

**DRAFT RULE UNDER THE COMPANIES ACT 2013  
CHAPTER XXVII  
NATIONAL COMPANY LAW TRIBUNAL RULES, 2013**

In exercise of the powers conferred by section 469 read with section 408 of Companies Act, 2013 the Central Government hereby makes the following rules namely:-

## **Part I**

### **Preliminary**

#### **Short title and Commencement –**

1. (1) These rules shall be called the National Company Law Tribunal Rules, 2013.
- (2) They shall come into force on the date of their publication in the Official Gazette.
- (3) The General Clauses Act, 1897 (10 of 1897) applies to the interpretation of these rules as it applies to the interpretations of a Central Act.
- (4) The requirements with regard to any approval or proceeding etc of or before the Tribunal provided under any other rule made under the Act shall be in addition to the requirements provided under these rules.
- (5) These rules shall also be applicable for the proceedings before the Tribunal in case of limited liability partnerships under LLP Act, 2008 or rules made thereunder and in case of any inconsistency between rules made under the LLP Act, 2008 and these rules, these rules shall apply.

### **Definitions**

2. In these rules, unless the context or subject- matter otherwise requires,

- (1) **“Act”** means the Companies Act, 2013.
- (2) **“Address for service”** shall mean the address furnished by a party or his authorized representative at which service of summons, notices or other processes may be effected by these rules;
- (3) **“Appellate Tribunal”** means the National Company Law Appellate Tribunal constituted under section 410 the Act;
- (4) **“Applicant”** means a petitioner or an appellant or any other person or entity capable of making an application including an interlocutory application or a petition or an appeal under the Act:

Provided that in respect of the matters pertaining to “Revival and Rehabilitation of Sick Companies” under Chapter XIX of the Act, the term “Applicant” shall mean and include the following:

- (a) ‘secured creditor (s)’ of a company representing 50% or more of its outstanding amount of debts, which the Company has failed to pay within 30 days of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditor as per the provisions contained in sub-section (1) of section 253 of the Act,
- (b) the company, on failing to pay the debt to its secured creditors to the extent of 50% or more of its outstanding debts within 30 days of the receipt of notice of demand or to secure or compound it to the reasonable satisfaction of the secured creditor.
- (c) the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State Level Institution or a scheduled bank being an authority which has made a reference in respect of sick company to the Tribunal under sub-section (5) of section 253.
- (5) **“Application”** means any application filed under the provisions of the Act, and also includes any written representation seeking interim orders before the Tribunal.
- (6) **“Annexure”** means an Annexure to these rules;

- (7) **"Authorised Representative"** means a person authorised in writing by a party to present his case before the Tribunal as the representative of such party as provided under section 432 of the Act;
- (8) **"Bench"** means a Bench of the Tribunal constituted under section 419 of the Act.
- (9) **"Body Corporate"** means the body corporate as defined in sub-section (11) of section 2 of the Act, and includes:
- (i) a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
  - (ii) a limited liability partnership incorporated outside India;
- (10) **"Central Registry"** means the registry in which all the applications or petitions and documents are received electronically by the Registrar for allocation to the concerned Bench of the Tribunal for disposal;
- (11) **"Certified"** means in relation to a copy as hereunder:
- (a) Certified as provided in section 76 of the Indian Evidence Act, 1872; or
  - (b) Certified as provided in section 6 of Information Technology Act, 2000 ; or
  - (c) A copy of document as may be a downloaded version from e-registry under MCA 21 or any other similar authorized portals or Dedicated Portal Online as may be given name thereto by the Central Government in instance or a photo copy of original pertaining to any company registered with the Office of the Registrar of Companies of the concerned state; and
  - (d) A certified copy issued by the Registrar of Companies under the Act;
- (12) **"Certified by Tribunal"** means in relation to a copy, certified to be a true copy issued by the Registry of the Tribunal or of a bench of the Tribunal under its hand and seal and as provided in Section 76 of the Indian Evidence Act, 1872;
- (13) **"Certifying Authority"** means a person who has been granted a license to issue a Digital Signature Certificate under section 24 of the Information Technology Act, 2000 (21 of 2000);
- (14) **"Chairperson", "Judicial Member", "Member", "President" and "Technical Member"** of the Tribunal or Appellate Tribunal shall have the same meanings as provided in section 407 of the Act;
- (15) **"Court"** means the court as defined in sub-section (29) of section 2 of the Act;
- (16) **"Dedicated Portal Online"** refers to an "Hyper Text Transfer Protocol" for the purpose of electronic transmission of documents to the Tribunal for hearing and disposal in pursuance of the provisions of the Act and includes MCA-21 portal;
- (17) **"Digital signature"** means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3 of the Information Technology Act, 2000 and includes a graphic image of a handwritten signature;
- (18) **"Digital Signature Certificate"** means a Digital Signature Certificate issued under sub-section (4) of section 35 of the Information Technology Act, 2000;
- (19) **"Document"** means summons , notice, requisition, a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or any other instrument in paper form or electronic form and other legal process, and registers, whether issued, sent or kept in pursuance of the Act and Rules made there under or any other Act or otherwise; but, does not include orders of the Tribunal;
- (20) **"EDGAR (Electronic Data Gathering, Analysis and Retrieval) Filer Manual"** means the current version of the manual prepared by the Tribunal setting out the technical format requirements for an electronic filing of Application or other documents with the Tribunal;

- (21) **"Electronic Format"** means the computerized format of a document prepared in accordance with Electronic Data Gathering, Analysis, and Retrieval (EDGAR);
- (22) **"Electronic Filer"** means an Applicant who files Application or other documents with the Tribunal electronically;
- (23) **"Electronic Filing"** is a process by which a filer files a document with the Registry of the Tribunal by means of an online computer transmission of the document in electronic form other than by means of fax or e-mail.
- (24) **"Electronic order"** means a computerized, non-paper Tribunal order that a Member or Members of the Tribunal signs by applying his or her digitized signature to the order.
- (25) **"Electronic service"** is a method of serving a document upon a party by electronically transmitting the document to that party's e-mail address.
- (26) **"Electronic Registry"** means an electronic repository or storage system which receives, stores, protects, preserves and retrieves an application or a Petition or any reply and rejoinder to the application, petition and other addendum to the pleadings in electronic form by the Tribunal;
- (27) **"Fee"** means the amount payable in pursuance of the provisions of the Act, and these rules for any petition or application or interlocutory application or a document or for certified copy of document or order of the Tribunal or such other paper as may be specified in "Annexure -B" to these rules and includes any modifications as may be made thereto or any fee as prescribed for electronic filing of documents to the Tribunal by these rules;
- (28) **"Filer"** means a person including an authorized representative of that person or any party to the proceedings who files any document with the Tribunal in relation to case filed under the Act, or any rules there under.
- (29) **"Filed"** means filed in the office of the Registry of the Tribunal;
- (30) **"Filing fees"** means the fees as applicable in terms of Annexure- Bin connection with the application filed;
- (31) **"Form"** means a form specified in **Annexure –C**;
- (32) **"Party"** means a person(s) who files a petition or an application before the Tribunal and includes a respondent(s), the Registrar of Companies or the Regional Director or Ministry of Corporate Affairs and any person who has a right under the Act, or the Reserve Bank of India Act 1934 (2 of 1934) to make suggestions or submissions or objections or file reply;
- (33) **"Petition"** means a petition or an application or an Appeal or a Complaint in pursuance of which any proceeding is commenced before the Tribunal.
- (34) **"Person(s) Interested"** means a shareholder, creditor or employee of a sick company, transferee company and other company concerned in relation to the term or context referred to in relevant provisions of the Act;
- (35) **"Pleadings"** means and includes the original application, petitions, applications, reply, statements, counter claim, additional statement supplementing the original applications and reply statements including electronic form as prescribed by these rules and as may be permitted by the Tribunal;
- (36) **"Pre-fill"** means the automated process of data input by the computer system from the database maintained in electronic registry of either the Tribunal or Ministry of Corporate Affairs;
- (37) **"Prescribed"** means prescribed by these rules; and 'prescribed charges' and 'prescribed fees' mean charges or fees prescribed by these rules and where they are not so prescribed, prescribed by the rules of the Tribunal;
- (38) **"Prescribed period"** means that the respective or relevant period to be reckoned as defined in the Limitation Act, 1963.
- (39) **Reference"** means a reference within the meaning of Rule 108 of these Rules;

- (40) **“Registrar of Companies”** includes Additional Registrar, Joint Registrar, Deputy Registrar or an Assistant Registrar.
- (41) **“Registrar”** in relation to the Tribunal, means the Registrar appointed to the Principal Bench and in relation to each of the Benches of the Tribunal shall mean an officer of the Central Government so appointed or designated as Registrar or in his absence such other officer of the Tribunal or Bench to whom the powers and functions of the Registrar be delegated.
- (42) **“Registry”** means the Registry of the Tribunal or any of its Benches, as the case may be which keeps records of the applications and documents relating thereto;
- (43) **“Reserve Bank”** means the Reserve Bank of India and includes its branches and agencies as defined in the Reserve Bank of India Act, 1934;
- (44) **“The rules”** mean these rules and include the Rules of the Tribunal regulating the Electronic Filing of Documents and forms prescribed thereto.
- (45) **“Sealed”** means sealed with the seal of the Tribunal.
- (46) **“Secretary”** means Secretary to the Tribunal and in the absence of Secretary, such other officer of the Tribunal to whom the powers and functions of the Secretary be delegated.
- (47) **“Service of Notice or Document”** includes the electronic service in addition to other modes of services.
- (48) **“Secured Creditor”** means and includes bank or financial institution or any consortium or group of banks or financial institutions which have lent any money to the company and subject to the compliance with the relevant provisions of the Act includes the following-
- (i) debenture trustee appointed by any bank or financial institution; or
  - (ii) securitization company or reconstruction company, whether acting as such or managing a trust set up by such securitization company or reconstruction company for the securitization or reconstruction, as the case may be; or
  - (iii) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;
  - (iv) any person in whose favour, a charge is created on any asset or assets of a company towards a security for the loan borrowed or secured or extended as a guarantee in whomsoever favour it may be on his behalf or other's behalf either singularly or jointly in association with other.
- (49) **“Sick Company”** means and includes a company, which has failed to pay the debt of its secured creditors within 30 days of the notice of demand or to secure or compound it to the reasonable satisfaction of the secured creditors as per section 253 of the Act;
- (50) **“Transferred Application” or “Transferred Petition”** means proceedings which have been transferred to the Tribunal from High Court, or Company Law Board or any other court or Tribunal as provided in section 434 of the Act, and shall also include the matters in respect of which the schemes for revival have been sanctioned as per the provisions of Sick Industrial Companies Act, 1985
- (51) **“Tribunal”** means the National Company Law Tribunal constituted under section 408 of the Act, and includes its Benches;
- (52) **“Words”** expressed in singular may be understood as plural or vice versa if the context so warrants. Likewise, ‘He/his’ may be referred to ‘She/her’ or vice versa. Petition may also be construed as application or appeal or complaint vice versa depending upon the reference which warrants so.
- (53) **“Words and Expressions”** used and not defined in these rules but defined in the Act, Competition Act, 2002, the Recovery of Debts Due to Banks And Financial Institutions Act, 1993, the Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Securities Contracts (Regulation) Act, 1956 the

Securities and Exchange Board of India Act, 1992 the Depositories Act, 1996; Information Technology Act, 2000; and General Clauses Act, 1897, shall have the meanings respectively assigned to them in those Acts and rules made thereunder.

