

THE HONOURABLE SRI JUSTICE RAJA ELANGO

COMPANY PETITION Nos.97 AND 119 OF 2015

COMMON ORDER:

Company Petition No.97 of 2015 is filed under Section 463 of the Companies Act, 2013 read with Section 633 of the Companies Act, 1956 and Rules 9 and 11(a) of the Company Court Rules, 1959 praying to direct respondent No.1 to remove the name of the petitioner from the “List of Defaulting Directors” marked thereunder as exhibit “E” from the records of respondent No.1 including but not limited to www.mca.gov.in and render justice.

2. Company Petition No.119 of 2015 is filed under Section 463 of the Companies Act, 2013 read with Section 633 of the Companies Act, 1956 and Rules 9 and 11(a) of the Company Court Rules, 1959 praying to relieve the petitioner from all liabilities for having acted as a Director of respondent No.3 company in accordance with Section 463 of the Companies Act, 2013 and direct respondent No.1 to remove the name of the petitioner from the “List of Defaulting Directors” from the records of respondent No.1 including but not limited to www.mca.gov.in and render justice.

3. Even though the petitioners are different, their grievance is one and the same since they are the nominee Directors of respondent No.3 – D.R.S. Logistics Private Limited, Secunderabad. Hence, both these company petitions are being disposed of by way of this common order.

4. The grievance of the petitioners is that though they are the nominee Directors of respondent No.3, their names were shown in the “List of Defaulting Directors” in the records of respondent No.1 since respondent No.3 has not filed the required documents.

5. One of the main contentions raised by the learned counsel for the petitioners is that the publication of respondent No.1 showing the petitioners as the defaulting Directors will cause prejudice to the petitioners in future and they cannot continue as Directors in any of the companies and even, they were not given any opportunity of being heard prior to taking such decision.

6. Respondent No.1 filed counter in C.P.No.97 of 2015 wherein it is held at para No.5 as under:

“It is submitted that petitioner in this petition is nominee director of a financial investor i.e., India Growth fund, a unit of Kotak SEAF Fund, represented by Kotak Mahindra Trusteeship Services Limited acting through its investment advisors Kotak Investment advisors Limited, Investment manager of IGF, which is an investment company and does not fall under the purview of General circular No.8/2011 and 47/2011 as the said circulars gives immunity only to the nominee director on behalf of public sector undertakings, Government appointed directors, independent directors, public financial institutions, financial institutions and banks on the board of companies. Hence the petitioner is not immune to the default committed by the company, however since they are not the officers in default as per section 5 of the Companies Act 1956 and 2013, they may not be liable for prosecution. The attested true copies of above said circulars are enclosed herewith as Annexure C and D.”

In view of the aforesaid contents in the counter, this Court is of the view that the petitioners are not liable to be prosecuted since they

are only nominee Directors of respondent No.3 and respondent No.1 is also not having any objection to remove the names of the petitioners from the said list.

7. Considering the facts and circumstances of the case, respondent No.1 is directed to remove the names of the petitioners from the "List of Defaulting Directors" from his records as well as the website of Ministry of Corporate Affairs i.e., www.mca.gov.in. Further, the petitioner in C.P.No.119 of 2015 is relieved from all liabilities for having acted as a Director of respondent No.3 company in accordance with Section 463 of the Companies Act, 2013.

8. Accordingly, both the Company Petitions are allowed. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, in these Company Petitions shall stand closed.

24.1.2017
AMD



JUSTICE RAJA ELANGO

THE HONOURABLE SRI JUSTICE RAJA ELANGO



COMPANY PETITION Nos.97 AND 119 OF 2015

Date: 24.1.2017

AMD