

\$~36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10834/2017 & CM 44433/2017**

RAJIVE KUMAR AND ORS Petitioners

Through Mr Sujoy Datta and Mr Gaurav
Varma, Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through Mr Amrit Pal Singh, Advocate for
R1,2/UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **21.12.2017**

1. The petitioners have filed the present petition, *inter alia*, impugning a “lists of disqualified directors” published by respondent nos. 1 and 2 to the extent that it includes the names of the petitioners.
2. Learned counsel appearing for the petitioners states that respondent nos. 3,5,8,9,10,11,12,13,14,15,16,17,19,21, 22, 24, 25 and 26 have not carried on any business for the past three years. The said companies have no assets and their bank accounts are also not in operation for the past three years. The petitioners have not filed the requisite returns as required under the Companies Act, 2013 in relation to these companies. In addition, the petitioners are also directors in respondent nos. 4,6,7, 18, 20, 23, 25 and 27 which have done some business in the past three years.

3. Learned counsel for the petitioners also makes an unequivocal statement, on instructions of the petitioners, that the petitioners are desirous of availing of the Condonation of Delay Scheme, 2018 (hereafter the CODS-2018). However, since some of the companies in which they are directors have been struck off from the Register of Companies they are deprived of the benefit of CODS-2018.

4. The petitioners also state that they are not in a position to seek revival of companies that have not carried out any business as indicated above. The learned counsel further states that the petitioners, in fact, would seek voluntary dissolution of those companies under Section 248(2) of the Act if they are provided an opportunity to do so.

5. In respect of other companies that have carried on business for the past three years, the learned counsel for the petitioners states that the petitioners and/or the concerned companies shall file appeal(s) before the National Company Law Tribunal (NCLT) under Section 252 of the Act.

6. In view of the above, this Court is of the view that the petitioners ought to be given a final opportunity to avail of the CODS-2018 and, accordingly, directs as under:-

(a) The company will file all requisite requirements in relation to the aforesaid companies to avail of CODS-2018;

(b) The petitioners will also file a affidavit enclosing the resolutions for voluntarily striking off the names of the companies that have not been carrying on the business or operational transactions as required under Section 248(2) of

the Act;

- (c) The petitioners would make the necessary application under CODS-2018 along with the requisite charges within a period of four weeks from today;
- (d) All documents/applications would be submitted to the Registrar of Companies in hard copies;
- (e) The ROC will scrutinise the same and if the same are found to be otherwise in accordance with Section 248(2) of the Act, the petitioners would be granted benefit of CODS - 2018 in respect of those companies. The removal of the aforementioned companies from the Register under Section 248(1) of the Act would be deemed to be under Section 248 (2) of the Act and petitioners' application under Section CODS-2018 would be sympathetically considered by the Registrar.

7. The petitioners shall also approach the NCLT under Section 252 of the Act for revival of the Companies that have carried on business in the past three years and have been struck off for non-filing of the requisite documents. The NCLT is requested to consider the same within a period of four weeks thereafter.

8. The impugned list of disqualified directors to the extent it includes the petitioners' names is stayed till 31.03.2018.

9. This order has been passed with due assistance of the learned ASG, in the peculiar facts and circumstances of these cases.

10. It is further clarified that the aforesaid order is made on the basis of the unequivocal statement made on behalf of the petitioners

as indicated above and in the event the statements are found to be incorrect, the petitioners 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.

VIBHU BAKHRU, J

DECEMBER 21, 2017

pkv