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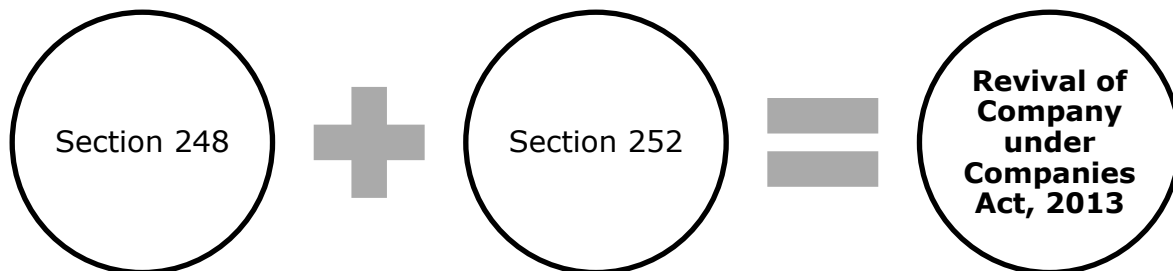
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REVIVAL OF COMPANIES AS PER COMPANIES ACT, 2013

Under the Companies Act, 2013, there exists two methods of strike off, i.e., removal by the ROC itself under Section 248(1) of the Act, and an application filed by the company itself under section 248(2) in Form STK-2.

In this article, we shall study about how to revive a Company if removal is done by the ROC itself. The two main Provisions of Companies Act, 2013 dealt for Revival of companies which was Struck off by ROC.



Section 248(1) - Power of Registrar to remove name of company from register of companies:

Registrar can on reasonable causes for him to believe, can strike off the name of companies from the Register of Companies and thereby leading to their closure.

Following are the situations where Registrar can exercise his power:

(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.

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 one hundred and eighty days of its incorporation under sub-section (1) of section 10A: (*This has been made available for the Companies incorporated after 2nd November, 2018.*)

OR

(d) 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.

ROC 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.

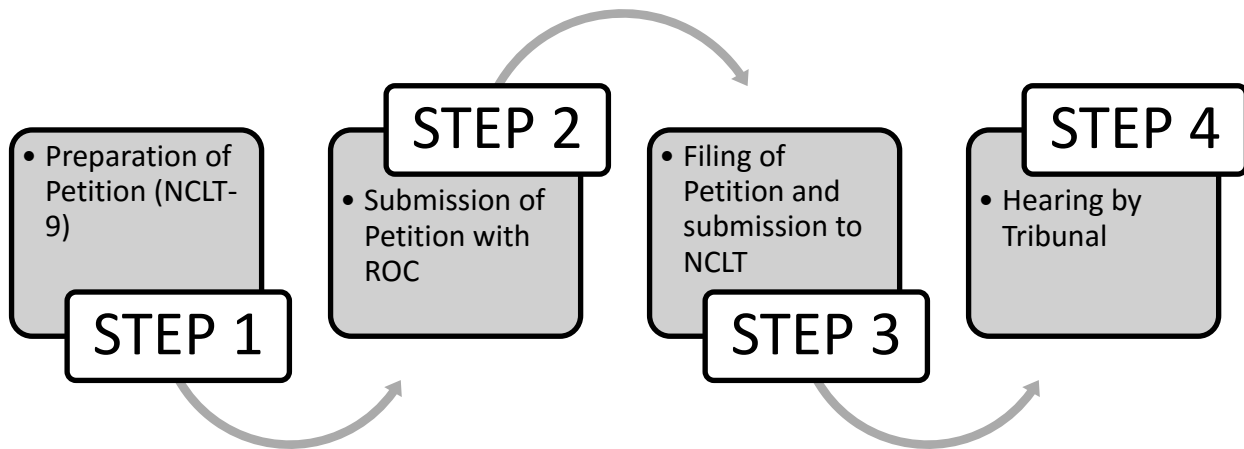
Following categories of companies name shall not be removed by ROC:

