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

+ W.P.(C) 9185/2017

DR. NAVEEN CHAUDHRI & ANR Petitioners

Through: Mr Prashant Katara and Mr Soin
Khan, Advocates.

versus

UNION OF INDIA & ANR Respondents

Through: Mr Vivek Goyal, CGSC with Mr
Harsh Pandit and Mr Rajeiv Ranjan
Shahi, Advocates for UOI/R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **07.02.2018**

Review Pet. 59/2018

1. The petitioners have filed the present review petition, *inter alia*, seeking to recall of the order dated 20.12.2017. The learned counsel appearing for the petitioners states that he did not have proper instructions on that date when the said order was passed and certain companies (Candy Pharma Pvt. Ltd, Candy Medtech Pvt. Ltd and Groovy Green Sports Pvt. Ltd.) which had been struck off from the Register of Companies, cannot be revived as they do not qualify the requisite criteria as provided under the Companies Act, 2013.

2. The application is allowed.

3. In view of the above, the order dated 20.12.2017 is recalled.

W.P.(C) 9185/2017 and CM No. 4829/2018

4. The petitioners have filed the present petition, *inter alia*, impugning a

“lists of disqualified directors” published by respondent nos. 1 and 2 to the extent that it includes the names of the petitioners.

5. The petitioners claim that they are the Directors of private companies named Candy Pharma Pvt. Ltd, Candy Medtech Pvt. Ltd and Groovy Green Sports Pvt. Ltd. (hereafter ‘the Defunct Companies’). The learned counsel appearing for the petitioners unequivocally states that the Defunct Companies have not carried out any business and their bank accounts are also not in operation for the past three years. In addition to the above, the petitioners are also Directors of NMC Imaging and Diagnostics Pvt. Ltd (hereafter ‘NMC’), which has also been struck off from the Register of Companies.

6. Concededly, the petitioners did not file the requisite returns as required under the Companies Act, 2013 (hereafter ‘the Act’). Consequently, the petitioners have incurred the disqualification under Section 164(2) of the Act.

7. The learned counsel appearing for the petitioners makes an unequivocal statement, on instruction of the petitioners, that the petitioners are desirous of availing of the Condonation of Delay Scheme - 2018 (hereafter ‘CODS - 2018’). However, since the companies in question have been struck off from the Register of Companies, they have been disabled from availing the benefits of CODS - 2018.

8. The petitioners are also not in a position to seek revival of the Defunct Companies by filing appeals under Section 252 of the Act as, admittedly, the Defunct Companies have not carried out any business and were liable to be struck off from the Register. The petitioners state that, in fact, they would

voluntarily seek dissolution of the Defunct Companies under Section 248(2) of the Act, if they are given an opportunity to do so.

9. This Court is of the view that since the Defunct Companies are not carrying out any business and their bank accounts have not been operated for over three years, the petitioners ought to be provided the benefit of the CODS - 2018.

10. The learned counsel appearing for the respondents also points out that the petitioners have an alternate remedy of approaching the National Company Law Tribunal (NCLT) under Section 252 of the Act in respect of NMC. He further states that if NMC is revived, the petitioners would be at liberty to avail of the CODS-2018.

11. Accordingly, this Court directs as under:-

- (a) The petitioners may file all the requisite returns in relation to the Defunct Companies to avail the CODS - 2018.
- (b) The petitioners may also file the necessary resolutions and documents for voluntarily striking off the names of the Defunct Companies as required under Section 248(2) of the Act.
- (c) The petitioners would also make a necessary application under CODS - 2018 along with the requisite charges.
- (d) The aforesaid documents and applications will not be submitted online but in hardcopies to the Registrar of Companies.
- (e) The Registrar shall scrutinize the same, and if the same are found to be otherwise in accordance with Section 248(2) of the Act, the petitioners would be granted the benefit of the CODS - 2018. The

removal of the Defunct Companies from the Register under Section 248(1) of the Act would be deemed as striking off the Defunct Companies under Section 248(2) of the Act, and the petitioners' application under CODS - 2018 would be sympathetically considered by the Registrar.

- (f) The petitioners are at liberty to file an appeal under Section 252 of the Act before the NCLT for revival of NMC. In the event such appeal is filed by the petitioners/NMC within a period of two weeks from today, the petitioners would be entitled to avail of CODS-2018 provided that the name of the company is restored on the Register.

12. In the event, such an appeal is filed, NCLT is requested to dispose of the same as expeditiously as possible given that the CODS-2018 is only available till 31.03.2018. Notwithstanding, the above, it is clarified that in the event the NCLT is unable to dispose of the appeal within the time as requested for the reasons that are not attributable to the petitioners, the respondents shall ensure that the scheme under CODS-2018 is extended in respect of the petitioners in order for the petitioners to avail of the same. In other words, the petitioners would not be deprived of the opportunity to avail the CODS-2018 only on account of pendency of the appeal before NCLT.

13. Since an unequivocal statement is made by the petitioners that they would pay the necessary charges and make the necessary application under the CODS - 2018, the impugned list of the disqualified directors, in as much as it includes the name of the directors, is stayed till 31.03.2018 or up till such time as the respondents take a final decision in the matter.

14. This order has been passed with due assistance of the learned counsel for the respondents, in the peculiar facts and circumstances of this case.

15. It is further clarified that the aforesaid order is made on the basis of the unequivocal statements made on behalf of the petitioners above and in the event the statements are found to be incorrect, the petitioners would be liable to be proceeded against Contempt of Court in addition to being subjected to other proceedings.

16. The petition along with application is dismissed as withdrawn.

VIBHU BAKHRU, J

FEBRUARY 07, 2018
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