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New Company Law Settlement Scheme, 2014

Dear professional Colleagues,

Keeping in view the fact that large percentage of Companies have not filed their statutory documents like Annual Accounts and other annual filing related documents like Annual return thereby making themselves liable for heavy penalties and prosecution, Ministry of Corporate Affairs (MCA) launched Company Law Settlement Scheme, 2014, through issue of General Circular No. 34/2014 dated August 12, 2014. Through Company Law Settlement Scheme, 2014 all pending annual filing related documents can be filed with ROC at a reduced additional fees of 25% of the actual additional fees payable as per section 403 read with Companies (Registration offices and fees) Rules 2014. This article deals with details of the CLSS 2014, advantages, disadvantages etc. I hope that this article would be of some help.

GOVERNING LAW

Ministry of Corporate Affairs (MCA), Central Government, in exercise of powers given by section 403 and 460 of Companies Act 2013, has launched Company Law Settlement Scheme, 2014, through issue of General Circular No. 34/2014 dated August 12, 2014, in order to provide an opportunity to all the Stakeholders to file their pending Annual filing related documents at reduced additional fees. You may download this General Circular No. 34/2014 dated August 12, 2014, from the link given below:

http://www.mca.gov.in/Ministry/pdf/circular_34_13082014.pdf

MAIN FEATURES OF COMPANY LAW SETTLEMENT SCHEME, 2014

1. This Company Law Settlement Scheme, 2014 shall remain in force from August 15, 2014 to October 15, 2014.
2. Defaulting companies who have not filed their annual filing documents pertaining to previous years are allowed to file belated documents which were due for filing till June 30, 2014.
3. Defaulting companies can file their old documents with Normal filing fees along with additional fees of 25% of the actual additional fees payable on the date of filing.
4. This scheme given an opportunity to inactive companies to get their companies declared as "Dormant Company" under section 455 of the Companies Act, 2013 by filing a simple application at reduced fees.
5. This scheme shall apply on the belated filing of the following documents:

   a. **Form 20B** for filing Annual Return by a company having Share Capital.
   b. **Form 21A** for filing Annual Return by a company not having Share Capital.

c. **Form 23AC, 23ACA, 23AC XBRL and 23ACA XBRL**- Forms for filing Balance Sheet and Profit and Loss Account.
d. **Form 66**- Form for filing Compliance Certificate with the ROC
e. **Form 23B**- Form for intimation for Appointment of Auditor

<u>SCHEME FOR INACTIVE COMPANIES</u>

The defaulting inactive companies while filing documents under CLSS 2014 can simultaneously apply:

a. to get themselves declared as dormant company under section 455 of the Companies Act 2013 by filing E-form MCS-1 at 25% of the prescribed fee.
b. For striking off the name of the Company by filing E-form FTE at 25% of the fee payable on FTE.

<u>FORM FOR FILING UNDER SETTLEMENT SCHEME</u>

The application for seeking immunity in respect of belated documents filed under the scheme may be made through filing of form CLSS-2014 after the documents taken on record or approved by the ROC. This form CLSS-2014 for filing application for obtaining immunity certificate will be available on MCA Site from September 01, 2014 and may be filed thereafter but not later than 3 month from the date of closure of scheme. No fees prescribed for this form.

<u>APPLICABILITY AND NON-APPLICABILITY OF COMPANY LAW SETTLEMENT SCHEME, 2014</u>

<u>Applicability:</u> This newly launched CLSS 2014 is applicable to all the defaulting Companies registered under Companies Act, 1956 except few companies as listed below.

<u>Non-applicability:</u> This newly launched CLSS 2014, **shall not apply** to the following Companies:

1. Company against which action for striking off the name under sub-section (5) of section 560 of Companies Act, 1956 has already been initiated by the Registrar of Companies; or

2. Where application has already been filed by the Company for striking off the name with the registrar of Companies; or

3. Where application has been filed for obtaining dormant status under section 455 of the Companies Act 2013; or

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4. Vanishing Companies, entities which have already applied for striking off their names from the Register of Companies and those which have sought dormant status, would not be eligible for the scheme.

ADVANTAGES AND DISADVANTAGES OF COMPANY LAW SETTLEMENT SCHEME, 2014

Advantages: Main advantages of CLSS 2014 are as follows:

1. **Waiver of additional fees:** Defaulting companies can file their old documents by paying only 25% of the actual additional fees payable on the date of filing. There is a waiver of 75% of Additional Fees by the MCA in favour of stakeholders.
2. Defaulting companies can file application for getting immunity from Penalty and Prosecution. This facility is there in CLSS 2014 scheme.
3. The defaulting inactive companies can apply to get themselves declared as dormant company under the scheme.
4. This is one of the crucial benefits of this scheme. Section 164(2), providing disqualification of a director in case a company has not filed financial statement or annual return for any continuous period of 3 financial years, shall not be applicable, if the company made its default good by filing belated documents under CLSS 2014. In this way CLSS 2014 protects Directors from Disqualification.

   In other words, if a defaulting company file all belated documents under this scheme, the disqualification under section 162(2)(a) shall apply only for the future defaults, if any, by such company.

Dis-advantages: There are no apparent dis-advantages of Company Law Settlement Scheme, 2014.

ACTION AGAINST DEFAULTING COMPANIES

At the conclusion of this scheme, ROC shall take necessary action under the Companies Act, 1956 or Companies Act, 2013, against the Companies who have not availed this scheme and are in default in filing these documents in a timely manner.

Thanks
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