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

\+ W.P.(C) 133/2018 & CM No.582/2018

AMARJIT NAYAK ..... Petitioner

Through: Mr Rajeev Ranjan Pandey, Advocate with Mr Sunny Arora, Company Secretary of the petitioner.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Vivek Goyal, CGSC with Mr Harsh Pandit and Mr Rajeev Ranjan Shahi, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 12.01.2018

1. The petitioner has filed the present petition, *inter alia,* impugning the "lists of disqualified directors" published by respondent nos. 1 and 2 to the extent that it includes the petitioner's name.

2. The learned counsel appearing for the petitioner states that M/s Bloom Steels Private Limited, M/s Array Marketing Private Limited, M/s Debut Marketing Private Limited, M/s Antique Hotels Private Limited, M/s Astute Homes Private Limited, M/s Diyal Infrabuild Private Limited, M/s Clunch Builders Private Limited, M/s Devi Propbuild Private Limited, M/s Acacia Media Private Limited, M/s Divine Media Private Limited and M/s Auspicious Media Private Limited have not carried on any business for the past three years. The said companies have no assets and their bank accounts

are also not operational for the past over three years. The petitioner has not filed the requisite returns as required under the Companies Act, 2013 (hereafter 'the Act') in relation to these companies. In addition, the petitioner is also a director in M/s Ncsc Healthcare Private Limited, M/s Nc Hospitals Private Limited, Jovita Clothing Private Limited, M/s Udvita Trading Private Limited, M/s Himank Trading Private Limited, Yuval Fashions Private Limited and Jesal Enterprises Private Limited, which have either done some business in the past three years or hold certain assets.

3. Learned counsel for the petitioner also makes an unequivocal statement, on instructions of the petitioner, that the petitioner is desirous of availing of the Condonation of Delay Scheme, 2018 (hereafter the CODS-2018). However, since some of the companies in which the petitioner is the director have been struck off from the Register of Companies they are deprived of the benefit of CODS-2018.

4. The petitioner also states that he is not in a position to seek revival of companies that have not carried out any business as indicated above. However, the petitioner would seek voluntary dissolution of those companies under Section 248(2) of the Act if the petitioner is provided an opportunity to do so.

5. In respect of other companies that have carried on business in the past three years or hold any asset(s), the learned counsel for the petitioner states that the petitioner and/or the concerned company shall file an appeal before the National Company Law Tribunal (NCLT) under Section 252 of the Act.

6. In view of the above, this Court is of the view that the petitioner ought to be given a final opportunity to avail of the CODS-2018 and, accordingly, directs as under:-

(a) The companies will file all requisite documents in relation to the aforesaid companies to avail of CODS-2018;

(b) The petitioner will also file an affidavit enclosing the resolutions for voluntarily striking off the names of the companies that have not been carrying on the business and have conducted no transactions in the past three years, as required under Section 248(2) of the Act;

(c) The petitioner would make the necessary application under CODS-2018 along with the requisite charges within a period of four weeks from today;

(d) All documents/applications would be submitted to the Registrar of Companies in hard copies;

(e) The ROC will scrutinise the same and if the same are found to be otherwise in accordance with Section 248(2) of the Act, the petitioner would be granted benefit of CODS -2018 in respect of those companies. Further, the removal of the aforementioned companies from the Register under Section 248(1) of the Act would be deemed to be under Section 248 (2) of the Act and petitioner's application under Section CODS-2018 would be sympathetically considered by the Registrar.

7. The petitioner shall also approach the NCLT under Section 252 of the Act for revival of the Companies that have carried on business in the past three years or hold assets and have been struck off for non-filing of the requisite documents, within a period of four weeks from today. The NCLT is requested to consider the same within a period of four weeks thereafter.

8. The impugned list of all disqualified directors to the extent it includes

the name of the petitioner is stayed till 31.03.2018.

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

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

11. The petition and the pending application are disposed of.

VIBHU BAKHRU, J

JANUARY 12, 2018
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