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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 126/2018 & CM No. 572/2018**

% **Date of decision : 10th January, 2018**

PREM PRAKASH SETHI AND ANR. ..... Petitioners
Through : Mr. Rohit Bansal and Mr. Siddharth Negi, Advs.

versus

UNION OF INDIA AND ANR. ..... Respondents
Through : Ms. Prema Priyadarshini and Mr. Ashish Shaw, Adv. for R-1 & 2

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. Issue notice to show cause as to why rule *nisi* be not issued.

2. Ms. Prema Priyadarshini, Advocate accepts notice for the respondent nos.1 and 2.

3. Our attention is drawn to a Scheme floated by the respondent no.1 being Condonation of Delay Scheme-2018 (hereinafter referred to as 'CODS-2018 Scheme') and the provisions of Section 252 of the Companies Act, 2013.

4. Learned counsels for the parties submit that the petition can be disposed of on a consideration of the aforesaid statutory provisions

and the CODS-2018 Scheme floated by the respondent No.1.

5. With the consent of the parties, we have taken up the writ petition for consideration.

6. It appears that the writ petitioners are the Directors of Shiv Vani Buildwell Private Limited (hereinafter referred to as 'the company'). It is the contention of the petitioners that the company was in active business and it had defaulted the statutory compliance under the provisions of the Companies Act, 2013 and the requisite returns were not filed by them.

7. As a result, the respondents are of the view that the petitioners had incurred disqualification under Section 164(2)(a) of the Companies Act, 2013 and company which had suffered disqualification meriting appropriate orders under Section 248(1) of the Companies Act, 2013 as well as removal of the name of the company from the Register of Companies.

8. In this background, the respondents issued a notice in March, 2017 being ROC-DEL/248(1)/STK-1 under Section 248(1) of the Companies Act, 2013 to the company requiring it to show cause as to why it was not liable to be removed from the Register of Companies. The company failed to respond to this notice to show cause, resulting in passing of an order of removal of the company from the Register of Companies maintained by the respondent No.2.

9. We are informed by the ld. counsel for the petitioners that the company has invoked its remedy under Section 252(3) of the Companies Act, 2013 by way of filing a petition being (IB)-334/ND/2017 before the National Company Law Tribunal (hereinafter

referred to as 'NCLT') praying for revival of the company.

10. Before us as well, the petitioners have submitted that the non-filing of the documents was a *bona fide* mistake on the part of company without any *mala fide* intention and it has been unequivocally stated that the company was ready to submit all the relevant documents with effect from Financial Year ended 31st March, 2011 onwards before the respondent No.2.

11. We are also informed that even though there was default in submitting the returns, the accounts of the company have been audited by the company.

12. So far as the present writ petition is concerned, the petitioners have assailed the notices dated 6th September, 2017 and 12th September, 2017 wherein their names appear at Page No.277 at Serial Nos.59193, 59194, 59195 & 59196 in the List of Directors who have been disqualified by the respondents under the provisions of Section 164(2)(a) of the Companies Act, 2013 as directors of companies with effect from 01.11.2016.

13. Ld. counsel for the petitioners makes an unequivocal statement on instruction of the petitioners, that the petitioners are desirous of availing of the CODS-2018 Scheme. However, since the company has been struck off from the Register of Companies, it has been disabled from availing the benefits of CODS-2018 Scheme. A prayer is made on behalf of the petitioners that the petitioners may be permitted to avail the benefit of CODS-2018 Scheme, subject to the outcome of the proceedings initiated under Section 252 of the Companies Act, 2013.

14. We are of the view that the request of the petitioners made

before us is *bona fide.* Given the fact that the action of the respondents for striking off the name of the company from the Register of Companies maintained by the respondent no.2 is itself pending consideration before the NCLT, the petitioners deserve to be fairly given an opportunity to avail the benefit of CODS-2018 Scheme.

15. In view of the above, it is directed as follows:

(i) The petitioners may file all the requisite returns in relation to the company in order to enable them to avail the benefits under the CODS-2018 Scheme;

(ii) The petitioners would also submit the necessary application under CODS-2018 Scheme along with its requisite charges;

(iii) The aforesaid documents and applications will be submitted online to the Registrar of Companies.

16. As noted above, the appeal bearing no.(1B)-334/ND/2017 has been filed. NCLT is therefore, requested to dispose of the same as expeditiously as possible given that the CODS-2018 is only available till 31.03.2018. Notwithstanding, the above, it is clarified that in the event the NCLT is unable to dispose of the appeal within the time as requested for the reasons that are not attributable to the petitioners, the respondents shall ensure that the Scheme under CODS-2018 is extended in respect of the petitioners in order for the petitioners to avail of the same. In other words, the petitioners would not be deprived of the opportunity to avail the CODS-2018 only on account of pendency of the appeal before NCLT.

17. In view of the CDOS-2018, the impugned list to the extent it includes the names of the petitioners is stayed till disposal of (IB)-334/ND/2017 by NCLT and disposal of the application of the petitioners under CODS-2018.

18. It is clarified that if the petitioners do not avail of the CODS-2018 or file the necessary documents as required, in addition to other consequences the petitioners would also be liable to be prosecuted for Contempt of Court.

19. It is further clarified that the aforesaid order is made on the basis of the unequivocal statements made on behalf of the petitioners above and in the event the statements are found to be incorrect, the petitioner would be liable to be proceeded against contempt of court in addition to being subjected to other proceedings.

20. The petition and the pending application are disposed of

Dasti to parties.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 10, 2018/kr