MISCELLANEOUS PROVISIONS

LEARNING OUTCOMES

After reading this chapter, you will be able to:

- Know the provisions regarding Removal of names of companies from the Register of Companies
- Identify the Government companies and their Annual Reports
- Analyzing the concept of Nidhis and Dormant companies

1. INTRODUCTION

Ministry of Corporate Affairs vide Notifications dated 7th of December & 26th of December, 2016 notified various sections of the Companies Act, 2013. Besides, with the enforcement of the Insolvency and Bankruptcy Code, 2016, many consequential changes have also bring in the Companies Act, 2013.

2. REGISTERED VALUER

(i) Valuation: Where a valuation is required to be made in respect of any

- property,
- stocks,
- shares,
- debentures,
- securities or
• goodwill or
• any other assets (herein referred to as the assets) or
• net worth of a company or its liabilities

under the provision of this Act, it shall be valued by a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

(ii) **Role of Valuer:** The valuer appointed under sub-section (1) shall,—

(a) make an impartial, true and fair valuation of any assets which may be required to be valued;
(b) exercise due diligence while performing the functions as valuer;
(c) make the valuation in accordance with such rules as may be prescribed; and
(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

(iii) **Contravention:** If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1 Lakh.

However, if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to 1 year and with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 5 lakhs.

(iv) Where a valuer has been convicted under point (iii), he shall be liable to—

(a) refund the remuneration received by him to the company; and
(b) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

**COMPANIES (REGISTERED VALUERS AND VALUATION) RULES, 2017**

**Definitions**

2. (1) In these rules, unless the context otherwise requires —

(b) “authority” means an authority specified by the Central Government under section 458 of the Companies Act, 2013 to perform the functions under these rules;
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(c) "asset class" means a distinct group of assets, such as land and building, machinery and equipment, displaying similar characteristics, that can be classified and requires separate set of valuers for valuation;

(f) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

(i) "valuation standards" means the standards on valuation referred to in rule 18; and

(j) "valuer" means a person registered with the authority in accordance with these rules and the term "registered valuer" shall be construed accordingly.

Eligibility for registered valuers

3. (1) A person shall be eligible to be a registered valuer if he-

   (a) is a valuer member of a registered valuers organisation;

   Explanation.— For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

   (b) is recommended by the registered valuers organisation of which he is a valuer member for registration as a valuer;

   (c) has passed the valuation examination under rule 5 within three years preceding the date of making an application for registration under rule 6;

   (d) possesses the qualifications and experience as specified in rule 4;

   (e) is not a minor;

   (f) has not been declared to be of unsound mind;

   (g) is not an undischarged bankrupt, or has not applied to be adjudicated as a bankrupt;

   (h) is a person resident in India;

   Explanation.— For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 as far as it is applicable to an individual;

   (i) has not been convicted by any competent court for an offence punishable with imprisonment for a term exceeding six months or for an offence involving moral turpitude, and a period of five years has not elapsed from the date of expiry of the sentence:
Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(j) has not been levied a penalty under section 271J of Income-tax Act, 1961 and time limit for filing appeal before Commissioner of Income-tax (Appeals) or Income-tax Appellate Tribunal, as the case may be has expired, or such penalty has been confirmed by Income-tax Appellate Tribunal, and five years have not elapsed after levy of such penalty; and

(k) is a fit and proper person:

Explanation.—For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence and financial solvency.

(2) No partnership entity or company shall be eligible to be a registered valuer if-

(a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;

(b) it is undergoing an insolvency resolution or is an undischarged bankrupt;

(c) all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (f), (g), (h), (i), (j) and (k) of sub-rule (1);

(d) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

(e) none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

Qualifications and experience
4. An individual shall have the following qualifications and experience to be eligible for registration under rule 3, namely:-

(a) post-graduate degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least three years of experience in the specified discipline thereafter; or
(b) a Bachelor's degree or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at least five years of experience in the specified discipline thereafter; or

(c) membership of a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession with at least three years' experience after such membership.