(54) Till the implementation of the E-filing system by the Tribunal the documents including petitions, applications etc may be filed physically;

## PART II

### GENERAL PROCEDURE

#### **Powers to determine procedure in certain circumstances.**

3. In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case.

#### **4. Territorial Jurisdiction of the Tribunal and its Benches:**

1. The National Company Law Tribunal shall have a principal Bench and such number of other Benches with territorial jurisdiction of each Bench as prescribed in **Annexure A**.

2. If an application or a petition is received or transmitted through electronic mode in the manner as provided in Part III of these rules by registry of a bench which does not have territorial jurisdiction to deal with the matter, the Registry of the Bench shall return or retransmit the application or a petition to the applicant advising him to file it with the Bench having a proper jurisdiction.

3. Notwithstanding anything contained in sub-rule 2 the applicant may apply to the President and the President may thereupon for reason to be recorded direct a Bench other than the Bench before which an application or a petition has been filed to hear such application and issue such orders as may be necessary for the transfer of the application. The President of the Tribunal may delegate this power to any member of Bench(s).

#### **5. Language of the Tribunal**

1. The pleadings before the Tribunal may be conducted either in English or in Hindi and in case it is in some other Indian language, it shall be accompanied by a copy translated either in English or in Hindi attested by a translator and counter-signed by the party concerned.

2. All orders and judgements of the Tribunal may be either in English or Hindi.

#### **6. Proceedings and Procedure for Filing Pleadings:**

1. Every proceeding shall be dated and shall be instituted in the matter of the Act and in the matter of the company to which it relates. The contents shall be divided into separate paragraphs, neatly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form. Numbers and dates shall be expressed in figures and where dates given are not according to the English Calendar, the corresponding English dates shall also be given.

2. A petition or an application, including any reply or documents related thereto, to the Tribunal shall be filed to the Registry of the Tribunal or such Bench (s) having territorial jurisdiction thereto in respective forms as provided in **Annexure-C** as the case may be either by the applicant in person or by his duly authorized representative.

3. After introduction of the e-filing mode of petition or application, the Tribunal may after satisfying itself permit the applicant or the respondent or such other party to file a petition or an application referred to in sub-rules (1) and (2) in physical form i. e. by sending the same through registered post or speed post to the concerned registry. In such case, the concerned registry shall receive the application in physical form to scrutinize and scan the application and convert it into electronic file in the manner as practicable as the case may be and process the e-file as if it were an original application received in the regular procedure under sub-rule (1) or under Part III of these rules.

4. A petition or application sent by post under sub-rule (3) shall be deemed to have been filed to the Registry on the day on which it is received by the Tribunal.
5. The petition or application under sub-rule (2) or (3) shall be presented in triplicate or as may be decided by the Tribunal.
6. The Applicant shall get the notices endorsed from the Registry for the purpose of service on the respondent and shall file the affidavit of service in proof at least 3 days before the date fixed for hearing.
7. The general heading in all proceedings before the Tribunal, in all advertisements and notices shall be in [Form No. 4](#).
8. Every petition or application shall be filed in e-form as provided in [Form No. 1](#) with attachments thereto accompanied by [Form No. 2](#) and in case of an interlocutory application, the same shall be filed in [Form No. 1](#) accompanied by such attachments thereto along with [Form No. 3](#). Interlocutory application shall be in [Form 3A](#). Every petition or application including interlocutory application shall be verified by an affidavit in [Form No. 6](#). Notice to be issued by the Tribunal to the opposite party shall be in [Form 5](#).

## **7. Documents to Accompany the Petition or Application:**

- (1) A petition or an application shall be accompanied by documents as prescribed in Annexure D and shall be as per the procedure for e-filing manual as may be issued by the Tribunal in such manner and as may be named by the Tribunal and shall be accompanied by an Index of Documents.
- (2) Documents referred to in sub-rule (1) may be attested as True Copy by the party or the authorized representative and the documents shall be marked serially as Annexures A1, A2, A3 and so on.
- (3) The petition or application shall be accompanied by a memorandum of appearance or a power of attorney or a duly executed Vakalatnama as specified in Rule 68.

**8. Contents of petition** - Every petition, other than an application filed under rule 107 shall set forth the name of the company, with its status, date of incorporation, the address of its registered office, authorized capital, paid-up share capital with division of different classes of shares and terms of issue, if any, in the case of preference shares, main objects in brief, for which the company was formed, present business activities of the company, latest audited accounts and auditors report and also latest financial position and shall also set forth concisely under distinct heads the grounds for such petition and the nature of relief(s) prayed for.

**9. Contents of interlocutory application**-An application filed subsequent to the filing of the petition applying for any interim order or direction shall, be in [Form No. 3 A](#) in Annexure C and shall be accompanied by an affidavit verifying the application in the manner laid down in sub-rule (8) of rule 6 i.e. in [Form 6](#):

Provided that it shall not be necessary to present a separate application to seek an interim relief or direction, except for condonation of delay in filing the petition, if, in the original petition, the same is prayed for.

## **10. Scrutiny of Petition or Application(s):**

- (1) The Registrar shall receive, register the petition (s) or application (s) or otherwise as provided in the rules under this Part.
- (2) The Registrar, or the officer authorised by him, shall endorse on every petition or application, the date on which it is presented or received through post if the Tribunal or such Bench has granted permission for filing such application (s) in physical form under sub-rule (3) of the rule 6 and sign the endorsement :-
  - (a) If, on scrutiny, the petition or application is found to be in order, it shall be registered and given a serial number.
  - (b) If the petition or application, on scrutiny, is found to be defective, the Registrar may allow the applicant to rectify the same within seven days from the date of intimation.

(c) If the applicant fails to rectify the defect within the time allowed under sub-rule (b), the Registrar may, by order and for reasons to be recorded in writing, decline to register the petition or application and inform the applicant accordingly within seven days from the time allowed.

(3) An appeal against the order passed under clause (c) of sub-rule (2) may be preferred by the person aggrieved within fifteen days from the date of such order to the President of the Principal Bench or any Member to whom the power is vested and at other places designated member of the Bench and such appeal shall be dealt with and disposed of in Chamber by the President or such Member whose decision thereon shall be final.

## **11. Advertisement detailing petition.**

(1) Where any application, petition or reference is required to be advertised, it shall, unless the Tribunal otherwise orders, or these rules otherwise provide, be advertised in [Form No 3 B](#), not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

(2) Every such advertisement shall state:

(a) the date on which the application, petition/ reference was presented,

(b) the name and address of the applicant petitioner and his authorized representative, if any;

(c) the nature and substance of application, petition/ reference;

(d) the date fixed for hearing;

(e) a statement to the effect that any person whose interest is likely to be affected by the proposed petition or who intends either to oppose or support the petition/ reference at the hearing shall send a notice of his intention to the petitioner or his authorized representative so as to reach him not later than two days previous to the day fixed for hearing.

(3) Where the advertisement is being given by the company, then the same shall also be placed on the website of the company, if any.

(4) An affidavit shall be filed to the Tribunal in, not less than 3 days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served:

Provided that such an affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.

(5) Where the requirements of this rule or the direction of the Tribunal, as regards the advertisement and service of petition, are not complied with, the Tribunal may either dismiss the petition or give such further directions as it thinks fit.

(6) The Tribunal may, if it thinks fit, dispense with any advertisement required by this rule.

## **12. Maintenance of Cash Register:**

(1) If any payment has been received by way of Indian postal orders or demand drafts or in cash by the Registry, the transaction shall be entered immediately by the Registration Clerk on their receipt side in a Cash Register kept for the purpose.

(2) On every next working day or the last working day of the week, the payments received during such day or week by way of Indian postal orders or demand drafts shall be transmitted by the Registration Clerk to the concerned official vested with the work pertaining to the Cashier who after scrutiny and verification shall acknowledge the receipt of all moneys in the Cash Register.



(3) The payments received in cash register shall be transmitted by the Registration Clerk to the official as per sub-rule (2) on each day, who after verification shall acknowledge the receipt of all moneys in the Cash Register.

(4) The official under sub-rule (2) and (3) shall deposit all payments received by way of Indian postal order or demand draft or cash in the Bank account of the Tribunal.

### **13. Notice in [Form No. 5](#) to Opposite Party-**

(1) The Tribunal shall issue notice in [Form No.5](#) to the respondent to show cause against the application on a date of hearing to be specified therein. Such notice in [Form No.5](#) shall be accompanied by a copy of the application.

(2) If the respondent does not appear on the date specified in the notice in [Form No.5](#) or appears and admits, the Tribunal shall forthwith proceed to dispose of the application.

(3) If the respondent contests thereto, it may file a reply along with copies of such documents on which it relies on or before the date of hearing and such reply and copies of documents shall form part of the record.

### **14. Service of Notices and Processes Issued by the Tribunal:**

(1) Any notice or process to be issued by the Tribunal may be served in electronic form at the valid e-mail address as provided in the petition or application or in the reply.

(2) Such notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal:

(a) by hand delivery through a process server or respective authorized representative;

(b) by registered post or speed post with acknowledgment due or ;

(c) service by the party himself.

(3) Where a notice issued by the Tribunal is served by the party himself by "hand delivery", he shall file with the Registrar the acknowledgment together with an affidavit of service.

(4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

(5) A notice or process may also be served on an authorized representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorized to accept a notice or a process, and such service on the authorized representative shall be deemed to be a proper service.

(6) Where the Tribunal directs a service under sub-rule (4), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the registry of the Tribunal.

### **15. Filing of Affidavit**

(1) The Tribunal may direct the parties to give evidence, if any, by affidavit.

(2) Notwithstanding anything contained in sub-rule (1), where the Tribunal considers it necessary for just decision of the case, it may order cross-examination of any deponent either through Information and Communication Technology (ICT) facilities like video conferencing or otherwise as may be decided by the Tribunal.

(3) Every affidavit to be filed before the Tribunal shall be in [Form No.7](#).

### **16. Production of additional evidence before the Bench.**

(1) The parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Inspector (s),



appointed by the Central Government for the purpose of investigating the affairs of the concerned company (s), during investigation under Chapter XIV of the Act, but if the Bench requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector (s) so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.

(2) Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.

(3) If the document is directed to be produced or witness examined or evidence adduced before any authority, he or she shall comply with the direction of the Bench and after compliance send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.

(4) Additional evidence/document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they may be afforded an opportunity to rebut the contents of the said additional evidence.

## **17. Filing of Reply and other Documents by the Respondents:**

(1) Each respondent may file his reply to the petition or the application and copies of the documents with the registry as specified by the Tribunal. A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.

(2) In reply filed under sub-rule (1), the respondent shall specifically admit, deny or explain the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

(3) When the respondent admits the facts stated in the petition or application, the Tribunal may make order in this regard".

## **18. Filing of Rejoinder:**

The applicant intending to file rejoinder to the written reply filed by the respondent may do so forthwith with a copy to respondent.

## **19. Power of the Bench to call for further information/evidence.**

(1) The Bench may, before passing orders on the petition, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary -

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders on the petition.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant Acts.

(3) Where any party preferring / contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it can move an application for forensic examination. The Bench hearing the matter may send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records but if this request is refused, the Bench will give reasons thereof.

## **20. Plural remedies**

A petition or an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

## **21. Admission and Denial of Documents:**

The Tribunal may, before framing issues ascertain from parties or their authorised representatives whether they admit or deny documents accompanying the petition or the application or reply, if any, and shall record such admission and denial.

## **22. Marking of Documents:**

The documents filed by the applicant shall be marked as 'A' series and the documents filed by the respondent shall be marked as 'R' series and the Tribunal exhibits shall be marked as 'T' series".

