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

+ W.P.(C) 11396/2017 and CM No.46513/2017

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Date of decision : 23rd March, 2018

BHAVNEESH SAIGAL AND ANR Petitioners
Through : Mr. Sanjeet Trivedi and
Mr. Naman Saraswat, Advs.

versus

UNION OF INDIA AND ANR. Respondents
Through : Ms. Maninder Acharya, ASG
with Mr. Rajesh Kumar, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The petitioners in this case were appointed as Additional Directors of the company being Mode Infotech Pvt. Ltd. on 5th January, 2008 for a fixed tenure. As such, these petitioners could have continued as Directors only till the next Annual General Meeting of the company. The writ petition has stated that the Annual General Meeting, after the petitioners' appointment, was to be held on 30th September, 2008. As such the petitioners ceased to be the Directors of the company by operation of law.

2. It has additionally been stated in the writ petition that the

petitioners had also submitted formal resignation to the Board of Directors of the Company. However, the returns which were required to be filed by the company to this effect were not filed. As such the petitioners continued to be shown as Directors of the company in its records.

3. The writ petition has been instituted in view of the notices 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 a default in submitting returns with regard to the affairs of the said Company, which were statutorily required to be filed with the Registrar of Companies for a continuous period of three financial years.

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

5. At the time of issuance of notices in this writ petition, we had granted interim stay of the impugned notices. As a result the DIN numbers of the petitioners were restored.

6. Inasmuch as Form 32 was not received by the Registrar of Companies, the respondents are unable to make any submissions with regard to the resignations, stated to have been submitted by the petitioners. However, inasmuch as the petitioners were the Additional Directors of the company, the cessation of their appointment by operation of law cannot be disputed.

7. In this background, the petitioners had ceased to be the Directors of the company, as stated by them, on 30th September, 2008

and could not have been penalized for the failure of the company to effect statutory compliances.

8. In view of the above, it is directed as follows :

(i) The respondents shall forthwith take steps for removal of the petitioner's name from the list of disqualified directors.

(ii) The orders to this effect would be posted on the website and shall also be communicated to the petitioner within two weeks from today.

(iii) It is clarified that this would not preclude the Registrar of Companies from passing a fresh order disqualifying the petitioner, if any material is found or produced before the ROC to indicate that the petitioner's statement that the petitioner had never consented to act as a Director of the Company, is false, or any material is produced which establishes that the petitioner had acted as a Director of the Company in any manner.

9. This writ petition is allowed in the above terms.

10. *Dasti.*

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

MARCH 23, 2018

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