

Is the Name of Your Company gets struck off by ROC?

Now, 10 Reason's for opting for its Restoration

- M/s. Vinit Nagar & Co.
Company Secretaries, Ahmedabad

Earlier the thought of making an application for getting the Company's name restored was courageous by itself looking after the involvement of hefty amount towards filing of overdue returns and documents with Registrar after its restoration which always used to count in lakhs but now the promoters & directors of such struck off Companies do have all the decent reasons to opt for Company's restoration after the Circular dated March 30, 2020, wherein the Ministry of Corporate Affairs has come up with Companies Fresh Start Scheme- 2020 (CFSS-2020) and has excused all the defaulting companies from incurring any additional filling fee along with an assurance that no prosecution / or adjudication shall be initiated by the Registrar with regards to non -filling of documents and returns if such overdue returns/ documents is filled within the timeframe provided under this scheme and this can now be possible if Company's name get restored well within the stated deadline.

Many of the defaulting Companies have been marked as "Struck-Off" by the Registrar just because of non-filing of annual compliance based returns either since incorporation or for last two preceding financial years and out of many such Companies, few of which are carrying on its operations but the fact that the name of their Company is no more exists on records of Registrar is neither known to its Promoters nor even their shareholders are aware of this fact and they generally notice when the Bank A/c of such Companies get freeze and directors get disqualified. For operative Companies this is the story whereas the Promoters/ Directors of non-operative companies are considering this act of Registrar as their good luck in view of the fact that that the Registrar has suo-moto initiated action to strike off their Company's name but by this they completely ignorant of this fact that even after the striking off their Company's Name, the:

1. Liability of every director & officer shall continue and can be enforced for discharging the liabilities/ obligations of the company.
2. Creditors of such Companies may initiate an action with a view to recover their overdue sum with interest.
3. Registrar may also recommend prosecution of the persons responsible for the non-filing of the returns and documents.
4. Resulting disqualification of Directors of such Companies if such Company have not filed financial statements or annual returns for any continuous period of three financial years and this disqualification will result to their ineligibility to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.
5. Leading to such disqualification as mentioned above, the office of the director shall become vacant in all the companies wherever he is holding directorship.
6. Even when the disqualification gets removed, such director shall be required to inform to the company concerned about his disqualification under sub-section (2) of section 164 before he is appointed or re-appointed. So this Tag shall prolong for the years.

But if the Promoter Shareholder opt for restoration of the Company's name by taking immediate action within the concurrence of this scheme, the following benefits can be availed:

7. Such Company which has not filled its returns for preceding years can now opt for filling of all its overdue returns and documents only with nominal fee of 300/- or 400/- or 500/- or 600/- as the case may be and cab get the complete waiver of additional fee and business can any time commence its operations if so desired.

8. No proceedings against the Company and its Officers shall be initiated for imposing penalty on accounts of delay associated with specified forms and returns if overdue documents shall be filled within the tenure of the scheme.
9. Prosecution or proceedings, if initiated shall be withdrawn if requirements of scheme will be complied in time.
10. The Companies Act, 2013 has not clarified anything with regards to removal of disqualification but pursuant to Rule 14(5) of the Companies (Appointment and Qualification of Directors) Rules, 2014, it is evident that disqualification in no case shall get removed robotically and application to Ministry will be required to be made in this regards and the Ministry's will surely consider the grounds of removal of disqualification tendered by the applicant at that moment but if the reason for which a director was marked disqualified shall not subsists at that time i.e. if the filling would have been completed then even Ministry wont delay the removal of disqualification.

Through this scheme, the Ministry has given a chance to all the dead companies to opt for it's another life and restart the operations with all the immunities and by washing way all the sins on Company, its directors and officers of all the proceedings years.

Views are Personal Only.

(The Author is Practicing Company Secretary from Ahmedabad (Gujarat) and majorly deals into the domain of Corporate Compliances and Litigation Management Practice under the Corporate Law and Insolvency & Bankruptcy Code in India)