_Explanation-I—_ For the purposes of this clause the 'specified discipline' shall mean the specific discipline which is relevant for valuation of an asset class for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

**Conditions of Registration**

7. The registration granted under rule 6 shall be subject to the conditions that the valuer shall -

(a) at all times possess the eligibility and qualification and experience criteria as specified under rule 3 and rule 4;

(b) at all times comply with the provisions of the Act, these rules and the Bye-laws or internal regulations, as the case may be, of the respective registered valuers organisation;

(c) in his capacity as a registered valuer, not conduct valuation of the assets or class(es) of assets other than for which he/it has been registered by the authority;

(d) take prior permission of the authority for shifting his/ its membership from one registered valuers organisation to another;

(e) take adequate steps for redressal of grievances;

(f) maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;

(g) comply with the Code of Conduct of the registered valuers organisation of which he is a member;

(h) in case a partnership entity or company is the registered valuer, allow only the partner or director who is a registered valuer for the asset class(es) that is being valued to sign and act on behalf of it;

(i) in case a partnership entity or company is the registered valuer, it shall disclose to the company concerned, the extent of capital employed or contributed in the partnership entity or the company by the partner or director, as the case may be, who would sign and act in respect of relevant valuation assignment for the company;

(j) in case a partnership entity is the registered valuer, be liable jointly and severally along with the partner who signs and acts in respect of a valuation assignment on behalf of the partnership entity;
(k) in case a company is the registered valuer, be liable along with director who signs and acts in respect of a valuation assignment on behalf of the company;

(l) in case a partnership entity or company is the registered valuer, immediately inform the authority on the removal of a partner or director, as the case may be, who is a registered valuer along with detailed reasons for such removal; and

(m) comply with such other conditions as may be imposed by the authority.

Conduct of Valuation

8. (1) The registered valuer shall, while conducting a valuation, comply with the valuation standards as notified or modified under rule 18:

Provided that until the valuation standards are notified or modified by the Central Government, a valuer shall make valuations as per-

(a) internationally accepted valuation standards;

(b) valuation standards adopted by any registered valuers organisation.

(2) The registered valuer may obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, in which case he shall fully disclose the details of the inputs and the particulars etc. of the other registered valuer in his report and the liabilities against the resultant valuation, irrespective of the nature of inputs or valuation by the other registered valuer, shall remain of the first mentioned registered valuer.

(3) The valuer shall, in his report, state the following:

(a) background information of the asset being valued;

(b) purpose of valuation and appointing authority;

(c) identity of the valuer and any other experts involved in the valuation;

(d) disclosure of valuer interest or conflict, if any;

(e) date of appointment, valuation date and date of report;

(f) inspections and/or investigations undertaken;

(g) nature and sources of the information used or relied upon;

(h) procedures adopted in carrying out the valuation and valuation standards followed;

(i) restrictions on use of the report, if any;

(j) major factors that were taken into account during the valuation;

(k) conclusion; and
(l) caveats, limitations and disclaimers to the extent they explain or elucidate the limitations faced by valuer, which shall not be for the purpose of limiting his responsibility for the valuation report.

Temporary surrender

9. (1) A registered valuer may temporarily surrender his registration certificate in accordance with the bye-laws or regulations, as the case may be, of the registered valuers organisation and on such surrender, the valuer shall inform the authority for taking such information on record.

(2) A registered valuers organisation shall inform the authority if any valuer member has temporarily surrendered his/its membership or revived his/its membership after temporary surrender, not later than seven days from approval of the application for temporary surrender or revival, as the case may be.

(3) Every registered valuers organisation shall place, on its website, in a searchable format, the names and other details of its valuers members who have surrendered or revived their memberships.

