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

+ **W.P.(C) 11302/2017**

HARI MOHAN GUPTA AND ORS. Petitioners

Through Mr N.P.S. Chawla, Advocate.

versus

UNION OF INDIA AND ORS. Respondents

Through Mr Sanjay Jain, ASG, with
Mr Dev P. Bhardwaj, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.12.2017

CM No. 46179/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 11302/2017 and CM No. 46160/2017

3. The petitioners have filed the present petition, *inter alia*, impugning a “list of disqualified directors” published by respondent nos. 1 and 2 to the extent that it includes the names of the petitioners.
4. The petitioners claim that they are the Directors of different private companies, namely, M/s Leading Infrabuild Pvt. Ltd, M/s Ninja Media Ltd., M/s Ninja Spirits Ltd., Ms Siddha Apparels Pvt. Ltd. M/s Fervor Marketing Pvt. Ltd, M/s Debut Marketing Pvt. Ltd., M/s Ornate Garments Pvt. ltd., M/s

Leostar Infrabuild Ltd., M/s Fbdone Realtors Pvt. Ltd., M/s Garden Villas & Flats Pvt. Ltd. and M/s Fbdtwo Realtors Pvt. Ltd. (respondent no. 3 to 14 except respondent no.11) (hereafter ‘the Companies’). The learned counsel appearing for the petitioners unequivocally states that the Companies have not carried out any business and have not operated their bank accounts since past three years. The petitioners also did not file the requisite returns as required under the Companies Act, 2013 (hereafter ‘the Act’). Consequently, the petitioners have incurred the disqualification under Section 164(2) of the Act.

5. The learned counsel appearing for the petitioners makes an unequivocal statement, on instruction of the petitioners, that the petitioners are 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, they have been disabled from availing the benefits of CODS - 2018.

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

7. This Court is of the view that since the Companies are not carrying out any business and their bank accounts have not been operated for over three years, the petitioners ought to be provided the benefit of the CODS - 2018.

Accordingly, this Court directs as under:-

- (a) The petitioners may file all the requisite returns in relation to the Companies to avail the CODS - 2018.
- (b) The petitioners may also file the necessary resolutions and documents for voluntarily striking off the name of the Companies as required under Section 248(2) of the Act.
- (c) The petitioners would also make a necessary application under CODS - 2018 along with 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 petitioners 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 to be under Section 248(2) of the Act, and the petitioners' application under CODS - 2018 would be sympathetically considered by the Registrar.

9. In respect of respondent no.11 the petitioners would approach the ROC for rectification of the records since it is stated that an official liquidator has already been appointed.

10. Since an unequivocal statement is made by the petitioners that they 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 31.03.2018 or up till such time as the respondents take a final decision in the matter.

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

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

12. The petition and the pending application are disposed of.

DECEMBER 21, 2017/pkv

VIBHU BAKHRU, J