HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.38864 & 43405 OF 2017

COMMON ORDER:

The petitioners challenge the disqualification of petitioners as Directors under Section 164(2) (a) of the Companies Act, 2013 and de-activation of DIN number allotted to petitioners, as illegal, arbitrary and unconstitutional.

The grievance of petitioners is that the petitioners are not directly responsible to file the returns/statement or on account of *inter se* disputes in the Board or Management, the statutory compliance could not be done by the petitioners. On account of default of the company in filing statutory returns, the DIN number allotted to petitioners if is de-activated, the petitioners will be compelled to commit default in the companies where the petitioners are actively doing business and conforming to the statutory obligations. The default of the company which did not file the returns will have to be independently examined and considered by respondent No.2, opportunity is afforded by 2nd respondent to petitioners as well and appropriate orders are passed in this behalf.

Mr.K.Lakshman submits that these complaints are singular instances. The "Condonation of Delay Scheme" is in operation. The case of petitioners will have to be examined with reference to the facts pleaded and proved before 2nd respondent by the petitioners. The Scheme is in operation from 01.01.2018 to 31.03.2018. The DIN is activated, therefore, the petitioners can represent to Registrar of Companies and the representation will be examined and disposed of before expiry of extended period.

I have heard the counsel and taken note of the respective submissions.

The writ petitions are ordered as follows:

(i) the petitioners are given liberty to represent with all the grievances the petitioners have against disqualification of Directors, including objection against striking off company under Section 248 of Companies Act within four weeks from today, by enclosing a copy of this order, to 2nd respondent;

(ii) the 2nd respondent considers the objection and passes order, if necessary, after affording opportunity to petitioners on or before 25.02.2018;

(iii) The interim order granted by this Court is directed to be continued till 01.03.2018; and

(iv) without prejudice to above, the petitioners, if prefer to avail the benefit under the scheme, are also permitted as follows:

  (a) the petitioners since have filed or uploaded the statutory reports pursuant to the interim direction of this Court, the respondents are directed to treat the documents/reports already uploaded as filed by the petitioners under the Scheme;

  (b) the petitioners pay the prescribed fee of Rs.30,000/- for the defaulting company for filing application Form-e-CODS 2018 and send the details of payment or the demand draft purchased by the company to 2nd respondent on or before 28.02.2018 by enclosing a copy of this order;

(c) The 2nd respondent after receiving the application referred to above considers the statutory reports already filed by petitioners and the report/balance sheet is entered and the disqualification removed and DIN restored; and

(d) The said exercise is directed to be taken up and completed on or before 15.03.2018.

(v) The petitioners, if aggrieved by the decision of Registrar, are given liberty to work out his prayers in accordance with law.

There shall no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

04th January, 2018

Lrkm/Stp/Prv/Dv