

IMPORTANCE OF MAINTENANCE OF REGISTERED OFFICE OF THE COMPANY

[Pursuant to Section 12 of The Companies Act, 2013]

Every company incorporated under the provisions of Companies Act 2013 (the Act) or any other previous Company Act, is required to maintain its office at all times which is to be registered with the Registrar of Companies (ROC) at the time of incorporation or post incorporation by filing form INC-22 and other Government departments such as Goods and Services Tax and other applicable regulatory authority.

The significance of registered office is that it helps the Government and other interested stakeholders to communicate with the Company by serving Notice, or other letters and documents.

The provisions/ overview of Section 12 of the Act is reproduced below :

Section 12: Registered Office of the Company

“(1) A company shall, within thirty days of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

Note : Every company is required to maintain its registered office which should be capable of receiving and acknowledging all communications and notices as may be addressed. Every new Company is required to intimate to the ROC within thirty days of its incorporation about maintenance of its registered office.

(3) Every company shall—

(a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

(b) have its name engraved in legible characters on its seal, if any;

(c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and

(d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed:

Note : Every company shall paint or affix its name, and the address of its registered office on every office or other place wherever its business is carried on in legible letters.

Further, every company in all its business letters, billheads, letter papers and in all its notices and other official publications shall get printed its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any.

Provided that where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years as required under clauses (a) and (c):

Provided further that the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

(4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.

Note: If there is any change in the registered office after the date of incorporation of the company such change shall be intimated to the ROC within fifteen days of any such change.

(5) Except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed,—

(a) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and

(b) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company:

Provided that no company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director on an application made in this behalf by the company in the prescribed manner.

(6) The confirmation referred to in sub-section (5) shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

(7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of sub-section (5) have been complied with and the change shall take effect from the date of the certificate.

(8) If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

Penal Provisions:

As per sub-section 8 of Section 12 of the Act, if any default is made in complying with the requirements of section 12 of the Act, then the company and every officer who is in default shall be liable to a **penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.**

Since compliance with laws becomes an integral part of business management and cannot be ignored as non-compliance of the same may result to hefty penalties on the company as well as officer in default.

ROC has recently passed various orders under section 12 read with section 454 (Adjudication of offences and imposing of penalties by Registrar of Companies) of the Act, over the non-compliances made by companies with respect to maintenance of registered office of the Company. In this article, some of the recently issued orders by the ROC for non-compliance of the provisions of Section 12 has been summarized as below.

Recent ROC orders in violation of Section 12 of the Companies Act 2013

1) Violation of Section 12(3)(a) of the Act by the order of Registrar of Companies (the "ROC") dated March 16, 2023:

In the matter of Axis Pigments Private Limited (the "**Company**"), where the Inspection officer (the "**IO**") carried out a physical inspection at the Company's registered office on 09.08.2019 and found out that the Company had not affixed or painted its name in conspicuous position accordance with the provisions of Section 12(3)(a) which showed that the Company had violated this section 12(3)(a) of the Companies Act, 2013 (the "**Act**").

A show cause notice (SCN) was issued by the Registrar of Companies (the "**ROC**") on 09.02.2023 through speed post which was delivered. In response to SCN, director Sh. Rajesh Sharma replied vide its letter dated 17.02.2023 stating that company is law abiding company **and admitted that on the date of inspection by IO on 09.08.2019 the name Board along with the address of the registered office of the company was not fixed, and hence the Company had violated the provision of Section 12(3)(a) of the Company Act, 2013.**

Subsequently the ROC issued an order on dated March 16, 2023 to the Company for violating the provisions of Section 12(3)(a) of the Companies Act 2013, stating that since the company has satisfied the requirement of a small company U/s 2(85) of the Act therefore the amount of penalty as provided under sub section (8) of Section 12 is reduced to half and is leviable on the company and its two directors (officer in default). Accordingly ROC imposed the following Penalty: -

S. No	Particulars	Total amount of penalty as per Section 12(8) of the Act	Actual penalty levied
1	AXIS PIGMENTS PRIVATE LIMITED	1,000/-	500/-
2	ADITYA KUMAR SARDA	1,000/-	500/-
3	RAJESH SHARMA	1,000/-	500/-
TOTAL		3,000/-	1500/-

The penalty which was imposed by the ROC was calculated for only one day i.e., the day on which the IO visited (09.08.2019) the Company's registered office.

2) Violation of Section 12 of the Act by the order of Registrar of Companies (the "ROC") dated March 20, 2023:

In the matter of Kamakshi India Nidhi Limited (the "**Company**"), where the office of ROC, Bihar -cum official liquidator, High Court Patna, issued a letter dated 24.01.2023 to the Company and its Directors for comments on the complaints made by Shri Surendra Kumar, the said letter returned undelivered in this office with postal remark "*left without instructions*". Therefore, it appears that the company is not maintaining registered office as required under section 12(1) of the Act.

