VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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Corporate & other related laws

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Inside this edition

MCA notifies LLP (Second Amendment) Rules replacing Form 3 and, Form-4

MCA extends Timeline of Annual General Meeting and EGM through VC or OAVM.

BSE, NSE announce additional surveillance measures for SME stocks

Restoration of the struck of name under Section 252 of the Companies Act, 2013- Imposition of huge costs is not tenable.

Mandatory Pre-requisite for filing matters in NCLT

& more...

MCA notifies LLP (Second Amendment) Rules replacing Form 3 and, Form-4

The Ministry of Corporate Affairs (MCA) has notified "the Limited Liability Partnership (Second Amendment) Rules, 2023". According to this amendment, the format of LLP Form No. 3, (information with regard to Limited Liability Agreement and changes, if any, made therein) and LLP Form No. 4 (Notice of appointment, cessation, change in name/address/designation of designated partner or partner and consent to become a partner/designated partner) are substituted.

MCA extends Timeline of Annual General Meeting and EGM through VC or OAVM.

The Ministry of Corporate Affairs has decided to allow companies to conduct their Annual General Meetings (AGM) and EGMs through Video Conference (VC) or Other Audio Visual Means (OAVM) or transact items through postal ballot in accordance with framework earlier circulars up to September 30, 2024.

BSE, NSE announce additional surveillance measures for SME stocks

Leading stock exchanges BSE and NSE has announced that stocks in the small and medium enterprises (SME) segment will come under the framework of Additional Surveillance Measures (ASM) and trade-to-trade settlement to curb volatility in such shares. The move is aimed at curbing speculative trading in the SME space, where retail participation has been increasing. A stock can be placed under additional surveillance measures in case it falls under a certain basis including high variation between high and low prices and variation in volumes as compared to the monthly average.

Restoration of the struck of name under Section 252 of the Companies Act, 2013- Imposition of huge costs is not tenable.

Brief of Fact: The appellant's name was struck of from the register of companies and an appeal for restoration of the name was filed by the Appellant before the NCLT. By the impugned order under challenge, NCLT directed the ROC Mumbai to restore the name of the company i.e. Vbuiltfine Properties Pvt Ltd, to the register of Registrar of Companies with imposition of cost of Rs. 5,00,000/- . Appellant challenged the imposition of this huge cost.

Hon'ble NCLAT observed that on examination of provision it is evident that from the date of striking off the name of the company from the register of Registrar of Companies, one can prefer an appeal within a period of three years from the date of striking off the name of the

company. In the order impugned date of striking off under Section 248(5) of Companies Act, 2013 has not been mentioned. On examination of the impugned order it is evident that though date of striking off was not mentioned, the appeal was preferred after four years. The order on this issue appears to be completely vague.

Moreover, if the NCLT was exercising its jurisdiction under Section 252(3) of the Companies Act, 2013, in such situation the appellant was required to satisfy the NCLT that on the date of striking off the company, the company was carrying on business or in operation. There was third condition for passing of the restoration order in case it was otherwise just for restoring the name of the company. The order does not meet either of the three criteria under Section 252(3) of the Act. Moreover, since the appeal was preferred under Section 252(1) of the Companies Act, 2013 the learned NCLT was required to examine the appeal strictly in accordance with the provision under Section 252(1) of the Companies Act, 23013. In absence of exact date of striking off it would be difficult to approve the impugned order. Moreover, learned NCLT has imposed cost of Rs. 5 lakhs but no plausible reason has been given for imposing such cost. In such view of the matter we are left with no option but to set aside the order and remit back the matter to the NCLT for passing order afresh after affording opportunity to both the parties i.e. Appellant and ROC.

Mandatory Pre-requisite for filing matters in NCLT

National Company Law Tribunal has issued an order relating to mandatory pre-requisite for filing matters in NCLT. According to the order, Litigants/Advocates/Parties are required to follow the pre-requisite outlined on formatting, proper book marking of Petition/Applications/Pleadings/ Documents, electronic signature using e-Sign, retention of originals etc. at time of e-filing in NCLT portal www.efilig.nclt.gov.in with effect from 04.09.2023. The PDF/A version documents are mandatory for filing followed by electronic signature using Digital Signature Certificate (DSC) issued by Certifying Authority.

Update-Ministry of Corporate Affairs regarding processing of Incorporation forms at Central Reservation Centre (CRC)

'The stakeholders are informed that the processing of application forms for the purpose of name reservation and incorporation at the Central Reservation Centre (CRC) is faceless and randomised. The applications if sent for resubmissions are normally not processed by the same official who has processed the application at the first instance. Stakeholders may inform the Ministry in case of any malpractice or irregularity on the part of any official/officer at CRC or any professional with supporting evidences at CVO-MCA@GOV.IN for taking action in accordance with the extent CVC guidelines.'

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