

Failure to enhance paid-up capital to minimum limit - Analysis

There are many complexities in the company law like other laws. Here an attempt has been made to take up a query that may raise its head in the mind of the professional, students and practitioners in the context of issues related with company law.

What will be the status and liability of a company which has not so far, raised its paid up capital to Rs. 1 lakh in case of Private company and Rs. 5 lakh in case of a Public company and the Registrar of Companies has also not struck off its name under section 560 in terms of section 3(3), (4) and (5) of the Companies Act, 1956.

Sub-section (3) of section 3 of the Companies Act, 1956 required every private company, existing on the commencement of the Companies (Amendment) Act, 2000, *i.e.* on December 13, 2000, with a paid up capital of less than Rs. 1 lakh to enhance its paid up capital to Rs. 1 lakh, within a period of two years, *i.e.* by December 12, 2002. Similarly every existing Public Company having paid up capital less than Rs. 5 lakh as on December 13, 2000 was required to enhance its paid up capital to Rs. 5 lakh by December 12, 2000 in terms of sub-section (4) of Section 3 of the Companies Act, 1956.

In terms of sub-section (5) of Section 3 of the Companies Act, 1956 such companies which did not raise their paid up capital accordingly are to be deemed to be defunct companies within the meaning of Section 560 of the Companies Act, 1956 and their names shall be struck off from the register of companies by the Registrar of Companies.

Thus, if such a company has not raised its paid-up capital, accordingly, it is to be deemed to be defunct company and its name can be struck off by the registrar by following the procedure laid down in Section 560. But if the registrar had not so far struck off the name, the company will remain on the register as a company in existence. In terms of the extant provisions of the Act, a company's existence can be brought to an end by any of the following 3 modes only:

1. By winding up the company.
2. By dissolution of the company without winding up in case of amalgamation of companies; and
3. By striking its name under section 560 on its being a defunct company.

Though a company which has not raised its capital as above is to be deemed to be a defunct company, it remains very much a company in existence and, therefore, it can sue and be sued. If it so desires, it may raise its capital to fulfill the statutory requirements though the period specified for raising the capital to the minimum limit under section 3 has expired and in that event the registrar will be barred to initiate any action under section 560.

There is, however, no penal provision for not raising the paid-up capital to the statutory minimum. The residuary penal provision of Section 629A which specifies penalty where no specific penalty is provided elsewhere in the act is also not applicable in this regard because the specific consequence of not raising the capital has been specified in sub-section (5) of Section 5 of the Companies Act, 1956.

The Registrar of Companies and others are, however, entitled to treat the company as a defunct company even though its name has not been struck off under section 560 because Section 3(5) says that such a company shall be deemed to be a defunct company. Of course, section 3(5) also says that the name of such a company shall be struck from the register by the Registrar. But the Registrar has to strike off the name of such a company under section 560 and section 560 provides for specific procedure involving principle of natural justice to be followed.

Procedure to be followed by the Registrar for striking off the name of defunct company

The procedures for striking the name off the Register of companies have been elaborated in section 560 for different circumstances as discussed hereunder:

Registrar on believing that a company is not carrying on business or in operation shall take the following steps:

(1) Inquiry to know whether company is in operation or not

If the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he will send a letter by ordinary post to the company at its registered office under section 560(1) inquiring about the same. **[Refer Section 560(8)]**

(2) Dispatch of registered letter in case no response received against first letter

If the Registrar receives no response to his first letter within one month, he shall within next fourteen days send to the company another letter by registered post. In this letter, he will make a reference of his first letter sent by ordinary post and mention that no answer has been received thereto. He shall add further that if no answer is received within a month of the dispatch of the registered letter, he shall proceed to get a notice

published in Official Gazette, with a view to strike the name of the concerned company off the Register of companies. **[Refer Section 560(2)]**

(3) Publication of Registrar's notice in Official Gazette

If the Registrar receives no reply to his registered letter within one month or receives a reply to the effect that the company is not carrying on business or in operation, he may use his discretion to get a notice published in the Official Gazette and also send a notice to the company mentioning that the company's name shall stand deleted from the Register of companies after the expiry of three months from the date of that notice, unless a cause to the contrary is shown to him within this period. **[Refer Section 560(3)]**

(d) Striking the name off the Register of Companies

If up till the expiry of three months of the notice, company does not show any cause to the contrary, the Registrar shall strike the name of the company off the Register and publish a notice thereof in the Official Gazette. **[Refer Section 560(5)]**

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