

F.No 2/1/2014
Ministry of Corporate Affairs
Government of India

5th Floor, A Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi,
15th January 2014.

To

All Regional Directors,
All Registrar of Companies,
All Stakeholders.

Subject: Report u/s 394A of the Companies Act, 1956- Taking accounts of comments/inputs from Income Tax Department and other sectoral Regulators while filing reports by RDs.

Sir,

Section 394A of the Companies Act, 1956 requires service of a notice on the Central Government wherever cases involving arrangement/compromise (under Section 391) or reconstruction / amalgamation (under Section 394) come up before the Court of competent jurisdiction. As the powers of the Central Government have been delegated to the Regional Directors (RDs) who also file representations on behalf of the Government wherever necessary.

2. It is to be noted that the said provisions is in addition to the requirement of the report to be received respectively from the Registrar of Companies and the Official Liquidator under the first and second provisos to Section 394(1). A joint reading of Sections 394 and 394A makes it clear that the duties to be performed by the Registrar and Official Liquidator under Section 394 and of the Regional Director concerned acting on behalf of the Central Government under Section 394A are quite different.

3. An instance has recently come to light wherein a Regional Director did not project the objections of the Income Tax Department in a case under Section 394. The matter has been examined and it is decided that while

responding to notices on behalf of the Central Government under Section 394A, the Regional Director concerned shall invite specific comments from Income Tax Department within 15 days of receipt of notice before filing his response to the Court. If no response from the Income Tax Department is forthcoming, it may be presumed that the Income Tax Department has no objection to the action proposed under Section 391 or 394 as the case may be. The Regional Directors must also see if in a particular case feedback from any other sectoral Regulator is to be obtained and if it appears necessary for him to obtain such feedback, it will also be dealt with in a like manner.

4. It is also emphasized that it is not for the Regional Director to decide correctness or otherwise of the objections/views of the Income tax Department or other Regulators. While ordinarily such views should be projected by the Regional Director in his representation, if there are compelling reasons for doubting the correctness of such views, the Regional Director must make a reference to this Ministry for taking up the matter with the Ministry concerned before filing the representation under Section 394A.

5. This Circular is effective from the date of issue.

Yours Faithfully,



(Vinod Sharma)

Deputy Director

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