relating to strike off provide an opportunity to the non working companies to get their names struck off from the records of the ROC. The MCA had also issued the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 ("Rules") to be effective from the same date i.e. 26th December, 2016 in order to provide procedural aspects of striking off.

WAYS OF STRIKING OFF OF COMPANIES

A company can be struck off by any of the following modes:

- *Suo moto* by the ROC under Section 248(1) of the Act; or
- An application by the company for removal of name/ strike off of company under Section 248(2) of the Act.

A company which is undergoing the process of 'Striking Off' either voluntarily or by an action of the ROC is given the status as 'Striking Off' and the status of the company is changed to 'Dissolved' or 'Liquidated' when affairs of the company are completely wound-up by following the provision of winding-up of company. After dissolution or liquidation, the company ceases to exist.

The provisions of Sections 248 to 252 of the Companies Act, 2013 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 deal with the removal of names of companies from the Register of Companies.

Legal Framework dealing with the provisions of:

(i) Strike Off by ROC

In case of an existing company which has failed to commence its business within one year of its incorporation or 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 of the Act or the subscribers to the memorandum have not paid the subscription and a declaration to this effect has not been filed within 180 days of incorporation or it is revealed after a physical verification that the company is not carrying on any business or operations, the Registrar can suo moto after giving notice and opportunity of being heard, strike off the name of the company from the register of companies, and publish notice thereof of the striking off of the name of the company from the register of companies in the Official Gazette and on the publication of this notice in the Official Gazette, the company shall stand dissolved.

(ii) Strike Off by the company

Striking off under Chapter XVIII of the Companies Act, 2013 can also be by way of an application filed by the company with the ROC for removing its name from the Register of Companies on all or any of the grounds mentioned above. A company may file such an application, after extinguishing all its liabilities, by a special resolution or consent of seventy-five percent members in terms of paid-up share capital. On receipt of the application along with necessary fees, the Registrar shall issue a public notice for intimating the general public about the receipt of an application for removal of name of the company and giving a chance to the creditors and general public to submit their objection, if any, to the proposed application. In case no objection is received after the expiry of the time mentioned in the notice, the ROC may proceed to strike off the name of the company from the Register of Companies and shall publish a notice thereof in the Official Gazette. On publication in the Official Gazette of this notice, the name of the company stands struck off with effect from the date mentioned therein and the company shall stand dissolved.

Strike Off by ROC *Suo Motu*

Subject to the provisions of section 248(1) of the Act read with Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, in the following cases, the Registrar can *suo moto* remove the name of the company from the Register:

(a) a company has failed to commence its business within one year of its incorporation or;

(b) 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 of the Companies Act, 2013; or

(c) 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 affect has not filed within 180 days of its incorporation under section 10A(i). This provision is applicable to companies incorporated after 02nd November, 2018 ; or

(d) the company is not carrying on any business or operations as revealed after the physical verification carried out under section 12(9) of the Act.

Before removal of the name of the company from the Register, the ROC is required to send a notice in Form STK 1 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. Such a notice should contain the reasons for which the name of the company is to be removed from the Register of Companies. Such a notice should be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post. On receipt of such a notice, the company and all the directors of the company are required to send their representations along with copies of the relevant documents, if any, explaining the reasons as to why the name of the company should not be removed from the Register of Companies. Such representations should be given within a period of thirty days from the date of the notice.

Procedure to be followed by ROC for striking of the name of the company on suo motu basis:

Service of notice by ROC
Reply to the notice from the company
Consideration of the representation made by the company
Publication of notice of strike off by the ROC
Intimation to regulatory authorities
Striking off / Removal of the name of the company
Provision for realisation of amount due
Notice of dissolution of the company by the ROC

1. **Service of notice by ROC:** The ROC is required to send a notice in Form STK 1 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. Such a notice shall contain the reasons on the basis of which the name of the company is to be removed from the Register of Companies. Such a notice should be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post.

2. **Reply to the Notice from the company:** On receipt of such a notice, the company and all the directors of the company, are required to send their representations along with copies of the relevant documents, if any, explaining the reasons as to why the name of the company should not be removed from the Register of Companies. Such a representation should be given within a period of thirty days from the date of the notice.

3. **Consideration of the representation made by the company:** The ROC will consider the representation made by the company and all the directors of the company. If the ROC is not satisfied with the representation made by the company and its directors, it may proceed to strike off the name of company.

4. **Publication of notice of strike off by ROC:** The notice for removal of the name of the company should be in form STK 5 for the information of the general public and should be:

   (i) placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;

   (ii) published in the Official Gazette;

   (iii) published in Form No. STK 5A in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

   Such a publication is required to be given for the information of the general public in order to enable the general public to give their objections, if any, to the proposed removal / striking off of name of the companies from the Register of Companies and requiring them to send their objection to the ROC within thirty days from the date of publication of the notice.

5. **Intimation to regulatory authorities:** Intimation about the proposed action of removal or striking off the names of company should be sent to the Income-tax authorities, central excise authorities and service-tax authorities having jurisdiction over such a company. Such intimation should be given to enable the authorities to give their objections, if any. Such objections are required to be given within a period of thirty days from the date of issue of the letter of intimation.

6. **Striking off / Removal of the name of the company:** After expiry of thirty days from the date of issue of the letter of intimation, if there are no objections received within thirty days from the general public or respective authority and unless cause to the contrary is shown by the company, the ROC can proceed to strike off or remove the name of the company from the Register of Companies.

7. **Provision for realisation of amount due:** The ROC before passing an order for Striking off / Removal of the name of the company should satisfy himself that sufficient provision has been made for s 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. The ROC can obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company. Notwithstanding the undertakings, 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.