Functions of a Valuer

10. A valuer shall conduct valuation required under the Act as per these rules.

Eligibility for registered valuers organisations

12. (1) An organisation that meets requirements under sub-rule (2) may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if—

(i) it has been registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in Annexure-III;

(ii) it is a professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession;

Provided that, subject to sub-rule (3), the following organisations may also be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, namely:-

(a) an organisation registered as a society under the Societies Registration Act, 1860 or any relevant state law, or;

(b) an organisation set up as a trust governed by the Indian Trust Act, 1882.
(2) The organisation referred to in sub-rule (1) shall be recognised if it –

(a) conducts educational courses in valuation, in accordance with the syllabus determined by the authority, under rule 5, for individuals who may be its valuers members, and delivered in class room or through distance education modules and which includes practical training;

(b) grants membership or certificate of practice to individuals, who possess the qualifications and experience as specified in rule 4, in respect of valuation of asset class for which it is recognised as a registered valuers organisation;

(c) conducts training for the individual members before a certificate of practice is issued to them;

(d) lays down and enforces a code of conduct for valuers who are its members, which includes all the provisions specified in Annexure-I;

(e) provides for continuing education of individuals who are its members;

(f) monitors and reviews the functioning, including quality of service, of valuers who are its members; and

(g) has a mechanism to address grievances and conduct disciplinary proceedings against valuers who are its members.

(3) A registered valuers organisation, being an entity under proviso to sub-rule (1), shall convert into or register itself as a company under section 8 of the Companies Act, 2013, and include in its bye laws the requirements specified in Annexure-III, within one year from the date of commencement of these rules.

Complaint against a registered valuer or registered valuers organisation

16. A complaint may be filed against a registered valuer or registered valuers organisation before the authority in person or by post or courier along with a non-refundable fees of ₹ 1,000 in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

Valuation Standards

18. The Central Government shall notify and may modify (from time to time) the valuation standards on the recommendations of the Committee set up under rule 19.
Punishment for contravention

20. Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

Punishment for false statement

21. If in any report, certificate or other document required by, or for, the purposes of any of the provisions of the Act or the rules made thereunder or these rules, any person makes a statement,—

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material, he shall be liable under section 448 of the Act.

3. REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

Provision related to removal of names of companies from the register of companies is covered in Chapter XVIII of the Companies Act, 2013. This chapter comprises of five sections being covered from Section 248 to 252.

[I] Power of Registrar to Remove Name of Company from Register of Companies [Section 248]

(1) Power of registrar: Where the Registrar has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation, or;

(b) omitted

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, or1;

(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12,

1 Substituted for "section 455," by the Companies (Amendment) Second Ordinance, 2019, w.r.e.f. 2-11-2018.
2 Clauses (d) and (e) inserted by the Companies (Amendment) Second Ordinance, 2019, w.r.e.f. 2-11-2018.
he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) **Filing of application to registrar by company for removal of name:** A company may, after extinguishing all its liabilities, by-

- a special resolution, or
- consent of seventy-five per cent. members in terms of paid-up share capital,

file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in subsection (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

**Approval of the regulatory body, in case of a company regulated under a special Act:** Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) **Exemption to section 8 companies:** Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) **Publishing of notice for general public:** A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) **Strike off of names from register of companies:** At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) **Provisions for realisation of amount:** The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.
(7) **Persistence of the liability:** The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) **Not affecting on the power of tribunal:** Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

[II] **Restrictions on making application under section 248 in certain situations [Section 249]**

(1) An application under section 248 on behalf of a company shall not be made if, at any time in the previous three months, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

(c) has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

(2) **Violation of above conditions on filing of application:** If a company files an application in violation of restriction as given in sub-section (1) as given above, it shall be punishable with fine which may extend to one lakh rupees.

(3) **Rights of registrar on non-compliance of conditions by the company:** An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.
[III] Effect of Company Notified as Dissolved [Section 250]

Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice –

- cease to operate as a company, and
- the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date.

For the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company, this sub-section shall not effect. The company shall be continued in existence.

