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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10761/2017**

RAMESH KUMAR SOMANI

..... Petitioner

Through Mr Ashish Virmani, Mr Tanisha Khaitan,
Advocates.

versus

UNION OF INDIA

..... Respondent

Through Mr Bhagwan Swarup Shukla, CGSC with
Mr Suraj Kumar, Advocate for UOI.
Mr Bhagwan Swarup Shukla, CGSC with
Mr Kamaldeep, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.03.2018

CM No. 8791/2018

1. This is an application seeking modification of the order dated 20.12.2017. The order dated 20.12.2017 is recalled.

2. The application stands disposed of.

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3. The petitioner has filed the present petition, *inter alia*, impugning the “list of disqualified directors” published by the respondent to the extent that it includes the petitioner’s name.

4. The petitioner claims that he is the Director of the private companies

named Real Agro Tech Pvt. Ltd and Secure Traders Pvt. Ltd (hereafter ‘the Companies’). Petitioner further claims that he is also the director of a company named Practical Properties Pvt. Ltd, which is an active company. The learned counsel appearing for the petitioner unequivocally states that the Companies have not carried out any business for the past three years and their bank accounts are also not in operation for the past three years. The petitioner also did not file the requisite returns as required under the Companies Act, 2013 (hereafter ‘the Act’). Consequently, the petitioner has incurred the disqualification under Section 164(2) of the Act.

5. The learned counsel appearing for the petitioner makes an unequivocal statement, on instruction of the petitioner, that the petitioner is desirous of availing of the Condonation of Delay Scheme - 2018 (hereafter ‘CODS - 2018’). However, since the Companies have been struck off from the Register of Companies, the petitioner has been disabled from availing the benefits of CODS - 2018.

6. The petitioner are also not in a position to seek revival of the companies by filing an appeal under Section 252 of the Act, since admittedly the Companies have not carried out any business and were liable to be struck off from the Register. The petitioner state that, in fact, he would voluntarily seek dissolution of the Companies under Section 248(2) of the Act, if he has the opportunity to do so.

7. This Court is of the view that since, admittedly, the Companies are not carrying out any business and their bank accounts have not been operated for over three years, the petitioner ought to be provided the benefit

of the CODS - 2018. Accordingly, this Court directs as under:-

- (a) The petitioner may file all the requisite returns in relation to the Companies to avail the CODS - 2018.
- (b) The petitioner may also file the necessary resolutions for voluntarily striking off the name of the Companies as required under Section 248(2) of the Act.
- (c) The petitioner would also make a necessary application under CODS - 2018 alongwith the requisite charges.
- (d) The aforesaid documents and applications will not be submitted online but in hardcopies to the Registrar of Companies.

8. The Registrar shall scrutinize the same, and if the same are found to be otherwise in accordance with Section 248(2) of the Act, the petitioner would be granted the benefit of the CODS - 2018. The removal of the Companies from the Register under Section 248(1) of the Act would be deemed as striking off the Companies under Section 248(2) of the Act, and the petitioner's application under CODS - 2018 would be sympathetically considered by the Registrar.

9. Since an unequivocal statement is made by the petitioner that he would pay the necessary charges and make the necessary application under the CODS - 2018, the impugned list of the disqualified directors, in as much as it includes the names of the directors, is stayed till such time as the respondent take a final decision in the matter. This is provided that the application is made before 31.03.2018.

10. It is further clarified that the aforesaid order is made on the basis of the unequivocal statements made on behalf of the petitioner above and in the event the statements are found to be incorrect, the petitioner would be liable to be proceeded against Contempt of Court in addition to being subjected to other proceedings.

11. The petition and the pending applications are disposed of.

MARCH 16, 2018
pkv

VIBHU BAKHRU, J