

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.40236 & 40248 OF 2017

COMMON ORDER:

Heard learned counsel for petitioners and Mr.K.Lakshman, Assistant Solicitor General for respondents.

The petitioners/Directors having different DIN numbers challenge the notification issued by 1st respondent under Section 164 (2) (a) of the Companies Act, 2013 disqualifying the petitioners as Directors and de-activating the DIN number for non-compliance with statutory requirement of filing returns/balance sheet by the company, as illegal, arbitrary and unconstitutional.

This Court granted interim direction directing the respondents to activate the DIN number of petitioners and enable compliance with the requirement of law by the Company/Director.

The case of petitioners is that the disqualification effected through notification is premature and illegal, because according to petitioners, the company has time to file annual returns and balance sheet. The disqualification, if any, could be after the statutory cut off dates referred to in the Act but not before the statutory due dates meant for compliance.

The 1st respondent during the pendency of the writ petition has notified "Condonation of Delay Scheme, 2018" and extended time for filing the returns/balance sheet up to 31.03.2018. The scheme provides for condonation of delay in filing the returns subject to complying with other conditions of the Scheme. The counsel for petitioners contends that the company and/or petitioners have already filed the returns pursuant to the interim orders of this Court and the petitioners and/or the company may be given opportunity to represent its grievance before the 2nd respondent against disqualification of petitioners and deactivation of DIN.

Having regard to the “Condonation of Delay Scheme, 2018” and also the interim order, to meet the ends of justice, the writ petitions are ordered as follows:

- (i) the petitioners are given liberty to make representation by enclosing a copy of this order to 2nd respondent on the objection the petitioner/company has against the disqualification of petitioners/Directors or deactivation of DIN within four weeks from today;
- (ii) the 2nd respondent considers the objections, passes order and communicates the decision to petitioner/ company on or before 25.02.2018;
- (iii) the interim order granted by this Court is directed to be continued till 01.03.2018 subject to orders of 2nd respondent on the representation of petitioners;
- (iv) without prejudice to above, the petitioners, if prefers 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.

There shall no order as to costs.

Miscellaneous petitions pending, if any, stand closed.

04th January, 2018

Lrkm/Stp/Prv/Dv



S.V.BHATT, J