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GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 10th May, 2019

G.S.R.....(E). In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the **Companies (Incorporation) Rules, 2014**, namely: -

1. Short title and Commencement.- (1) These rules may be called the **Companies (Incorporation) Fifth Amendment Rules, 2019**.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Incorporation) Rules, 2014, for rule 8, the following rules shall be substituted, namely:-

“8. Names which resemble too nearly with name of existing company.- (1) A name applied for shall be deemed to resemble too nearly with the name of an existing company, if, and only if, after comparing the name applied for with the name of an existing company by disregarding the matters set out in sub-rule (2), the names are same.

(2) The following matters are to be disregarded while comparing the names under sub-rule (1):-

(a) the words like Private, Pvt, Pvt., (P), OPC Pvt. Ltd., IFSC Limited, IFSC Pvt. Limited, Producer Limited, Limited, Unlimited, Ltd, Ltd., LLP, Limited Liability Partnership, company, and company, & co, & co., co., co, corporation, corp, corpn, corp or group;

(b) the plural or singular form of words in one or both names;

A. Illustrations

- (i) Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.
- (ii) Pratap Technology Ltd. is same as Prataps Technology Ltd. and Prataps Technologies Ltd.
- (iii) SM Computers Ltd. is not same as SMS Computers Ltd.

(c) type and case of letters, spacing between letters, punctuation marks and special characters used in one or both names;

B. Illustrations

- (i) ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.
- (ii) TeamWork Ltd. is same as Team@Work Ltd. and Team-Work Ltd.

(d) use of different tenses in one or both names ;

C. Illustrations

- (i) Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.
- (ii) Speak English Solutions Limited is same as Spoken English Solutions Limited.

(e) use of different phonetic spellings including use of misspelled words of an expression;

D. Illustrations

- (i) Chemtech Ltd. is same as Chemtec Ltd., Chenitek Ltd., Cemtech Ltd., Cemtek Ltd., Kemtech Ltd., and Kemtek Ltd.
- (ii) Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Bee Kay Ltd.

(f) use of host name such as 'www' or a domain extension such as 'net', 'org', 'dot' or 'com' in one or both names;

E. Illustrations

- (i) Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd.
- (ii) Supreme Ultra Solutions Ltd. is not the same as Ultrasolutions.com Ltd.

(g) the order of words in the names;

F. Illustrations

- (i) Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.
- (ii) Ravi Builders and Contractors Limited is not the same as Ravi Shankar Builders and Contractors Limited.

(h) use of the definite or indefinite article in one or both names;

G. Illustrations

- (i) Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd.
- (ii) Isha Industries Limited is not the same as Anisha Industries Limited.

(i) a slight variation in the spelling of the two names including a grammatical variation thereof;

H. Illustrations

- (i) Color Technologies Ltd. is same as Colour Technologies Ltd.
- (ii) Disc Solutions Ltd. is same as Disk Solutions Ltd. but it is not same as Disco Solutions Ltd.

(j) complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English;

I. Illustrations

- (i) National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.
- (ii) Hike Construction Ltd. is not the same as Hike Nirman Ltd.

(k) addition of the name of a place to an existing name, which does not contain the name of any place;

J. Illustrations

- (i) If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd and Salvage Delhi Technologies Ltd.
- (ii) Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.

(l) addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand;

K. Illustrations

- (i) Thunder Services Ltd is same as Thunder11 Services Ltd and OneThunder Services Ltd
- (ii) Style Garments11 Ltd. is same as Style Garments Ltd and Style12 Garments Ltd.
- (iii) One 11 Power Equipment Ltd is not the same as One Power Equipment Ltd, if One 11 represents a brand:

Provided that clauses (f) to (h) and clauses (k) and (l) shall not be disregarded while comparing the names, if a no objection by way of a Board resolution has been provided by an existing company.

8A. Undesirable names.- (1) The name shall be considered undesirable, if-

(a) it is prohibited under the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950), unless a previous permission has been obtained under that Act;

(b) save as provided in section 35 of the Trade Marks Act, 1999 (47 of 1999), the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters;

(c) it includes any word or words which are offensive to any section of the people;

(d) the proposed name is identical with or too nearly resembles the name of a limited liability partnership.

