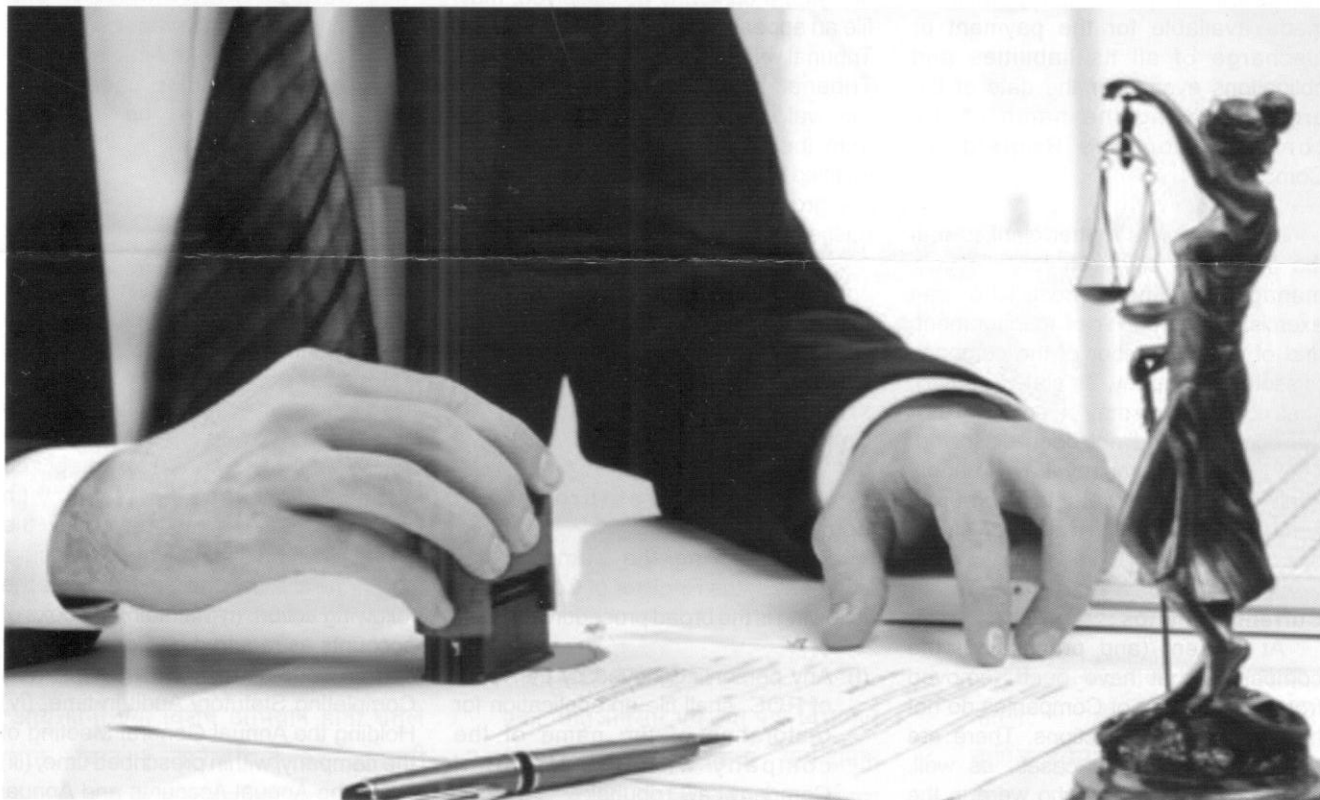


# Revival of de-registered companies and the way forward

Gaurav N. Pingle



With an objective to root out corruption and black money in the economy, the Government has de-registered 1 lakh companies for their dubious transactions. *"48 hours before the launch of GST, we, by one stroke of pen, have cancelled the registration of 1 lakh companies that were found to be involved in irregularities,"* Prime Minister Narendra Modi said, when he was addressing the Foundation Day of ICAI. The Govt. is launching a multi-pronged offensive against such 1 lakh companies, including action against those for violating taxation and money-laundering laws as well as choking their access to banking. While the Ministry of Corporate Affairs has acted against them for not filing returns, it is now going to approach banks with the list of companies where action has been taken to ensure that they are unable to operate their bank accounts or access loans.

