



## Dormant Companies Under Section 455 of The Companies Act, 2013: Regulatory Intent and Practical Relevance

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### Abstract

The 'dormant companies' concept is a decidedly less hyped one under Companies Act 2013, as section 455 deals with the regulatory vacuum of corporate inactivity. The present doctrinal research paper, analyses the jurisprudential nature of a "dormant company" regime – its legislative intent, statutory requirements, compliance requirement and developing practice of quasi-judicial authority. The Section 455 stipulates that, a calibrated regulatory response which strikes the balance between the intricacies of business and corporate accountability effortlessly. The research article concludes by stating the two vital elements, reinforced jurisprudential values and regulatory guidance for "Dormant companies" with the purview of India's Corporate Governance Ecosystem.

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## 1. INTRODUCTION

The rules for companies doing business have really focused on firms that're fully active in commercial activities. In today's business world we see that some companies go through periods of legitimate inactivity due to long projects, restructuring or holding assets. The Companies Act of 2013<sup>1</sup> introduced a concept called "Dormant Companies<sup>2</sup>" under Section 455. This section says that regulated inactivity is a recognized status for

companies. Before this under the Companies Act of 1956<sup>3</sup> if a company was inactive for a time, it would be struck off. This meant the company would lose its 'corporate personality'<sup>4</sup>. Section 455 provides a solution to this by letting companies, corporations and financial organizations keep their existence during inactive periods. They must be under supervision by the authority under the act. This provision is especially important for start-ups, special purpose vehicles and companies that hold intellectual property rights. These types of companies can

<sup>1</sup> Companies Act, 2013, § 455

<sup>2</sup> Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company

<sup>3</sup> National Company Law Tribunal

<sup>4</sup> Corporate personality refers to the legal recognition of a company as a separate entity from its owners, allowing it to have its own rights and obligations

benefit from being classified as companies. They can safeguard their existence during their inactive periods. The concept of companies is particularly significant in the market. It helps companies to maintain their personality. Companies can avoid being struck off due to inactivity. The provision under Section 455<sup>5</sup> is a measure for the rigidity of the previous act. It allows companies to keep their existence during inactive periods. The regulatory supervision by the authority ensures that companies follow the rules. The concept of companies is a welcome move, for companies that go through periods of inactivity.

## **2. CONCEPT AND LEGAL MEANING OF DORMANT COMPANIES**

The provision 455 clearly explains what a 'corporate dormancy' means. A dormant company can be one that is set up for a project. It can be formed just to hold assets or intellectual property. In this case the company does not do much in terms of accounting transactions. The provision 455 also talks about an 'inactive company'. For a company to be considered inactive it should not have done any business for two years in a row. It also should not have done any accounting transactions. It should not have made any statutory filings for two consecutive financial years. When they say 'significant accounting transactions they do not mean compliance-related transactions. This is done on purpose. They want to make a difference between a company that's genuinely inactive and one that is just following rules. A company that is dormant under the act is not the same as an abandoned company. It is a legal situation. The company is transparent. Wants to keep its corporate identity. The concept of dormancy and inactive company is clearly defined under provision 455. A dormant company and inactive company have characteristics. The provision 455 explains the conditions for both. The main keyword here is dormancy and inactive company. The provision 455 explains dormancy. The provision also explains company and its conditions. Corporate dormancy is a legal circumstance. The company maintains its identity. The provision 455 statutorily defines dormancy. It also defines company. The provision explains the conditions, for both.

## **3. REGULATORY INTENT BEHIND SECTION 455**

The main idea of Section 455 is to make sure companies are transparent and accountable. This is part of the Companies Act, 2013. The law wants to make it easy for companies to do business. Section 455 helps companies that are not doing any business to not have to follow all the rules. It also stops companies that're not real from just existing. Section 455 lets companies still be a company even if they are not doing any business. This helps companies plan for the future and keep their money safe<sup>6</sup>. At the time Section 455 makes sure the Registrar of Companies is watching these companies. This means the mentioned section has two goals. It wants to give companies the freedom to do what they want. Also make sure they are following the rules. The people who made the law are trying to find a balance between being flexible and having rules<sup>7</sup>. Section 455 is important, for the Companies Act, 2013 because it helps companies and makes sure they are not doing anything.

<sup>5</sup> *Companies Act, 1956, § 560 (repealed).*

<sup>6</sup> *Ministry of Corporate Affairs, Notes on Clauses, Companies Bill, 2012*

<sup>7</sup> *Companies Act, 2013, § 455(2)*

## **4. PROCEDURE FOR OBTAINING DORMANT STATUS**

To get a status the company has to follow a lot of steps. The company must make a decision and then apply to the Registrar in the right way. They also have to give some declarations that say they are eligible for this status<sup>8</sup>. The Registrar will give the status to the company if they are sure the company does not have any inspections or investigations going on and if the company is not doing any big accounting work. The Registrar has the power to say a company is dormant on their own if the company has not filed the required papers for two years, in a row. Notably, the Registrar is empowered to suo motu classify a company as dormant where statutory filings have not been made for two consecutive financial years. This helps make sure companies follow the rules and do not use dormancy as a way to avoid doing what they are supposed to do<sup>9</sup>. The Registrar is making sure that companies do not become dormant just to avoid following the rules. The company has to follow the rules. The Registrar has to make sure of that when it comes to dormant status.