8. **Notice of dissolution of the company by the ROC:** After the expiry of the time mentioned in the notice, the ROC can strike off the name of the company from the Register. The notice of striking off the name of the company from the Register of Companies and its dissolution should be published in the Official Gazette in Form STK 7 and the same should also be placed on the official website of the Ministry of Corporate Affairs. The company shall stand dissolved on the publication of this notice in the Official Gazette.

Strike Off by Way of Filing an Application by the Company

Strike off provisions gives a choice or an option to non working companies to remove its name from the Register of Companies. There are many companies which are registered with ROC but due to various reasons they are not operative. The strike off gives an option to such companies to apply to ROC for removal of their name from the Register of Companies. The procedure of this exit is now governed under section 248(2) of Companies Act, 2013 read with Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. This act is a speedy way to close down a company being non–operational over a period of time.

Subject to the provisions of section 248 (2) of companies Act 2013 read with Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, the company can on its own file an application for removal of name of company from the Register of companies.

Type of Companies which cannot be removed under these provisions, viz., Section 248(1) & (2) of the Act:

(i) Listed Companies;

(ii) Companies registered under section 8;

(iii) Companies having charges which are pending for satisfaction;

(iv) Companies whose application for compounding is pending for compounding of offences committed by the company or any of its officers in default;

(v) Companies against which any prosecution for an offence is pending in any court;

(vi) Vanishing Companies;

(vii) Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;

(viii) Companies where inspection or investigation is ordered and being carried out or actions or such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court;

(ix) Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;

(x) Companies where notices under section 234 of CA 1956 or 206 or 207 of the CA 2013 have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the court.

A company through its board of directors, can file an application for removal of name of company from the Register of Companies on the following grounds:

(a) Where a company has failed to commence its business within one year of its incorporation; or

(b) Where 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 of the Companies Act, 2013; or

(c) 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 180 days of its incorporation. This provision is applicable to companies incorporated after 02nd November, 2018; or

(d) the company is not carrying on any business or operations as revealed after the physical verification carried out under section 12(9).

Before making an application to the ROC for removal of the name of the company, the board of directors of the company shall take all the steps necessary in order to extinguish all its liabilities. Approval of the shareholders by way of special resolution or consent of seventy five percent members in terms of paid up share capital is also required to be taken for filing an application to the ROC for the removal of the name of the company from the Register of Companies. 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.

Situations in which a company cannot apply for strike off under Section 248(2) of the Act:

The Company shall not make any application for the strike off of the company, if at any time in the previous 3 months, the company has done any of the below mentioned activities:

i. Has changed its name; or

ii. Has shifted its registered office from one State to another; or

iii. 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; or

iv. 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; or

v. has made an application to the Tribunal for the sanctioning of a scheme of compromise or arrangement and the matter has not been finally concluded; or

vi. is being wound up under Chapter XX of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016.

An application for striking off the name of the company under Section 248(2) of the Act shall be withdrawn by the company or rejected by the ROC as soon as the above stated conditions are brought to notice. In case of violation of the above provision, the company shall be punishable with fine which may extend to one lakh rupees.

Procedure of striking off of the name of the company by way of an application to ROC

The board of directors of the company shall follow the following procedure for removal of name of the company from the Register of Companies maintained by the ROC:

(i) Call and hold Board Meeting to pass Board resolution for the purpose of striking off of the name of the company from the Register maintained by the ROC, subject to the approval of the shareholders of the company, and to authorize any director to file an application and for fixing date, time and venue for the Extraordinary General Meeting of the shareholder.

(ii) After passing of Board resolution, if there is any liability in the company, the company will set off / pay all its liabilities.

(iii) Every director of the company should sign and execute indemnity bond duly notarised by every director in Form STK 3 and Affidavit in Form STK 4. In case director is a foreign national or non-resident Indian, the documents should be notarized or apostilled or consularised.

(iv) Company should get the statement of accounts in Form STK-8 containing the assets and liabilities of the company made up to a day, not more than thirty days before the date of application. Such a statement should be certified by a Chartered Accountant.

(v) General Meeting should be held on the day, date, time and venue as fixed earlier for passing of the special resolution.

(vi) Within thirty days from the date of the passing of the special resolution in the General Meeting or after obtaining consent, company should file MGT-14.

(vii) Approval of concerned authorities is required in case of a company regulated by any other authority.

(viii) Thereafter, an application for removal of the name of the company shall be made in Form STK-2 along with the fee of ten thousand rupees.

Application for Removal of Name of Company

Rule 4(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 provides that an application for removal of name of a company under sub-section (2) of section 248 shall be made to the Registrar, Centre for Processing Accelerated Corporate Exit in Form No. STK-2 along with fee of ten thousand rupees.

Provided that the company shall not file an application unless it has filed overdue financial statements under section 137 and overdue annual returns under section 92, up to the end of the financial year in which the company ceased to carry its business operations:

Provided further that in case a company intends to file the application after the action under subsection (1) of section 248 has been initiated by the Registrar, it shall file all pending financial statements under section 137 and all pending annual returns under section 92, before filing the application:

Provided also that once notice under sub-section (5) of section 248 has been issued by the Registrar for publication pursuant to the action initiated under sub-section (1) of section 248, a company shall not be allowed to file the application under this sub-rule.

Rule 4(2) provides that every application under sub-rule (1) shall accompany a no objection certificate from appropriate Regulatory Authority concerned in respect of following companies, namely: -

(i) companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 or rules and regulations thereunder;

(ii) housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987;

(iii) insurance companies as referred to in the Insurance Act, 1938 or rules and regulations thereunder;

(iv) companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;

(v) companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;

(vi) asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;

(vii) any other company which is regulated under any other law for the time being in force.