## **23. Summary dismissal of petition or application:**

The Tribunal may, after considering the petition or application, summarily dismiss the application, if for reasons to be recorded, the Tribunal is of opinion that there are not sufficient grounds for proceeding therewith.

## **24. Hearing of petition or applications:**

(1) The Tribunal shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

(2) Where at any stage prior to the hearing of the petition or application the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary the others arrayed as opposite parties in the petition or the application or otherwise may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interest of the justice.

## **25. Rights of a party to appear before the Bench.**

(1) Every party may appear before a Bench in person or through an authorized representative.

(2) A party may, in writing, authorize an Advocate or a Company Secretary in practice or a Chartered Accountant in practice or Cost Accountant in practice, to function as a representative of such party. A company may appoint and authorise its directors or company secretary or CFO or CEO or manager all under the Act to appear, in its behalf, in any proceedings before the Bench. The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate. The Company Liquidator shall make his appearance in person.

(3) The officer authorized by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator should be an officer not below the rank of officers of Senior Time Scale. In the case of the Company Secretary in practice or chartered accountants in practice or cost accountant in practice should have post qualification experience of five years.

(4) The authorized representative except officer(s) of Central Government or the Regional Director or the Registrar of Companies shall not be allowed to represent the party unless such power of attorney or Vakalatnama or memorandum of appearances as mentioned in rule 69 is filed before the Bench before commencement of the proceedings.

(5) During any proceedings before the Tribunal, it may for the purpose of its knowledge, may call upon the Registrar of Companies to submit information on the affairs of the company only on the basis of information available in the MCA 21 portal. Reasons for such directions shall be recorded in writing.

## **26 . Oath to the witness:**

The Tribunal Officer or the Tribunal Commissioner as appointed by the Tribunal, as the case may be, shall administer the following oath to a witness:-

"I do swear in the name of God that what I shall state shall be truth and nothing but the truth."

## **27. Action on Application for Applicant's Default:**

(1) Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

(2) Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the petition or the application and restore the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened except by way of review.

## **28. Ex-parte Hearing and Disposal of petition or Application**

(1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion adjourn the hearing or hear and decide the petition or the application ex-parte in exercise of the powers conferred on it in clause (f) of sub-section 2 of section 424 of the Act.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfy the Tribunal that the notice was duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit in exercise of powers conferred on it under clause (g) of sub-section (2) of section 424 of the Act, and shall appoint a day for proceeding with the petition or application :

Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.

## **29. Procedure and Powers of Tribunal :**

(1) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil court under the Code of Civil Procedure, 1908, while trying suit, in terms of section 424 of the Act, in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of any person and examining him on oath ;
- (b) requiring the discovery and production of document;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed by the Central Government.

(2) For the purposes of clause (h) of sub-section (2) of section 424 of the Act, the Tribunal shall for the purpose of discharging its functions under the Act exercise the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters:-

- (a) granting stay or order status quo;
- (b) ordering injunction or cease and desist;
- (c) appointing commissioner (s) for the purpose under the Act;
- (d) exercising limited power to review its decision to the extent of correcting clerical or arithmetical mistakes or any accidental slip or omission as provided in rule 189 of these rules;
- (e) passing such order or orders as it may deem fit and proper in the interest of justice.

### **30. Power to Pass Order :**

The Tribunal may, after giving the parties to any proceeding before it a reasonable opportunity of being heard pass such orders therein as it thinks fit as provided in section 424 of the Act. The Tribunal shall send a copy of every order passed to the parties concerned.

### **31. Power of Contempt:**

The Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as a High Court has and may exercise, for the purpose, the powers under the provisions of the Contempt of Courts Act, 1971 which shall have the affect subject to the modifications as prescribed in section 425 of the Act.

### **32. Power to Regulate the Procedure:**

In exercise of the powers conferred on it under sub-section (1) of section 424 of the Act, the Tribunal may regulate its own procedure for the purpose of discharging its functions under the Act.

### **33. Summoning of Witnesses and Method of Recording Evidence-**

(1) If a petition or an application is presented by any party to the proceedings for summoning of witnesses, the Tribunal shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.

(2) The Tribunal shall make a brief memorandum of the substance of the evidence of every witness as the examination of the witness proceeds and such memorandum shall form part of the record ;

Provided that if the Tribunal is prevented from making such memorandum, it shall record the reasons of its inability to do so and shall cause such memorandum to be made in writing from its dictation and shall sign the same, and such memorandum shall form part of the record.

(3) Where summons are issued by the Tribunal under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar.

### **34. Documents not to form part of records**

Unless duly permitted by the Tribunal, the following documents shall not form part of the records of the case-

- (a) written statement or reply filed after the expiry of time granted for the purpose;
- (b) rejoinder filed without leave of the Tribunal or after the expiry of time granted;
- (c) additional pleading filed in any manner whatsoever without leave of the Tribunal or filed after expiry of time granted; and
- (d) documents not submitted in time or not tendered into evidence.

## **35. Power to Issue Commission:**

Any Bench of the Tribunal may issue a commission for the examination or interrogatories or otherwise of any person who is unable to attend the Tribunal for any justifiable reason or for any other purpose as may be required for the disposal of the case.

## **36. Procedure in Connected Cases:**

(1) Where two or more petitions or applications pending before a Tribunal arise out of the same facts and any issue involved is common to two or more such petitions or applications, such petitions or applications may so far as the evidence bearing on such issue is concerned, be heard simultaneously and a common order may be passed.

(2) Where action is taken under sub-rule (1), the evidence bearing on the common issue or issues shall be recorded on the record of one petition or application and the Tribunal shall certify under its hand on the records of any such other petition or application, the extent to which evidence so recorded applies to such other case and the fact that the parties to such other case had the opportunity of being present, and, if they were present for cross-examining the witnesses.

## **37. Calendar of Transferred Cases:**

Each Bench shall draw up a calendar for the hearing of transferred cases in such manner as the President may, by general or special order transfer such cases to its Benches with a direction to hear and decide the cases according to the calendar.

## **38. Substitution of Legal Representatives-**

(1) Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.

(2) In the case of death of a party during the pendency of the proceedings before Tribunal, the legal representative (s) of the deceased party may apply within ninety days of the date of such death for being brought on record.

(3) Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:

Provided that for good and sufficient reasons shown, the Tribunal may allow substitution of the legal representatives of the deceased at any time before disposing the appeal on merits.

## **39. Assessors or Valuers-**

(1) In any enquiry into a claim, the Tribunal may call in the aid of assessors, not exceeding two in number, who possess any technical or special knowledge with respect to any matter before the Tribunal for the purpose of assisting the Tribunal.

(2) An assessor or valuer shall perform such functions as the Tribunal may direct.

(3) The remuneration, if any, to be paid to an assessor or valuer shall in every case be determined by the Tribunal and be paid by it in the manner as may be specified by the Tribunal.

## **40. Pleadings before the Tribunal**

No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

## **41. Adjournment of Hearing:**

If the Tribunal finds that a petition or an application cannot be taken up for hearing on a given date at the request of either of the parties or both or on its own, it shall record the reasons which necessitate the adjournment and also inform the parties present of the date of adjourned hearing in the open court:

Provided that no such adjournment shall be granted more than three times to a party during the proceedings before the Tribunal except in circumstances which are beyond the control of the concerned party:

Provided further that all the documents shall be filed by the parties along with pleadings and no adjournment shall be granted for filing documents at a later stage except in circumstances which are beyond the control of the concerned party, but before concluding the arguments.

#### **42. Costs:**

The Tribunal may, in its discretion, pass such order (s) in respect of costs incidental to any proceedings before it, as it may deem fit.

#### **43. Decision of the Tribunal:**

The Tribunal shall decide every petition or application as expeditiously as possible on perusal of documents, affidavits and other evidence, if any, and after hearing such oral arguments as may be advanced with reference to section 422 of the Act.

#### **44. Order to be passed and signed-**

- (1) The Tribunal, after hearing the applicant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.
- (2) An order made by the Tribunal shall be executable by the Tribunal as a decree of a civil court and the provisions of the Code of Civil Procedure, 1908, so far as may be, shall apply as they apply in respect of decree of a civil court as provided in terms of sub-section (3) of section 424 of the Act.
- (3) Every order of the Tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order.
- (4) Orders shall be pronounced in the sitting of the Tribunal by the President or in case of the temporary absence of the President, the Member so authorized.
- (5) The orders of the Tribunal, as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the President may lay down.
- (6) A certified copy of every order passed by the Tribunal shall be communicated to the parties.
- (7) The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.
- (8) Any order made by the Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction as per sub-section (3) of section 424 of the Act:-
  - (a) In the case of an order against a company, the registered office of the company is situate; or
  - (b) In the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
- (9) Notwithstanding anything stated in these rules, the Tribunal may transmit order made by it to any court for enforcement on application made by either of the parties to the order or suomotu subject to sub-rule 8 (a) and (b) above.
- (10) Every order or judgement or notice shall bear the seal of the Tribunal.

#### **45. Application for Execution:**

For execution of order passed by the Tribunal, the holder of an order shall make an application to the Tribunal in [Form No. 8](#) as provided in **Annexure C**.

#### **46. Issue of Process of Execution-**

(1) On receipt of an application under rule 44, the Tribunal shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908.

(2) The Tribunal shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such Form as provided in the Code of Civil Procedure, 1908, as the case may be.

#### **47. Review of decision-**

(1) The Tribunal may at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record amend any order passed by it, and shall make such amendment *suomotu*, or if the mistake is brought to its notice by the parties in terms of sub-section (2) of section 420:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under the Act.

(2) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed or from which appeal is allowed, but has not been preferred and who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply in [Form No. 9](#) of these rules for review of a final order not being an interlocutory order, to the Tribunal.

(3) Where it appears to the Tribunal that there is not sufficient ground for a review, it shall reject the petition or application.

(4) Where Tribunal is of the opinion that the petition or application for review should be granted, it shall grant the same:

Provided that no such petition or application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for.

#### **48. Compliance of orders of the Bench.**

Every Bench shall have power to direct the parties concerned to file an affidavit of compliance of its order or such other documents in the manner specified in its order.

#### **49. Effect of non-compliance.**

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Bench is of the view that such failure has resulted in miscarriage of justice.

#### **50. Procedure for imposition of penalty under the Act.**

(1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings of the Bench, has been given a show cause notice and reasonable opportunity to represent his or her or its case before the Bench or any officer authorized in this behalf.

(2) In case the Bench decides to issue show cause notice to any person or company or a party to the proceedings, as the case may be, under sub-rule (1), the Registrar/Registry shall issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Bench shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.

#### **51. Empanelment of special authorized representatives by the Tribunal.**



(1) The Tribunal may draw up a panel of legal practitioners or company secretaries in practice or chartered accountant in practice or cost accountant in practice to assist in proceedings before the Tribunal or Appellate Tribunal.

(2) The President may call upon any of the persons from panel under sub-rule (1) for assistance in the proceedings before the Bench, if so required.

(3) The remuneration payable and other allowances and compensation admissible to such persons shall be specified in consultation with the Tribunal.

## **52. Publication of orders-**

Any order of the Tribunal deemed by it to be fit for publication in any authoritative report either in physical or electronic form or both or other media may be released for such publication on such terms and conditions as the President or Member concerned may specify by general or special order.

## **53. Certified copy of the order and inspection of documents or records-**

(1) If the applicant or the respondent to any proceeding requires a copy of any order passed by the Tribunal, the same shall be supplied to him on payment of fees as specified in **Annexure -B** within four working days from the date of the receipt of the petition or application for the said purpose and on urgent basis within two working days from the receipt of the petition or application for the said purpose.