[IV] Fraudulent Application for Removal of Name [Section 251]

(1) Intention of filing application: Where it is found that an application by a company has been made with the-

- object of evading the liabilities of the company, or
- to defraud any other persons, or
- with the intention to deceive the creditors, or

the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

(a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) be punishable for fraud in the manner as provided in section 447.

(2) Recommendation for prosecution: The Registrar may also recommend prosecution of the persons responsible for the filing of an application.
[V] Appeal to Tribunal [Section 252]

(1) **Aggrieved person to file an appeal against the order of registrar:** Any person aggrieved by an order of the Registrar, notifying a company as 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:

**Reasonable opportunity of representations given to registrar:** Before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to

- the Registrar,
- the company and
- all the persons concerned.

**Restoration of name of company:** If the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) **Order of tribunal to be filed with register:** A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) **Order of tribunal as it may deem just:** 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.

[4]  GOVERNMENT COMPANIES

Annual reports on Government companies [Section 394]

As per section 2(45) of the Companies Act, 2013, “Government Company” means any company in which not less than 51% of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

Section 394 of the Companies Act, 2013 provides for Annual reports on Government companies.

It provides for Annual reports on Government companies in the cases where the central government and the state Government is a member of the Government Company. According to this section:

(1) **Where the Central Government is a member of a Government company**, the Central Government shall cause an annual report on the working and affairs of that company to be—

   (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report are placed under the proviso to sub-section (6) of section 143; and
(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.

Example:

(i) Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

Examine with reference to the provisions of the Companies Act, 2013 whether MN Limited and PQ Limited can be considered as Government Company.

Answer

According to section 2(45) of the Companies Act, 2013, “Government company” means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

(i) The Central Government and Government of Maharashtra together hold 40% of the paid-up share capital of MN Limited. A government company also holds 20% of the paid-up share capital in MN Limited.

In this case, MN Limited is not a Government company because the holding of the Central Government and Government of Maharashtra is 40% which is less than the 51% prescribed under the definition of Government Company. The holding of the government company in MN Limited of 20% cannot be taken into account while counting the prescribed limit of 51%.

(ii) PQ Limited is a subsidiary but not a wholly owned subsidiary of a government company.

In this case, PQ Limited is a government company as the definition of Government Company clearly specifies that a Government Company includes a company which is a subsidiary company of a Government company. Whether the subsidiary should be a wholly owned subsidiary or not is not clearly mentioned under the definition of the Government company under section 2(45).
Annual reports where one or more State Governments are members of companies
[Section 395]

Section 395 of the Companies Act, 2013 seeks to provide that one or more state governments who is a member of a company where no Central government is a member shall prepare annual reports on the working and affairs of the company. According to this section:

1. Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be—
   (a) Prepared within the time specified in sub-section (1) of section 394; and
   (b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.

2. Application of the provisions to the Government Company in liquidation: The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

5. NIDHIS

Power to modify Act in its application to Nidhis (Section 406 of the Companies Act, 2013)

Section 406 of the Companies Act, provides Power to the Central Government to modify Act in its application to Nidhis. According to this section:

(i) Definition: Here, “Nidhi” means a company which has been incorporated as a Nidhi with the object of:
   (a) cultivating the habit of thrift and savings amongst its members,
   (b) receiving deposits from, and lending to, its members only, for their mutual benefit, and
   (c) which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

(ii) The Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.

(iii) A copy of every notification proposed to be issued under point (ii), shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the
expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

The *Nidhi Rules, 2014*, shall apply in relation to the following:

(i) **Application:** These rules shall apply to-

(a) every company which had been declared as a Nidhi or Mutual Benefit Society under sub-section (1) of Section 620A of the Companies Act, 1956,

(b) every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society under sub-section (1) of Section 620A of the Companies Act, 1956; and

(c) every company incorporated as a Nidhi pursuant to the provisions of Section 406 of the Act.

(ii) **Incorporation and incidental matters—**

(a) A Nidhi to be incorporated under the Act shall be a public company and shall have a minimum paid up equity share capital of 5 lakh rupees.

