

**RESTORATION OF NAME UNDER SECTION 252 OF
COMPANIES ACT, 2013 (EARLIER SECTION 560 OF
COMPANIES ACT,1956).**

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In this article, an attempt has been made to clarify the doubts of the Professionals as well as the companies whose name was deleted/strike off by the Registrar of Companies or the companies had voluntarily availed the route the “Simplified Exist Scheme” introduced by the Ministry of Corporate Affairs from time to time and now they wish to revive the name of the company.

MEANING OF ‘STRIKING OFF’

2. A company comes into existence by registration in the office of the Registrar of Companies. Section 9 of the Companies Act, 2013 provides that on the registration of the memorandum of a company, the Registrar shall certify under his hand that the company is incorporated.

3. The Companies Act, 1956 contained provisions for striking defunct companies off the register, which is an alternative to winding-up of a company. Section 560 Of the Companies Act,1956 is reproduced herein:-

SECTION 560 OF COMPANIES ACT, 1956

Power of Registrar to strike defunct company off register.

- (1).....
- (2).....
- (3).....
- (4).....
- (5):.....
 - (a).....

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(b).....

(6): If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the Court, on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register;

(7).....

.....

4. The corresponding section of 560 of Companies Act,1956 has been came into existence in Section 248 and 252 of the Companies Act, 2013 which are reproduce herein below:-

SECTION 252 OF COMPANIES ACT,2013

(1) Any person aggrieved by an order of the Registrar, notifying a company 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 and 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 the Registrar, it may order restoration of the name of the company in the register of companies.

Provided.....(speaks of opportunity of hearing)

Provided.....

(2).....

(3) if 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, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of Section 248 may, if 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 to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and 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 register of companies.

5. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, the Registrar can, on his own, exercise the power conferred upon him by section 248 and remove the company from his Register of Companies by following the procedure laid down in that section.

6. Earlier as per Section 560 of the Companies Act, 1956, the petition for restoration was required to be filed before the concerned High Court under whose jurisdiction the registered office of the company was situate. However, with the notification of Section 248 and 252 of Companies Act, 1956, the power now vests with National Company Law Tribunal under whose jurisdiction the registered office of the company is situated.

7. Earlier petition under Section 560 of the Companies Act, 1956 were filed before the concerned High Courts, the High Courts were extremely liberal in restoring the name of the company in the register of Registrar of Companies. The High Court in the following cases had allowed the company petition where the name had been struck off by the Registrar of Companies due to non filing of Annual returns and Balance Sheet by the Company with the Registrar of Companies.

- A. Pancham Hotels Pvt. Ltd. Vs. ROC 2015 (220) DLT 443 : 2015 (7) Apex Decision (Delhi) 509 passed by Delhi High Court.
- B. Rakesh and A Realtors (P) Ltd. Vs. ROC 2015 (216) DLT 52 passed by Delhi High Court.
- C. M.A. Panjwani Vs. ROC 2014 (206) DLT 17 passed by Delhi High Court.
- D. Holly International Pvt. Ltd. Vs. ROC 2010 (174) DLT 10 passed by Delhi High Court.

E. Medtech Pharma (India) Pvt. Ltd. Vs. ROC 2010 (4) Apex decision (Delhi) 869 passed by Delhi High Court.

F. Rajasthan Foils Pvt. Ltd. Vs. ROC 2010 (9) Apex Decision (Delhi) 417 passed by Delhi High Court.

G. Kakku E and P Control Pvt. Ltd. Vs. ROC 2010 (154) Companies Cases 408 passed by Delhi High Court.

8. The various High Courts in the following matters had allowed the petition where the name had been struck off under the route of “Simplified Exist Scheme” introduced by the Ministry of Corporate Affairs from time to time and the company want to revive the name into the register maintained by the Registrar of Companies.

A. Siddhant Garg & Anr. Vs ROC MANU/DE/0549/2012 : (2012) 171 Company Cases 326 (Delhi).

B. VI Brij Fiscal Services Pvt. Ltd. Vs. ROC MANU/MP/0029/2010 : (2010) 155 Companies Cases 157 (M.P.)

C. Prashanth Surface Coating Pvt. Ltd. Vs. ROC MANU/KA/2301/2013.

D. Intec Corporation Pvt. Ltd. Vs. ROC C.P. No. 191/2016 decided on 21.12.2016 by Delhi High Court.

9. Now after the notification of Section 248 and 252, the petition is required to be filed before the National Company Law Tribunal in whose jurisdiction the registered office of the company is situated. Along with the appeal, the following documents are invariably required to be filed:-

A. Copy of Memorandum and Article of Association of the Company duly certified by the Director of the Company.

B. Copies of Audited Annual Accounts of Company duly certified by the Director to show that the company was running and functional when the name was deleted by the Registrar of Companies.