Further the ROC issued a Show Cause Notice (SCN) under section 12 of the Act on 17.02.2023 that also remained undelivered with the postal remark "Addressee left without instructions". In view of the aforesaid remarks of the postal authority, it is clear that registered office of the Company as notified with the ROC is not capable of receiving and acknowledging all communication and notices.

Hence it appears that the provisions of Section 12) of the Act has been contravened by the Company and its officers/managing Director and therefore they are liable to pay penalty under Section 12(8) of the Act.

The Registrar of Companies (the "**ROC**") in its order dated March 20, 2023, stated that since the company satisfied the requirement of a small company U/s 2(85) of the Act therefore the amount of penalty as provided under sub section (8) of Section 12 is reduced to half and is leviable on the company and its three directors (officer in default) and imposed the following Penalty: -

S. No	Particulars	No. of days of default	Total amount of penalty as per Section 12(8) of the Act	Total Penalty	Actual penalty levied
1	Kamakshi India Nidhi Limited	52	1,000/-	52*1000= 52,000	26,000/-
2	Shri Sami Kumar Pandey	52	1,000/-	52*1000= 52,000	26,000/-
3	Ms. Navodita Pandey	52	1,000/-	52*1000= 52,000	26,000/-
4	Shri Dayanand Kumar	52	1,000/-	52*1000= 52,000	26,000/-

Note: 52 days of default has been calculated from 28.01.2023 (date of item returned) till the date of the order i.e., 20.03.2023.

3) Violation of Section 12(1) of the Act by the order of Registrar of Companies (the "ROC") dated July 05, 2023:

In the matter of Jwalaji Suppliers Private Limited (the "**Company**"), the Ministry of Corporate Affairs (the **MCA**) ordered an inquiry under Section 206 f the Companies Act, 2013 (the **Act**). In compliance with the directions of the Ministry/Directorate, Notice under section 206(1) of the Act was issued to the company to call necessary information/documents vide letter dated 12.02.2018 followed by letter dated 08.04.2019 and letter dated 13.05.2019. All the letters issued to the company have received back undelivered with the postal remarks "*Not known/left*" by postal authorities. Further no reply has been received from the company or its officers since then. In this regard, the MCA had submitted a report to the Directorate under section 208 of the Act. The Directorate vide letter dated 29.05.2020 directed the ROC Ahmedabad to adjudicate the default of Section 12 of the Companies Act, 2013 and submit an action taken report in the matter.

An adjudication notice dated 24.05.2023 was issued by the ROC Ahmedabad to the company and its officer in default, but no suitable reply were received back from the company/directors to the aforesaid Notices.

The ROC Ahmedabad vide office order dated 24.05.2023 deputed an official of ROC, Ahmedabad to carry out physical verification of the registered office of the company in term of companies (Incorporation) Third Amendment Rules, 2022. Thereupon, official of ROC, Ahmedabad reported that The Company existed at the address shown on the MCA's website. He further reported that no person was available on the aforesaid premises and the said premises were closed. From the above verification of registered office, it was revealed that there is no existence of the alleged company at the given address available on the MCA record.

Thereafter, a "written Notice" was issued to mailing address of the company and its Directors in pursuant to sub-section 4 of Section 454 of the Act read with Rule 3 of companies (Adjudication of penalties) Rules, 2014 and a hearing was fixed for 27.06.2023. **None of the representatives of the company or directors furnished their suitable reply in stipulated time or appeared on the date so fixed before the Adjudicating Officer.**

Having considered the facts and circumstances of the case, the Adjudicating authority has reasonable cause to believe that the company and its officers are in default and have failed to comply with the provisions of Section 12(1) of the Act and thereby the ROC imposed the penalty as under:

S. No	Particulars	No. of days of default	Total amount of penalty as per Section 12(8) read with Section 446B of the Act	Total Penalty	Actual penalty levied
1	Jwalaji Suppliers Private Limited	1962	500/-	1962*500= 9,81,000	50,000/-
2	Sanjay Prasad	1144	500/-	1744*500=5,72,000	50,000/-

3	Gopi Kishan Agarwal	1144	500/-	1744*500=5,72,000	50,000/-
4	Md Naimudin	817	500/-	817*500=4,08,500	50,000/-
5	Jagriti Gavel	817	500/-	817*500=4,08,500	50,000/-

Note-Period of default counted 1962 days from ROC's letter dated 12.02.2018 issued to the company and return back undelivered to the date of hearing i.e., 27.06.2023.

The No. of days of default by the officers who are in default is being calculated as per their appointment in the company.

Conclusion:

Given the fact that the ROC is closely monitoring the existence of registered office of the company which is advisable that all companies ensure that the provisions of section 12 are followed in letter and spirit.