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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L.) NO.1052 OF 2018

Mr.Arijit Sen & Ors.

...Petitioners

Versus

Union Of India & Anr.

...Respondents

Ms.Pallavi Maheshwari i/b. Naveen Maheshwari for Petitioners.

Mr.Ojas Gole i/b. Mr.Ashish Mehta for Respondents.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 28th MARCH 2018

P.C.:

The petitioners are challenging their disqualification as directors under Section 164(2) of the Companies Act, 2013, for non filing of financial statements and annual returns by the respective companies of which they are directors for the consecutive period of three years. The Notification dated 7th September 2017 was issued by the respondents with retrospective effect from 1st November 2016.

2. The learned Counsel appearing for the respondents placed reliance on the following decisions:-

i. order dated 21st December 2017 passed by the learned Single Judge of Delhi High Court in case of **Trilokchand M.Kothari & Ors. Vs.**

Union of India & Ors.¹;

ii. order dated 6th March 2018 passed by Delhi High Court in case of

Sandeep Jain & Anr. Vs. Union of India & Ors.² and

iii. order dated 6th October 2017 passed by High Court of Telangana

and Andhra Pradesh in case of **Dr.Reddy's Research Foundation Vs.**

Ministry of Corporate Affairs³.

3. By an order dated 22nd March 2018, a Division Bench of this Court (Shantanu S. Kemkar & M.S. Karnik, JJ) disposed of the identical petitions of this nature by granting certain reliefs to the petitioners.

Paragraphs 8 and 9 of the said order read as under:-

“8. Be that as it may, learned Counsel appearing for the petitioners have made an unequivocal statement, on instructions of the petitioners, that the petitioners are desirous of availing of CODS-2018. Learned Counsel appearing for the petitioners, on instructions, have submitted that they undertake not to revive in future the companies which were struck off from the register of company on account of non filing of requisite statements and annual returns.

9. The petitioners were appointed as directors on the Board of Directors of the companies. The names of those companies were struck off from the register of the companies on account of failure to file requisite financial statements and annual returns. Furthermore, the petitioners submitted that the companies have not been carrying on business for more than three years. It is pointed out that the petitioners are also the directors on the Board of other companies, which are active and functional. As the names of the petitioners were included in the impugned list of disqualified directors, their role as directors is impeded in so far as other companies are concerned which are active and running. Learned Counsel for the petitioners

1 W.P.(C) No.11381 of 2017

2 W.P.(C) No.2051 of 2018

3 Writ Petition No.32575 of 2017

undertake that they do not wish to revive the company of which they were directors and that they would take steps under Section 248(2) of the said Act in consonance with the directives contained in Writ Petition (C) 11381 of 2017 of the Delhi High Court in the case of Trilokchand M.Kothari & Ors. Vs. Union of India & Ors. as also in the case of Sandeep Jain & anr. Vs. Union of India (supra).”

4. The learned Counsel appearing for the petitioners submits that in the light of the order passed by this Court as referred above, these petitions may be disposed of. The learned Counsel for the petitioners submits that they too extend their undertakings as expressed by the petitioners and recorded by this Court in paragraphs 8 and 9 as quoted above.

5. The learned Counsel for the respondents submits that these petitions may be disposed of by recording undertakings of the petitioners and with liberty to the respondents to resort to appropriate remedies as permissible in law.

6. The learned Counsel for the parties submit that the department is taking steps to file Special Leave Petition in respect of the order passed by this Court.

7. We have perused the record produced before us and the orders passed by the Delhi High Court, Bombay High Court and Telangana and

Andhra Pradesh High Court.

8. The undertaking given by the learned Counsel for the petitioners as was given in the disposed of petitions (paragraphs 8 and 9) would operate in these petitions also. By adopting the reasoning of the Court in the said order, we dispose of these petitions on identical lines.

9. The petitioners to take immediate steps in consonance with the provisions under Section 248(2) of the said Act,2013 and under the CODS-2018, in any case within a period of ten days from today.

10. In order to facilitate this exercise, the operation of the impugned list, in so far as it concerns the petitioners, will remain stayed till 31/3/2018 or till such time the respondents take requisite decision with regard to the request of the petitioners made to them in consonance with the provisions under Section 248(2) of the said Act,2013 and under the CODS-2018.

11. As indicated earlier, the petitioners forthwith to do the needful, in any case within a period of ten days from today. In addition thereto, for the present, the Registrar of Companies will also activate the petitioners' DIN and DSC.

12. The Writ Petitions are disposed of in the above terms.
13. Parties to act on the authenticated copy of this order.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]