

STRIKE OFF OF A COMPANY



Team Mehta & Mehta

Prepared by: Sumeet Bhawe

**MEHTA & MEHTA
LEGAL & ADVISORY SERVICES
MUMBAI | PUNE | COCHIN**



WAYS TO CLOSE A COMPANY

WAYS TO CLOSE A COMPANY

➤ Following are the ways to close a company

WAYS TO SHUT DOWN A COMPANY STRIKE

STRIKE – OFF

(Name of the company struck off from the register of companies)

By Registrar of Companies

At the request of a Company

WINDING – UP

(Assets of the company are first disposed than company is closed)

Voluntary Winding up

Compulsory Winding up

Strike off and Winding up - both can be done in two ways. The same are mentioned above. Separate procedures are laid out in the Companies Act, 2013 and rules made thereunder for each process.

STRIKE OFF

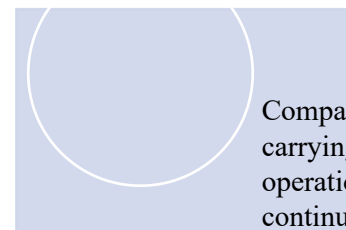
- Strike off is a process of **REMOVING** the name of the *incorporated or registered company* from the **register of companies**. The existence of a company comes to an end once the name of the company is removed from the register of companies.
- ➤ **The Companies Act, 2013 and rules made thereunder** contain provisions such as eligibility for strike off, procedure to strike-off and consequences etc. regarding strike-off.

The Companies Act

Section 248-252

Chapter 18

ELIGIBILITY FOR STRIKE-OFF



Or

Company fails to commence its business within 1 year from the date of registration

PROCESS OF STRIKE OFF

(Name of the company struck off from the register of companies)

TWO WAYS OF STRIKE OFF (Name of the company struck off from the register of companies)

By Registrar of Companies (RoC)
on own motion

– 248 (1) of the Companies Act,
2013 deals with it

At the request of the company

Section – 248(2) of the Companies
Act, 2013 deals with it

DOCUMENTS WHICH ARE REQUIRED FOR CLOSURE OF THE COMPANY?

- Certified true copy of board resolution for authorization given for filing this application.
- Registered Digital Signature Certificate of director for signing the form.
- Memorandum of association of the Company
- Article of Association of the Company.
- Proof of identity (PAN Card/Aadhar Card/Voter ID card).
- Residence proof (Passport/Driving License/Voter ID Card)
- Statement of account duly certified by a chartered accountant.
- Affidavit in **Form STK-4** and Indemnity bond in **Form STK-3** duly notarized.
- Certified true copy of Special Resolution

CASES IN WHICH COMPANY CANNOT APPLY FOR STRIKE OFF

Following categories of the Companies shall not be removed from Register Of Companies

Listed Companies

Companies which have been delisted due to non-compliance of listing regulations

Vanishing companies

Companies where inspection or investigation is ordered and such order are yet to be taken up

Companies against which any prosecution for an offence is pending in any court

Companies whose application for compounding is pending before the competent authority

Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same

Companies having charges which are pending for satisfaction

Companies registered under section 8 of the Companies Act, 2013 and rules made thereunder

