

## ICSI-CCGRT – “GEETA SAAR” – A Brief of Premier on Company Law

### Registered Office of a company (Sec 12)

#### **1. Company to have a Registered Office**

The company shall have on and from fifteenth day of its incorporation and all time thereafter a registered office for all communication purpose. When we read all other provision under Companies Act, 2013 the registered office is office of company is a hub connecting the company and outside world.

#### **2. Furnishing the verification of Registered Office**

The company shall furnish verification of its registered office within a period of thirty days of its incorporation. The term “verification” conveys its very specific meaning. This is not information from company about address, which was a case earlier. Under this law, the company shall file verification from independent professional of its address.

#### **3. Display of name of the Company**

The company shall paint or affix its name and address on its registered office and on outside wall of every office and place of business in conspicuous position, in legible letters. In case characters employed for affixing the name are not in local language, then also in character of local language.

The company shall have its name engraved in legible character on its seal. The Amendment Act, 2015 has made this optional i.e. only in cases where the Company has a common seal. The company shall get its name, address of its registered office, Corporate Identity Number, telephone number, fax number (if any), e – mail address and website (if any) printed on all its business letters, billheads, letter papers, all its notices and other official publications.

The company shall also have its name printed on hundies, promissory notes, bill of exchange, and such other documents as may be prescribed. The Central Government may as and when required, notify the other documents on which the name of the company shall be printed. No documents are prescribed as of today. In case of “One Person Company”, the words “One Person Company” shall be mentioned below the name of the company.

#### **4. Displaying the changed name**

Where the company has changed its name, it shall paint or affix present name and earlier name for next two years. In other words, when company has changed its name one or more time in last two years, all such names shall be painted or affixed or printed on business letters as required by clause (a) and (c). This requirement does not apply in case of clause (b) and (d).

## 5. Change in the Registered Office of the Company

The Registered Office of a company may be changed to any place outside the local limit of any city, town or village after passing a special resolution by the company. For change in the local limits, Board resolution is required to be passed.

The change in the place of Registered Office from the jurisdiction of one registrar to the jurisdiction of another registrar can be effected only after it is approved by the RD.

The Company shall make the application in Form INC-23. Not less than 1 month before making such application, a company is required to publish at least one notice in a daily newspaper published in English and in the principal language of the district in which the registered office of the company is situated and circulating in that district. It is also required to serve individual notice on every debenture holder, depositor and creditor stating the prescribed particulars and giving a time of 21 days from the publication of notice to the concerned persons to intimate grounds of opposition to the RD. If no objection is received within 21 days, it will be deemed that consent has been given. The RD shall communicate his decision within thirty days from the date of application and the company shall file the confirmation within a period of sixty days thereafter.

The Registrar is required to certify the registration within a period of 30 days from the date of filing the confirmation. Such certificate is conclusive evidence that all formalities for with respect to change in registered office have been complied with and the change shall take effect from the date mentioned in the certificate.

## 6. Shifting of registered office is prohibited

The shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act. Here, only action against company is contemplated and not its officers.

## 7. Notice of change of registered office

In case of change in registered a notice of change duly verified shall be given to Registrar within fifteen days of such change in Form INC-22. There shall be attached to said Form, any of the following documents, namely—

- A. the registered document of the title of the premises of the registered office in the name of the company; or
- B. the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- C. the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and

- D. the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

## 8. Offence and Compoundability

For any default, the Company and every officer in default shall be liable to penalty of Rs. 1,000/- for every day for which the default may continue. The maximum penalty shall not go beyond Rs. 1,00,000/-. The offence is not compoundable as penalty is being levied. The same will be adjudicated under the provisions of Section 454.

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## Rectification of name of company (Sec 16)

### 1. Direction to change name

This power is exercised both for registration of a company of the existing company as well as change of name to a new name. Direction to change name is issued in two occasions. First is of suo motu cognizance by the Central Government and other is on an application made by a registered proprietor of trade mark.

