

GENERAL CIRCULAR No. 55/2011

F. No. 35/6/2011/Insolvency
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi-110001
Dated 26th July 2011

To

All Regional Directors
All Registrar of Companies
All Official Liquidators

Subject: Scrutiny inspection and investigation in all winding up cases.

Sir,

It has been noticed that winding up petitions are being filed by management after having committed major violations under the Companies Act, 1956 as well as misappropriation of funds of the company. Winding up of such companies are also being filed by creditors. In order to curb such malpractices following procedure may be followed in all such cases:-

- (a) The moment winding up petition is filed before the Court, Official Liquidator (OL) will obtain a copy of petition and forward the same to the Registrar of Companies (ROC) concerned.
- (b) ROC will have a scrutiny of the details/documents available in respect of the company in MCA21 registry and will submit a preliminary report to the Ministry within a week time for inspection or investigation, if so required, containing following information for the past five years of the date of filing of petition:-
 - (i) History of the company, viz incorporation, maintenance of registered office, main object and present business activities;
 - (ii) Management pattern, including details of directors/nominee directors and their directorship in other companies;
 - (iii) Capital structure and shareholding pattern;

- (iv) Financial position and working results;
 - (v) Comments on filing position and compliances of Schedule VI read with Accounting Standards;
 - (vi) Nature of complaints registered on MCA-21, their nature and any noticeable findings;
 - (vii) Whether any complaint was received alleging that the company is involved in fraudulent activities, siphoning of funds etc. If so, the details thereof.
 - (viii) Whether any scrutiny/inspection was carried out, if so, the details thereof;
 - (ix) Whether the company is having any holding or subsidiary company, if so, details thereof;
 - (x) Whether company has raised funds through IPO, if so, the utilization of amount collected, compliance of provisions of the Act for deviation from the object stated in Prospectus/Offer Document; transactions with related parties;
 - (xi) In case of public company, whether it has accepted public deposit. If so, whether the payment of matured amount including interest was made as per schedule. In case any amount is still pending, the details of amount and interest thereon.
 - (xii) The quantum of unsecured loan amount and related party transactions thereto.
 - (xiii) Secretarial reports and qualifications made by the auditors on accounts of the company;
 - (xiv) Whether company or its members/creditors have requested for investigation into the affairs of the company, if so, the details thereof.
- (c) MCA will take a final view in the matter within a period of 15 days from the date of receipt of preliminary report from ROC. If any inspection under Section 209A and/or investigation under Section 235/237 of the Act is

ordered, the same will be completed by the ROC and forwarded to the OL within 30 days.

- (d) The OL will place the report before the Hon'ble High Courts for seeking appropriate order/action under Section 539 to 544 and other relevant provisions of the Act. Simultaneously, necessary action as per law will be initiated against the director, ex-director and key management of the company for any violation of law/ Companies Act, 1956.
- (e) These cases will be monitored in the monthly staff meeting of Regional Directors.

Yours faithfully,

(Jaikant Singh)
Director