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

+ W.P.(C) 5654/2018

VISHNU KUMAR GARG

..... Petitioner

Through: Mr Ayush Sharma, Advocate.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Roshan Lal Goel and Ms Anju Gupta, Advocates for R-1 & R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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18.07.2018

CM No. 22053/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 5654/2018 & CM No. 22054/2018

2. The petitioner has filed the present petition, *inter alia*, impugning the list of disqualified directors to the extent that it includes the petitioner's name.

3. The petitioner states that he has been disqualified under the provisions of Section 164(2)(a) of the Companies Act, 2013 on account of failure on the part of M/s Lark Home Gadgets Private Limited (hereafter 'the Company') to file the requisite returns with the Registrar of Companies (hereafter 'RoC'). The petitioner states that he is neither a signatory to the Memorandum and Articles of Association of the Company nor has ever consented to act as its Director.

4. The petitioner states that on 24.01.2001, he became Director of the company named as L. V. Rustore Applications Private Limited. Thereafter, on 30.12.2005, the petitioner also became a Director of the company named as Blossom Landel Private Limited.

5. The petitioner also promoted another company named as ELVI Bardahl India Private Limited. At the time when the said company was under incorporation, the petitioner became aware that he was also shown as a Director of the Company.

6. The learned counsel appearing for the petitioner has also drawn the attention of this Court to Form 12 filed by the petitioner for incorporation of ELVI Bardahl India Private Limited. In its application, the petitioner had provided the list of companies in which he was a Director at the material time. The said list also includes a specific noting which reads as under:-

“Please note that I have neither subscribed to the Memorandum and Articles of Association nor signed or given any consent to become a Director of the third Company whose details are given below i.e. Lark Home Gadgets Private Limited. I came to know of this only today about this discrepancy. Appropriate Action may be taken in this regard.”

7. The punitive measure of disqualifying the petitioner is premised on the basis that the petitioner is a Director of the said company. Plainly, if the said assumption is incorrect, the action taken against the petitioner would be unsustainable. The material placed on record also indicates that the petitioner had informed the RoC that he was not a Director of Company and requested that the RoC take action in this regard.

8. The learned counsel appearing for the respondent states that he does not have any instructions and he can offer no assistance to this Court in the

matter.

9. In view of the above, the impugned list of disqualified directors to the extent that it includes the petitioner's name is set aside. The RoC shall restore the petitioner's Directors Identification Number (DIN) forthwith.

10. The RoC may consider the averments made in the present petition and if the RoC still desirous to proceed against the petitioner, it may do so after issuing a show cause notice and after affording the petitioner a full opportunity of being heard.

11. The petition is disposed of with the aforesaid directions. The pending application is also disposed of.

VIBHU BAKHRU, J

JULY 18, 2018
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