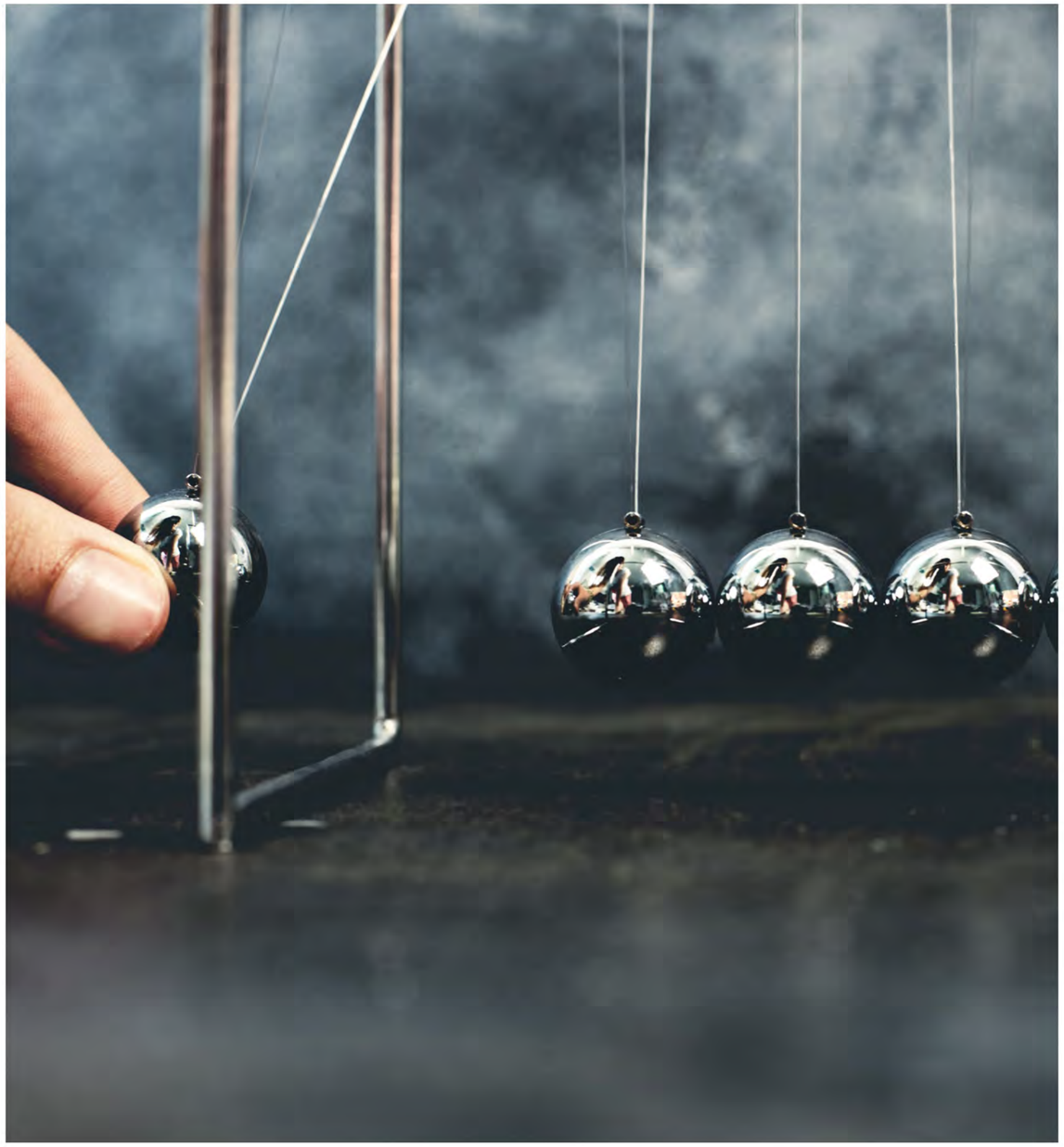
VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

Communiqué

Corporate & other related Laws

August 2023



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The Companies (Incorporation) Second Amendment Rules, 2023

The Ministry of Corporate Affairs (MCA) vide its notification dated August 02, 2023 has notified "the Companies (Incorporation) Second Amendment Rules, 2023" which shall come into force on the date of its publication in the Official Gazette.

According to the amendment Form RD-1 {Form for filling application to Central Government (Regional Director)} has been substituted.

Condonation of delay in filing of Form-3, Form-4, and Form-11 under section 67 of Limited Liability Partnership Act, 2008 read with section 460 of the Companies Act, 2013

The Ministry of Corporate Affairs (MCA) has issued general circular no. 8/2023 dated August 23, 2023 and granted onetime relaxation in additional fees to those LLPs who could not file the Form 3, Form 4 and Form 11 within due date and provided an opportunity to update their filings and details in Master-data for future compliances. Salient features are mentioned as below:

1. Form 3 and Form 4 will be processed under STP mode, except for cases involving changes in business activities. Further, stakeholders are advised to file these forms sequentially.
2. These forms will provide facility to edit the pre-filled master data which is available as the existing master database of the LLP. However, the onus of filing the correct data would be on the stakeholders.
3. The filing of Form 3 and Form 4 without additional fees shall be applicable for the event dates 01.01.2021 onwards. For the events prior to the aforesaid period, these forms can be filed with two times and four times of normal fees as additional fee for small LLPs and other than small LLPs respectively.
4. The filing of Form 11 without additional fee shall be applicable for the financial year 2021-22 onwards.
5. These forms shall be available for filing from 01.09.2023 onwards till 30.11.2023.
6. The LLPs availing the scheme shall not be liable for any action for the delayed filing of aforesaid forms

Dispensation of Class Meeting under Section 230 and 232 of the Companies Act

- The Hon'ble NCLAT noted that in Section 232(1) of the Companies Act that it is left to the discretion of the Tribunal, as the word used is" may", regarding the holding of meeting of the creditors or class of creditors or members or class of members in the manner directed by the Tribunal.
- Further, Appellate Tribunal observed that this discretion given in section 232(1) to the Tribunal has been interpreted by Hon'ble Bombay High Court in the matter of Mahaamba Investments Limited vs. IDI Limited vs. IDI Limited, also by this Tribunal in the matter of Patel Hydro Power Private Limited in Company Appeal (AT) No. 137 of 20221 (2021 SCC OnLine NCLAT 420) that if the Transferor Company is wholly owned subsidiary of the Transferee Company and there is no reorganization of the share capital of Transferee Company and the creditors and shareholders of the Transferee Company are not affected by the implementation of the Scheme as the assets of the Transferee Company and the Transferor Company far exceed their liabilities, the requirement for holding meetings of the shareholders, secured and unsecured may be dispensed with.

Adjudication Order by Registrar of Companies, Patna

The Ministry of Corporate Affairs (MCA) has recently, imposed penalties upon an auditor who failed to duly report transactions involving specified bank notes. This significant development was brought into effect through the issuance of Order No. ROC/PAT/ Inquiry/13665/834 on the 18th of August 2023. The order focuses on the case of Vinayak Builders and Developers Private Limited, a company incorporated under the provisions of the Companies Act, 1956/2013. The central issue revolves around a violation of Section 143 of the Companies Act, 2013, in conjunction with Rule 11(d) of the Companies (Audit and Auditors) Rules, 2014.

This order provides valuable insights into regulatory actions taken to uphold compliance with the Companies Act, 2013.

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