

Can a Company Hold AGM Now for Past Years and Take Benefit of the CCFSS Scheme?

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SHORT SUMMARY

After the introduction of the MCA CCFSS Scheme, many professionals have asked whether a Company that has not prepared financial statements for previous years can hold the AGM now and file the pending AOC-4 and MGT-7 under the Scheme.

Yes, the Company can hold the AGM now and subsequently file the pending forms to avail the benefit of the Scheme.

However, doing so will not cure the default under Section 96 of the Companies Act, 2013 which prescribes the time limit for holding AGM. Since the AGM for earlier years was not held within the prescribed time, the company would have already committed a default under Section 96 which is punishable under Section 99.

The Scheme only provides relief from additional filing fees (generally up to 90% waiver) for delayed filings. It does not provide immunity from statutory violations such as failure to hold AGM on time. Therefore, separate compounding of offence and payment of penalty under Section 99 may be required.

1. BACKGROUND OF THE ISSUE

Many Companies, particularly inactive or non-operational Companies, have not prepared their Financial Statements for several years and therefore could not hold their AGMs. With the introduction of the CCFSS Scheme, such Companies now intend to prepare pending Financial Statements, hold AGM for past years, and file pending forms such as AOC-4 (all types) and MGT-7/MGT-7A.

2. REQUIREMENT OF HOLDING AGM – SECTION 96

Under Section 96(1) of the Companies Act, 2013 every Company must hold an Annual General Meeting within six months from the end of the financial year and the gap between two AGMs shall not exceed fifteen months. If AGM is not held within this time, the Company is in default of Section 96.

3. PENALTY FOR FAILURE TO HOLD AGM – SECTION 99

If a Company fails to hold AGM in accordance with Section 96, the Company and every officer in default may be liable to penalty which may extend up to ₹1,00,000 and in case of continuing default an additional penalty of ₹5,000 per day may be imposed.

4. WHETHER THE SCHEME GIVES IMMUNITY FROM SECTION 96

The CCFSS Scheme primarily deals with delayed filing of forms and provides relief in the form of reduction or waiver of additional filing fees. However, the Scheme does not grant immunity from violations such as failure to hold AGM. Therefore, default under Section 96 continues to exist even if filings are completed under the Scheme.

5. PRACTICAL SCENARIO

For example, if a company has not prepared financial statements for multiple financial years and no AGM was held, the company may now prepare the accounts, hold AGM and file the pending AOC-4 and MGT-7 forms under the Scheme. While the company may benefit from reduced additional fees, the default of Section 96 still remains.

6. COMPOUNDING OF OFFENCE

Since the default under Section 96 has already occurred, the company may need to file an application for compounding offence and pay the fine as may be determined by the competent authority.

7. BENEFIT AVAILABLE UNDER THE SCHEME

The company may still take benefit of the Scheme by filing pending statutory forms such as AOC-4 and MGT-7/MGT-7A with significant reduction of additional filing fees, which may go up to 90%. This results in substantial financial relief where filings are delayed by multiple years.

8. RECOMMENDED COMPLIANCE APPROACH

Step 1 – Finalize financial statements for pending years.

Step 2 – Convene Board Meeting to approve financial statements and AGM notice.

Step 3 – Hold AGM even if delayed.

Step 4 – File AOC-4 and MGT-7/MGT-7A under the Scheme.

Step 5 – Apply for compounding of offence for violation of Section 96 read with Section 99.

CONCLUSION

Companies that have not prepared financial statements for earlier years may hold AGM now and subsequently file statutory forms pending to avail the benefits under the CCFSS Scheme. However, such action does not remove the default under Section 96 of the Companies Act, 2013. The company and its officers may still be liable for penalty under Section 99 and may be required to seek compounding of the offence.

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