#### 1.1 Suo motu cognizance by Central Government

In first case, the Central Government has opinion that the name is identical with or too nearly resembles the name by which an existing company has been registered. In this case, Central government may direct the company to change its name. The company shall change its name by adopting an ordinary resolution within three months from issue of the direction by the Central Government.

While holding the name cGMP PHARMAPLAN PRIVATE LIMITED similar to NNE PHARMAPLAN PRIVATE LIMITED, Delhi High Court ruled in the case of cGMP Pharmaplan Pvt Ltd v. Regional Director, Ministry Of Corporate Affairs & Anr[(2010) 118 DRJ 155 ] that 'The two names are to be compared as a whole. When compared as a whole, it would be apparent that the two names structurally and phonetically too nearly resemble each other.... Powers of the central government under Section 22 of the Act are wider inasmuch as there is no need to examine whether there is a likelihood of deception or confusion. It is enough to examine if the name registered too nearly resembles another registered name.'

#### 1.2 Application being made to Central Government

In second case, on an application is made by a registered proprietor of a trademark under the Trade Marks Act, 1999 to the effect that the name of the Company is identical with or too nearly resembles to the said trademark. Such application needs to be made within three years from the date of incorporation or change of the name of the company, as the case may be. The Central Government upon consideration of the application may direct the company to change its name. Before passing any such order an opportunity being heard shall be provided to the company in accordance

with the principles of natural justice. The company shall make an application for reservation of another name to the Registrar for change its name and subsequently by adopting an ordinary resolution within six months form issue of the direction.

Bombay High Court while explaining the rationale behind longer period available to trade mark owner as compared to Central Government stated in the case of Intelgain Technologies Pvt.Ltd.v. Regional Director, Western Region & Anr. that 'It is possible that the registered proprietor of a trade mark who has registered its trade mark in foreign country may not be aware immediately of registration or registration of the new name which resembles or is identical to the name of the Company in question and, therefore, some more latitude has been given to the registered proprietor of a trade mark'. [Writ Petition No. 5173 of 2012, Order pronounced on 21st August, 2013, Reportable]

### **1.3 Common law procedure survives**

After the passage of time for making an application to the Central Government, the owner of the trade mark can take common law action of passing off or infringement thereof. It was held by Bombay High Court in the case of Biochem Pharmaceutical Industries and others v. Biochem Synergy Limited [(1997) 99 BOMLR 538] that 'While an action for passing off is a Common Law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another, that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of the exclusive right to the use of the trade mark in relation to those goods. The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the sine qua non in the case of an action for infringement'.

### **2. Procedure after change of name**

The company shall within fifteen days from such change by passing ordinary resolution, give a notice of change in name to the Registrar along with a copy of order of the Central Government. Registrar shall then carry out necessary changes in the certificate of incorporation and the altered copy of the memorandum to that effect will be registered and taken on record.

The powers of the Central Government under this Section have been delegated to the Regional Directors vide Notification SO 1352(E) dated 21-05-2014.

### **3. Judicial pronouncements**

1. Where the permission granted by an existing company to other company to use the word "Kilburn", such permission did not contain right to use the same in respect of other companies being incorporated. In such cases, allowing such name would be held to be inadvertent even though letter of the company which had taken permission was taken. Direction to change name was held to be valid by Madras High

Court in Kilburn Electricals Ltd. And Ors. vs Regional Director.[2000 99 CompCas 243 Mad]

2. Calcutta High Court while holding that the period covered by the order of Injunction is liable to be excluded while computing the period of 12 months stated (period available under Section 22 for the Central Government to issue directions) held in the case of Sen & Pandit Electronics (P) Ltd. V. Union Of India & Ors.[AIR 1999 Cal 293 b] that 'It is well established principle of judicial procedure that where any proceedings are stayed by an order of a court or by an injunction issued by any court that period should be excluded in computing any period of limitation prescribed by the statute.'

#### **4. Offence and Compoundability**

In case of default in complying with the direction of the Central Government, the fine on the company is Rs. 1,000/- for each day of default. Every officer who is in default is punishable with fine of Rs. 5,000/- which may extend to Rs. 1,00,000/-.

The offenses under this section are compoundable under section 441 of the Act.

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