

Annexure R-2

12

General Circular No...../2017

File No.02/04//2017
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhawan
Dr. Rajendra Prasad Road,
New Delhi-110 001.

Dated2017

To

All Regional Directors,

All Registrar of Companies,

All Stakeholders.

Sir,

Subject: Condonation of Delay Scheme, 2018

Whereas, companies registered under the Companies Act, 2013 (or its predecessor Act) are inter-alia required to file their Annual Financial statements and Annual Returns with the Registrar of Companies and non-filing of such reports is an offence under the said Act.

Whereas, section 164(2) of the Act read with section 167 of the Companies Act, 2013 [the Act], which provisions were commenced with effect from 01.04.2014, provide for disqualification of a director on account of default by a company in filing an annual return or a financial statement for a continuous period of three years.

Whereas, Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014 further prescribes that every director shall inform to the company concerned about his disqualification, if any, under section 164(2), in form DIR-8.

Whereas, consequent upon notification of provisions of section 164(2), Ministry of Corporate Affairs (MCA) had launched a Company Law Settlement Scheme 2014 providing an opportunity to the defaulting companies to clear their defaults within the time period specified therein and following the due process as notified.

Whereas, MCA in September 2017, identified 3,09,614 directors associated with the companies that had failed to file financial statements or annual returns in the MCA21 online registry for a continuous period of three financial years 2013-14 to 2015-16 in terms of provisions of section 164(2) r/w 167(1)(a) of the Act and they were barred from accessing the online registry and a list of such directors was published on the website of MCA.

Whereas, as a result of above action, there have been a spate of representations from industry, defaulting companies and their directors seeking an opportunity for the defaulting companies to become compliant and normalize operations.

Whereas, certain affected persons have also filed writ petitions before various High Courts seeking relief from the disqualification.

Whereas, with a view to giving an opportunity for the non-compliant, defaulting companies to rectify the default, in exercise of its powers conferred under sections 403, 459 and 460 of the Companies Act, 2013, the Central Government has decided to introduce a Scheme namely "Condonation of Delay Scheme 2018" [CODS-2018] as follows.

1. The scheme shall come into force on the **_01.01.2018** and shall remain in force up to **31.03.2018**
2. **Definitions** - In this scheme, unless the context otherwise requires, -
 - i. "Act" means the Companies Act, 2013 and Companies Act, 1956 (where ever applicable);
 - ii. 'overdue documents' means the financial statements or the annual returns or other associated documents, as applicable, in the case of a defaulting company and refer to documents mentioned in paragraph 5 of the scheme.
 - iii. "Company" means a company as defined in clause of 20 of section 2 of the Companies Act, 2013;
 - iv. "Defaulting company" means a company which has not filed its financial statements or annual return as required under the Companies Act, 1956 or Companies Act, 2013, as the case may be, and the Rules made thereunder for a continuous period of three years.

- v. "Designated authority" means the Registrar of Companies having jurisdiction over the registered office of the company.
3. **Applicability:** - This scheme is applicable to all defaulting companies (other than the companies which have been struck off/whose names have been removed from the register of companies under section 248(5) of the Act). A defaulting company is permitted to file its overdue documents which were due for filing till 30.06.2017 in accordance with the provisions of this Scheme.
4. **Procedure to be followed for the purposes of the scheme:-** (1) In the case of defaulting companies whose names have not been removed from register of companies,-
- i) The DINs of the disqualified directors de-activated at present shall be temporarily activated during the validity of the scheme to enable them to file the overdue documents.
 - ii) The defaulting company shall file the overdue documents in the respective prescribed eForms paying the statutory filing fee and additional fee payable as per section 403 of the Act read with Companies (Registration Offices and fee) Rules, 2014 for filing these overdue documents.
 - iii) The defaulting company after filing documents under this scheme, shall seek condonation of delay by filing form e-CODS 2018 attached to this scheme along with a fee of Rs. 30,000/- (Rs. Thirty Thousand only) as prescribed under the Companies (Registration Offices and Fee) Rules, 2014 well before the last date of the scheme.
 - iv) The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the eform CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme in terms of section 164(2)(a) r/w 167(1)(a) of the Act shall be liable to be deactivated on expiry of the scheme period.
- (2) In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated ~~consequent~~ only NCLT upon

order of revival subject to the company having filing of all overdue documents.