C. Copies of last three years Audited Annual Accounts of Company duly certified by the Director to show that the company is still running and functional at the time of filing of petition.

- D. Copies of latest Income Tax Returns for the last two to three years duly certified by the Director to show the compliance of other duties by the Company.
- E. Board Resolution in favour of one of the Director to sign, verify and file the petition.
- F. List of Shareholders and NOC from all the Shareholders.
- G. List of Directors and NOC. From all the Directors.
- H. Copy of Gazette
- I. Any other document to show the existence and working of the Company like the list of employees, Bank Statement of the company when the name was deleted and at the time of filing of petition.

WHO CAN FILE THE PETITION FOR RESTORATION OF NAME.

10. An petition for restoration can only be filed by the Company, member, creditor or workmen. It must be shown that at the date when the company was dissolved, the Petitioner was a member, creditor or workmen thereof. A third party has no locus standi to oppose a company's application for restoration under this section, but he may be heard as amicus curie if the Court so please. The expressions 'member' or 'creditor' used in sub-section (6) of Section 560 includes the personal representatives of a deceased member or creditor.

LIMITATION

11. An petition can be filed by the Company, member, creditor or workmen before the National Company Law Tribunal within 20 years from the date of striking off the name of the company by the Registrar of Companies or publication in the Gazette.

EFFECT OF THE ORDER

12. The effect of an order of restoration of the name of a company under this section, is to place the company whose name was struck off by the Registrar in the same position as if the name of the company had never been struck off during the interregnum. If a court of competent jurisdiction

directs restoration of the name of the company, it shall be deemed to have continued throughout.

LATEST JUDGMENTS OF NATIONAL COMPANY LAW TRIBUNAL (VARIOUS BENCHES) ON THE PETITION UNDER SECTION 252 OF THE COMPANIES ACT,2013.

13. The National Company Law Tribunal in the following matters have taken a constant view to dismiss the petition where the name was deleted in the simplified exist scheme on the request of the company.

A. Rahul Rice Mills Pvt. Ltd. Vs ROC, Company Petition No.171 of 2016 decided on 21.04.2017 by the Principal Bench of National Company Law Tribunal, New Delhi.

B. Delhite Niphko (India) Pvt. Ltd. & Anr Vs. ROC Company Petition No.528 (ND)/2015 decided on 01.05.2017 by the Principal Bench of National Company Law Tribunal, New Delhi.

Observing that once, the name was deleted in the simplified exist scheme on the request of the company, the company has no right and entitlement to seek restoration of name of the company in the register of Registrar of Companies.

14. Even the National Company Law Appellate Tribunal in the case of Rahul Rice had dismissed the appeal of the company.

15. The National Company Law Tribunal in the following matters have allowed the petition where the name was deleted by the Registrar of Companies due to non filing of Annual Return and Balance Sheet with the Registrar of Companies.

A. R.A.P Garments Pvt. Ltd. Vs. ROC Company Petition No. 461 of 2014 decided on 24.04.2017 by the Principal Bench of National Company Law Tribunal, New Delhi.

B. M.G. Power systems Pvt. Ltd. Vs. ROC Company Petition No. 47 of 2015 decided on 18.05.2017 by the National Company Law Tribunal, New Delhi.

C. Hamilton Estates Pvt. Ltd. Vs. ROC Company Petition No. 561 of 2016 decided on 19.04.2017 by the National Company Law Tribunal, New Delhi.

16. Now, the National Company Law Tribunal in the recent cases have dismissed the petition where the name was deleted by the Registrar of Companies due to non filing of Annual Return and Balance Sheet with the Registrar of Companies on the ground that the Company has failed to proof that the company was carrying the business at the time of deletion of name by the Registrar Of Companies. .

A. Rastogi Enterprises Pvt. Ltd. Vs. ROC Company Petition No. 411 of 2014 decided on 07.08.2017 by the Principal Bench of National Company Law Tribunal, New Delhi.

B. S.K. Bajaj Rubber Pvt. Ltd. Vs. ROC Company Petition No. 73(ND)/2017 decided on 08.08.2017 by the Principal Bench of National Company Law Tribunal, New Delhi.

C. Haryana Energy & Fuels Pvt. Ltd. Vs. ROC Company Petition No. 642 of 2014 decided on 21.08.2017 by the Principal Bench of National Company Law Tribunal, New Delhi.

17: It is our most respectful submission, a pragmatic, justice oriented and business like approach is needed to be followed in as much as restoration of name of the company shall fetch sizeable revenue to (i) Ministry of Corporate Affairs in the form of fine/penalty (ii) Once business is restored – it will earn sizeable revenue in the form of various taxes to the Government (iii) eradication of unemployment thus giving bread, education and livelihood to families of employees (iv) overall growth, prosperity and

development of nation and above all, there is absolutely no prejudice to anyone.