CASES IN WHICH COMPANY CANNOT APPLY FOR STRIKE OFF

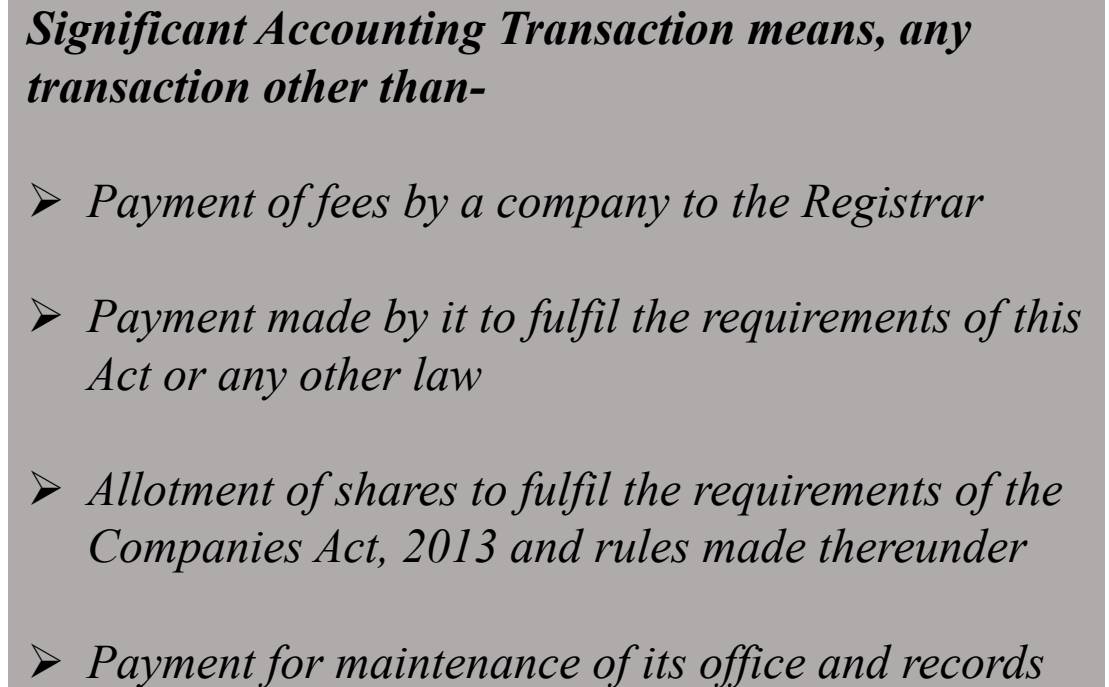
SECTION 249 OF THE COMPANIES ACT, 2013 DESCRIBES THE CASES IN WHICH COMPANY CANNOT APPLY FOR STRIKE - OFF

Company cannot apply for Strike off if any time in previous 3 months from the date of making application the company

- *has changed its name*
- *has engaged in any other activity has shifted registered office from one state to another*
- *has filed an application to Tribunal for sanctioning of Compromise or Arrangement*
- *has engaged in any other activity*
- *has made disposal for value of property*

(Name of the company struck off from the register of companies)

- **Registrar of Companies (RoC)** may Strike off a company on its own motion as per **Section 248 (1)** of the Companies Act, 2013.
- A company which falls under the eligibility criteria of Strike off (*as mentioned above*) may be struck off by RoC if the company has not applied for the status of a **DORMANT COMPANY**.



SEC 455: DORMANT COMPANY

As per clause 455(1) a Dormant Company is defined as a company which is formed and registered under the Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Section 455(4) states that in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.

Section 455 (5) provides that a dormant company shall have comply with the following and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

- Have minimum number of directors (three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company),
- file such documents [Return of Dormant Company” annually, inter-alia, indicating financial position duly audited by a chartered accountant in practice in Form MSC-3 along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.

As per section 455(6) the Registrar shall strike off the name of a dormant company from the register of dormant companies, which has failed to comply with the requirements of this section.

PROCESS OF STRIKE OFF

(Name of the company struck off from the register of companies)

By Registrar of Companies on OWN MOTION (Section – 248 (1))

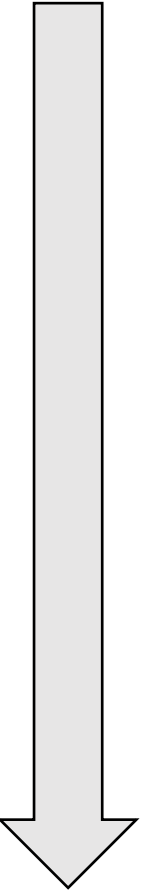
RoC sends a notice to the Company and the Directors (in prescribed form) of its intention to remove the name of the Company from the register of companies