As per Rule 4(3), the application in Form STK 2 shall be accompanied by -

(i) indemnity bond duly notarised by every director in Form STK 3;

Provided that in case of a -

(a) Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; or

(b) subsidiary of a Government company, referred to in clause (a), in which the entire paid up share capital is held by that Government company, a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company.

(ii) a statement of accounts in Form No. STK-8 containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant;

(iii) An affidavit in Form STK 4 by every director of the company;

(iv) a statement regarding pending litigations, if any, involving the company.

Rule (3A) states that the Registrar, Centre for Processing Accelerated Corporate Exit established under sub-section (1) of section 396, shall be the Registrar of Companies for the purposes of exercising functional jurisdiction of processing and disposal of applications made in Form No. STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India.

According to Rule (4) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016:

(a) Where the Registrar, on examining the application made in Form STK-2, finds that it is necessary to call for further information or finds such application or any document annexed therewith is defective or incomplete in any respect, he shall inform to the applicant to remove the defects and re-submit the complete Form within fifteen days from the date of such information, failing which the Registrar shall treat the Form as invalid in the electronic record, and shall inform the applicant, accordingly.

(b) After the re-submission of the Form or document, if the Registrar finds that the Form or document is defective or incomplete in any respect, he shall give further time of fifteen days to remove such defects or complete the Form, failing which the Registrar shall treat the Form as invalid in the electronic record and shall inform the applicant, accordingly.

(c) Any re-submission of the application in Form STK-2 made prior to the commencement of the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 shall not be counted for the purposes of reckoning the maximum number of re-submissions of such Form.

Manner of Filing of Application

As per Rule 5 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016:

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

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

Form to be Certified

Rule 6 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 provides that the Form STK 2 shall be certified by a Chartered Accountant in whole time practice or ***Company Secretary in whole time Practice*** or Cost Accountant in whole time practice, as the case may be.

Manner of Publication of Notice

According to Rule 7of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016:

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

  (i) placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;

  (ii) published in the Official Gazette;

  (iii) published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

Provided that in case of any application made under sub-section (2) of section 248 of the Act, the company shall also place the application on its website, if any, till the disposal of the application.

Provided further that the publications of notice under clause(iii) of this sub-rule, in respect of cases falling under sub-section (1) of section 248 shall be in Form No. STK 5A.

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

Manner of Notarisation, Appostilisation or Consularisation of Indemnity Bond and declaration in case of Foreign Nationals or Non-Resident Indians

Rule 8 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 provides that if the person is a foreign national or non-resident Indian, the indemnity bond, and declaration shall be notarised or appostilised or consularised.

Notice of Striking Off and Dissolution of Company

Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 states that the Registrar shall cause a notice under subsection (5) of section 248 of striking off the name of the company from the register of companies and its dissolution to be published in the Official Gazette in Form STK 7 and the same shall also be placed on the official website of the Ministry of Corporate Affairs.

Liabilities of directors, managers, officers and members to be continue

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 section 248(5) of the Act, shall continue and may be enforced as if the company had not been dissolved.

List of STK forms

Sr. No	Name of Form	Purpose	Governed by
1	Form STK-1	Notice by ROC for removal of name of a company from the Register of Companies.	Section 248(1) of the Companies Act,2013& rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
2	Form STK-2	Application by company to ROC for removing its name from register of Companies.	Section 248(2) of the Companies Act, 2013 & Rule 4(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
3	Form STK-3	Indemnity Bond (to be given individually or collectively by every director).	Pursuant to clause (i) of sub-rule (3) of rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
4	Form STK-4	Affidavit (to be given individually by every Director).	Section 248(2) of the Companies Act, 2013 & clause (iii) of sub-rule (3) of Rule 4.
5	Form STK-5	Public Notice	Section 248(1) & (4) of the Companies Act, 2013 & rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

Sr. No	Name of Form	Purpose	Governed by
6	Form STK-5A	Public Notice	Section 248(1) & (4) of the Companies Act, 2013 & rule 7(1) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
7	Form STK-6	Public Notice	Section 248(2) & (4) of the Companies Act, 2013 & rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.
8	Form STK-7	Notice of Striking Off and Dissolution.	Section 248(5) of the Companies Act, 2013 & rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

Restoration of the company

The ROC can *suo moto,* after issuing the notice under section 248(1) of the Act, strike off the name of the company. It may so happen that the name of the company may be struck off from the Register of Companies by the ROC even though the company is active company due to non-filing of reply to the said notice. In such a case, the directors of such a company have no option but to approach National Comapny Law Tribunal ("NCLT") by making an appeal for the restoration of the name of the company in the Register of Companies maintained by the ROC. The legal provisions related to restoration of name of the struck off companies are given in Section 248 to 252 of the Act read with Rule 87A of the NCLT (Amendment) Rules, 2017 and the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016.

Appeal to NCLT for restoration of the name of the company

Any person aggrieved by the order of the ROC may file an appeal before the Tribunal within 3 years of the order passed by ROC and if the Tribunal is of the opinion that the removal of name of company from the Register is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may pass an order for restoration of the name of the company in the Register of Companies after giving a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.

Application to NCLT by ROC for restoration of the name of the company

The ROC 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, if it 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.

Application to NCLT for restoration of the name of the company by Company or any member or creditor or workmen:

The Tribunal, on an application made by the company, member, creditor or workman, aggrieved by the company having its name struck off from the Register of Companies, before the expiry of 20 years from the publication in the Official Gazette of the notice of dissolution of the company, if satisfied that:

(a) the company was, at the time of its name being struck off, carrying on business or in operation; or

(b) otherwise it is just that the name of the company be restored to the Register of Companies, may order the name of the company to be restored to the Register of Companies. Further, the Tribunal may also pass an order and 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.