## **Provisions of Companies Act, 2013 relating to De-Registration of Companies :**

Pursuant to the provisions of Companies Act, 2013, where the Registrar of Companies ('ROC') has reasonable cause to believe that :

- (i) Company has failed to commence its business within one year of its incorporation or;
- (ii) Company is not carrying on any business or operation for a period of 2 immediately preceding financial years and has not made any application within such period for obtaining the status of a 'dormant company'.

In such cases, the Registrar of Companies 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. As per law, the ROC should request, in the Notice, the directors and company to send their representations along with copies of the relevant documents, if any, within a prescribed time.

After the expiry of the prescribed time period, the ROC may, unless cause to the contrary is shown by the company, strike off its name from the ROC. The ROC shall publish the notice in the Official Gazette, and from such date (i.e. the date of publication of Notice in Official Gazette), the company shall stand dissolved.

However, the ROC, before passing the said order, shall satisfy himself that sufficient provision has been made for the realisation of all amounts due to the company and for the payment or discharge of its liabilities and obligations

by the company within a reasonable time. If necessary, the ROC shall obtain necessary undertakings from the Managing Director, Director or other persons in charge of the management of the company. The law further states that irrespective of the said 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.

In the law, it is further clarified that 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 company, as stated earlier), shall continue and may be enforced as if the company had not been dissolved. The National Company Law Tribunal shall have the powers to wind-up a company, whose name has been struck off from Register of Companies.

#### **Current scenarios :**

At present (and practically), the companies that have been removed from the Register of Companies do not have dubious transactions. There are quite a few genuine cases, as well. There are companies who were in the process of filing annual accounts (with late fee) for the previous years. At the same time, there are companies where there is dispute in the management or dispute between shareholders and management, due to which the company was not able to finalise accounts, complete the statutory audit, adopt financial statements and file it with the Registrar of Companies. In certain cases, the company was incorporated, but the business was not commenced due to some personal or professional reasons of the promoters, however, the annual filing was not completed. In many cases, there are no transactions in the company for years. In all the said cases, it cannot be concluded that the companies were carrying dubious transactions. However, there is an apparent non-compliance by such companies with respect to filing of Financial Statements or Annual Returns with the Registrar of Companies. Therefore, the directors and

shareholders of the company ought to revive the company.

#### **Revival of Companies :**

According to the provisions of Companies Act, 2013, any person aggrieved by an order of the ROC, notifying a company as dissolved, may file an appeal to National Company Law Tribunal within a period of 3 years. 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 ROC, then the Tribunal may order restoration of the name of the company in the register of companies. Recently, the Government notified the provisions relating to restoration of the name of the company that has been struck off by the Registrar of Companies.

#### **Procedure for restoration of company's name :**

For restoring the name of the company in the Register of Companies, following is the broad procedure:

- (i) Any person aggrieved by the order of ROC, shall file an application for restoration of the name of the company with the National Company Law Tribunal;
- (ii) Copy of the Application, shall be served on the Registrar of Companies and other persons (as directed by the Tribunal, if any) within 14 days before the date fixed for hearing;
- (iii) Upon hearing the appeal, the Tribunal may pass appropriate order, as it deems fit.
- (iv) Where the Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that:
  - (a) Applicant shall deliver a certified copy to ROC within prescribed time;
  - (b) On such delivery, the ROC, in his official name and seal, shall publish the order in the Official Gazette;

(c) Applicant shall pay to the ROC his costs of, and occasioned by, the application (if directed by NCLT); and

(d) The company shall file pending financial statements and annual returns with the ROC and comply with the requirements of the Companies Act, 2013 and rules made there under within such time (as may be directed by the Tribunal).

#### **Conclusion :**

Taking into consideration the recent de-registration of companies by the Government, entrepreneurs and businessmen have to ensure annual and periodical compliances under the Companies Act, 2013. At the same time, the professionals are also required to guide and provide appropriate legal advice on the entrepreneurs' proposed business ventures and plans. With reference to the action taken by the Govt., it can be said that as responsible corporate citizens, the Govt. expects the following action: (i) Maintaining books of accounts as required by Company Law and Accounting Standings, (ii) Completing Statutory Audit in time, (iv) Holding the Annual General Meeting of the company, within prescribed time, (iii) Filing the Annual Accounts and Annual Returns within prescribed time. If the entrepreneurs and businessmen propose to close down their business venture, same shall be acted upon without any delay.

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*Gaurav Pingle*

*Practising Company Secretary, Pune*

*(E) : gp@csgauravpingle.com*

*(W) : www.csgauravpingle.com*