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[TO BE PUBLISHED IN THE GAZETTE OF INDIA PART II, SECTION 3,  
SUB SECTION (i), EXTRAORDINARY]

GOVERNMENT OF INDIA  
Ministry of Corporate Affairs

Notification

New Delhi the 30<sup>th</sup> May, 2011

G.S.R. .... (E). – In exercise of the powers conferred by section 192A read with clauses (a) and (b) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, in supercession of Companies (passing of the resolution by postal ballot) Rules, 2001 namely:-

**1. Short title and commencement**

- (1) These rules may be called the Companies (passing of the resolution by postal ballot) Rules, 2011.
- (2) They shall come into force on the date of their publication in the official gazette.

**2. Definitions:-**

In these rules unless the context otherwise requires -

- (a) "Act" means the Companies Act, 1956 (1 of 1956);
- (b) "Agency" means agency appointed for providing and supervising electronic platform for voting by electronic platform shall be an agency approved by the Ministry of Corporate Affairs.
- (c) "Postal Ballot" includes voting by share holders by postal or electronic mode instead of voting personally by presenting for transacting businesses in a general meeting of the company;
- (d) "Requisite majority" with regard to Special Resolution means votes cast in favour of the business is three times more than the votes cast against, with regard to ordinary resolution, votes cast in favour is more than the votes cast against.
- (e) "Voting by electronic mode" means a process for recording votes by the members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or

against such that the entire voting gets registered and counted in a electronic registry in a centralised server;

(f) Words and expressions used herein but not defined shall, unless the contest otherwise requires, bear the meaning, if any, as assigned to them under the Act and Information Technology Act, 2000.

### **3. Notice:-**

(a) The company may issue notices either,-

(i) under Registered Post Acknowledgement Due; or

(ii) through any other secured mode of posting provided by Department of Post; or

(iii) through electronic mail provided the company has obtained e-mail address of its member for sending the notices through e-mail, after giving an advance opportunity to the member to register his e-mail address and changes therein from time to time with the concerned depository; and

(b) The notice shall clearly mention that whether the company is providing voting through postal ballot or by electronic mode. If the company is opting for providing voting by electronic mode, then the notice shall clearly indicate the process and manner for voting by electronic mode provided by the agency.

(c) The company shall cause an advertisement to be published in a leading English Newspaper and in one vernacular Newspaper circulating in the State in which the registered office of the company is situated, about having dispatched the ballot papers duly specifying therein, inter alia, the following matters:”

(i) The date of completion of despatch of notices;

(ii) The date of commencement of voting through postal ballot or by electronic mode;

(iii) The date of end of voting through postal ballot or by electronic mode;

(iv) The notice shall further state that any postal ballot received from member beyond the said date will not be valid.

(v) That members, who have not received postal ballot forms may apply to the Company and obtain a duplicate thereof.

### **4. Applications:-**

These Rules shall be applicable to listed companies and in case of resolutions relating to such businesses as are specified under rule 5.

**5. List of businesses in which the resolutions shall be passed through Postal Ballot.**

- (a) Alteration in the Object Clause of Memorandum;
- (b) Alteration of Articles of Associations in relation to insertion of provisions defining private company;
- (c) Buy-back of own shares by the company under sub-section (1) of section 77A;
- (d) Issue of shares with differential voting rights as to voting or dividend or other wise under sub-clause (ii) of clause (a) of section 86;
- (e) Change in place of Registered Office out side local limits of any city, town or village as specified in sub-section (2) of section 146;
- (f) Sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 293;
- (g) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A;
- (h) Election of a director under proviso to sub-section (1) of section 252 of the Act;
- (i) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 106.

**6. Procedure to be followed for conducting business through Postal Ballot:-**

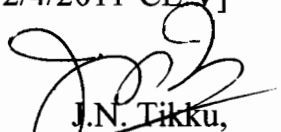
- (a) The company may make a note below the notice of General Meeting for understanding of members that the transaction(s) at Sl. No. requires consent of shareholders through postal ballot;
- (b) The board of directors shall appoint one scrutinizer, who is not in employment of the company, may be a retired judge or any person of repute who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner;
- (c) The scrutinizer shall submit his report as soon as possible after the last date of receipt of Postal Ballots;

- (d) The scrutinizer will be willing to be appointed and he is available at the Registered Office of the company for the purpose of ascertaining the requisite majority;
- (e) The scrutinizer shall maintain a register to record the consent or otherwise received, including electronic media, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-voting rights and the Scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form. The Postal Ballot and all other papers relating to postal ballot will be under the safe custody of the Scrutinizer till the Chairman considers, approves and sign the minutes of the meeting. Thereafter, the Scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/register safely till the resolution is given effect to;
- (f) The consent or otherwise received after thirty days from the completion of dispatch of notice shall be treated as if reply from the member has not been received;

**7. Procedure to be followed for conducting business by electronic mode:-**

The company shall follow the procedure for voting by electronic mode as recommended by agency.

[F No 2/4/2011-CL V]

  
J.N. Tikku,  
Joint Director