A copy of the order passed by the Tribunal shall be filed by the company with the ROC within thirty days from the date of the order and on receipt of the order, the ROC shall cause the name of the company to be restored in the Register of Companies and shall issue a fresh certificate of incorporation.

In the case of *Vbuiltfine Properties Private Ltd(Appellant) vs. Registrar of Companies, Mumbai (Respondent) Company Appeal (AT) No.27 of 2023,* the appellant's name was struck of from the register of companies and an appeal for restoration of the name was filed by the Appellant before the NCLT. By the impugned order under challenge, NCLT directed the ROC Mumbai to restore the name of the company i.e., Vbuiltfine Properties Pvt Ltd, to the register of Registrar of Companies with imposition of cost of Rs. 5,00,000/- Appellant challenged the imposition of this huge cost.

National Company Law Appellate Tribunal in its judgement dated August 18, 2023 inter alia observed that ongoing through the aforesaid order it is difficult to infer as to under what circumstances the company petition was allowed and direction was issued for restoration of the name of the company along with imposition of costs.

It is evident from the impugned order that the company petition was preferred under Section 252(1) of the Companies Act, 2013. However, since the date of striking off the name of the company is not mentioned. It is difficult to infer as to whether the petition was filed within three years from the striking off the name of the company or not. The order does not reflect any plausible reason for passing an order for restoration. Similarly, nothing has been indicated as to under what circumstances the cost of Rs.5 lakhs was imposed.

On examination of aforesaid provision, it is evident that from the date of striking off the name of the company from the register of Registrar of Companies, one can prefer an appeal within a period of three years from the date of striking off the name of the company. In the order impugned date of striking off under Section 248(5) of Companies Act, 2013 has not been mentioned. On examination of the impugned order, it is evident that though date of striking off was not mentioned, the appeal was preferred after four years. The order on this issue appears to be completely vague. Moreover, if the NCLT was exercising its jurisdiction under Section 252(3) of the Companies Act, 2013, in such situation the appellant was required to satisfy the NCLT that on the date of striking off the company, the company was carrying on business or in operation. There was third condition for passing of the restoration order in case it was otherwise just for restoring the name of the company.

The order does not meet either of the three criteria under Section 252(3) of the Act. Moreover, since the appeal was preferred under Section 252(1) of the Companies Act, 2013 the learned NCLT was required to examine the appeal strictly in accordance with the provision under Section 252(1) of the Companies Act, 2013. In absence of exact date of striking off it would be difficult to approve the impugned order. Moreover, learned NCLT has imposed cost of Rs. 5 lakhs but no plausible reason has been given for imposing such cost. In such view of the matter, we are left with no option but to set aside the order and remit back the matter to the NCLT for passing order afresh after affording opportunity to both the parties i.e., Appellant and ROC.

STRIKING OF THE NAME OF THE LIMITED LIABILITY PARTNERSHIP (LLP) FROM THE REGISTER OF LIMITED LIABILITY PARTNERSHIPS

Similar to the provision of section 248 to 252 of the Companies Act, 2013 read with Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 dealing with the provision for Removal of Names of Companies from the Register of Companies, Section 75 of the Limited Liability Partnership Act, 2008 read with Rule 37 of the Limited Liability Partnership Rules, 2009 deals with the provision for striking off the name of the Limited Liability Partnership from the Register of limited liability partnerships.

The Ministry of Corporate Affairs ("MCA") had amended Limited Liability Partnership Rules, 2009 by introducing the Limited Liability Partnership (Amendment) Rules, 2017 with effect from 20th May, 2017. With this amendment, LLP Form 24 has been introduced by the MCA to allow easy closure of a LLP by making an application to the ROC for striking off the name of LLP.

Legal Framework

In case of an existing LLP which is not carrying on any business or operation for a period of one year or more, it can make an application in Form 24 to the ROC, with the consent of all partners of the limited liability partnership for striking off its name from the register. Similarly, where the Registrar has reasonable cause to believe that a limited liability partnership is not carrying on business or its operation, in accordance with the provisions of this Act for a period of two years or more, the name of limited liability partnership may be struck off from the register of limited liability partnerships by ROC by taking suo moto action for striking off the name of the LLP. However, before striking off the name of the LLP by the ROC, the ROC shall give reasonable opportunity of being heard to the limited liability partnership and all its partners.

Strike Off by the ROC on suo moto basis

Subject to the provisions of section 75 of the Limited Liability Partnership Act, 2008 read with Rule 37 of Limited Liability Partnership Rules, 2009 as amended from time to time, the ROC can *suo mot*o remove the name of the LLP from the Register in case a limited liability partnership is not carrying on any business or operation for a period of two years or more and the ROC has reasonable cause to believe the same. In such a case, the ROC can *suo moto* take the action for striking off the name of the LLP.

