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

Judgment pronounced on: 20.02.2018

+ W.P.(C) 1621/2018 & CM Nos.6654-6655/2018

ANNAT JAIN & ANR. Petitioners

Through : Mr. S.P. Singh Chawla,
Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through : Mr. Ajay Digpaul, CGSC
with Ms. Madhuri Dhingra,
Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

CM No.6555/2018 (Exemption)

1. Allowed, subject to just exceptions.

W.P.(C) 1621/2018 & CM No.6654/2018

2. A perusal of the writ petition would show that even according to the petitioners, Sanya Automobile Private Limited, which is arrayed as respondent no.5 (hereafter "SAPL") in the present writ petition, has been struck off from the Register of Companies and therefore, according to me, the said company cannot be arrayed as party to the present writ petition.

2.1 Respondent no.5 is, thus, deleted from the array of parties.

3. I may also note that the petitioners have averred in the writ

petition that an appeal has been preferred under Section 252 of the Companies Act, 2013 (in short “Act”) with the National Company Law Tribunal, New Delhi (in short “NCLT”) with regard to the action taken by respondent no.2 in striking off the name of SAPL from the Register of Companies.

4. Besides this, the petitioners claim that the other two companies i.e., respondent no.3 and 4 are active. It is also averred that petitioner no.1 and 2 are the Directors on the board of respondent no.3. However, insofar as respondent no.4 is concerned, only petitioner no.1 is a Director on its Board.

5. The petitioners *inter alia* aver that they were disqualified by respondent no.2 from aforementioned companies for falling foul of the provisions of Section 164(2)(a) of the Act, on account of their failure to file the requisite financial statements/annual reports.

5.1 It is stated that the order disqualifying petitioner no.1 and 2 was passed without notice to them. In other words, according to the petitioners, apart from anything else, the principles of natural justice were not adhered.

6. Notwithstanding the aforementioned position, learned counsel for the petitioners says that the petitioners wish to take the benefit of the Condonation Of Delay Scheme, 2018 (in short “2018 Scheme”). Furthermore, the counsel for the petitioner says that beneficial provisions incorporated under the 2018 Scheme can be taken recourse to only after the names of respondent no.3, 4 and SAPL are restored to the Register of Companies.

6.1 It is the counsel’s contention that since petitioners DIN and

DSC have been deactivated, they are unable to take corrective measures, at present, insofar as respondent no.3 and 4 are concerned.

6.2 Counsel, though, does concede that corrective measures qua SAPL can only be taken once the NCLT passes the requisite order in the appeal preferred in that behalf.

7. Issue notice. Mr. Ajay Digpaul accepts notice on behalf of official respondents i.e., respondent no.1 and 2. Mr. Digpaul says that petitioners can take corrective measures by availing of provisions under the 2018 Scheme which is currently in play and shall expire on 31.03.2018.

8. Given the stand, which has been taken by Mr. Digpaul, the writ petition can be disposed of with following directions:

(i) The petitioners can take recourse to the provisions of 2018 Scheme.

(ii) In this behalf, the petitioners will file either hardcopies of the requisite statements/forms/returns as prescribed under the 2018 Scheme, or, in the alternative they shall file the E-CoDS forms as and when they are uploaded on the official website of respondent no.1.

(iii) In order to enable the petitioners to do the needful, inclusion of their names in the list of Directors disqualified under Section 164(2)(a) of the Act for the relevant financial years as indicated in Annexure P-1 shall remain stayed till 31.3.2018.

(iv) Furthermore, petitioners DIN and DSC shall be

activated in order to enable them to do the needful in the matter.

9. It is made clear that if the petitioners do not take requisite steps under the 2018 Scheme, then, the official respondents i.e., respondent no.1 and 2 would be at liberty to de-activate the petitioner's DIN and DSC.

10. Consequently, pending applications shall stand closed.

11. *Dasti.*

FEBRUARY 20, 2018

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RAJIV SHAKDHER, J

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