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

+ W.P.(C) 8987/2018 & CM Nos. 34642/2018 & 34643/2018

EDAYATHIMANGALAM RAMNATH CHANDRA
SHEKAR

..... Petitioner

Through: Mr Anunaya Mehta, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Prasanta Varma, Senior Central
Government Counsel for R-1 and R-
2.

Mr Chandra Prakash, Advocate for
SEBI/R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.08.2018

1. Issue notice. The learned counsel appearing for the respondents accepts notice.
2. The petitioner has filed the present petition, *inter alia*, praying as under:-

“(i) Pass a writ, order or direction directing Respondent No.2 to remove the name of the Petitioner from the list of Disqualified Directors published for the years 2014-19, 2015-20 and 2016-21 in terms of the provisions of s. 164(2) of the Companies Act;

(ii) Pass a writ, order or direction directing Respondent No. 2 to not include the name of the Petitioner in the list of Disqualified Directors henceforth;

(iii) Pass a writ, order or direction declaring that the inclusion of the name of the Petitioner in the list of disqualified directors in relation to the Company Jaypee SPA Infocom Ltd. would not have any effect whatsoever upon his continuation as Directors in other Companies.”

3. The petitioner states that he has been disqualified under provisions of Section 164(2) of the Companies Act, 2013 on account of defaults committed by Jaypee SPA Infocom Limited (hereafter ‘the Company’) in filing its returns with Registrar of Companies (ROC). The petitioner states that he was a Director in the Company prior to 30.03.2011 and had resigned from the Board of Directors of the Company with effect from the said date.

4. It is stated that although the petitioner had resigned as a Director, the Company had not uploaded the necessary forms indicating cessation of the petitioner as a Director of the Company. It is pointed out that the petitioner had also addressed a letter dated 25.08.2011 seeking confirmation that the necessary form (Form No. 32) had been filed with the ROC. However, no response was received from the Company. This led the petitioner to send a letter dated 26.08.2011 to the ROC informing the ROC that the petitioner had resigned as a Director of the Company and further requesting that his cessation as a Director be regularized at the earliest in the officials records.

5. It is stated that after pursuing with the matter, on 24.10.2011, the Company filed the necessary form – Form 32 – indicating that the petitioner had ceased to be a Director of the Company with effect from. 30.03.2011.

6. The petitioner states that he has not acted as a Director of the company since his resignation on 30.03.2011.

7. The petitioner states that the Company was a joint venture between Jaypee Ventures Private Limited and SPA Computers Private Limited. he

further claims that certain disputes arose between the promoters of the said companies and it is alleged that Mr Nirmal Kumar Jain, Director of JP Ventures Private Limited, who was nominated on the Board of the Company, has illegally filed a Form 32 under his signatures showing the appointment of the petitioner as a Director of the Company with effect from 31.03.2011. It is the petitioner's case that this was without his consent and knowledge.

8. The petitioner states that after he became aware that a Form 32 indicating his appointment as a Director had been filed without his consent, he lodged a protest and filed another form CG-I on 14.10.2017. On 05.02.2018, the petitioner also filed a complaint with the ROC. It is stated that a show cause notice in this regard was issued to Mr Nirmal Kumar. However, it is stated that he has not submitted any response as yet.

9. In the above facts, it is apparent that there is serious dispute whether the petitioner is a Director of the Company and, therefore, no punitive action can be taken against the petitioner without forming a view (prima facie or otherwise) that the petitioner was appointed as a Director with his consent or had otherwise acted as such. It is also apparent that the ROC is in seisin of the disputes.

10. In view of the above, the impugned list of disqualified Directors to the extent that it includes the petitioner's name is set aside. However, it is clarified that this would not preclude the ROC from disqualifying the petitioner under Section 164(2) of the Act if, on examination of the material on record and consideration of the facts, the ROC comes to the conclusion that the case set up by the petitioner is incorrect and the petitioner had continued to be a Director of the Company. Since the ROC is already

examining the complaint in this regard, no further directions in this regard are necessary.

11. The petition is disposed of in the above terms. The pending applications are also disposed of.

AUGUST 30, 2018
MK

VIBHU BAKHRU, J