(2) The parties to any case or their authorized representative may be allowed to inspect the record of the case on making a petition or an application in writing to the Registrar and on payment of fee as specified in **Annexure -B**.

(3) For the purpose of inspection of any physical documents or records or getting clarification of any query relevant thereto from the Registry, by the parties to the proceedings or their respective authorized representatives or such other person shall be allowed on payment of fee as may be specified in **Annexure-B** during the working hours of the Registry as may be decided by the President.

## **54. Orders or directions by the Tribunal and inherent powers of Tribunal-**

The Tribunal may pass such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of Justice. Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

## **55. Registration of Authorized Representative's clerks-**

(1) No clerk employed by an authorised representative shall act as such before the Tribunal or be permitted to have access to the records and obtain copies of the orders of a Bench of the Tribunal in which the Authorised Representative ordinarily appears, unless his name is entered in the Register of Clerks maintained by the said Bench. Such clerk shall be known as a "Registered Clerk".

(2) An authorised representative desirous of registering his clerk shall make a petition or an application to the Registrar in [Form 10](#). On such application being allowed by the Registrar, his name shall be entered in the Register of clerks.

(3) An identity card shall be issued to a Registered Clerk of the Authorised Representative on payment of fee as specified under **Annexure -B** by way of Indian postal order or demand draft drawn in favour of the Registrar.

## **56. Working Hours of the Tribunal:**

Except on Saturdays, Sundays and other public holidays, the office of the Tribunal shall, subject to any order made by the President, remain open from 9-30 a.m. to 6-00 p.m.

## **57. Sitting hours of the Tribunal:**

The sitting hours of the Tribunal shall ordinarily be from 10-30 a.m. to 1-15 p.m. and 2-15 p.m. to 4-30 p.m. subject to any general or special order made by the President or Members or any Member concerned with the prior approval of the President.

## **58. Seal and emblem:**

The official seal and the emblem of the Tribunal shall be such as the Central Government may specify.

## **59. Sittings of the Tribunal outside the Headquarters:**

The Tribunal and any of the Benches may hold its sittings at its Headquarters or at any other place as it may find convenient for better transaction or conduct of the business as may be decided by the Tribunal.

## **60. Headquarters of the Tribunal:**

The Tribunal shall have its Headquarters at New Delhi.

## **61. Preservation of Record :**

All necessary documents and records relating to petitions or applications dealt with by the Tribunal shall be stored or maintained as provided in these rules and other physical records kept in a record room shall be preserved for a period of three years after the passing of the final order.

## **62. Inherent powers of the Tribunal:**

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

## **63. Monthly progress report of Tribunal:**

The Tribunal shall furnish every month to the Central Government the information with regard to institution, disposal and pendency of applications or petitions and other information relating to the functioning of the Tribunal and its Benches.

## **64. Maintenance of Order Sheets:**

The Registrar shall attach to every petition or application an order sheet in the e-form or in physical mode as may be prepared to suit to the proceedings of the Tribunal.

## **65. Maintenance of Tribunal Diary:**

The Tribunal Officer shall maintain a Tribunal diary in format specified by the Registry for recording the proceedings of the Tribunal for each working day with respect to all petitions or applications listed in the daily cause list either manually or electronically as provided hereto.

## **66. Preparation and publication of daily cause list:**

The Tribunal Officer shall on each working day prepare for the next working day, the cause list in the prescribed format as prepared by the Registry and such format should uniformly be followed by the respective registries of the Benches and such cause list shall also be displayed at conspicuous place in the premises of the Tribunal either by affixing a copy of the same on the Notice Board of the Tribunal and by making publication in the website of the Tribunal forthwith.

## **67. Retention, Preservation and Destruction of Records:**

(1) The Record Keeper or any other officer so designated shall be responsible for the records consigned to the Record Room. He shall scrutinize the records received by him within three days and prepare an index.

(2) On the expiry of the period for preservation of the records specified under rule 61, the Registrar shall weed out the record.

## **68. Dress for President and Members and for the Authorised Representatives and for the parties in person:**

(1) For President and Members: The dress of the President shall be white or striped or black pant with black coat over white shirt and band or buttoned-up black coat and band. The dress for the other members of the Tribunal shall be white or striped or black trousers with black coat over white shirt and black tie or buttoned coat. In the case of a female President or a Member, the dress shall be black coat over a white saree.

(2) For Authorized Representatives: Every authorized representative as provided in section 432 of the Act, other than a relative or regular employee of the party shall appear before the Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned-up coat over a pant or national dress that is a long buttoned-up coat on dhoti or churidarpyjama, and a female, in a coat over white or any other sober coloured saree or in any other sober dress.

(3) For Parties in Person: Parties appearing in person before the Tribunal shall be properly dressed.

## **69. Memorandum of Appearance:**

The Authorized Representatives shall make an appearance through the filing of Memorandum of Appearance or a power of attorney in [Form No. 12](#) representing the respective parties to the proceedings. In case of legal practitioner/ advocate, he may make appearance by filing Vakalatnama.

## **70. Applicability of General Procedure under this Part:**

The above rules under General Procedure shall be in addition to the rules provided specifically under Parts herein in respect of the various categories of matters arising before the Tribunal

## **71. Registers of petitions and applications.**

(1) There shall be kept in the office of the Bench two separate registers, one for the petitions and other for the applications filed before the Bench.

(2) In every register, referred to in sub-rule (1), there shall be entered the following particulars, namely -

(a) the serial number of the petition or application and in addition, in the case of an application, the serial number of the petition to which it relates;

(b) the date of presentation or receipt of the petition or application;

(c) the name of the company to which the matter relates;

(d) the name and address of the petitioner or applicant;

(e) the names and addresses of the other parties to the petition or application and the names and addresses of the authorised representatives of the parties, if any

(f) the provision of law under which the petition or application is made;

(g) the nature of the relief (s) which have been sought;

(h) the date of disposal of the petition or application;

(i) the nature of the order made by the Bench;

(j) the date when the formal order is drawn up and communicated to the parties;

(k) remarks, if any.

(3) Separate registers shall be opened for each year and each register of petitions shall be preserved permanently and each register of application shall be preserved for a period of eight years.

## **72. Fees.**

(1) In respect of the several matters mentioned in Annexure D, there shall be paid fees as prescribed in Annexure B of these rules:

Provided that no fee shall be payable or shall be liable to be collected on a petition or application filed or reference etc made by the Registrar of Companies, Regional Director or by any officer on behalf of the Central Government:

(2) In respect of every interlocutory application there shall be paid fees as prescribed in Annexure B of these rules:

Provided that no fee shall be payable or shall be liable to be collected on an application filed by the Registrar of Companies, Regional Director or by an officer on behalf of the Central Government.

(3) In respect of a petition or application filed or references made etc before the Principal Bench or the Bench of the Tribunal, fees payable under these rules shall be paid by means of a bank draft drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi/Kolkata/Chennai /Mumbai as the case may be or by electronic mode.

## PART-III

### E-filing of applications, petitions etc

#### 73. Purpose

These rules govern the electronic filing and service of Tribunal documents, by any method other than fax filing and they are made in consonance with the provisions provided in the Act regarding electronic filing so as to supplement thereto to enable the filer to upload documents electronically through the Electronic filing service providers as may be notified by the Central Government.

#### 74. Effect on Existing Acts and Rules

Notwithstanding anything contained in any other Act for the time being in force concerning the filing of electronic documents, these rules shall be in addition to the provisions of the Act, and Information Technology Act, 2000 and such other analogous rules made thereunder but not in derogation thereto. In case of any conflict or contrast with any other provisions of the Act or other Acts or respective rules as prescribed for electronic filing, then these rules shall prevail.

#### 75. Electronic Filing Wholly Compulsory or Mandatory unless Ordered by Tribunal

(a) Except as provided by sub-rule (b) below, the electronic filing and serving of Tribunal documents is mandatory and compulsory.

(b) Upon the motion of a party and for cause shown, the Tribunal may order the parties in a particular case to manually file and serve Tribunal documents, which are otherwise permitted to be electronically filed in a manner as may be directed by the Tribunal.

(c) The rules made under this Part for electronic filing shall come into force on the date as may be notified by the Central Government in the Official Gazette.

#### 76. Power to Exempt from Electronic Filing of Documents:

(1) Notwithstanding anything contained in these rules, the Central Government may grant exemption from filing documents electronically either wholly or partly or put on hold the implementation of the rules of this Part completely and such other related provisions in these rules until a period or thereafter until such extended period as may be specified by way of notification in the Official Gazette.

(2) Save as otherwise provided in these rules, in case such exemption has been granted, the documents required to be filed electronically shall manually be filed and wherever appearing, the relevant rules stipulating electronic or e-filing in these rules may be understood for manual filing only.

#### 77. Registry:

This part of these rules applies only to the filing of documents with the Registry. This part of these rules do not apply to the filing of documents directly with a Member or Members of the Tribunal if the respective persons or entity has been directed to file any document before the Bench directly.

## **78. Documents Containing Signatures**

(a) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath shall be electronically filed only as a scanned image.

(b) Where a filer has electronically filed a scanned image under this rule, the Tribunal may require the filer to properly file the document in a physical form with the Registry. The Registry may allow such documents for the inspection.

## **79. “DEDICATED PORTAL ONLINE”**

(a) “Dedicated Portal Online” is a Portal as defined in sub-rule (16) of rule 2 through which all the parties or Central or State Government agencies and local government’s bodies may electronically send and receive documents to or from the Tribunal and make required payments.

(b) To electronically file documents, filers must follow registration and such procedures as outlined by “Dedicated Portal” or otherwise as prescribed by the Central Government.

(c) Filers do not electronically file documents directly with the Registry. Rather, filers indirectly file a document with the Registry by electronically transmitting the document to “Dedicated Portal Online” which then electronically transmits the document to the Registry. A filer filing or serving a document must have a valid account with Dedicated Portal Online.

(d) Consistent with standards promulgated by the Central Government in coordination with such other authority or committee on Information Technology, the Dedicated Portal Online, will specify the permissible formats for documents that will be electronically filed and electronically served.

(e) Filers who electronically file documents will pay the filing fees to the Registry indirectly through the “Dedicated Portal Online” by a method set forth by “Dedicated Portal Online.”

## **80. Signatures**

(a) Upon completion of the initial registration procedures, each filer will be issued a confidential and unique electronic identifier. Each filer must use his or her identifier in order to electronically file documents. Use of the identifier to electronically file documents constitutes a “digital signature” on the particular document.

(b) The attachment of a digital signature on an electronically filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by relevant provisions of the Act, or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of fulfilling all the requirements provided under the Act, or “Dedicated Portal” online or such other Machine Mode Project as designed, developed and maintained by the Ministry of Corporate Affairs or the Central Government for the purpose under these rules or Information Technology Act, 2000 or such other amended Acts or relevant rules as provided from time to time, unless otherwise designated. The digital signature on any document filed is deemed to be the signature of the Attorney or the Authorised Representative, whose name appears first in the signature block of the document for the said purpose.

(c) A digital signature on an electronically-filed document is deemed to constitute a signature by the filer for the purpose of authorizing the payment of document filing fees.

## **81. Time Document Filing**

(a) A filer may electronically transmit a document to “Dedicated Portal Online” 24 hours in a day and every day of the year, except during brief periods of Central Government approved scheduled maintenance which will occur on any fixed day as informed at the respective website.