5. **Scheme not to apply for certain documents** - This scheme shall not apply to the filing of documents other than the following overdue documents:

- i) Form Number 20B/MGT-7- Form for filing Annual return by a company having share capital.
 - ii) Form 21A/MGT-7- Particulars of Annual return for the company not having share capital.
 - iii) 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.
 - iv) Form 66- Form for submission of Compliance Certificate with the Registrar.
 - v) Form 23B/ADT-1- Form for intimation for Appointment of Auditors.
6. The Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s) for all documents filed under the scheme. However, this scheme is without prejudice to action under section 167(2) of the Act or civil and criminal liabilities, if any, of such disqualified directors during the period they remained disqualified.
7. At the conclusion of the Scheme, the Registrar shall take all necessary actions under the Companies Act, 1956/ 2013 against the companies who have not availed themselves of this Scheme and continue to be in default in filing the overdue documents.

Yours faithfully,

(KMS. Narayanan)
Assistant Director (Policy)
23387263

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

Government of India
MINISTRY OF CORPORATE AFFAIRS

Notification

New Delhi, , 2017

G.S.R.(E).—In exercise of the powers conferred by sections 396,398,399, 403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Registration Offices and Fees) Amendment Rules, 2017.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014 (herein after refer to as the principle rules) in the Annexure, in item II, after sub-item (vii), the following sub-item shall be inserted, namely;-

For Application made	Other than OPCs and Small Companies	OPC and Small Companies
"(vii) For filing an Application for Condonation of Delay under the Condonation of Delay Scheme, 2018 (CODS, 2018)	30,000	30,000"

3. In the annexure to the principle rules, after item No. VII, the following form shall be inserted, namely;-

FORM

Application for Condonation of Delay Scheme, 2018 (CODS, 2018)

[Pursuant to Condonation of Delay Scheme, 2018]

Note - All fields marked in * are to be mandatorily filled.

To

The Registrar of Companies,

Sir/ Madam,

I herewith make an application for the Condonation of Delay Scheme, 2018 and give below the following particulars, namely:-

1.(a) * Corporate identity number (CIN)

Pre-fill

(b) Global location number (GLN) of company

2.(a) Name of the company

(b) Address of the registered office or of the principal place of business in India of the company

(c) *e-mail ID of the company

(d) Date of incorporation of Indian company or date of establishment of the principal place of business in India of foreign company

(DD/MM/YYYY)

3. Details of documents filed under the Condonation of Delay Scheme, 2018

Total number of Service Request Number (SRN)(s)

Pre-fill

SRN	Form number(s)	Date of filing (DD/MM/YYYY)	Date of event (DD/MM/YYYY)
			Total (in Rs.)

- 4. *Whether any appeal(s) was filed against any notice issued or complaint filed before the competent court for violation of the provisions under the Act in respect of the above mentioned document(s). If yes, attach proof of withdrawal of such appeal. Yes No Not Applicable
- 5. *Whether any prosecution(s) is pending in court against the company and its officers in respect of belated documents filed under the scheme. If yes, provide details thereof as an attachment. Yes No
- 6. *Whether any director(s) of the company is declared as proclaimed offender or facing criminal case(s) for economic offences. If yes, provide details of such director(s) as an attachment. Yes No

Attachments

List of attachments

- 1. Proof of withdrawal of any appeal(s) against any notice issued or complaint filed before the competent court
- 2. Details in respect of prosecution(s) pending against the company and its officers in respect of belated documents filed under the scheme which requires withdrawal by the Registrar
- 3. Details of director(s) declared as proclaimed offender or facing criminal case(s) for economic offences
- 4. Optional attachment(s) - if any

Declaration and Verification

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

- I have been authorised by the Board of directors' resolution number dated (DD/MM/YYYY) to sign and submit this application.
- I am authorised by the Board of directors to sign and submit this application.
- * The company had failed to comply with the provisions of the Act as mentioned in respect of filing of above mentioned documents.
- The company has withdrawn the appeals pending before any Court or NCLT/NCLAT or Regional Director or any other adjudicating authority.

To be digitally signed by

Managing Director or director or manager or secretary of the company (in case of an Indian company) or authorised representative (in case of a foreign company)

*Designation

*Director identification number of the director or Managing Director; or Income-tax permanent account number (Income-tax PAN) of the manager or authorised representative; or Membership number, if applicable or income-tax PAN of the secretary (secretary of a company who is not a member of ICSI, may quote his/ her income-tax PAN)

For office use only:

eForm Service request number (SRN) eForm filing date (DD/MM/YYYY)

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Date of signing (DD/MM/YYYY)

[F.No. 02/04/2017 CL-V]

Amardeep Singh Bhatia, Joint Secretary.

Note: The principal notification was published in the Gazette of India, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 268(E), dated 31st March, 2014 and subsequently amended by:-

Serial Number	Notification Number	Notification Date
1.	G.S.R. 297(E)	28-04-2014
2.	G.S.R. 122(E)	24-02-2015
3.	G.S.R. 438 (E)	29-05-2015
4.	G.S.R. 493(E)	06-05-2016
5.	G.S.R.1049 (E)	07-11-2016