Procedure to be followed by the ROC for striking of the name of the LLP on suo moto basis:

Service of Notice by the ROC to the LLP
Reply to Notice
Consideration of the representation made
Publication of Notice
Striking off of the name of the LLP
Provision for realisation of amount due
Notice of dissolution of the LLP

1. **Service of notice by the ROC to the LLP:** Before striking off the name of the LLP, the ROC is required to send a notice to the LLP and all the partners of the LLP of his intention to remove the name of the LLP from the Register of LLP. Such a notice shall contain the reasons for which the name of the LLP is to be removed from the Register.
2. **Reply to Notice:** On receipt of such a notice, the LLP and all the partners of the LLP are required to send their representations along with copies of the relevant documents, if any, explaining the reasons as to why the name of the LLP should not be removed from the Register. Such a representation should be given within a period of one month from the date of the notice.
3. **Consideration of the representation made:** The ROC will consider the representation made. If the Registrar is not satisfied with the representation made by the LLP and its partners, it may proceed to strike off the name of LLP.
4. **Publication of Notice:** The Notice shall be placed on the website of the Ministry of Corporate Affairs for the information of the general public for the period of one month. Such publication is required to be given for the information of the general public in order to enable the general public to give their objections, if any, to the proposed striking off of name of the LLP from the Register and requiring them to send their objection to the ROC within one month from the date of publication of the notice.
5. **Striking off of the name of the LLP:** After the expiry of the time limit of one month and unless cause to the contrary is shown by the LLP, if there are no objections received, the ROC can proceed to strike off the name of the LLP from the Register of LLP.

6. **Provision for realisation of amount due:** The ROC before passing an order for striking off of the name of the LLP should satisfy that sufficient provision has been made for the realization of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time. The ROC can obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership. Notwithstanding the undertakings, the assets of the limited liability partnership 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 limited liability partnership from the Register.

7. **Notice of dissolution of the LLP:** After the expiry of the time mentioned in the notice of one month for receiving objections from the general public, the ROC can strike off the name of the LLP from the Register and publish notice thereof in the Official Gazette. The LLP shall stand dissolved on the publication of this notice in the Official Gazette.

Strike Off by Way of Filing an Application by the LLP

Subject to the provision of section 75 of the Limited Liability Partnership Act, 2008 read with Rule 37 of the Limited Liability Partnership Rules, 2009, where a limited liability partnership is not carrying on any business or operation for a period of one year or more, such a LLP can make an application for purpose of suo moto striking off the name of the LLP.

Procedure of striking off of the name of the LLP by way of an application to ROC:

1. Calling and holding the meeting of the partners of LLP for making an application in Form 24 for the striking off of the name of the LLP and authorizing the partner to make the application to ROC. The consent of all partners of the limited liability partnership should be obtained before making an application to the ROC for striking off of the name of the LLP.
2. All the pending filings including the Annual Filing of Form 8 and Form 11 up to the end of the financial year in which the limited liability partnership ceased to carry on its business or commercial operations should be completed before making of an application for striking off of the name of the LLP.
3. Approval of concerned authorities should be obtained in case of a LLP regulated by any Special Law.
4. All the Designated Partners of the LLP must execute an affidavit, either jointly or severally, as mentioned as point 5(d) below. Thereafter, an application for striking of the name of the LLP shall be made in Form 24 along with fees as prescribed and along with following documents:
   (a) a statement of account disclosing nil assets and nil liabilities, certified by a Chartered Accountant in practice made up to a date not earlier than thirty days of the date of filing of Form 24.
   (b) copy of acknowledgement of latest Income tax return, where the limited liability partnership has carried out any business and has filed such a return.
   (c) copy of the initial limited liability partnership agreement, if entered into and not filed, along with changes thereof in cases where the LLP has not commenced business or commercial operations since its incorporation.
   (d) an affidavit signed by the designated partners, either jointly or severally, to the effect,—
      (i) that the Limited Liability Partnership has not commenced business or where it commenced business, it ceased to carry on such business from (dd/mm/yyyy);
      (ii) that the limited liability partnership has no liabilities and indemnifying any liability that may arise even after striking off its name from the Register;
      (iii) that the Limited Liability Partnership has not opened any Bank Account and where it had opened, the said bank account has since been closed together with certificate(s) or statement from the respective bank demonstrating closure of Bank Account;
      (iv) that the Limited Liability Partnership has not filed any Income-tax return where it has not carried on any business since its incorporation, if applicable.

(e) Copy of the initial limited liability partnership agreement, if entered into and not filed, along with changes thereof in cases where the Limited Liability Partnership has not commenced business or commercial operations since its incorporation.

(f) Copy of detailed application- mention full details of LLP plus reasons for closure.

(g) Copy of Authority to Make the Application- Duly signed by all the Partners.

The date of cessation of commercial operation is the date from which the Limited Liability Partnership ceased to carry on its revenue generating business and the transactions such as receipt of money from debtors or payment of money to creditors, subsequent to such cessation will not form part of revenue generating business.

5. **Publication of Notice:** The Notice shall be placed on the website of Ministry of Corporate Affairs for the information of the general public for the period of one month.

6. **Striking off of the name of the LLP:** After the expiry of the time limit of one month and unless cause to the contrary is shown by the LLP, if there are no objections received, the ROC can proceed to strike off the name of the LLP from the Register of LLP.

7. **Provision for realisation of amount due:** The ROC, before passing an order for striking off of the name of the LLP, should satisfy that sufficient provision has been made for the realization of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time. The ROC can obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership. Notwithstanding the undertakings, the assets of the limited liability partnership 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 limited liability partnership from the Register.

8. **Notice of dissolution of the LLP:** After the expiry of the time mentioned in the notice of one month and if the application filed by the company is found acceptable, the concerned ROC can strike off the name of the LLP from the Register and publish notice thereof in the Official Gazette. The LLP shall stand dissolved on the publication of this notice in the Official Gazette.

Liabilities of Partners to be continued after Striking Off

The liability of all designated partners of the limited liability partnership would continue and may be enforced as if the limited liability partnership had not been dissolved.

Power of the Tribunal to wind up

Nothing in these provisions shall affect the power of the Tribunal to wind up a limited liability partnership, the name of which has been struck off from the Register of LLP.

Restoration of the LLP

The ROC can *suo moto* after issuing the notice under section 75, strike off the name of the LLP. In such a case, it may happen that the name of the LLP may be struck off even though the LLP is active, but the ROC removed the name of the LLP from the Register, either inadvertently or due to incorrect information furnished by the LLP or its partners.

