

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.44502 & 44732 OF 2017

COMMON ORDER:

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

The petitioners/Directors having 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 numbers for non-compliance with statutory requirement of filing returns/balance sheet by the company, as illegal, arbitrary and unconstitutional.

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 submits that the company and/or petitioners 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", to meet the ends of justice, the writ petition is 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) without prejudice to above, the petitioners, if prefers to avail the benefit under the scheme, are also permitted as follows:
 - (a) 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;
 - (b) 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
 - (c) 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.

S.V.BHATT, J

04th January, 2018

Lrkm/Stp/Prv/Dv