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

CM No.16008/2018 in
+ W.P.(C) 10783/2017

BRIJ KISHORE SABHARWAL Petitioner
Through : Ms. Pratiksha Chaturvedi,
Adv.
versus

UNION OF INDIA AND ANR. Respondents
Through : Mr. Bhagvan Swarup
Shukla, CGSC with
Mr. Kamaldeep, Adv. for R-
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CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER
% **24.04.2018**

CM No.16008/2018

1. Notice.

Mr. Bhagvan Swarup Shukla, learned CGSC accepts notice.

2. This application has been filed by the petitioner pointing out errors in our order dated 22nd March, 2018. It is pointed out that the Company Visvas Securities Limited with which the writ petition was concerned was an active company which is carrying on business and for this reason, no matter is pending before the NCLT. Erroneously, in paras 5 and 7 of the order dated 22nd March, 2018, reference has been noted with regard to proceedings

before the NCLT.

3. Mr. Bhagvan Swarup Shukla, learned CGSC appearing for the respondent does not oppose the grant of the prayer made in this application.

The application is allowed.

W.P.(C) No.10783/2017

4. In view of the above errors, the order dated 22nd March, 2018 is recalled.

5. We find that this writ petition has been filed by the petitioner, who is director in a company named Vishvas Securities Limited (hereinafter referred to as “Company”), registered under the provisions of Indian Companies Act, 1956.

6. Apart from this Company, the petitioner is stated to be Directors of several other companies as follows:

- (i) The Festival Network Ltd.
- (ii) Kingdom Digital Asia Ltd.
- (iii) Sarovar Electronics Pvt. Ltd.
- (iv) Eco Friendly Food Processing Park Ltd.
- (v) Esteem Bio Organic Food Processing Ltd.

7. The writ petition has been instituted in view of the notice 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 Director in the company for the reason that there was default in submitting returns which were statutorily required to be filed with the Registrar of Companies for

a continuous period of three financial years with regard to the affairs of the said Company.

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

9. Notice was issued in the writ petition by an order dated 5th December, 2017 when we also granted interim stay of said notice dated 6th September, 2017 and 12th September, 2017 so far as they concerned the writ petitioner.

10. We are today informed by Mr. Bhagvan Swarup Shukla, CGSC that pursuant to the stay order granted by this Court, the Director Identification Numbers ('DIN') of the petitioner was activated by the respondents.

11. Thereafter, the annual returns and financial statements of the Company have been filed up to the financial year 2009-2010 by the petitioner in the office of respondent no. 2.

12. A submission has been made before us Ms. Pratiksha Chaturvedi, learned counsel for the petitioner that, in view of the above, so far as the defaults attributed to the Director is concerned, all deficiencies have been addressed by him and, the relief sought in the writ petition deserves to be granted.

13. It is further submitted by Ms. Pratiksha Chaturvedi, learned counsel for the petitioner that the Company had throughout continued to run its business and, for this reason as well this writ petition ought to be favourably considered.

14. Contesting this claim, it is submitted by Mr. Bhagvan Swarup Shukla, learned CGSC that in view of the above narration of facts, it is an admitted position that the petitioners had defaulted and that the action of the respondents in declaring them as ‘disqualified’ under Section 164(2) of the Companies Act, 2013 cannot be faulted.

15. Our attention has been drawn however to the Condonation of Delay Scheme, 2018 (hereinafter referred to the “CODS Scheme, 2018”) floated by the respondents, enabling such defaulters to seek removal of the disqualification. It is submitted that in case the petitioner wish to avail the benefit of restoration of the directorship, he would be required to comport to the requirements of this scheme.

16. Mr. Bhagvan Swarup Shukla, learned CGSC further submits that if the petitioner wished to avail of the benefit of the CODS 2018, he may deposit the form e-Cods on behalf of deficient Company with the requisite fee payable under the scheme with the respondent without the necessity of refilling the document which stands filed as noted above.

17. It is submitted that upon such compliances, the respondents will consider the matter in accordance with law for removal of the name of the petitioner from the list of disqualified directors. This suggestion on behalf of respondents is certainly fair and deserves to be accepted.

18. In view of the above, we direct as follows:

(i) Subject to the petitioner submitting the requisite form e-Cods and fees on behalf of deficient Company with the respondents within a period of two weeks as prayed, the respondents shall forthwith take steps for removal of the petitioner's name from the disqualified directors. In case the petitioner has not submitted the prescribed form under the CODS Scheme, the same may be also submitted within the same period.

(ii) It is made clear that given the fact that the petitioner has already submitted the deficient returns it shall not be necessary for him to submit the same afresh along with this writ petition.

(iii) The orders would be posted on the website and shall also be communicated to the petitioner within two weeks from the deposit of the requisite form and fees.

18. This writ petition is disposed of in the above terms.

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ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 24, 2018/kr