



Condonation of Delay Scheme, 2018

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Introduction

Central Government's initiatives of aiming and promoting good corporate governance, has armed the regulators with enormous powers. Post demonetisation, in order to curb illegal fund flows and black money by shell companies, the Ministry of Corporate Affairs has disqualified more than 3,00,000 directors. Apropos to Section 164 (2) of the Companies Act, 2013 ("the Act"), dealing with the disqualification of directors, Central Government has introduced the Company Law Settlement Scheme, 2014 which was in effect from 15th August 2014 to 15th October 2014. The Act lays down a stricter regime for the defaulting companies with stringent penalties, both monetary and disqualification.

In September 2017, Ministry of Corporate Affairs has identified directors associated with the Companies which have not filed financial statements or annual returns under the compliance the Act and disqualified them. Further to the disqualification, more than 2,00,000 companies were struck off by the Registrar of Companies. Ministry of Finance has directed banks to restrict the operations of defaulting companies and to freeze their bank accounts. Pursuant to the hardships caused by blocking of bank accounts and disqualification, a number of representations, writ petitions have been filed by various stakeholders, disqualified directors seeking relief. Based on the various representations and with the view to give an opportunity to rectify the default, Central Government has decided to introduce Condonation of Delay Scheme, 2018.

Key Features

Time period of Scheme

Scheme will come in force with effect from 1st January 2018 and will be in force upto 31st March 2018.

Applicability of Scheme

The scheme is applicable for a Defaulting Company which has not filed its Financial Statements or Annual Return which is a statutory requirement under the Act. However, the scheme is not applicable for companies, whose name has been struck off/removed from the register of companies under Section 248(5) of the Act. It is made clear in the scheme that the Companies whose name is not struck off/removed, despite the failure to comply statutory requirement can avail the scheme. A defaulting company has been given a time period to file the documents which are pending for filing till 30th June, 2017.

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Scheme is applicable for seeking condonation towards non-filing of the following documents only:

- Form 21A/MGT-7- Particulars of Annual return for the Company not having share capital
- Form Number 20B/MGT-7- Form for filing the Annual return by a Company having share capital.
- Form 23AC, 23ACA, 23AC-XBRL, 23ACA-XBRL, AOC-4, AOC-4(CFS), AOC (XBRL) and AOC-4(non-XBRL) – Forms for filing Balance Sheet/ Financial Statement and profit and loss account
- Form 66 – Form for submission of Compliance Certificate with the Registrar
- Form 23B/ ADT-1- Form for intimation for Appointment of Auditors.

Procedure for Directors

- DIN of disqualified director will be activated temporarily to enable them to file the overdue documents
- DIN of directors, associated with defaulting company, will be deactivated after the expiry of scheme if the default is not made good during the period allowed under the scheme.

Procedure for Company

- Defaulting Company shall file overdue documents in originally prescribed E-Form with originally prescribed fees and additional fee as per Section 403 of the Act.
- After filing the overdue documents, defaulting company should seek condonation of delay by filing e-CODS along with application fees of INR 30,000.

Conclusion

Scheme has instructed Registrar to withdraw all the prosecution which have been initiated due to non-filing of overdue documents, however the directors are not exempt from any actions taken Under Section 167(2) of the Companies Act, which specifies that if the director functions even after knowing that he is disqualified, he shall be imprisoned for a term extended upto 1 year along with/without fine of INR 1 Lakh which may extend upto INR 5 Lakhs. Registrar has been given enormous powers to take all necessary actions under Companies Act, 2013, against the companies which have not availed the scheme and not filed the documents to make good of the defaults. The Company whose name has been already been struck off from the Register of Companies as on the date of applicability of this scheme, cannot opt for condonation under this scheme. Such Companies should approach NCLT for revival of Companies under Section 252 of the Act.

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