Provided that the provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling the name of a limited liability partnership;

(e) the proposed name is identical with or too nearly resembles with a name which is for the time being reserved in accordance with rule 9:

Provided that the provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling with a reserved name;

(f) the company's main business is financing, leasing, chit fund, investments, securities or combination thereof, but the proposed name is not indicative of such related financial activities, viz., Chit Fund or Investment or Loan, etc.;

(g) the company's name is indicative of activities financing, leasing, chit fund, investments, securities or combination thereof, but the company's main business is not related to such activities;

(h) it resembles closely the popular or abbreviated description of an existing company or limited liability partnership;

(i) the proposed name is identical with or too nearly resembles the name of a company or limited liability partnership incorporated outside India and reserved by such company or limited liability partnership with the Registrar:

Provided that if a foreign company is incorporating its subsidiary company in India, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian State or city, if otherwise available:

Provided further that provisions of rule 8 shall apply *mutatis mutandis* while determining whether a proposed name is too nearly resembling the name of a company or limited liability partnership incorporated outside India;

(j) any part of the proposed name includes the words indicative of a separate type of business constitution or legal person or any connotation thereof e.g. co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG, etc.;

Explanation.- For the purposes of this clause, it is hereby clarified that the name including phrase 'Electoral Trust' may be allowed for registration of companies to be formed under section 8 of the Act, in accordance with the Electoral Trusts Scheme, 2013 notified by the Central Board of Direct Taxes (CBDT):

Provided that name application is accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under the said Electoral Trust Scheme as notified by the Central Board of Direct Taxes;

(k) the proposed name contains the words 'British India';

(l) the proposed name implies association or connection with an embassy or consulate of a foreign government;

(m) the proposed name includes or implies association or connection with or patronage of a national hero or any person held in high esteem or important personages who occupied or are occupying important positions in the Government;

(n) the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding and a period of two years has not elapsed from the date of such dissolution:

Provided that if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 248 of the Act or under section 560 of the Companies Act, 1956 (1 of 1956) then the same shall not be allowed before the expiry of twenty years from the date of publication in the Official Gazette being so struck off;

(o) it is identical with the name of a limited liability partnership in liquidation or the name of a limited liability partnership which is struck off up to a period of five years;

(p) the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual Fund', etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA, etc. have been complied with by the applicant;

(q) the proposed name includes the word "State", in case the company is not a Government company;

(r) the proposed name is containing only the name of a continent, country, State, city such as Asia limited, Germany Limited, Haryana Limited or Mysore Limited;

(s) Use of descriptive names, where the name merely consists of commonly used words to describe an activity.

Explanation.—For the purposes of this clause,—

(A) the term "commonly used words" refers to use of generic expressions which may be used by any other company to describe its trade;

(B) while determining whether a name is descriptive or not, the objects of the proposed company or the order of words appearing in a name shall not be relevant;

(C) the name shall not be deemed to be descriptive where "commonly used words" are used in addition to other words in the name;

A. Illustrations

(i) The names Silk Manufacturers Private Limited and Manufacturers Silk Ltd. are descriptive names as they merely describe an activity which may also be carried out by any other company and the order of the words is not relevant while determining a descriptive name.

(ii) The names Computer World Ltd., Food Star Ltd., Tour Hub Ltd or House of Chocolate Ltd are not descriptive as the names do not merely consist of commonly used words.

(iii) The names Technical Vista Ltd or Vista Technical are not descriptive as the names do not merely consist of commonly used words and the order of the words is not relevant while determining whether a name is descriptive.

(iv) The name Drinking Water Plant Ltd. is a descriptive name, even if the object of the company is not related to making drinking water plant as it consists of commonly used words and objects of the proposed company is not relevant while determining whether a name is descriptive.

(v) The name Silk Wise Manufacturers Private Limited is not descriptive as it contains words other than commonly used words.

(t) the proposed name includes name of any foreign country or any city in a foreign country, the same shall be allowed if the applicant produces any proof of significance of business relations with such foreign country like memorandum of understanding with a company of such country:

Provided that the name combining the name of a foreign country with the use of India like India Japan or Japan India shall be allowed if, there is a government to government participation or patronage and no company shall be incorporated using the name of an enemy country.

Explanation.- For the purposes of this clause, 'enemy country' means so declared by the Government of India from time to time.

(u) the proposed name of a section 8 company under the Act does not include the words Foundation, Forum, Association, Federation, Chambers, Confederation, Council, Electoral Trust and the like, etc.

(v) the proposed name of a Nidhi company under the Act does not have the last words "Nidhi Limited" as a part of its name.

(w) the proposed name has been released from the register of companies upon change of name of a company and three years have not elapsed since the date of change unless a specific direction has been received from the competent authority in the course of compromise, arrangement or amalgamation.

(2) The applicant shall declare in affirmative or negative (to affirm or deny) whether he is using or has been using in the last five years, the name applied for incorporation of company or LLP in any other business constitution like Sole proprietor or Partnership or any other incorporated or unincorporated entity and if, yes details thereof and No Objection Certificate from other partners and associates for use of such name by the proposed Company or LLP, as the case may be, and also a declaration as to whether such other business shall be taken over by the proposed company or LLP or not.

3B. Word or expression which can be used only after obtaining previous approval of Central Government. In terms clause (b) of sub-section (3) of section 4, the following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the Central Government has been obtained for the use of any such word or expression:-

- a) Board;
- b) Commission;
- c) Authority;
- d) Undertaking;
- e) National;
- f) Union;
- g) Central;
- h) Federal;
- i) Republic;
- j) President;
- k) Rashtrapati;