IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.7695 of 2018

Date of decision : 27.03.2018

Sarabdeep Singh and another

...... Petitioners

Versus

Union of India and another

... Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Anuj Garg, Advocate for the petitioners.

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DAYA CHAUDHARY, J. (*Oral*)

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing the action of the respondents whereby the petitioners have been made disqualified to become Directors for any company and their Director Identification Numbers (DINs) have been blocked in view of letter dated 23.03.2017 (Annexure P-1). A further prayer has also been made for issuance of an appropriate direction to the respondents to activate the Director Identification Numbers (DINs) of the petitioners and thereby enabling them to take benefit under the Condonation of Delay Scheme 2018 (hereinafter referred to as 'the CODS–2018') so that they can file their mandatory Annual Financial Returns with respect to new company.

Briefly, the facts of the case as made out in the present petition are that the petitioners along with one other person namely Vaneet Singla started a company under the name and style “BLACK N WHITE CONSULTING PRIVATE LIMITED” in the year 2008. Said company was registered. Thereafter, respondents issued Director Identification Numbers (DINs) to the petitioners. Said company was incorporated on 05.09.2008 and, thereafter, immediately after 2-3 transactions, there was no business and there were no bank transactions. Even no Annual Financial Statements/Returns were filed. Said company was non-functional in every manner. A notice was sent to the Company under Section 248 (1) of the Companies Act, 2013 (hereinafter referred to as ‘the Act’) vide letter dated 23.03.2017 to remove the said company from the register of companies. The company was requested to send representation along with the relevant documents within a period of 30 days. No representation was made as there was no transaction since 2010.

Thereafter, the petitioners being Directors incorporated a new company under the name and style “Pecu Services Private Limited” on 22.07.2016 which was registered with the Registrar of Companies, Chandigarh. Petitioners were working as Directors in the new Company with the same DINs as per law. Due to removal of earlier company *i.e.* “BLACK N WHITE CONSULTING PRIVATE LIMITED” from the list of Registrar of Companies at Chandigarh, the petitioners were declared disqualified to become Directors and blocked the Director Identification Numbers (DINs) of both the petitioners. Petitioners came to know about it at the time of filing Annual Statements/Returns in the month of October, 2017.

Learned counsel for the petitioners submits that the petitioners were declared disqualified to become Directors of any other company and their Director Identification Numbers (DINs) have been blocked without giving any opportunity of hearing and without issuing any notice. Learned counsel further submits that due to action of the respondents, the petitioners could not take benefit of CODS–2018 and could not file Annual Statements/Returns with delay. Learned counsel further submits that as per provisions of Clause 3 of General Circular No.16/2017 dated 29.12.2017, CODS–2018 is applicable to all defaulting companies (other than the companies which has been stuck off or 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 is due for filing till 30.06.2017 in view of provisions of CODS–2018. Learned counsel also submits that action of the respondents has adversely affected the existing business of the petitioners and also the liability to comply with the provisions. He also submits that the petitioners are interested to take benefit of the CODS–2018 and to comply with any condition in case they are allowed to take benefit of said scheme. At the end, learned counsel for the petitioners submits that the petitioners have not done any transaction in the previous company since 2010 and it could not be revived by filing an appeal under Section 252 of the Act. The petitioners are ready to seek its voluntarily dissolution under Section 248(2) of the Act in case any opportunity is granted to them. In support of his arguments, learned counsel for the petitioners has relied upon order dated 22.03.2018 passed by the

Division Bench of Delhi High Court in case ***W.P.(C) No.9439/2017*** titled as ***Atul Khosla and another Vs. Union of India and others*** as well as Single Bench judgment of Delhi High Court in case ***W.P.(C) No.1297/2018*** titled as ***Syed Muzaffar Ali Khan and another Vs. Union of India and others*** decided on 12.02.2018. In said two cases the issue was the same.

Heard arguments of learned counsel for the petitioners and have also perused the documents available on the file.

Admittedly, the Registrar of Companies has disqualified the petitioners under Section 164(2) (a) of the Act and stuck off the name of the company under Section 248 of the Act. In ***Syed Muzaffar Ali Khan's*** case (supra) the petitioners challenged the impugned order of disqualifying the Directors. The Directors of the Company did not carry out any business and their bank accounts were not operated for the past many years. They did not file requisite returns as required under the Act. The petitioners in that case incurred disqualification under Section 164 (2) of the Act. Petitioners were interested to avail the benefit of CODS–2018 but because their company was stuck off from the Register of Companies, they were made disabled from availing the benefit of said scheme. It was the contention of the petitioners in that case that they were not in a position to seek revival of company by filing an appeal under Section 252 of the Act. The business could not be carried out as the company was liable to be stuck off from the Register. Said petition was disposed of with certain directions, which are reproduced as under:

(a) The petitioners may file all the requisite returns in relation to the Company to avail the CODS–2018.

(b) The petitioners may also file the necessary resolutions and documents for voluntarily striking off the name of the Company as required under Section 248 (2) of the Act.

(c) The petitioners would also make a necessary application under CODS–2018 along with the requisite charges.

(d) The aforesaid documents and applications will not be submitted online but in hard copies to the Registrar of Companies.

It was further directed to the Registrar to scrutinize the same in case same were found to be otherwise in accordance with Section 248 (2) of the Act. A direction was issued to consider the application of the petitioner sympathetically. In the present case also, the same controversy is there as no notice was issued to the petitioners with regard to disqualifying them or blocking their Director Identification Numbers (DINs). Due to this action of the respondents, the petitioners could not file the Annual Returns for their new company. Even no benefit of CODS–2018 could be taken by them, whereas the petitioners are ready to comply with any condition in case any opportunity is granted for taking benefit under CODS–2018. It has also been brought to the notice of this Court that under CODS–2018, the respondents accept the returns upto 31.03.2018 only.

In view of the facts as mentioned above and by taking into consideration the interest of the petitioners and to ensure that no prejudice be caused to either of the party, it is directed that the petitioners be permitted to file the application under the CODS–2018 with hard copies with the respondents. It is further directed that the petitioners shall ensure that the fee, other charges and documents which are necessary under the CODS–2018 shall be deposited with the Registrar of the Companies.

Accordingly, the petitioners are held entitled to avail the benefit of CODS–2018 subject to making good any shortcomings which may be pointed out by the respondents. It is also made clear that the petitioners shall also be entitled for the same benefits with the same terms and conditions as directed in ***Writ Petition (Civil) No.9439 of 2017*** and other connected matters before the Division Bench of Delhi High Court as well as ***Writ Petition (Civil) No.1297 of 2018***.

Disposed of accordingly.

27.03.2018 **(DAYA CHAUDHARY)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No