- (b) Upon sending an electronically filed document with the Registry by a filer, the filer is deemed to have delivered the document to the Registry and, subject to sub rule (e), the document is deemed to be filed.
- (c) As soon as possible but not later than three working days after receiving a document from “Dedicated Portal Online”, the Registry shall examine the document for acceptance or if not, to decide otherwise.
- (d) If the document is accepted for filing, the Registry shall note the date and time of filing which, with the exception of sub-rule (e) below, shall be the date and time that the filer transmitted the document. The Registry shall inform through “Dedicated Portal Online” its action within 3 working days.
- (e) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, documents that serve to commence the proceedings will not be deemed to have been filed on any holiday when the document is electronically transmitted to the “**Dedicated Portal Online**” or the Registry on holiday. Such documents will be deemed to have been filed on the succeeding working day of the Tribunal.

## **82. Filing Deadlines Not Altered**

The electronic filing of a document does not alter any filing deadlines.

## **83. Multiple Documents**

- (a) Except as provided by sub-rule (b) below, a filer may include only one document in an electronic transmission to Dedicated Portal Online.
- (b) A filer may electronically transmit a document to Dedicated Portal Online that includes another document as an attachment (e.g., a motion or a proceeding to which is attached a brief in support thereto)

## **84. Official Document**

- (a) The Registry’s file for a particular case may contain a combination of electronically-filed documents and physically filed documents.
- (b) The Registry may maintain and make available electronically-filed documents in any manner allowed by law.

## **85. E-mail Address Required**

In addition to the information required in a pleading by the Act, or rules, a filer must provide a valid e-mail address on any electronically filed document.

## **86. Document Format**

- (a) Electronic Format or Electronically-filed documents must be computer-formatted document prepared in accordance with the EDGAR Filer Manual as specified by the Tribunal. Electronically-filed documents must also be formatted for printing on 8 ½-inch by 11-inch paper or in such manner as may be specified by the Tribunal.
- (b) In addition to compliance with para (a), an electronically-filed pleading shall comply with band width etc as may be specified by Central Government from time to time for filing through the Dedicated Portal Online.

## **87. Electronic Service of Documents Permissible**

- (a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in the Act as well as in these rules, a filer may serve documents upon another party in the case by electronically transmitting the document to that party at the party's provided email address. Service in such a manner is known as “Electronic service,” and is permissible in the circumstances unless the Tribunal has ordered the parties to serve the documents otherwise.
- (b) By virtue of electronically filing a document or serving a document or by agreeing to accept service, a filer additionally agrees to provide information regarding any change in his or her e-mail address to Dedicated Portal Online, the Registry, and all parties in the case.

(c) A party who electronically files a document may not be necessarily required to electronically serve documents upon other parties unless the Tribunal has ordered the parties to electronically serve documents.

(d) A filer may electronically serve a document in instances where the document is physically filed as well as in instances where the document is electronically filed.

## **88. Completion of Service and Date of Service**

(a) Electronic service shall be complete upon transmission of the document by the filer to the party at the party's e-mail address.

(b) Except as provided by sub-rule (c) below, the date of service shall be the date on which the electronic service is complete.

(c) When electronic service is complete after office hours (recipient's time), then the date of service shall be deemed to be the next day which is not a public holiday.

## **89. Time for Action after service**

Whenever a party has the right or is required to do some act within a prescribed period of time after service of a document upon the party and that document is electronically served, then three days shall be added to the prescribed period of time unless the Tribunal orders otherwise.

## **90. Certification of Service**

(a) Documents to be electronically served upon another party shall be served before the time or at the same time that the document is filed.

(b) A filer who electronically serves a document upon another party shall make a written certification of such service that shall accompany the document when that document is filed. The written certification shall include, in addition to any other requirements imposed by the Act, or in these rules, the following:

(i) the filer's e-mail address or telecopier (facsimile machine) number;

(ii) the recipient's e-mail address;

(iii) the date and time of electronic service; and

(iv) a statement that the document was electronically served and that the electronic transmission was reported as complete.

## **91. Tribunals Authorized to Make Electronic Orders**

(a) The President or a member or members or any Presiding Officer, as the case may be in an instance, may electronically sign an order by applying his or her digitized signature to the order.

(b) Upon electronically signing an order as stated in para (a) above, the President or a member or one of the members or any Presiding Officer who has or have heard the case and passed the order, shall electronically forward the order to the Registry who shall treat the electronic order as the official copy of the order. The Registry shall print the electronic order and treat the printed order as the official copy of the order.

(c) The Registry may electronically scan a physical form of the Tribunal order. The scanned Tribunal order may then serve as the official copy of the Tribunal order. The Registry is not required to electronically scan physical copies of the orders of the Tribunal in order to create official electronic Tribunal orders. Electronic scanning of physical copies of the Tribunal orders is at the option of the Registry.

## **92. Viewing of Electronically-filed Documents**

(a) The Registry shall ensure that all the records of the Tribunal, except those made confidential or privileged by law or statute, may be viewed in same format by all persons free of cost or for such fee as may be specified by the Tribunal.



(b) Independent of the Dedicated Portal Online system and the requirement of viewing access described in sub-rule (a), the Registry may choose to provide for both filers and the general public to electronically view documents or Tribunal orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or Tribunal orders that have been electronically filed or scanned subject to such fee as may be prescribed by the Central Government and such collection of fee.

(c) Nothing in this rule allows for the viewing of documents or Tribunal orders, in any form, that are legally confidential or otherwise restricted by relevant Act or order.

## PART IV

### **President and Members' salaries & Allowances and other Terms and Conditions of Service**

#### **93. Salary, Allowances, and other Terms and Conditions of Service of President and Members:**

The Salary, Allowances, and other Terms and Conditions of Service of President and Members shall be in the manner as may be prescribed by the Central Government in exercise of the powers provided under section 414 of the Act.

#### **94. Powers of the President:**

In addition to the General Powers provided in the Act, and in these rules elsewhere, the President shall exercise the following powers:

- a. Preside over the consideration of cases by the Tribunal;
- b. Direct the Registry of the Tribunal in the performance of its functions;
- c. Prepare an annual report on the activities of the Tribunal;
- d. Perform the functions entrusted to the President under these Rules; and
- e. Such other powers as may be relevant to carry out his duties as Head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal;
- f. Transfer case(s) from one Bench to other Bench of the Tribunal when the circumstances so warrant.

## PART V

### **Procedure relating to issuance of orders and disposal of cases**

#### **95. Matters relating to the Judgements or Orders of the Tribunal:**

(1) Once the final text of the judgement has been approved and adopted, the judgement shall be signed and dated by the President or the concerned members or member and the Registrar and shall contain the names of the members who have taken part in decision;

(2) Any member differing as to the grounds upon which the judgement was based or some of its conclusions, or dissenting from the judgement, may append a separate or dissenting opinion. In case the members who have heard the case are equally divided in passing the order or judgement, then the President shall constitute a Bench as referred in sub-section (5) of section 419 of the Act.

#### **96. Amicus Curiae**

The Tribunal may, at its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to the Tribunal as Amicus Curiae on any point or points or legal issues as the case may be as assigned to such Amicus Curiae. The Tribunal may permit an Amicus Curiae to have access to the pleadings of the parties. The Tribunal shall enable the parties to submit timely observations on an amicus brief. The Tribunal shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the Amicus Curiae has been sought, to bear such expenses or fee as may be ordered

by the Tribunal. The judgement and any appended opinions shall be transmitted to the parties and to Amicus Curiae.

## **97. Recusal**

1. For the purpose of maintaining the high standards and integrity of the Tribunal, the President or a Member of the Tribunal shall recuse himself
  - a. In cases involving persons with whom the President or the Member has a personal, familial or professional relationship;
  - b. In cases concerning which the President or the Member has previously been called upon in another capacity, including as advisor, representative, expert or witness ; or
  - c. If there exist other circumstances such as to make the President or the Member's participation seem inappropriate.
2. Any member recusing himself shall immediately inform the President of the Tribunal or in the case of the President, the next senior member thereto.

## **PART-VI**

### **Functions of the Registry, Secretary and General Procedures**

#### **98. Appointment of Staff to the Registry:**

In exercise of the powers provided in section 418 of the Act, the Central Government in consultation with the Tribunal shall provide the Tribunal the staff including the Registrar, Secretary and such other officers for the purpose of exercising the powers and discharging the functions of the Tribunal as the case may be.

#### **99. Powers, Functions and Duties of the Registrar:**

(1) In addition to the functions and duties as assigned to the Registry in Part II and elsewhere in these rules, the Registrar at the Principal Bench, and at other Benches, the officer so designated to function as Registrar shall have all the powers, functions and duties of the Registrar and the Registrar or such officer as designated as Registrar at the Benches shall be head of the Registry and the staff working in the Registry shall work under his general superintendence and control of the Registrar or such other officiating Registrar at the Benches. The Registrar shall work under the general superintendence and control of the President at the Principal Bench whereas the officiating Registrar at other benches shall work under the senior most member of the respective Benches of the Tribunal. Under the authority of the President, the Registrar of the Tribunal shall:

- (a) Receive and register petitions, appeals, applications, interlocutory and all other miscellaneous applications relating to such petitions appeals or applications, institution proceedings and related documentation of the case;
- (b) Be responsible for transmitting all documents and making all notifications required in connection with cases before the Tribunal and represent the matters pertaining to this Tribunal before any other forum as may be decided by the President;
- (c) Make for each case a dossier which shall record all actions taken in connection with the case, the dates thereof, and the dates on which any document or notification forming part of the procedure is received or dispatched from his office;
- (d) Attend hearings, meetings and deliberations of the Tribunal;
- (e) Keep the minutes of these hearings and meetings of the members as instructed by the President;
- (f) Upon the transmittal of a petition or an application to the Tribunal, unless the President decides otherwise, circulate within the Tribunal a notice summarizing the issues raised in the petition or application, without disclosing the name of the applicant, in order to inform the Members of the Tribunal of proceedings pending before the Tribunal; in respect of category matters as the President so instructs the Registrar;

(g) Expeditiously perform the functions entrusted to him by the rules of procedure and carry out tasks as assigned by the President; and

(h) Have the custody of the records of the Tribunal and shall perform such other functions as are assigned to him under these rules or from time to time by the President or the Member:

Provided that no record or document filed in any case or matter shall be allowed to be taken out of the custody of the Tribunal without the leave of the Tribunal.

(2) Without prejudice to the foregoing sub-rule (1), the Registrar shall have the following powers and duties, subject to the general or special order of the President or Member, namely:

(i) subject to the direction of the respective Benches, to fix the date of hearings and to issue notices therefore;

(ii) to direct any formal amendment of records;

(iii) to order to grant or transmit the documents to the parties of the proceedings;

(iv) to grant leave to inspect or view the records of the Tribunal;

(v) to dispose of all matters relating to the service of notices or other processes, applications for the issue of fresh notices and for extending the time for filing such applications and to grant time not exceeding 30 days for filing reply or rejoinder, if any, and to place the matter before the Bench for appropriate orders after the expiry of the aforesaid period;

(vi) to requisition for transfer of any records of such suit, claim or other legal proceeding as are transferred to the Tribunal from any Court, Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction or Company Law Board or any other court or authority;

(vii) to receive and dispose of applications for substitution, except where the substitution would involve setting aside an order of abatement;

(viii) to receive and dispose of applications by parties for return of documents.

(ix) to supply to the Central Government the information in the prescribed Form;

(x) to dismiss the petition or application for default in case the applicant or his authorized representative does not appear before him on the date fixed for hearing of the case regarding the defects raised by the Registry;

(xi) to dismiss the petition or application in case the applicant fails to serve the opposite party with the notice; and

(xii) to restore the petition or application, if he is satisfied that there are sufficient reasons for non-appearance or for not serving the opposite party.

(3) The official seal shall be kept in the custody of the Registrar.