Directors shall send representation to RoC within 30 DAYS from the date of receipt of the notice through Registered/Speed Post

After the expiry of the time mentioned in the notice, RoC may strike off the company unless cause to the contrary is shown by the company

Notice will be issued (in prescribed form) by RoC and the same shall be published in official Gazette and placed on the website of Ministry of Corporate Affairs (MCA: www.mca.gov.in) to seek objection from public within 30 days from the date of Notice

If no objection is received from public, notice of striking off the name of the company and its dissolution (in prescribed form) will be published in Official Gazette and Official Website of MCA



PROCESS OF STRIKE OFF

(Name of the company struck off from the register of companies)

At the REQUEST of a Company (Section – 248(2))

COMPANY MAY APPLY TO ROC FOR STRIKE OFF THE COMPANY IN PRESCRIBED FORM ALONG WITH REQUISITE STATUTORY FEE

Application form shall be accompanied with:

- *Indemnity Bond in prescribed form*
- *Affidavit in prescribed form*
- *Copy of Special Resolution*
- *Statement of Accounts (not more than 30 days older from the date of application and certified by CA)*

In case of following companies, No Objection Certificate (NOC) from regulatory authorities is also required:

- *Non-Banking Financial Companies*
- *Housing Finance Companies*
- *Insurance Companies*
- *Asset Management Companies*
- *Companies engaged in Collective Management Scheme*
- *Companies in the business of Capital Market Intermediaries*

PROCESS OF STRIKE OFF

(Name of the company struck off from the register of companies)

At the REQUEST of a Company (Section – 248(2))

Notice will be issued (in prescribed form) and the same shall be published in official Gazette and placed on the website of MCA to seek objection from public within 30 days from the date of the notice.

Letter of intimation will be issued by RoC to regulatory authorities namely:

Income Tax Authorities

Central Excise Authorities

Service Tax Authorities

If no objection is received from public, notice of striking off the name of the company and its dissolution (in prescribed form) will be published in Official Gazette and Official Website of MCA



CONSEQUENCE OF STRIKE OFF

COMPANY CEASE TO EXIST AFTER STRIKE OFF

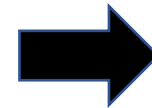
As per Section 250 of the Companies Act, 2013, the Company shall cease to operate and exist after the strike off and the Certificate of Incorporation shall be deemed to be cancelled from the date of the notice.

FRAUDULENT APPLICATION FOR REMOVAL OF NAME

*As per Section 251 of the Companies Act, 2013,
if fraudulent application is made for removal of name*

To evade Company's liability

To deceive creditors



Company will be liable to person who has incurred losses

➤ *Punishable for fraud u/s 447*

➤ *Registrar of Companies will recommend Prosecution*

SEC 250: EFFECT OF THE COMPANIES BEING STRUCK OFF

Where a company stands dissolved under section 248

- it shall on and from the date mentioned in the notice under section 248 (5) cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled and the company ceases to operate
- The liability of every director, officers of the company exercising power of management to continue.
- Under section 164(2) of the Act, disqualification of the directors except that in case of this section it is triggered only if financials or annual returns are not filed for 3 consecutive years.
- Proceedings by the defunct companies are stayed till company is restored to the register.
- Continuation of business, operation of bank accounts etc not possible once co is dissolved, unless its restored

WAY TO RESTORE COMPANY STRUCK OFF BY ROC ON ITS OWN MOTION

Person aggrieved by the order of ROC may file an application to Tribunal

Section 252 of the companies act, 2013 deals with it

Within 3 years from date of ROC order

If removal of name is not justified, Tribunal will order restoration of name of company

RESTORATION UNDER SECTION 252 OF THE ACT 2013

On appeal filed by any person:

- Any person aggrieved by the order of the ROC may file an appeal before the Tribunal within 3 years of the order passed by ROC
- if the Tribunal is of the opinion that the removal of name of company is not justified it may pass an order for restoration of the name of the company in the register of companies

On application filed by RoC:

- The ROC may, within a period of 3 years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company if it 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.

