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

+ **W.P.(C) 3909/2018**

MANKARAN SINGH AHLUWALIA & ANR Petitioners
Through: **Mr. Sougat Sinha, Adv.**

versus

UNION OF INDIA & ANR Respondents
Through: **Mr.B.S. Shukla with Mr.Suraj Kumar**
Adv. for R1&2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 20.04.2018

1. Issue notice. Mr.B. S. Shukla, accepts notice on behalf of respondent Nos.1 and 2.
2. Learned counsel for the petitioners submits that an appeal under Section 252 of the Companies Act, 2013 was filed qua the direction issued by the respondents striking off the subject company i.e. Maktech Auto Pvt. Ltd. (MAPL) from the Register of Companies. The petitioner avers that vide order dated 23.03.2018, passed in CP 338/ND/2017, the NCLT allowed its appeal. A copy of the judgment passed by NCLT is appended as Annexure P-5 at page 82 of the paper book.
3. A perusal of the operative part of the NCLT's order would show that following directions have been issued:-

“(a) within a period of 15 days from the restoration of the Petitioner Company's name in the register being maintained by the RoC, the appellant/petitioner will file

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inter alia its annual returns and balance sheets as well as other compliance statutorily required to be made under the Companies Act, 2013 for the period for from which there has been default with requisite charges/fees as well as additional fee/late charges.

(b) That the Petitioner Company out of its funds, set apart a sum of Rs.2,00,000/- and deposit the same with the Respondent/RoC to defray the cost and expenses within a period of one month from the date of this order.

(c) Till all compliance are made by the Petitioner Company, the Petitioner Company shall not alienate or dispose of any of its valuable assets.

(d) It is further observed that by virtue of this order of restoration of the name of Appellant/Petitioner Company in the register it will not entitle the Directors of the Company whose names in case have been disqualified by virtue of provisions of Section 164 of the Companies Act, 2013 by the Respondent/RoC automatically to be restored to directorship except in accordance with law.

(e) An affidavit of compliance of the aforesaid directions shall be filed by the Petitioner Company within a period of 2 months from the date of this order.

(f) Further this order allowing the appeal shall also not circumscribe the power of the respondent to proceed against the Petitioner Company and its Directors as mandated for alleged late filing of any forms, documents, returns and such other compliance under the provisions of Companies Act, 2013”.

4. Learned counsel for the petitioner submits that the directive (a) cannot be given effect to till the name of the petitioners is removed from the list of disqualified directors and their DIN and & DSC is activated. As a matter of fact, it is the stand of the petitioner that no compliance can be made till such time the aforesaid is permitted by the ROC.

4.1 Mr. Shukla does not seriously dispute this aspect of the matter.

5. In these circumstances, the writ petition is disposed of with the direction to the ROC to consider the request of the petitioner for removal their names from the list of disqualified directors bearing in mind the fact that this event occurred on account of failure of MAPL to file the financial statement and requisite statutory returns.
6. For this purpose, the petitioners and their authorised representatives will present themselves before the ROC on 10.05.2018 at 3.00 pm.
7. The ROC, will consider the request of the petitioners. Pending the above, the petitioners' DIN and DSC will be activated.
8. The ROC will, however, have the authority to vary or withdraw the facility, if the demands passing of such an order.
9. Needless to say, the ROC will pass a speaking order. In case the petitioners are aggrieved they will have liberty to assail the order passed by the ROC in the manner known to law.
10. *Dasti.*

RAJIV SHAKDHER, J

APRIL 20, 2018
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