In such a case, there is no relief provided in the Limited Liability Partnership Act, 2008 or in the Limited Liability Partnership Rules, 2009 to restore the name of the LLP in the Register, hence, the partners of such a LLP have to approach the jurisdictional High Court by filing writ petition under Article 226 of the Constitution of India for restoration of the name of the LLP in the Register of LLP.

LESSON ROUND-UP

- The Registrar has suo moto power to remove the name of the company and LLP from the Register after complying with the provisions of law. With a view to enable the defunct company / LLP to remove their name from the Register, the provisions are made for such companies / LLP, providing an exit scheme. Such companies / LLP can apply to the Registrar for striking off their name from the Register.
- The provisions of section 248 to 252 of the Companies Act 2013 provide an easy exit to companies and are much speedy as compared to other modes of winding up under the Companies Act, 2013. Even though the company can easily dissolve through this mode and get its name removed from the ROC's Register, the liabilities of every director, officer and members of the company continue and may be enforced in the same manner as if the company had not been dissolved. In addition, by providing restoration provisions, the company which has been struck off may get a chance to restore its name in the Register and acquire 'active' status with the permission of NCLT within 20 years of being struck off.

GLOSSARY

Defunct company : A company which has failed to commence business operations within one year from the date of registration without any proper reason, which is beyond the control ofthe company or where a company has no assets or liabilties. Again, if a company is not filling its balance sheet for many years, then also it will be termed as a defunct company.

Vanishing Company : A company, registered under the Act or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

Cessation of commercial operation : It is the date from which the Limited Liability Partnership ceased to carry on its revenue generating business and the transactions such as receipt of money from debtors or payment of money to creditors, subsequent to such cessation will not form part of revenue generating business.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Discuss in brief the law to strike off the name of the company on its own accord.
2. State the power of Registrar of Companies to strike off the name of the Company.
3. State the grounds on which the name of a struck off company can be restored.
4. Discuss in brief the law to strike off the name of LLP on its own accord. State the power of Registrar of Companies to strike off the name of the LLP.
5. State the power of the NCLT to restore the name of the struck off LLP.

LIST OF FURTHER READINGS

- Companies Act, 2013
- Insolvency and Bankruptcy Code, 2016 (Bare Act)

OTHER REFERENCES (Including Websites / Video Links)

- https://ibbi.gov.in
- https://mca.gov.in

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

It may be noted that according to regulation 2(ia) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.

PROFESSIONAL PROGRAMME

CORPORATE RESTRUCTURING, VALUATION & INSOLVENCY

GROUP 2 • PAPER 6

(This test paper is for practice and self-study only and not to be sent to the Institute)

Time Allowed: 3 Hours ***Maximum Marks: 100***

Answer ALL questions

PART I: CORPORATE RESTRUCTURING (40 MARKS)

Question No. 1

Kumar Farms Private Limited (hereinafter referred to as "KFPL" and/or "Transferee Company") is a private limited company incorporated and existing under the provisions of the Companies Act, 2013. The entire shareholding (100%) of KFPL is held by the Singhania Family comprising Mr. Ajay, Mrs. Vinay and Mr. Abhishek. KFPL and the Singhania Family are part of the Promoter and Promoter Group of PPAP Limited (hereinafter referred to as "PPAP / Target Company"), a company whose shares are listed on the Stock Exchanges i.e., BSE and NSE. The entire Promoter and Promoter Group holding in PPAP is 64.52% as of June 30, 2023. Copy of Shareholding Pattern of PPAP as disclosed under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "SEBI (LODR) Regulations, 2015") for the Quarter ending 30th June 2023.

Out of the Promoter and Promoter Group shareholding of PPAP, KFPL holds 13.28% and shareholders of KFPL viz. Mr. Ajay (27.62%), Mrs. Vinay (3.81%) and Mr. Abhishek (7.16%) are also classified as "Promoter" for more than 3 years. Their consolidated/aggregate shareholding in the PPAP/Target Company is 51.87%. Presently, KFPL is in the process of considering a Scheme of Amalgamation and Arrangement ("Scheme") of below mentioned 10 entities ("Transferor Companies") with KFPL i.e., the Transferee Company:

S. No.	Name	Shareholding Percentage in PPAP/ Target Company as of June 30, 2020	Current Shareholding Percentage in PPAP/ Target Company	Shareholder whether classified as "Promoter" or not
1	NiFoods Private Limited	1.03%	1.05%	Promoter
2	Advance Private Limited	1.56%	1.58%	Promoter
3	Dealtrade Private Limited	1.04%	1.06%	Promoter
4	Littlestar Private Limited	1.39%.	1.41%	Promoter
5	Sri Lehra Private Limited	3.91%	3.98%	Promoter
6	Commosales Limited	NIL	NIL	Promoter
7	Icon Private Limited	NIL	NIL	Promoter
8	Ginius Private Limited	NIL	NIL	Promoter
9	Arhaan Private Limited	NIL	NIL	Promoter
10	Ajay Holdings Private Limited	NIL	NIL	Promoter
	Total	**8.93%**	**9.08%**	

100% of the shareholding of all the aforesaid companies is directly or indirectly held by Mr. Ajay, Mrs. Vinay and Mr. Abhishek. Furthermore, all the aforesaid 10 entities are included in the Promoter and Promoter Group of PPAP. With a view to consolidate the entities so as to eliminate the chain holdings and attain a leaner and more efficient structure from a long-term perspective it is proposed to merge the 10 Transferor Companies with the Transferee Company i.e., KFPL through a Scheme of Amalgamation and Arrangement ("Scheme") under section 230 to 232 of the Companies Act, 2013 ("Act") read with applicable provisions of the Act.

