

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8139 of 2018

- =====
1. Innovine Infratech Private Limited having its registered office at 13/1, Anandpuri (East), West Boring Canal Road, P.S.- S.K. Puri, Town and District- Patna, Bihar through its duly authorized Director Shri Prabhat Kumar, Son of Shri Ram Ekbal Mishra, Resident of G-8, Abhiyanta Nagar, Ashiana Road, Patna, P.S.- Shastrinagar, Town & District- Patna, Bihar.
 2. Prabhat Kumar, Son of Shri Ram Ekbal Mishra, Resident of G-8, Abhiyanta Nagar, Ashiana Road, Patna, P.S.- Shashtrinagar, Town & District- Patna, Bihar.
 3. Archana Mishra, Wife of Shri Prabhat Kumar, Resident of G-8, Abhiyanta Nagar, Ashiana Road, Patna, P.S.- Shashtrinagar, Town & District- Patna, Bihar.

.... Petitioners

Versus

1. The Union of India through the Secretary, Ministry of Corporate Affairs, New Delhi.
2. The Secretary, Ministry of Corporate Affairs, Govt. of India, New Delhi.
3. The Assistant Director (Policy), Ministry of Corporate Affairs, Govt. of India, New Delhi.
4. The Registrar of Companies, Bihar, Maurya Lok Complex, Patna.

.... Respondents

=====

Appearance :

For the Petitioners : Mr. Sushil Kumar Singh, Advocate
For the Respondents : Mr. S.D. Sanjay, Addl. Soc. Gen.
Mr. Anshay Bahadur Mathur, CGC

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 30.04.2018

The present writ petition has been filed for the following
reliefs —

“(i) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing of the list of Disqualified directors, to the extent that it included the name of the petitioners, issued by the Respondents and the same has been published upon the official web site of the aforesaid ministry, whereby and whereunder the Petitioner No. 1 & 2 have been declared disqualified for



the period from 01.11.2016 to 31.10.2021 and consequently their respective DIN has been de-activated.

(ii) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the Respondent(s) concerned to expunge the name of the petitioners from the list of disqualified directors of struck off Company and their respective DIN may re-activated.

(iii) For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the Respondent concerned to provide opportunity to avail the option of CODS— 2018.

(iv) For issuance of writ in the nature of mandamus or any other appropriate writ to commanding the Respondent concerned to accept the necessary resolution for voluntarily striking off the name of the company petitioner as required under section 248(2) of the Companies Act, 2013.

(v) For issuance of any other appropriate writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

2. Mr. Ajay Kumar Rastogi, learned counsel for the petitioners, states that the petitioner no. 1, which is a private limited company, was incorporated on 12.08.2009 but could not carry out any business nor operate its bank account. It did not file the requisite financial statements and annual returns and consequently, its name is in the process of being struck off from the register of companies.



Petitioner nos. 2 and 3 are Directors of the petitioner no.1, who have incurred disqualification under Section 164(2) of the Companies Act, 2013 for five years with effect from 01.11.2016 and their respective DIN Nos. 01970447 and 02685518 have been de-activated for the reason that two other companies, namely Invincible Infratech Pvt. Ltd. and Eiffel Automation Pvt. Ltd., in which the petitioner Nos. 2 and 3 are the Directors respectively, had also failed to file their respective financial statements and annual returns and had accordingly been struck off from the register of companies.

3. Learned counsel for the petitioner invites attention to the Condonation of Delay Scheme, 2018 (for short, "the Scheme") introduced under General Circular No. 16/2017 dated 29.12.2017 (Annexure-3) which was operational from 01.01.2018 upto 31.03.2018 and subsequently extended upto 30.04.2018, according to which the petitioner-company is entitled to furnish its overdue documents. The relevant provisions of the said Scheme reads as follows –

*"3. **Applicability:-** This scheme is applicable to all defaulting companies other than the companies which have been struck off/whose names have been removed from the register of companies under section 248(5) of the Act. A defaulting company is permitted to file its overdue documents which were due for filing till 30.06.2017 in accordance with the provisions of this Scheme.*

*4. **Procedure to be followed for the purposes of the scheme:-** (1) In the case of defaulting companies whose*



names have not been removed from register of companies,-

i) The DINs of the concerned disqualified directors deactivated at present, shall be temporarily activated during the validity of the scheme to enable them to file the overdue documents.

ii) The defaulting company shall file the overdue documents in the respective prescribed eForms paying the statutory filing fee and additional fee payable as per section 403 of the Act read with Companies (Registration Offices and fee) Rules, 2014 for filing these overdue documents.

iii) The defaulting company after filing documents under this scheme, shall seek condonation of delay by filing form e-CODS attached to this scheme online on the MCA21 portal. The fee for filing application e-form CODS is Rs. 30,000/- (Rs. Thirty Thousand Only).

iv) The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the eform CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme in terms of section 164(2)(a) r/w 167(1)(a) of the Act shall be liable to be deactivated on expiry of the scheme period.

v) In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only NCLT order of revival subject to the company having filing of all over due documents.



4. Reliance has been placed on a decision of the Hon'ble Delhi High Court dated 21.12.2017 in W.P.(C) 11307/2017 (Raman Nanda Vs. Union of India & Ors.).

5. Mr. S.D. Sanjay, learned Additional Solicitor General, appears on behalf of the respondents and submits that the Company Master Data (Annexure-1) discloses that there are five Directors in the present Company in which only two Directors namely Prabhat Kumar and Archana Mishra who happened to be the Directors in other Companies as well, have been disqualified. He states on instructions that the overdue annual statements, returns and documents can well be furnished by the two Directors, namely, Shiv Vikash Agarwal and Kundan Sinha, who are not disqualified, having regard to the submission of the petitioners that a third Director namely Sanjay Kumar Sinha has also been disqualified. In such event there would be no objection to accepting the relevant documents furnished on behalf of the petitioner-Company. Statement is made at the Bar that the judgment of the Hon'ble Delhi High Court was passed in the peculiar facts and circumstances of that case that there were only two Directors of that Company, both of whom had been disqualified.

6. Having regard to the stand of the respondents, the present writ petition is disposed of, granting liberty to the petitioner-Company to furnish the relevant annual statements, returns and relevant documents through the two Directors, Shiv Vikash Agarwal



and Kundan Sinha, whose DINS are said to be operative, during the validity of the CORDS-2018, before the Registrar of Companies, Patna. Such documents may be furnished in hard copy form at the option of the petitioners, considering that today is the last date of the Scheme as extended. If such documents are furnished as above, the Registrar of Companies shall duly accept the same under acknowledgment for purpose of processing the documents in accordance with law.

B.T/Ibrar

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.04.2018
Transmission Date	N.A