## **5. PRACTICAL RELEVANCE OF DORMANT COMPANIES**

Dormant status plays a crucial role in today's market. Many startups influence companies even before they get funding for transactions or the necessary approvals<sup>10</sup>. Also, big projects like construction of buildings, or developing an estate which is a tedious yet time consuming process to get going. A dormant company paves them a legal way to exist in the market among competitors during this time keeping their assets and identity safe and secure. Companies that just hold patents or other intellectual property rights might not do anything with them right away as it doesn't give profits or earnings to flourish. Being a dormant company in the market which helps these companies to protect their ideas without putting a hole in the pocket and any compromise on rules and regulations under Companies Act. Section 455 makes sure that the laws about companies match how businesses really work. This makes it easier for companies to work within the law even when they are not doing much. Dormant status serves a role. Startups often create companies before funding. Infrastructure projects take time. Dormant companies provide a structure. They preserve assets and identity. Companies holding property may delay. Dormant status helps in safeguarding assets without any other costs. Section 455 aligns regulation with realities. Dormant status is a much needed one and is a vital way to exist in the market. It helps startups and projects which can survive without much ado in the market. They can maintain assets in their own name which gives the company the right under section 455. It makes rules which fit the needs better. Companies can work within permitted legal regulations and processes. Dormant companies are useful in such a way that; they provide security in the market for survival. They help the businesses exist among other companies. So Dormant status serves a functional role in modern corporate practice. Startups frequently incorporate entities in anticipation of funding or regulatory approvals while infrastructure and real estate projects often involve gestation periods. Dormant companies provide a secure structure during such phases preserving

<sup>8</sup> *Companies Act, 2013, § 455(4)*

<sup>9</sup> *Companies (Miscellaneous) Rules, 2014*

<sup>10</sup> *Avtar Singh, supra note 4*

corporate personality and asset ownership. Similarly, companies formed to hold intellectual property may delay exploitation. Dormant status enables entities to safeguard valuable intangible assets without incurring the full costs of active compliance. In this sense Section 455 aligns regulation, with commercial realities.

## 6. COMPLIANCE OBLIGATIONS AND GOVERNANCE CONCERNS

Dormant companies do not have to deal with many rules as other companies. They still have to follow some rules. For example, they have to file some paperwork and keep their records up to date. This is dormant companies are still accountable for what they do. Sometimes it is not clear what dormant companies are allowed to do<sup>11</sup>. This can cause problems because dormant companies might do something that they are not supposed to do. If a dormant company does something it is not supposed to do it could get in trouble, with the people who make the rules. Dormant companies have to be careful so they do not lose their status.

## 7. CHALLENGES AND CRITICAL ANALYSIS

The huge problem with companies is figuring out if they are really inactive or just trying to avoid the rules. With laws in place to protect us it is still up to the people, in charge to make sure everything runs smoothly and that all the different groups work together. Sometimes small companies do not know much about what it means to be dormant. That can cause a lot of trouble. They might get removed from the list of companies. They might not follow the rules for a long time. We need to make the rules clearer and help small companies understand what they need to do. Dormant companies need to know what is going on so we can fix these problems with companies.

## 8. COMPARATIVE PERSPECTIVE

When we look at companies in different places, we see that the United Kingdom has a pretty clear system in place. In the UK a company is thought of dormant if it does not have any big transactions in a year and it has to follow simpler rules when it files paperwork. India has an idea but it works a little differently. India requires companies to register and it gives the Registrar the power to take action on its own. This shows that India is being very careful about companies that are not really doing anything and it wants to make sure everything is transparent, with money<sup>12</sup>.

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11. *M/s Alliance Commodities Pvt. Ltd. v. Registrar of Companies*, NCLT (2019).

## 9. NCLT JURISPRUDENCE AND REGULATORY PRACTICE

The law about companies is pretty clean and clear. When a company is not showing any progress in the business or is not functioning well, it is known as dormant and given a status called “dormant company”. This comes up a lot when the National Company Law Tribunal is deciding whether to remove a company’s name or put it back. The Tribunal says that being dormant is something a company can do if it follows the rules, it is not something that just happens<sup>13</sup>. When the Tribunal is looking at cases where a company wants to start doing business it wants to see that the company really means to do business or follow the rules to be dormant. This shows that the law about companies is important for companies to follow the rules. The National Company Law Tribunal looks at what companies do to see if they are really dormant or just not following the rules. This is all related, to Section 455 and the National Company Law Tribunal.

## 10. CONCLUSION

Section 455 of the Companies Act 2013 is a way of dealing with companies that are not doing anything. The Companies Act 2013 says that companies that are not doing anything can be considered dormant. This means that the Indian corporate law is taking an approach to companies that are not active. The Companies Act 2013 is trying to balance two things: giving companies the freedom to do what they want and making sure companies are responsible for what they do. In order to analyse the real working of the above-mentioned dormant company status, the government needs to scrutinise and provide viable instructions on what dormant companies are allowed to do in the market. The tribunals also need to make decisions about dormant companies. Companies need to understand what the rules are so they can follow them. If all these things happen, then being a company can be a good alternative, to shutting down the company. This can help India system of rules for companies to keep getting better. Section 455 of the Companies Act, 2013. The dormant company regime can help with this.

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<sup>11</sup> *Companies Act, 2013, § 455(3)*

<sup>12</sup> *Companies Act, 2006, c. 46, pt. 15 (UK)*

<sup>13</sup> *M/s Alliance Commodities Pvt. Ltd. v. Registrar of Companies, NCLT (2019)*