All the Transferor Companies shall stand dissolved pursuant to the proposed Scheme and the entire business and whole of the undertaking of the Transferor Companies, including, without any limitation all the assets and properties of the Transferor Companies, including but not limited to all stocks, assets, investments of all kinds (including shares, scrips, stocks, bonds, debenture stocks, units) shall get transferred to KFPL. Thus the 9.08% shares held by the Transferor Companies in PPAP will stand transferred to KFPL. The same will result in an increase in the holding of KFPL in the Promoter capacity in PPAP from 13.28% to 22.36%. Pursuant to the Scheme, there will be no change in the shareholding percentage of the Singhania Family in KFPL, who will continue to hold 100%. Further, there will be no change in the percentage of Promoter and Promoter Group shareholding of PPAP, which will remain at 64.52%.

As per the Scheme, the entire consideration paid for the amalgamation would be discharged by KFPL by way of the issue of its shares to Mr. Ajay, Mrs. Vinay and Mr. Abhishek. No portion of the consideration would be discharged in the form of cash/cash equivalent.

In view of the above facts, answer the following with reasons:

(i) Whether the proposed transfer of shares from one promoter entity to another, qualifies as normal transfer within the 5% limit as well as inter se transfer not amounting to seeking exemption under Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011?

(ii) Whether normal disclosures under Regulations 29 any other compliance have to be made by the Promoter while filing of forms under Regulation 10 of SEBI (SAST) Regulations, 2011.

(iii) The inter-se transfer of shares among promoter groups though permitted under SEBI (SAST) Regulations, 2011, will it be affecting the proposed preferential offer under SEBI (ICDR) Regulations, 2018?

(iv) Discuss whether the threshold limits for acquisition of shares / voting rights, beyond which an obligation to make an open offer is triggered?

(5 marks each)

Attempt all parts of either Q.No.2 or Q.No.2A

Question No. 2.

(a) Mr. "X" a member of ABC Limited holding 8% of shareholding in the company raised several legal issues pertaining to methodology of the valuation of concerned companies, adequacy of swap ration of 15:1, violation of Section 230 of Companies Act, 2013 in the scheme of amalgamation, challenged to market approach method of valuation and other illegalities which tantamount to Oppression & Mis-Management of the Appellants minority shareholders. Discuss whether Mr. "X" is eligible to raise objection in the scheme of amalgamation.

(b) Every scheme of amalgamation of a Bank is sanctioned under the Banking Regulation Act and aims at securing larger public interest and health of the banking industry. Comment.

(c) Amalgamation is unlike the winding up of a corporate entity, in the case of amalgamation, the outer shell of the corporate entity is undoubtedly destroyed; it ceases to exist. Comment.

(d) Whether Companies Act, 2013 empowers the National Company Law Tribunal to dispense with the meeting of shareholders in Amalgamation? Discuss the scope and ambit of the jurisdiction of the Tribunal while exercising its power in sanctioning the scheme of amalgamation.

(5 marks each)

OR (Alternate question to Q.No.2)

Question No. 2A

(a) PCBL Limited ("Acquirer") is a public listed company. The Acquirer is currently engaged in the following businesses: (i) manufacture and sale of carbon black, and (ii) manufacture of green power. The Acquirer is one of the largest manufacturers of carbon black in India and is a strong global player with a significant customer base in over 50+ countries.

ACP Private Limited ("Target") is a private limited company, with its registered office located in Pune, Maharashtra. The Target is a leading specialty chemicals company, engaged in the manufacture of: (i) water treatment chemicals with key products such as: (a) phosphonates, (b) biodegradable chelating agents, (c) polymers, (d) biocides; and (ii) water treatment chemicals used for scale and corrosion control such as: (i) imidazolines, and (ii) quats, used in oil and gas production.

The Acquirer proposes to acquire 100% equity share capital of the Target from the existing shareholders of the Target. Post the Proposed Combination, the Target will be a wholly-owned-subsidiary of the Acquirer. The Proposed Combination is notifiable to the Hon'ble Competition Commission of India under Section 5(a) of the Competition Act, 2002.

The Proposed Combination will enable the Acquirer to enter the global specialty segments of (i) water treatment chemicals, and (ii) oil and gas chemicals. The Proposed Combination will result in the Target becoming a part of the PCBL Limited, allowing it to access a larger pool of resources, aiding its expansion and growth strategies. Additionally, the Proposed Combination will provide the existing shareholders of the Target an attractive exit opportunity. The Acquirer & Target activities do not exhibit any horizontal, vertical, or complementary overlaps in any of the plausible relevant markets in India.

In view of the above, answer the following:

(i) Whether the Proposed Combination is required to be notified under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011? Discuss briefly the Green Channel Route.

(ii) In accordance with international best practices, the Competition Commission of India allows for informal and verbal consultation with its staff/ case team prior to filing of notice for a proposed combination in terms of sub section (2) of section 6 of the Competition Act, 2002 ("Act") read with regulations 5 and 5A of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. Discuss briefly the Pre-Filing Consultation with Competition Commission of India.

(iii) Discuss the factors that the Competition Commission of India may be taken into account while deciding whether any combination is Appreciable Adverse Effect in Competition (AAEC).

(5 marks each)

(b) The Board of directors of ABC Ltd., a small company is considering to merge with BRQ Ltd., another small company. The Board wants the merger to be fast and seeks your opinion about the conditions to be complied in this respect. Render your opinion based on the provisions of Companies Act, 2013.