(4) Subject to any general or special direction by the President, the seal of the Tribunal shall not be affixed to any order, decree or judgement or summons or other process save under the authority in writing of the Registrar in case of physical form or in case of e-form as prescribed in Part III of these rules.

(5) The seal of the Tribunal shall not be affixed to any certified copy issued by the Tribunal save under the authority in writing of the Registrar.

(6) The Registrar of each Bench shall make out, every month a brief summary of the important decisions given by that bench during the previous month and send it to the Registrar of the Principal Bench who shall after suitable editing, circulate it to all the Benches of the Tribunal in the country and the Central Government for their information.

## **Presentation and scrutiny of petitions or applications:**

**100.** In case of the scrutiny of the petitions or applications as provided in the rules in Part II and elsewhere in these rules, if any person is aggrieved with the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within 15 days of the making of such order to the President of the Principal Bench and at other places to the designated member of the Bench whose decision thereon shall be final.

## **Duties, Functions and Powers of the Secretary:**

**101 .** The post of the Secretary shall be at the Principal Bench, New Delhi. He shall discharge his duties, function and exercise his powers under the general superintendence and control of the President of the Tribunal. His main function is to co-ordinate with the Principal Bench and the Benches and act as a liaison officer between the Tribunal and the concerned Ministry having administrative jurisdiction over the Tribunal. He shall in addition to the work assigned to him by the President from time to time, have the following functions, duties and powers:

- i. In charge of the long term projects and initiatives of the Tribunal;
- ii. Supervise the Human Resources;
- iii. Budgetary allocations and Financial Management;
- iv. Tribunal operations;
- v. Tribunal facilities and Administrative Services;
- vi. Supervise the Public Grievances Mechanism;
- vii. Coordinate with the Authorised Representatives and other Professionals;
- viii. Information and Communication Technology (ICT) facilities;
- ix. Communication services;
- x. Public affairs and Public safety provisions in the Tribunal Premises;
- xi. Supervision of Library and Research;
- xii. Administrative Matters pertaining to the Benches and liaisons between the President and the other Benches as well as providing support to the other benches under the directions of the President;
- xiii. Attend and execute such directions given by the President and discharge such other functions and duties as may be assigned to him.
- xiv. Attend the petitions or applications received for empanelment of the professionals including mediators/conciliators.

## **Part VII**

### **102. Matters earlier dealt by the Company Law Board**

(i) Notwithstanding any other provision of law or rule of Court or Tribunal to the contrary, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act, dealing with the Tribunal have been given effect, or the Company Law Board has been abolished in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective benches of the Tribunal exercising respective territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred:

Provided that the Tribunal shall consider any action taken under the said rules be deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings, except in a case where the order is reserved by the Company Law Board or its Bench. In such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:

Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice.

(ii) It shall be lawful for the President or such member (s) to whom the powers are so delegated, to provide that matters falling under all other sections of the Act, shall be dealt with by such benches consisting one or more members as may be constituted in exercising of such power as enshrined in the Act,

Provided that matters pending before the Principal Bench and Additional Principal Bench of the Company Law Board as on the date of constitution of Tribunal as stated supra shall continue and be disposed of by a bench consisting of not less than two members of the Tribunal having territorial jurisdiction

(iii) It shall be lawful for the Tribunal to dispose of any case transferred to it wherever the Tribunal decides that further continuance of such application or petition transferred before the Tribunal shall be a redundant exercise or an unnecessary proceeding on account of changes which have taken place in the Act either upon an application filed by either of the parties to the proceedings or suo motu.

(iv) A fresh petition or an application may also be filed in the prescribed form as provided in the Annexure-C corresponding to those provisions of the sections of Act, if both the parties thereto so consent unanimously with the approval of the Tribunal while withdrawing the proceedings as already continued before the Company Law Board and serve a copy of the petition on the parties thereto including the Ministry of Corporate Affairs, Regional Director, Registrar of Companies, Official Liquidator or Serious Fraud Investigation Office, as the case may be, as provided in the Act, in the manner as provided under Part II. Upon an application to the Tribunal if the permission is granted to file a petition or an application in physical form, then the same shall be filed accompanied with the documents or papers to be attached thereto as required to prove the case subject to the provisions of the Act, and rules hereto. The same procedure shall also apply to other parties to application or petition for filing reply or counter thereto.

(v) Notwithstanding the above and subject to section 434 of the Act, the Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases.

## **103. Matters earlier dealt by the District Court or High Court**

(i) All proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.

(ii) Subject to section 434 of the Act, Tribunal may prescribe the rules relating to numbering of cases and other procedures to be followed in the case of transfer of such matters, proceedings or cases.

## **104. Matter earlier dealt by BIFR**

Any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 immediately before the commencement of this Act shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this clause.

## **105. Petition or Application under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934):**

(i) Provisions of these rules shall apply, mutatis mutandis, to the application or petition made under sub-section (2) of section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934) or under such other analogous provision of the other Act(s). Similarly, these rules shall extend to the petitions or applications filed under various provisions of the existing Acts before the Company Law Board.

**Explanation:-** For the purpose of the said provisions, wherever the words “Company Law Board” or “Board”, are mentioned, the same shall be treated as if such provision or word is addressing or referring to “Tribunal”.

## **106. Reference to the Tribunal:**

Any reference to the Tribunal by the Registrar of Companies under second proviso to sub-section (1) of section 252, section 441 of the Act, or any reference to the Tribunal by the Central Government under proviso to sub-section (5) of section 140, 221, sub-section (2) of section 224, sub-section (5) of section 224, sub-section (5) of section 233, sub-section (2) of section 241 of the Act, or any reference by a company under clause (c) of sub-section (4) of section 22A of the Securities Contracts (Regulations) Act, 1956 shall be made by way of a petition or application in [Form No. 9](#) in Annexure C and shall be accompanied by documents mentioned in Annexure-D.

## **PART VIII**

### **SPECIAL PROVISIONS RELATING TO CERTAIN SPECIFIC MATTERS**

## **107. Application under sub-section (7) of section 7.**

1. Application under sub-section (7) shall be filed to the tribunal filed in [form 1](#) and shall be accompanied such documents as are mentioned in Annexure –D
2. Every application filed under sub rule (1) shall also set out the following particulars.
  - a. Name of the company and other details including date of incorporation, name and address of the subscribers, promoters and first directors.
  - b. The details of false or incorrect information or representation or material facts or information suppressed.
  - c. details of such documents in or declaration filed or made for incorporating such company,
  - d. involvement of promoters, subscribers and first directors in committing fraud during the course of incorporation;
3. Tribunal may pass such orders, as it may think fit in accordance with clauses (a), (b), (c), (d) and (e) of sub-section (7) of section 7.
4. Before making any such order under sub-section(7) of section 7 Tribunal shall give reasonable opportunity to the company of being heard in the matter, and shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

## **108. Petition under section 14.**

(1) A petition under second provision to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, not less than three months from the date of passing of special resolution, be filed to the Tribunal in [Form No. 1](#) and shall be accompanied with such documents as are mentioned in Annexure D.

(2) Every petition filed under sub-rule (1) shall set out the following particulars:

- (a) the date of the Board meeting at which the proposal for alteration of memorandum was approved;
- (b) the date of the general meeting at which the proposed alteration was approved;
- (c) state at which the registered office of the company was situated;
- (d) State number of members in the company, number of members attended the meeting and number of members of voted for and against.
- (e) reason for conversion into a private company effect of such conversion on shareholders, creditors, debenture holders and other related parties.
- (f) state listed or unlisted public company.
- (g) state the nature of the company that is a company limited by shares, a company limited by guarantee( having share capital or not having share capital) and unlimited company
- (h) state whether a company registered under section 8 of the Act.

(3) There shall be attached to the application, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of petition by not more than two months, setting forth the following details:

- (a) the names and address of every creditor and debenture holder of the company;
- (b) the nature and respective amounts due to them in respect of debts, claims or liabilities;
- (c) in respect of any contingent or unascertained debt or any such claim admissible to proof in winding up of the company, the value, so far as can be justly estimated of such debt or claim:

Provided that the petitioner company shall file an affidavit, signed by the company secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of , or claims against, the company to their knowledge.

(4) A duly authenticated copy of such list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(5) The company shall at least 14 days before the date of hearing

- (a) advertise the petition in accordance with rule 11;
  - (b) serve, by registered post with acknowledgement due, individual notice (s), in [Form No. 3 B](#) to the effect set out in sub-rule (a) above on each debenture-holder and creditor of the company; and
  - (c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:
- (6) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of companies on or before the date of hearing:
- (7) While passing an order, the Tribunal may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid complying with the provisions of the Act, disallow the conversion.



## **109. Application to Cancel Variation of Rights under sub-section (2) of Section 48.**

(1) Where an application to cancel a variation of the rights attaching to any class of shares is made on behalf of the shareholders of that class entitled to apply for cancellation under sub-section (2) of section 48 by the letter of authority signed by the shareholders so entitled, authorizing the applicant or applicants to present the application on their behalf, shall be annexed to the application, and the names and addresses of all the said shareholders, the number of shares held by each of them, aggregate number of such shares held and percentage of the issue shares of that class shall be set out in the schedule to the application.

(2) The application in [Form No. 1](#) shall be accompanied by documents mentioned in Annexure D and shall set out;

(a) the particulars of registration

(b) the capital structure, the different classes of shares into which the share capital of the company is divided and the rights attached to each class of shares

(c) the provisions of the memorandum or articles authorizing the variation of the rights attached to the various classes of shares

(d) the total number of shares of the class whose rights have been varied

(e) the nature of the variation made, and so far as may have been ascertained by the applicants, the number of shareholders of the class who gave their consent to the variation or voted in favor of the resolution for variation and the number of shares held by them,

(f) the number of shareholders who did not consent to the variation or who voted against the resolution, and the number of shares held by them,

(g) the date or dates on which the consent was given or the resolution was passed,

(h) the reasons for opposing the variation.

(3) The applicant shall at least 14 days before the date of the filing of the petition advertise the application in accordance with rule 11.

(4) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Registrar of companies and Regional Director on or before the date of hearing:

(5) On any such application, the Tribunal, after hearing the applicant and any other person as appears to it to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation, and shall if not so satisfied, confirm the variation:

Provided that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.

(6) The decision of the Tribunal on any such application shall be final.

## **110. Petition under sub-section (3) of section 55**

(1) The petition in [Form No. 1](#) shall be accompanied by documents mentioned in Annexure D and shall set out:

(a) the particulars of registration

(b) the capital structure, the different classes of shares into which the share capital of the company is divided;

(c) the provisions of the memorandum or articles authorizing the issue of preference shares;

(d) the total number of preference shares issued;

(e) Details of such preference shares which are not redeemed or unable to pay dividend.

- (f) Terms and conditions of issue of such existing preference shares.
  - (g) The total number of such preference shares (unredeemed) and number of holders consented for with value of such preference shares and percentage of holders who have consented for.
  - (h) The date or dates on which the consent was given or the resolution was passed.
  - (2) On any such petition, the Tribunal, after hearing the petitioner and any other person as appears to it to be interested in the petition, may, if it is satisfied, having regard to all the circumstances of the case may approve for issue of further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of unredeemable preference shares.
- Provided that the Tribunal shall, while giving approval, order the redemption forthwith of preference shares held by such persons who have not consented to the issue of further redeemable preference shares;
- Provided further that the Tribunal may, at its discretion, make such orders as to cost as it thinks fit.
- (3) The decision of the Tribunal on any such petition shall be final.