RESTORATION UNDER SECTION 252 OF THE ACT 2013

On application filed by Company or any member or creditor or workmen:

- The Tribunal, on an application made by the company, member, creditor or workman before the expiry of 20 years
- from the publication in the Official Gazette of the notice of dissolution of the company, if satisfied that:
- the company was, at the time of its name being struck off, carrying on business or in operation; or
- otherwise it is just that the name of the company be restored to the register of companies,
- may order the name of the company to be restored to the register of companies.

Further, the Tribunal may also pass an order and give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.

STEPS – REVIVAL OF STRUCK OFF COMPANY

As per Rule 87A : Appeal or application under section 252 (3) (1) of National Company Law Tribunal (Amendment) Rules, 2017:

- An appeal under section 252 (3)(1), may be filed before the Tribunal in Form No. **NCLT. 9**
- A copy of the appeal or application, 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 appeal or application, as the case may be.
- Upon hearing the appeal or the application or any adjourned hearing thereof, the Tribunal may pass appropriate order
- Where the Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that:
 - the appellant or applicant shall deliver a certified copy to the ROC **within 30 days** from the date of the order;
 - on such delivery, the ROC do, in his official name and seal, publish the order in the Official Gazette;
 - the appellant or applicant do pay to the ROC his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and
 - the company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.

EFFECT OF RESTORATION OF STRUCK OFF COMPANY

In number of cases restoration is done in favourable circumstances such as change of management, ownership, favourable market conditions

On restoration the effect is that as if its name had not been struck off. The object is to put the company and their parties in the same position as they would have occupied, had dissolution not taken place.

The rights of parties would be as if there had been no cessation or interruption of its existence

This is distinct from winding up by liquidator where company ceases to exist vs removal of the name by administrative act of ROC. In later case its not absolute or irrevocable.

RELEVANT CASE LAWS

Pr. Commissioner of Income tax, Delhi v. Registrar of Companies, Delhi & Ors

[NCLAT] Company Appeal (at) No. 405 of 201

Facts :

- A company name “M/s Nexus Marketing Pvt. Ltd” applied for striking off its name under ‘Fast Track Exit Scheme, 2011’ [FTE]. This application was processed by the Respondent (ROC).
- The Respondent issued notice to the Appellant (Revenue) for seeking objections, if any within 30 days but received no objections from them within the stipulated period. Resultantly, the name of the Company was struck off.
- Subsequently, the Appellant filed an appeal to the NCLT seeking restoration of the name of the company on the ground that the tax dues against the company were not determined, which was dismissed by the Tribunal.
- Aggrieved, the preferred the instant appeal.

Decision –

- The Court decided in favour of the Respondent (RoC).

RELEVANT CASE LAWS

Legal Principles held / Observations made –

- That the relevant documents filed by the Respondent satisfactorily established that the procedure laid down for striking off the name of Company from Register of Companies had been observed in letter and spirit.
- That the relevant company was eligible to apply for striking off of its name under the FTE, 2011 as they qualified all the criteria for being adjudged as a defunct company.
- That the plea of Appellant of them being a ‘Creditor’ of the company could not be accepted when admittedly they had not raised any demand or passed any assessment order prior to passing of the order of striking off the Company.
- That as per Section 179 of the Income Tax Act, 1961, striking off the name of a Private Company from the Register of Companies does not absolve its erstwhile Directors from the liability to pay the amount of Tax leviable in respect of income of any previous year. In such a scenario, there is no requirement for restoring the name of the company for the mere purpose of collection of tax.

Conclusion –

- The Court held that the name of the company could not be restored.

THANK-YOU

KNOWLEDGE MANAGEMENT TEAM OF MEHTA & MEHTA

**201-206, Shiv Smriti chambers, 2nd Floor, A B Road,
Above Corporation Bank, Worli, Mumbai – 400 018 |
B: +91 (22) 6611 9696 | D: +91 (22) 6611 9623 |
Website: <http://www.mehta-mehtaadvisory.com>**