(b) On and after the commencement of the Act, no Nidhi shall issue preference shares.

(c) If preference shares had been issued by a Nidhi before the commencement of this Act, such preference shares shall be redeemed in accordance with the terms of issue of such shares.

(d) Except as provided under the proviso to sub-rule (e) to rule 6, no Nidhi shall have any object in its Memorandum of Association other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

Exception as provided under the proviso to sub-rule (e) to rule 6: Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

(e) Every Company incorporated as a “Nidhi” shall have the last words ‘Nidhi Limited’ as part of its name.
(iii) General restrictions or prohibitions

No Nidhi shall—

(a) carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;

(b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;

(c) open any current account with its members;

(d) acquire another company by purchase of securities or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management, unless it has passed a special resolution in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi;

Explanation.—For the purposes of this sub-rule, “control” shall have the same meaning assigned to it in section 2(27) of the Act;

(e) carry on any business other than the business of borrowing or lending in its own name:

However, Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year.

(f) accept deposits from or lend to any person, other than its members;

(g) pledge any of the assets lodged by its members as security;

(h) take deposits from or lend money to any body corporate;

(i) enter into any partnership arrangement in its borrowing or lending activities;

(j) issue or cause to be issued any advertisement in any form for soliciting deposit:

However private circulation of the details of fixed deposit Schemes among the members of the Nidhi carrying the words “for private circulation to members only” shall not be considered to be an advertisement for soliciting deposits.

(k) pay any brokerage or incentive for mobilising deposits from members or for deployment of funds or for granting loans.

(iv) Membership—

(a) A Nidhi shall not admit a body corporate or trust as a member.
(b) Except as otherwise permitted under the rules, every Nidhi shall ensure that its membership is not reduced to less than 200 members at any time.

(c) A minor shall not be admitted as a member of Nidhi:
However, deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian who is a member of Nidhi.

(v) **Rules relating to Directors—**

(a) The Director shall be a member of Nidhi.

(b) The Director of a *Nidhi* shall hold office for a term up to 10 consecutive years on the Board of *Nidhi*.

(c) The Director shall be eligible for re-appointment only after the expiration of 2 years of ceasing to be a Director.

(d) Where the tenure of any Director in any case had already been extended by the Central Government, it shall terminate on expiry of such extended tenure.

(e) The person to be appointed as a Director shall comply with the requirements of sub-section (4) of Section 152 of the Act and shall not have been disqualified from appointment as provided in section 164 of the Act.

(vi) **Dividend—** A Nidhi shall not declare dividend exceeding 25% or such higher amount as may be specifically approved by the Regional Director for reasons to be recorded in writing and further subject to the following conditions, namely:—

(a) an equal amount is transferred to General Reserve;

(b) there has been no default in repayment of matured deposits and interest; and

(c) it has complied with all the rules as applicable to Nidhis.

(vii) **Auditor—**

(a) No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of 5 consecutive years.

(b) No Nidhi shall appoint or re-appoint an audit firm as auditor for more than 2 terms of 5 consecutive years:

Provided that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of 2 years from the completion of his or its term:

*Explanation*: For the purposes of this proviso:

(1) in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these...
rules shall be taken into account in calculating the period of 5 consecutive years or 10 consecutive years, as the case may be;

(2) appointment includes re-appointment.

(viii) **Auditor’s certificate**—The Auditor of the company shall furnish a certificate every year to the effect that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

(ix) **Penalty for non-compliance**—If a company to which *the Nidhi Rules, 2014* applies contravenes any of the provisions of the prescribed rules, the company and every officer of the company who is in default shall be punishable with fine which may extend to 5,000 rupees, and where the contravention is a continuing one, with a further fine which may extend to 500 rupees for every day after the first during which the contravention continues.

6. **MISCELLANEOUS PROVISIONS**

[I] Punishment for fraud [Section 447]

Section 447 of the Companies Act, 2013 provides for Punishment for fraud. According to this section:

(i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.

(ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

(iii) Where the fraud involves an amount less than ₹ 10 Lakhs or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ₹ 50 Lakhs or with both.

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3 Substituted for "twenty lakh rupees" by the Companies (Amendment) Second Ordinance, 2019, w.r.e.f. 2-11-2018.
**Explanation.**— For the purposes of this section—

(a) “fraud” in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(b) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(c) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

**[II] Punishment where no specific penalty or punishment is provided [Section 450]**

(i) **Applicability of section 450:** The penalty under this section applies only in those cases where penalty or punishment is not provided elsewhere in this Act.

(ii) **Penalty under this section:** The company and every officer of the company who is in default or such other person:

   (a) shall be punishable with fine which may extend to ₹ 10,000, and

   (b) Where the contravention is continuing one, with a further fine which may extend to ₹ 1,000 for every day after the first during which the contravention continues.

(iii) **List of contraventions:** If a company or any officer of a company or any other person contravenes:

   (a) any of the provisions of this Act; or

   (b) the rules made thereunder; or

   (c) any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted.

**[III] Dormant company [Section 455]**

A new section 455 of the Companies Act, 2013 provides for Dormant Company. According to this section:

(i) **Status as a dormant company:** Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application
to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Explanation.—For the purposes of this section,—

(a) “inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years;

(b) “significant accounting transaction” means any transaction other than—

1. payment of fees by a company to the Registrar;
2. payments made by it to fulfill the requirements of this Act or any other law;
3. allotment of shares to fulfill the requirements of this Act; and
4. payments for maintenance of its office and records.

According to the Rule 3 of the Companies (Miscellaneous) Rules, 2014, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

A company shall be eligible to apply under this rule only, if-

(a) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;

(b) no prosecution has been initiated and pending against the company under any law;
(c) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;

(d) the company is not having any outstanding loan, whether secured or unsecured:
   However if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1;

(e) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;

(f) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;

(g) the company has not defaulted in the payment of workmen’s dues;

(h) the securities of the company are not listed on any stock exchange within or outside India.

(ii) **Certificate of status of dormant company:** The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.

   According to the Rule 4 of the *Companies (Miscellaneous) Rules, 2014*, the Registrar shall, after considering the application filed in Form MSC-1, issue a certificate in Form MSC-2 allowing the status of a Dormant Company to the applicant.

(iii) **Register of dormant company:** The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

   According to the Rule 5 of the *Companies (Miscellaneous) Rules, 2014*, the Register maintained under the portal maintained by the Ministry of Corporate Affairs on its web-site www.mca.gov.in or any other website notified by the Central Government, shall be the register for dormant companies.

(iv) **Consequences of non filing of annual returns or financial statements:** In case of a company which has not filed financial statements or annual returns for 2 financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

   According to the Rule 7 of the *Companies (Miscellaneous) Rules, 2014*, a dormant company shall file a “Return of Dormant Company” annually, *inter alia*, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the *Companies (Registration Offices and Fees) Rules, 2014* within a period of 30 days from the end of each financial year.

   The company shall also continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.
Directors of dormant company: A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

According to Rule 6 of the Companies (Miscellaneous) Rules, 2014, a dormant company shall have a minimum number of 3 directors in case of a public company, 2 directors in case of a private company and 1 director in case of a One Person Company.

Rotation of auditors: According to Rule 6 the Companies (Miscellaneous) Rules, 2014, the provisions of the Act in relation to the rotation of auditors shall not apply on dormant companies.

Application for seeking status of an active company: According to the Rule 8 of the Companies (Miscellaneous) Rules, 2014,

(a) An application for obtaining the status of an active company shall be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed:

However, the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive 5 years.

(b) The Registrar shall, after considering the application filed for obtaining the status of an active company, issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

(c) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form MSC-1 submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within 7 days from such event, file an application for obtaining the status of an active company.