(5 marks)

PART II: VALUATION (20 MARKS)

Question No. 3

(a) Assume ABC Manufacturing Company is projected to generate the following cash flows over the next five years:

Year 1: Rs. 500,000

Year 2: Rs. 600,000

Year 3: Rs. 700,000

Year 4: Rs. 800,000

Year 5: Rs. 900,000

The discount rate for ABC Manufacturing Company is determined to be 10%.

Calculate the Present Value (PV) of Cash Flows & Determine the Terminal Value

(b) ABC Tech Solutions is a fast-growing technology company specializing in software development and IT services. The company was founded five years ago and has experienced rapid revenue growth and a strong customer base. The management team is exploring options for fundraising and needs to determine the valuation of the business.

Key Information:

1. Financial Performance:

Year 1: Revenue - $2 million, Net Income - $500,000

Year 2: Revenue - $3 million, Net Income - $800,000

Year 3: Revenue - $5 million, Net Income - $1.2 million

Year 4: Revenue - $7 million, Net Income - $1.8 million

Year 5: Revenue - $10 million, Net Income - $2.5 million

2. Industry Analysis:

Comparable companies in the same industry are trading at an average Price-to-Earnings (P/E) ratio of 15x.

The average Enterprise Value-to-Revenue (EV/Revenue) multiple is 2.5x.

3. Discount Rate:

10% The discount rate represents the required rate of return considering the risk associated with the investment.

Calculate Average Net Income & Present Value (PV) of Earnings Value.

(5 marks each)

Question No. 4

(a) Discuss the Core Principles of Valuation needs to be followed by Valuers in the process of Amalgamation.

(b) Examine the three Principle Business Valuation Approaches such as Market Approach, Income approach & Asset Approach.

(5 marks each)

PART III: INSOLVENCY(40 MARKS)

Question No. 5.

(a) Mr. “A”, Mr. “B” & Mr. “C” are home buyers, who had opted for allotment in a real estate project of the XYZ Limited. Aggrieved by the delay in the completion of the project, Mr. “A”, Mr. “B” & Mr. “C” approached the State Real Estate Regulating Authority (RERA) which by its orders upheld this entitlement to refund amounts deposited by the, together with interest. In the meantime, proceedings under the Insolvency and Bankruptcy Code, 2016 were initiated against XYZ Limited. In the course of proceedings after due consultations by the Committee of Creditors, a resolution plan was presented to the Adjudicating Authority.

In that plan, a distinction was made between home buyers, who had opted or elected for other remedies such as i.e., applying before the RERA and having secured orders in their favor, and those who did not do so. Home buyers who did not approach authorities under Real Estate Development Authority Act, 2016 were given the benefit of 50% better terms than that given to those who approached RERA or who were decree holders. Mr. “A”, Mr. “B” & Mr. “C” appeal before the Adjudicating Authority; their applications were rejected by the adjudicating authority. Their appeals too were unsuccessful before the NCLAT. Consequently, they have approached Supreme Court.

In view of the above facts, answer the following with reasons:

(i) Whether home *buyers are financial creditors under the IBC?*

(ii) Whether a single homebuyer has the right to initiate an insolvency process against the defaulting builder company under IBC?

(5 marks each)

(b) Discuss the parameters to be met with respect to Group Insolvency Approach in Corporate Insolvency Resolution Process (CIRP) Framework.

(c) Section 95 to Section 100 of the Insolvency and Bankruptcy Code, 2016 are unconstitutional as they violate Article 14 and Article 21 of the Constitution. Comment.

(5 marks each)

Attempt all part of either Q. No. 6 or Q. No. 6A

Question No. 6

(a) The statutory obligation and duty of the resolution professional and liquidator is very clear in the IBC(Code). Section 30 of the Code mandates a resolution professional to examine every resolution plan to be in compliance with the requirements mentioned therein and section 25(2)(i) cast upon him the duty to present all resolution plans at the meetings of the committee of creditors. While during the liquidation process, Regulation 33(3) of the Liquidation Regulations casts an obligation on the liquidator not to proceed with sale of assets and approach AA for necessary directions, if he is of the opinion that there is possible collusion. Resolution Professional and Liquidator should not draw a parallel between the process of submission of resolution plans in the insolvency resolution process with the e-auction process during the liquidation process.

In view of the above, answer the following:

(i) An insolvency professional must not conceal any material information to the IBBI or to the Adjudicating Authority. Critically examine.

(ii) An insolvency professional or liquidator should not itself acquire, directly or indirectly, any of the assets of the debtor, nor knowingly permit any relative to do so. Critically examine.

(iii) When can a liquidator apply for avoidance of preferential transaction?

(5 marks each)

(b) Commercial Wisdom of Committee of the Creditors (CoC) is paramount under the Insolvency and Bankruptcy Code, 2016. Comment.

(5 marks)

OR (Alternate question to Q. No. 6)

Question No. 6A

(a) For the purposes of the Indian insolvency ecosystem, the possibility of cross border insolvency arises when an Indian company has foreign liabilities, assets or operations or when a foreign company has Indian liabilities, assets or operations. For assets, the term “foreign” generally indicates the presence of assets and operations in a foreign jurisdiction. For instance, cash holdings in a bank account in a foreign country, a production facility or an office in a foreign country and so on. However, foreign assets may also take intangible forms, not always be linked with physical presence or human interventions.

In view of the above, answer the following:

(i) How IBC enables Liquidator to relies the assets in a foreign jurisdiction. Discuss.

(ii) Discuss the scope of UNCITRAL Model Law on cross border insolvency.

(5 marks each)

(b) State the eligibility criteria for Pre-packaged Insolvency Resolution Process under IBC.

(c) Discuss the procedure to be followed by Registrar of Company for striking of the name of the company sue motu basis.

(5 marks each)