

In order to engage with our readers and simplify the legal complexities of the infrastructure sector, EPC World has partnered with Rajani Associates, a full-service law firm for a series of legal Q&As. Through this Legal Q&A column, **SHISHAM PRIYADARSHINI**, Partner, Rajani Associates and **AMISH SHROFF**, Associate Partner, Rajani Associates, will endeavour to address the queries and challenges faced by our readers.



Shisham Priyadarshini



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What are the procedures to be followed to strike off the name of the Company from the Registrar of Companies (ROC)?

In our previous edition, we discussed the provisions relating to striking off under the Companies Act, 2013, the modes of strike off and the different scenarios under which the Companies can apply for the same. The provisions relating to strike off provide an opportunity to the defunct companies to get their names struck off from the records of the ROC. In addition to the provisions of the Act relating to strike off, the Ministry of Corporate Affairs has also issued the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 in order to provide procedural aspect of strike off under the Act. In the event, the ROC initiates to strike off the name of the companies, it has to follow certain procedures by its own motion. To begin with, the ROC shall be required to send a notice in writing in the prescribed form to all the directors of the Company at the addresses available on record, by registered post with acknowledgement due or by speed post. The notice shall contain the reasons on which the name of the Company is to be removed and seek representations, if any, against the proposed action from the Company (and its Directors) along with the copies of relevant documents, if any, within the prescribed time period from the date of the notice. After the representation of the Company and

its directors (where such representation has been received), in case the ROC is not satisfied with such representation, it may proceed further for the strike off the name of company. In this regard, the Company will require to publish the notice in the prescribed format in terms of the provisions of the Act.

The ROC shall simultaneously also require to intimate the concerned regulatory authorities regulating the company (like the Income-tax authorities, excise authorities) about the proposed action of striking off the names of such companies and seek objections, if any, to be furnished within the time period as per the prescribed provisions. At the expiry of the time mentioned in the notice, unless cause to the contrary is shown by the company, the ROC may strike off its name from the ROC. The company shall stand dissolved on the publication of this notice in the Official Gazette. The ROC, before striking off the name of the Company, shall satisfy itself that sufficient provision has been made for realization of all amounts due to the company and for the payment or discharging of its liabilities. The Company can file an application for Striking off its name with the ROC by passing the resolutions, taking the approval of the concerned authorities, filing of relevant forms and publishing the notice of striking off in the Official Gazette.

Which categories of companies shall not be removed from the ROC?

The Companies which shall not be eligible to be removed from the ROC are as under: Listed companies; Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws; Vanishing company (i.e. the company listed with the Stock Exchange and has failed to file its returns with the Registrar and Stock Exchange for a prescribed time period and is not maintaining its registered office at the notified address and none of its directors are traceable); Companies where inspection or investigation is ordered and being carried out or actions on such order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in the Court;

Companies where notices under issued under certain sections of the Act by the Registrar or Inspector and reply thereto is pending or report has not yet been submitted or follow up of instructions on report is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court; Companies against which any prosecution for an offence is pending in any court; companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default; Companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same; Companies having charges which are pending for satisfaction; and companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

What is the effect of company notified as dissolved by the ROC?

Where the company stands dissolved, it shall on and from the date mentioned in the notice of dissolution, cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date, other than for the purpose for realizing the amount due to the Company and for the payment or discharge of the liabilities or obligations of the Company. Even the liability, if any, of every director, manager or other officer (who was involved in the management of the Company), and of every member of the Company dissolved under this section, shall continue and may be enforced as if the Company had not been dissolved.

Whether there are any provisions for restoration of company which has been struck off?

In terms of the provisions of the Act, the Tribunal is empowered to pass an order for the restoration of the company that has been struck off by the ROC. Such restoration order can be passed by the Tribunal on appeal by any person who is aggrieved by the order of the ROC, where the Tribunal is of the opinion that the removal of name of Company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC. However, before passing the restoration order, reasonable opportunity of making representations and of being heard shall be provided to the ROC, the Company and all the concerned persons. The restoration order can also be passed by the Tribunal,

based on the application made by the ROC, where ROC is of the opinion that the name of the Company has been struck off from the ROC either inadvertently or on the basis of incorrect information furnished by the company or its directors.

Where the Tribunal, on an application made by the company, member, creditor or workman, is 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, then even under such a scenario the name can be restored. Although, the provisions are made to restore the name of the Company, it may be noted that application in this regard is made within the stipulated time period as prescribed under the Act. In addition to the right to pass the restoration order, the Tribunal may also pass an order and give such other directions and make such provisions as deemed to place not only the company but also 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 ROC. In other word, status quo ante shall prevail. The right to restore the name of the Company ensures that the strike off provisions are not used by the Company as an escape route to exonerate itself from any liabilities and applications for the same are not filed with any malafide intentions and if filed sufficient protections measures are there in place to punish the guilty (by imposing penalty and prosecuting the wrong doers).

What are the penalties prescribed for any contravention of the provisions dealing with the striking-off?

In the event a company files a striking off application in violation of the provisions of the Act, it shall be punishable with fine which may extend to ₹ 1 lakh. Where the application is filed with the object of evading the liabilities of the Company or with the intention to deceive the creditors or to defraud any other persons, 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. In such a scenario, the guilty shall be punishable for fraud in the manner as provided in Act. In addition to this, the ROC may also recommend prosecution of the persons responsible for the filing of the striking off application. EPC^{World}