(d) Where the Registrar has reasonable cause to believe that any company registered as ‘dormant company’ under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry under section 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

Striking off the name by the Registrar: The Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.
Multiple Choice Questions

1. Mr. Raman, is appointed as valuer in April, 2018 in ABC Ltd. He undertook the valuation of the assets of the company in 2018. In case Mr. Raman becomes interested in any property, stock etc of the company, he may be not be eligible to undertake valuation in such property of the company till:
   (a) 2019
   (b) 2020
   (c) 2021
   (d) He will never be appointed as Registered Valuer of ABC Ltd.

2. Aakaar Solar Energy Private Limited was allowed the status of a ‘dormant company’ after a certificate to this effect was issued on 1st July 2018 by the Registrar of Companies, Delhi and Haryana. Mention the latest date after which the Registrar is empowered to initiate the process of striking off the name of the company if Aakaar Solar Energy continues to remain as a dormant company.
   (a) After 30th June, 2023.
   (b) After 30th June, 2019.
   (c) After 30th June, 2020.
   (d) After 30th June, 2021.

3. Nanny Marcons Private Limited was incorporated on 9th June, 2017. For the financial year 2017-2018, it did not file its financial statements and annual returns. For the time being the company desires to be treated as ‘inactive company’ since it does not intend to carry on any business permitted by its Memorandum. As to when ROC can issue certificate of status of dormant company to ‘Nanny Marcons’ on the basis of non-submission of financial statements if the company makes an application to the Registrar in this respect.
   (a) After non-submission of financial statements for the two financial years i.e. 2018-19 and 2019-20.
   (b) After non-submission of financial statements for the next financial year i.e. 2018-19.
   (c) After non-submission of financial statements for the three financial years i.e. 2018-19, 2019-20 and 2020-21.
   (d) After non-submission of financial statements for the four financial years i.e. 2018-19, 2019-20, 2020-21 and 2021-22.
Descriptive Questions

Question 1

Explain the meaning of 'Fraud' in relation to the affairs of a company and the punishment provided for the same in Section 447 of the Companies Act, 2013.

Question 2

JKL Research Development Limited is a registered Public Limited Company. The company has a unique business idea emerging from research and development in a new area. However, it is a future project and the company has no significant accounting transactions and business activities at present. The company desires to obtain the status of a 'Dormant Company'. Advise the company regarding the provisions of the Companies Act, 2013 in this regard and the procedure to be followed in this regard.

ANSWER/SOLUTION

Answers to MCQ

1. (c)  Hint: As per section 247(2) of the Companies Act, 2013, the valuer appointed under sub-section (1) shall,— not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

2. (a)  Hint: Refer Proviso to Rule 8 (1) of the Companies (Miscellaneous) Rules, 2014 which states that the Registrar shall initiate the process of striking off the name of the company if such company remains as a dormant company for a period of consecutive five years.

3. (b)  Hint: Refer Explanation (i) to Section 455 (1) which states that an 'inactive company' means a company which has not filed financial statements and annual returns during the last two financial years.

Answers to Descriptive Questions

1. As per the explanation given to section 447 of the Companies Act, 2013, ‘Fraud’ in relation to affairs of a company or anybody corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

“Wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled.
“Wrongful loss” means, the loss by unlawful means of property to which the person losing is legally entitled.

**Punishment:**

(i) Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

(ii) Where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

(iii) However, where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

2. The provisions related to the Dormant companies is covered under section 455 of the Companies Act, 2013. According to provisions:

1. a company is formed and registered under this Act for the purpose of a future project or to hold an asset or intellectual property and has no significant accounting transaction.

2. Such company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

3. The Registrar shall allow the status of a dormant company to the applicant and issue a certificate after consideration of the application.

4. The Registrar shall maintain a register of dormant companies in such form as may be prescribed.

In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Register shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. However, the Registrar
shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

Thus, JKL Research Development Limited may follow the above procedure to obtain the status of a ‘Dormant Company’.