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

+ W.P.(C) 11326/2017 & CM No.46265/2017

% Date of decision : 29th January, 2018

TUSHAR MITTAL

..... Petitioner

**Through : Mr. Manish Jain with Mr. Alok
Kucchal, Mr. Rukban Tyagi,
Advts.**

versus

UNION OF INDIA AND ANR.

..... Respondents

**Through : Mr. Dev P. Bhardwaj, CGSC
for R-1/UOI**

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. The writ petitioner complaints that he had been appointed a Director in a company registered under the name and style of ARPQ Enterprises Pvt. Ltd. (hereinafter referred to as the 'Company') wherefrom he resigned in the year 2009. The company failed to submit Form 32 regarding his resignation in accordance with the provisions of the erstwhile Companies Act, 1956 with the Registrar of Companies-respondent no.2. In this regard, the petitioner had made a complaint to the respondent no.2 vide an Investor Complaint Form dated 22nd December, 2013. It appears that the respondent no.2 vide a

letter dated 28th January, 2014 had sought an explanation from the Company about the non-filing of the said Form 32 regarding the petitioner's resignation from the directorship of the company.

2. The petitioner has stated that the annual returns of the Company filed for the year 2010-11 disclose that the petitioner had ceased to be a director of the company with effect from 20th September, 2009. These returns were filed with the respondent no.2 i.e. the Registrar of Companies.

3. This writ petition has been necessitated inasmuch as the respondent no.1, on the 6th of September, 2017 and 12th September, 2017 notified a list of directors who have been disqualified under Section 164(2)(a) of the Companies Act, 2013 as directors with effect from 1st November, 2016. To the petitioner's shock, he found his name featuring in this list at serial no.63691 page no.208. As a result, the petitioner stands prohibited from being appointed or re-appointed as a director in any other company for a period of five years.

4. It is submitted that in the above facts and circumstances of the case that the petitioner has resigned from the directorship of the company in question and information thereof has been filed with the Registrar of Companies-respondent no.2 as well as notified in the annual returns of the company with the respondent no.2, the petitioner would not incur a disqualification under Section 164 of the Companies Act. Consequently, the disqualification of the petitioner as notified in the lists dated 6th September, 2017 and 12th September, 2017 by the respondent no.1 was incorrect and illegal.

5. In view thereof, the disqualification of the petitioner as notified in the impugned list as disqualification of the petitioner as a director of the company and the resultant prohibition under Section 164(2)(a) by virtue of the petitioner's name featuring in the list dated 6th and 12th September, 2017 is hereby set aside and quashed. The respondent no.2 shall also ensure that its records are properly rectified to delete the name of the petitioner from the lists dated 6th September and 12th September, 2017. Action in this regard shall be positively taken within a period of two weeks from today. Name of the petitioner, as a director, shall be removed from all records of the respondent no.2 in the Ministry of Corporate Affairs.

6. The interim orders made on 19th December, 2017 shall continue till such time that the respondents comply with the direction passed by us today.

The writ petition and the pending application are disposed of in the above terms.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 29, 2018/kr