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

+ **W.P.(C) 11368/2017 & CM 46413-46414/2017**

SHRI NAIVEDYA SHARMA Petitioner

Through Mr Pradeep K. Mittal, Advocate

versus

UNION OF INDIA AND ANR. Respondents

Through Mr B.S. Shukla, CGSC with Mr Suraj
Kumar, Advocate for R1,2/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.12.2017

1. The petitioner has 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 name of the petitioner.
2. The petitioner claims that he is the Director of the company named Vedant Herichson Biotech Limited (hereafter ‘the Company’). The learned counsel appearing for the petitioner unequivocally states that the Company has not out any business for the past three years and its bank account is 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.
3. 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 Company has been struck off from the Register of Companies, it has been disabled from availing the benefits of CODS - 2018.

4. The petitioner is also not in a position to seek revival of the company by filing an appeal under Section 252 of the Act, since admittedly the Company has not carried out any business and was liable to be struck off from the Register. The petitioner states that, in fact, it would voluntarily seek dissolution of the Company under Section 248(2) of the Act, if it has the opportunity to do so.

5. This Court is of the view that since, admittedly, the Company is not carrying out any business and its bank account has 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 Company to avail the CODS - 2018.
- (b) The petitioner may also file the necessary resolutions for voluntarily striking off the name of the Company 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.

6. 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 Company from the Register under Section 248(1) of the Act would be deemed as striking off the Company under Section 248(2) of the Act, and the petitioner's application under CODS - 2018 would be sympathetically considered by the Registrar.

7. Since an unequivocal statement is made by the petitioner 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 name of the directors, is stayed till 31.03.2018 or up till such time as the respondents take a final decision in the matter.

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

9. It is clarified that if the petitioner does not avail of the CODS-2018 or file the necessary documents as required for dissolution of the company under Section 248(2) of the Act as stated above; in addition to other consequences, the petitioner would also be liable to be prosecuted for contempt of Court.

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.

VIBHU BAKHRU, J

DECEMBER 21, 2017

pkv