1. Listed Companies;
2. Delisted Companies due to non-compliance of listing regulations or listing agreement or any other statutory laws;
3. Vanishing Companies;
4. Companies where inspection or investigations are pending in the Court;
5. Companies whose actions are pending under Section 206 or Section 207 or Section 208 of the Act before the Court;
6. Companies against which prosecution for an offence is pending;
7. Companies which have accepted public deposits which are either outstanding or the Company is in default in repayment of the same;
8. Companies whose application for compounding is pending before the competent authority for compounding of offences committed by the Company or any of its officers in default;
9. Companies whose charges are pending for satisfaction and
10. Companies registered under Section 25 of the Companies Act, 1956 or Section 8 of the Act.

Section 252: Appeal to Tribunal

- 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**.
- 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.
- 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 can file application before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248.

PROCESS FOR FILING AN APPLICATION FOR REVIVAL OF COMPANY WITH THE NATIONAL COMPANY LAW TRIBUNAL ("NCLT")



A **Petition** shall be filed in **Form No. NCLT-9** with the NCLT where the Company is carrying on its business, before its striking off. Along with Petition in Form NCLT-9, following are the suggested documents that are to be prepared for submissions:

- General Affidavit verifying petition in **Form No. NCLT-6**
- Synopsis of the Case
- Date of Events (Date of Strike-off, Date of Notices, Date of Incorporation etc.)
- Notice of Admission in **Form No. NCLT-2**
- Copy of Certificate of Incorporation, Memorandum and Article of Association
- Copy of Audited Accounts with Directors report of last three Financial Years (From Last Annual filling)
- Copy of PAN card and Income Tax Return Acknowledgement filed with Income Tax Department (if filed)
- Copy of Bank Statements of the Company (From last three Years of Company)
- Master Data of the Company
- Copy of Notice STK-1, STK-5 and STK-7
- Copy of land deed (in case any land is in the name of the Company and it is reflecting on the Balance Sheet)
- List of Shareholder, creditors as on latest Balance sheet
- Details of Loans & advances given if any, Investments made if any
- Receipt of online Payment to Bharat Kosh of Rs.1,000/-

SUBMISSION OF DOCUMENTS: All the document should be properly stitched and are to be submitted to the following departments:-

1. Registrar of Companies (One Set-Xerox)- not less than 14 days before the date fixed for hearing of the application.
2. Regional Director (One Set-Xerox)
3. Income Tax Department mention PAN (One Set-Xerox)

4. National Company Law Tribunal (Three Sets-One Original and two copy Xerox)- The said Petition shall be filed with the NCLT along with the relevant list of documents and proof of payment of prescribed fees.

All this Copy must be submit with the Covering letter of Practitioner who Represent before NCLT on behalf of the Petitioner.

HEARING BY TRIBUNAL: After Submission of the documents the Tribunal shall hear the Petitioner and Respondent i.e. ROC and take note of the observations/objections. After the hearing, the Tribunal will pass appropriate order i.e. either revival of the name of the company or dismiss the application, as it deems fit.

ORDER: Where the Tribunal makes an order restoring the name of a company in the register of companies, the order may direct that:-

- The appellant shall pay Requisite amount as mentioned in NCLT order as Penalty to be paid by way of online payment in favor of specified department on Bharat Kosh Portal.”

POST HEARING:

- The appellant shall obtain a certified copy of the said order from Hob’ble NCLT and make the said Payment.
- The appellant shall deliver a certified copy of the said order to the ROC with the following:
 1. Certified true copy of Order of NCLT
 2. Affidavit for payment NCLT penalty
 3. Copy of Receipt of payment made to Bharat Kosh
 4. Bank Statement of appellant.
- The Company shall file **Form INC-28** for submitting the Order copy to ROC.
- After all the process the Company’s status will change from **“Strike-off”** to **“Active”** and then necessary pending filings are to be done (Filing of Annual Returns other e-forms which is applicable)

Contribution by Nayan Sedani

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