## **111. Form of application or petition for reduction of share capital under section 66 and Notice of Admission for directions:**

- (1) An application to confirm a reduction of the share capital of a company shall be in [Form No. 13](#), and shall be accompanied by a notice of admission for directions in [Form No. 14](#). Such application shall be accompanied by documents mentioned in Annexure D.
- (2) The application filed under sub-rule (1) shall set out the following particulars:
  - (a) existing capital structure of the company;
  - (b) proposed capital structure after the reduction;
  - (c) terms and conditions of the reduction of share capital indicating clearly whether the reduction of share capital involves diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital and whether the company has creditors or any class of them entitled to object;
  - (d) provisions of the articles of association of the company authorizing such reduction of capital;
  - (e) date of passing of special resolution by the members in the general meeting of the company;
  - (f) the number of members present and voting at such meeting and number of shares/ voting power held by them;
  - (g) the number of members who voted in favour of the resolution for reduction of capital and the number of shares/ voting power held by them;
  - (h) the number of members who voted against the resolution and the number of shares/ voting power held by them;
  - (i) reasons for such reduction of share capital.

## **112. Procedure on hearing of Notice of Admission:**

Upon the hearing of the notice of admission and after giving notice to the Central Government, Registrar of companies and to the Securities and Exchange Board, in the case of listed companies, or in the case of non banking financial companies to the Reserve Bank of India and the creditors of the company, if the Tribunal is satisfied that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and does not think fit to direct that the procedure prescribed in section 66 shall apply, it shall fix a date for hearing of the application and give such directions as it may think fit as to the advertisement of the application. The application shall be posted for hearing on the date fixed, and upon the hearing thereof, the Tribunal may confirm the reduction on such terms and conditions as he may think fit.

## **113. Directions at the hearing of Notice of Admission:**

Where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital and, in any other case, if the Tribunal thinks fit to direct that the procedure prescribed in section 66 of the Act shall apply, the Tribunal may, upon the hearing of the notice of admission or upon any adjourned hearing thereof, or upon the hearing of any subsequent application, give such directions as it may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say:

- (a) the proceedings to be taken for settling the list of creditors entitled to object, including the dispensing with the observance of the provisions of said section 66 as regards any class or classes of creditors ;
- (b) fixing the date with reference to which the list of such creditors is to be made out,
- (c) the publications of notices ; and
- (d) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

The order made upon the notice of admission under this rule shall be in [Form No. 15](#) with such variations as the circumstances may require

## **114. List of Creditors:**

The company shall, within the time allowed by the Tribunal, file a list in [Form No. 16](#) made out by an officer of the company competent to make the same, containing the names and addresses of the creditors of the company to whom the enquiry extends as on the date fixed by the Tribunal under the last preceding rule, and the respective amounts due to them in respect of debts, claims or liabilities to which the enquiry extends or in case of any such debt payable on a contingency or not ascertained, or any such claim admissible to proof in a winding-up of the company, the value, so far as can be justly estimated, of such debt, or claim.

## **115. Affidavit verifying list of Creditors:**

Such list shall be verified by an affidavit made by an officer of the company competent to make the same, who, in such affidavit, shall state his belief that the list verified by such affidavit is correct, that the estimated values, as given in the list, of the debts payable on a contingency or not ascertained, or of any claims admissible to proof in a winding-up, are just and proper estimates of the values of such debts and claims respectively, and that there was not, at the date fixed by the Tribunal under rule 134, any debt, claim or liability which if that date were commencement of the winding-up of the company, would be admissible in proof against the company, except the debts, claims and liabilities set forth in such list as filed under rule 136 and any debts, claims or liabilities to which the enquiry does not extend, and shall state the source of his knowledge or information and the grounds of his belief regarding the matters deposed to in such affidavit. Such affidavit shall be in [Form No. 17](#), with such variations as the circumstances of the case may require.

## **116. Inspection of list of creditors:**

Copies of such list shall be kept at the registered office of the company and at the office of the authorised representative of the company, and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees fifty for inspection and for taking extracts on payment of the sum of rupees ten per page to the company.

## **117. Notice to Creditors:**

- (i) The company shall, within seven days after the filing of the list of creditors referred to in rule 136 or such further or other time as the Tribunal may allow, send to each creditor whose name is entered in the said list, a notice of presentation of the application and of the said list, stating the amount of the proposed reduction of capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditor's name is entered in the said list, and the time, as fixed by the Tribunal, within which if he claims to be entitled to be entered on such list as a creditor for a larger amount, he must send in his name and address, and the

particulars of his debt or claim, and the name and address of his authorised representative if any, to the authorised representative of the company.

(ii) Such notice shall be in [Form No. 18](#) and shall, unless the Tribunal in the manner as prescribed under Part II of these rules or otherwise directs in the manner to each creditor at his last known address or place of abode:

Provided that where his address is not known to the company, the Tribunal may direct notice to be given to such creditor in such manner as the Tribunal may think fit.

## **118. Advertisement of the petition or application and list of creditors:**

(i) Notice of the presentation of the application and of the list of creditors under rule 114 read with rule 115, shall, within seven days after the filing of the said list or such further or other times as the Tribunal may allow, be advertised by the company in such manner as the Tribunal shall direct.

(ii) Such notice shall state the amount of the proposed reduction of share capital, and the places, where the aforesaid list of creditors may be inspected, and the time as fixed by the Tribunal within which creditors of the company who are not entered but claim to be entitled to be entered on the said list, must send in their names and addresses and the particulars of the debts or claims and the names and addresses of their authorised representatives, if any, to the authorised representative of the company. Such notice shall be in [Form No.19](#).

## **119. Affidavit for Proof of Service:**

The company shall, as soon as may be, file an affidavit proving the dispatch and publication of the notices referred to in rules 138 and 139. Such affidavit shall be in [Form No. 20](#).

## **120 . Statement by company as to the result of rules 117 and 118:**

(i) The company shall within the time fixed by the Tribunal, file a statement signed and verified by the authorised representative of the company stating the result of the notices mentioned in rules 117 and 118 respectively and verifying a list containing the names and addresses of the persons, if any, who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively and the amounts of such debts or claims.

(ii) Such statement shall be accompanied by an affidavit made by a competent officer or officers of the company who shall, in such list, distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly or as to any and what part thereof, disputed by the company, and which (if any) of such debts and claims are alleged by the company to be wholly, or as to any and what part thereof not included in the enquiry.

(iii) Such affidavit shall also state which of the persons, who are entered in the list as creditors and which of the persons, who have sent in particulars of their debts or claims in pursuance of such notices as aforesaid, have been paid or have consented to the proposed reduction. Such statement shall be in [Form No. 21](#).

## **121. Procedure where claim is not admitted, and proof of debt:**

(i) If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or if any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company is willing to set apart and appropriate in such manner as the Tribunal shall direct, the full amount of such debt or claim, the company shall, if the Tribunal thinks fit so to direct, sent to the creditor a notice in [Form No. 22](#) that he is required to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claim or such part thereof as is not admitted by the company on the day fixed by the Tribunal.

(ii) Such notice shall be served not less than four clear days before the date fixed by the Tribunal.

(iii) A proof of debt by a creditor shall be in [Form No. 23](#). Where the creditor is for good reason personally unable to make the affidavit, his authorised agent may make the same.

## **122. Costs of Proof:**

The costs of proof of a debt or claim or any enquiry under the preceding rules shall be at the discretion of the Tribunal.

## **123. Certificate by the Tribunal as to Creditors:**

The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the authorised representative of the company and signed by the Tribunal. Such certificate shall -

- (1) specify the debts or claims (if any) which have been disallowed ;
- (2) distinguish (a) the debts or claims, the full amount of which the company is willing to set apart and appropriate ; (b) the debts or claims (if any) the amount of which has been fixed by enquiry and adjudication in the manner provided by section 66 and these rules ; and (c) the debts or claims (if any) the full amount of which the company does not admit or is not willing to set apart and appropriate or the amount of which has not been fixed by enquiry and adjudication as aforesaid ; and
- (3) show (a) which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them ; and (b) the total amount of the debts or claim the payment of which has been secured in the manner provided by section 66 and the persons to or by whom the same are due or claimed.

The said certificate shall also state which creditors have under rule 119 come in and sought to establish their title to be entered on the list and whether such claims have been allowed or not, but it shall not be necessary to make in such certificate any further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the enquiry does not extend or to show therein the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid.

## **124. Hearing of the petition or application:**

After the expiry of not less than fourteen days from the filing of the certificate mentioned in the preceding rule, the application shall be set down for hearing. Notice of the date fixed for the hearing of the application shall be advertised within such time and in such newspaper or newspapers as the Tribunal may direct and shall be in [Form No. 24](#).

## **125. Who may Appear and Oppose:**

Any creditor included in the certificate whose debt or claim has not, before the hearing of the application, been discharged or determined or been secured in the manner provided in section 66 and who has not before the hearing consented in writing to the proposed reduction of share capital may, if he thinks fit, upon giving two clear days' notice to the authorised representative for the company of his intention to do so, appear at the hearing of the application and oppose it. The costs of his appearance shall be in the discretion of the Tribunal.

## **126. Directions at Hearing:**

- (1) At the hearing of the application the Tribunal may, if he thinks fit, give such directions as may seem proper with reference to securing in the manner mentioned in section 66, the debts or claims of any creditors who do not consent to the proposed reduction, and the further hearing of the application may be adjourned to enable the company to comply with such directions.
- (2) Upon the hearing of the petition or application, if the Tribunal is satisfied that the proposed reduction does not involve either diminution or liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital, it shall
  - (a) fix a date for hearing of the application; and
  - (b) give such directions as to the advertisement of the application, as it may think fit.

(3) Upon the hearing of the petition or application or upon any adjourned hearing thereof or upon the hearing of any subsequent application, if the Tribunal is satisfied that the proposed reduction involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then

(a) the Tribunal shall require the company to file, within such time as allowed by the Tribunal, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than two months, setting forth the following details:

(i) the names and address of every creditor and debenture holder of the company;

(ii) the nature and respective amounts due to them in respect of debts, claims or liabilities;

(iii) in respect of any contingent or unascertained debt or any such claim admissible to proof in a winding up of the company, the value, so far as can be justly estimated of such debt or claim:

Provided that the applicant company shall file an affidavit, signed by the Company Secretary of the company, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of, or claims against, the company to their knowledge.

(b) A duly authenticated copy of such list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of rupees ten per page to the company.

(c) Any person claiming that his name shall be entered in the list of creditors or objects to the amount of debt payable to him according to such list, shall deliver or cause to be delivered by registered post, the objections supported by an affidavit, to the Registrar and shall also serve a copy of the objections on the applicant-company at its registered office.

(d) If the applicant-company contends that:

(i) the person filing any objection is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or

(ii) any debt or claim, the particulars of which are so sent in, shall not be admitted by it, either in full or in part,

then, and in every such case, unless the company is willing to set apart and appropriate in such manner as the Tribunal directs, the Tribunal may direct such person to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claims or such part thereof as is not admitted by the company on the day fixed by the Tribunal.

(e) The Tribunal may give such directions as he may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say:

(i) the proceedings to be taken for settling the list of creditors entitled to object;

(ii) the publications of notices; and

(iii) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter.

## **127. Order on the application :**

Where the Tribunal makes an order confirming a reduction, such order shall include directions -

(a) as to the manner in which, the times at which and the newspaper or newspapers in which, notice of the registration of the order and of minute as approved by the Tribunal shall be published,

(b) as to the period commencing on or after the date of the order, during which the words 'and reduced' shall be added to the name of the company as the last words thereof, in case the Court thinks fit to direct under section 66 that the words shall be so added, and

(c) as to the publication, if the Tribunal so directs, of the reasons for reduction or the causes that led to it or such other information in relation thereto as the Tribunal may require to be published under section 66.

