

\$~45

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

+ W.P.(C) 3390/2018 and CM No.13351/2017

%

Date of decision : 24th April, 2018

AKASH KHILWANI

..... Petitioners

*Through : Mr. Ishaan
Madaan and Mr. Ayush S.
Sahni, Advs.*

versus

UNION OF INDIA AND ANR.

....Respondents

*Through : Ms. Suparna
Srivastava, CGSC*

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The petitioner in this case was appointed as Additional Directors of the company being Open Kitchen on 6th April, 2011 but was never confirmed as a Director. Since his appointment was never confirmed as a Director, he ceased to be a Director from the date the AGM should have been held i.e. 30th September, 2011. As such the petitioner ceased to be the Directors of the company by operation of law but he continued to be shown as an Additional Director of the company.

2. The writ petition has been instituted in view of the notices dated 6th September, 2017 and 12th September, 2017 issued under Section 164(2)(a) of the Companies Act, 2013 by the respondents disqualifying the petitioner as a Director for the reason that there was a default in submitting returns with regard to the affairs of the said Company, which were statutorily required to be filed with the Registrar of Companies for a continuous period of three financial years.

3. The writ petition inter alia seeks quashing of the said notices dated 6th September, 2017 and 12th September, 2017.

4. Issue notice. Ms. Suparna Srivastava, CGSC accepts notice on behalf of the respondents.

5. Inasmuch as the petitioner was an Additional Directors of the company, the cessation of his appointment by operation of law cannot be disputed. Learned counsel for the respondent submits that the respondents are not in a position to dispute this submission.

6. In this background, the petitioners had ceased to be a Director of the company, as stated by him, on 30th September, 2011 and could not have been penalized for the failure of the company to effect statutory compliances.

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

(i) The respondents shall forthwith take steps for removal of the petitioner's name from the list of disqualified directors.

(ii) The orders to this effect would be posted on the

website and shall also be communicated to the petitioner within two weeks from today.

(iii) It is clarified that this would not preclude the Registrar of Companies from passing a fresh order disqualifying the petitioner, if any material is found or produced before the ROC to indicate that the petitioner's statement that the petitioner had ceased to act as a Director of the Company, is false, or any material is produced which establishes that the petitioner had acted as a Director of the Company in any manner.

8. This writ petition is allowed in the above terms.

CM No.13351/2017

9. In view of the disposal of the petition, this application does not survive for adjudication and is dismissed.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 24, 2018/kr