## **128. Minutes:**

Unless the form of the minute has been approved by the Tribunal at the time of making the order confirming the reduction, the company shall, within seven days from the date of the said order, file for the approval of the Tribunal a draft of the minute containing the particulars required by section 66, and shall take an appointment for approval of the same. The authorised representative for the company shall attend when the minutes comes up before the Tribunal for approval.

The order confirming the reduction of capital and approving the minute shall be in [Form No.25](#) with such variations as may be necessary.

## **129. Advertisement of Reasons for Reduction of Share Capital:**

Where the Tribunal makes an order directing the company to publish the reasons for the reduction or such other information in regard thereto as the Tribunal may direct, unless the form of the statement to be published has been approved by the Tribunal at the time of making the order, the company shall, within seven days of the order, file, for the approval of Tribunal, a draft of the statement and shall take an appointment for approval of the same. The authorised representative of the company shall attend when the statement comes up for approval before the Tribunal. The statement as approved shall be published in the same newspapers in which notice of the registration of the order and the minute has been directed to be published.

## **130. Form of Minute and Notice of Registration:**

The Minute may be in [Form No.26](#) and the Notice of Registration of the order and the minute shall be in [Form No. 27](#).

## **131. Petition under sections 58 & 59.**

(1) The petition against the refusal for registration of transfer or transmission of securities under section 58 or for rectification of Register of members under section 59 shall be made to the Tribunal by way of a petition in [Form No. 1](#) and shall be accompanied by such documents as are mentioned in Annexure D:

Provided that a copy of such petition shall be served on the concerned company at its registered office immediately after filing of the petition with the Tribunal.

(2) The petitioner shall at least 14 days before the date of hearing advertise the petition in accordance with rule 11.

(3) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies and Regional Director on or before the date of hearing:

(4) The Tribunal may, while dealing with a petition under section 58 or 59, at its discretion, make-

(a) order or any interim order, including any orders as to injunction or stay, as it may deem fit and just;

(b) such orders as to costs as it thinks fit; and

(c) incidental or consequential orders regarding payment of dividend or the allotment of bonus or rights shares.

(5) On any petition under section 59, the Tribunal may-



- (a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;
- (b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.
- (6) The decision of the tribunal on any such petition shall be final.

## **132. Application under proviso to clause (b) of sub-section (1) of section 61.**

(1) An application for obtaining the approval of the Tribunal for the consolidation and division of all or any of its share capital into shares of a larger amount than its existing shares which results in changes in the voting percentage of shareholders shall be filed in [Form No. 1](#) and shall be accompanied with such documents as are mentioned in Annexure D.

(2) The application shall, inter alia, set forth the following:

- (a) provision of articles authorizing such consolidation or division;
- (b) existing capital structure of the company;
- (c) new capital structure of the company after the consolidation or division;
- (d) class of shares being consolidated or divided;
- (e) face value of shares pre and post consolidation or division;
- (f) justification for such consolidation or division.

(3) The company shall at least 14 days before the date of hearing.

- (a) advertise the petition in accordance with rule 11; and
- (b) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Central Government, Registrar of Companies and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:

(4) Where any objection of any person whose interest is likely to be affected by the proposed application has been received by the applicant, it shall serve a copy thereof to the Central government Registrar of Companies and Securities Exchange Board of India, in the case of listed companies and to regulated body, if the company is regulated under any Special Act on or before the date of hearing:

(5) Upon hearing the application or any adjourned hearing thereof, the Tribunal may pass such order, subject to such terms and conditions, as thinks fit.

## **133. Application under sections 71 (10), section 73(4) or section 76(2) read with section 73(4), section 74(2), section 76(2) read with section 74(2)**

(1) Where a company fails to redeem the debentures or repay the deposits or any part thereof or any interest thereon, an application under sub-section (10) of section 71 or under sub-section (4) of section 73 of the Act or section 45QA of the Reserve Bank of India Act, 1934 (2 of 1934), shall be filed to the Tribunal, in [Form No. 11](#) in duplicate and shall be accompanied by such documents as are mentioned in Annexure D, by-

- (a) in case of debentures, all or any of the debenture holders(s) concerned, or debenture trustee; or
- (b) in case of deposits, all or any of the depositor(s) concerned, or where the deposits are secured, by the deposit trustee.

(2) There shall be attached to the application, a list of depositors or debenture holders, as the case may be, setting forth the following details in respect of every such depositor or debenture holder:

- (a) Full name, age, father's/ mother's/ spouse's name, occupation and full residential address
- (b) Fixed deposit receipt number or debenture certificate number, as the case may be.
- (c) Date of maturity;
- (d) Amount due to such person by the company;

- (e) Amount already paid by the company, if any;
- (f) Total amount due as on the date on the application:

Provided that where the company is the applicant, it shall file an affidavit stating the list of depositor(s) or debenture holder (s), as the case may be, is correct, and that the estimated value as given in the list of the amount payable to such depositors or debenture holders are proper estimates of the values of such debts and claims.

(3) The Tribunal shall pass an appropriate order within a period of sixty days from the date of receipt of application under sub-rule (1):

Provided that the Tribunal shall, before making any order under this rule, give a reasonable opportunity of being heard to the company and the other persons interested in the matter.

(4) The Tribunal may, if it is satisfied, on the application filed under sub-rule (1), that it is necessary so to do, to safeguard the interests of the company, the debenture holder(s) or the depositor(s), as the case may be, or in the public interest, direct, by order, the company to make repayment of such deposit or debenture or part thereof forthwith or within such time and subject to such conditions as may be specified in the order:

Provided that while passing such an order, the Tribunal shall consider the financial condition of the company, the amount or deposit or debenture or part thereof and the interest payable thereon.

(5) Where a company failed to repay the deposits under section 76 or part thereof or any interest thereon in accordance with sub-section (3) or sub-section (4) of sub-section 73 or sub-section (2) of section 74 and in accordance with the above rules the provisions of section 75 shall be applicable.

(6) (a) the application under section 74(2) and 76(2) read with section 74(2) shall be in [Form 1](#) and shall accompanied with the documents as per Annexure D.

(b) A copy of the application made under :

(i) section 74(2) shall be served on the Regional Director and the Registrar of Companies before the date of hearing;

(ii) section 76(2) read with section 74(2) shall be served on the Regional Director and the Registrar of Companies before the date of hearing.

(c) The Registrar of Companies in consultation with Regional Director shall submit before the Tribunal, the report on the affairs of the company within thirty days from the date of the receipt of the application and Tribunal may consider such observations made by the Registrar of Companies before passing an order.

## **134. Application under section 97 for calling or obtaining a direction to call annual general meeting.**

(1) An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company. Such application shall be made in [Form No. 1](#) and shall be accompanied by the documents specified in Annexure D.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

## **135. Application for obtaining an order for calling of general meeting (other than Annual General Meeting) under section 98**

(1) An application under section 98 for obtaining an order for calling of a general meeting (other than Annual General Meeting) shall be made by any director or member of the company who would be entitled to vote at the meeting. Such application shall be made in [Form No. 1](#) and shall be accompanied by the documents specified in Annexure D.

(2) A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

## **136. Petition or application under section 130.**

- (1) A petition or application under sub-section (1) of section 130 for obtaining an order of re-opening of books of account and recasting of financial statement of a company shall be filed to the Tribunal in [Form No. 1](#) and shall be accompanied by such documents as are mentioned in Annexure D.
- (2) The petition or application shall, inter alia, set forth the following particulars:
  - (a) financial year or period to which such accounts relates;
  - (b) the name and contact details of the officer of the company responsible for making and maintaining such books of accounts and financial statement;
  - (c) where such accounts are audited, the name and contact details of the auditor who audited such accounts;
  - (d) brief particulars of the fraud or mismanagement casting a doubt on the reliability of financial statement;
  - (e) circumstances that made the company to derive to the conclusion that the accounts were prepared in a fraudulent manner or the affairs of the company were mis-managed during the relevant period;
  - (f) financial impact of such fraud or mis-management.
- (3) The company shall at least 14 days before the date of hearing:
  - (a) advertise the petition in accordance with rule 11;
  - (b) serve, by registered post with acknowledgement due, individual notice(s) , in [Form No. 3 B](#) to the effect set out in sub-rule (a) above on each debenture-holder and creditor of the company; and
  - (c) serve, by registered post with acknowledgement due, a notice together with the copy of the petition to the Central Government, Registrar of Companies, the Income-tax authorities and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act:
- (4) Where any objection of any person whose interest is likely to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar of Companies, Central Government, the Income- tax authorities and to the Securities and Exchange Board, in the case of listed companies and to the regulatory body, if the company is regulated under any Special Act on or before the date of hearing:
- (5) Where no objection has been received from any of the parties, who have been duly served, the Registrar of Tribunal or Bench as the case may be may put up the petition for orders without hearing.
- (6) Upon the hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit:

## **137. Petition or application under section 252.**

- (1) A petition or application under sub-section (1) of section 252, filed to the Tribunal in [Form No. 9](#) to restore the name of a company in the register of companies shall be served on the Registrar and on such other persons as the Tribunal may direct, not less than 14 days before the date fixed for hearing of the petition.
- (2) The petitioner or applicant shall at least 14 days before the date of hearing advertise the petition in accordance with rule 11.
- (3) Upon hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit.
- (4) Where the Tribunal makes an order restoring the name of such company to the register of companies, the order shall direct that :-
  - (a) the petitioner to deliver to the Registrar of Companies a certified copy thereof within 30 days from the date of the order;
  - (b) on such delivery, the Registrar of Companies do, in his official name, advertise the order in the Official Gazette; and

(c) the petitioners do pay to the Registrar of Companies his costs of, and occasioned by, the petition, unless for any special reasons the Tribunal orders otherwise.

(5) If the Registrar of Companies 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 a petition or an application before the Tribunal under second proviso to sub-section (1) of section 252 seeking restoration of name of such company. The petition or application hereto shall be near to [Form No. 9](#). Upon hearing the petition or any adjourned hearing thereof, the Tribunal may pass such an order, subject to such terms and conditions, as it thinks fit.

## PART IX

### MISCELLANEOUS

#### **138. Enlargement of Time:**

Where any period is fixed by or under these rules, or granted by Tribunal for the doing of any act, or filing of any document or representation, the Tribunal may, in its discretion from time to time, enlarge such period, even though the period fixed by or under these rules or granted by the Tribunal may have expired.

#### **139. Saving of Inherent Powers of the Tribunal:**

Nothing in these rules or otherwise affect the inherent powers of the Tribunal to make such order or pass such direction as may be necessary for the ends of justice or to prevent abuse of the process of the Tribunal.

#### **140. Amendment of Order:**

Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of review.

#### **141. General Power to Amend:**

The Tribunal may, at any time, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

#### **142. Tribunal to be deemed to be a Court for Certain Purposes:**

The Tribunal shall be deemed to be a court for all purposes including for the purpose of prosecution or punishment of a person who willfully disobeys any direction or order of the Tribunal.

#### **143. Preparation of paper book.**

The (Registrar/Registry), if it so deemed fit, may call upon the parties to prepare a paper book after completion of the pleadings.

#### **144. Power to Dispense with the Requirements of the Rules:**

Every Bench of the Tribunal shall have power for reasons to be recorded in writing, to dispense with the requirements of any of these rules, subject to such terms and conditions as may be specified.

#### **145. Punishment**

(a) Saved as other provided in the Act, if any person intentionally gives false evidence upon an examination on oath of Solomon affirmation he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakhs of rupees in accordance with section 449 of the Act.

(b) If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or 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, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person, notwithstanding any other liability or action, shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues in accordance with section 450 of the Act.

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