IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2019

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

C.P.Nos.4 & 5 OF 2019

C.P.No.4 of 2019

Kalappulan Eani Abdurasheed ... Petitioner in CP.No.4/2019

Mohammed Ali Pookaya ... Petitioner in CP.No.5/2019

vs

1. The Registrar of Companies,
   The Office of the Registrar of Companies,
   5th Floor, Shastri Bhavan,
   No.26, Haddows Road,
   Chennai-600 006.

2. Union of India,
   Through its Secretary,
   Ministry of Corporate Affairs,
   5th Floor, A Wing,
   "SHASTRI BHAVAN",
   New Delhi-110 001. ..Respondents in both CPs

<u>Prayer in both CPs</u>: These petitions are filed under Sections 463 (2) of the Companies Act, 2013, to relieve the petitioner(s) from the disqualification made by the 1st Respondent under section 164(2)(a) of the Companies Act r/w.Section 167 vide list published by the 1st Respondent dated 18.12.2018 and consequently direct the 1st

Respondent to remove the petitioner from disqualification to serve on the Boards of the Company and more fully described in Schedule A to the petition and to issue a direction to the 1st and 2nd respondents to activate his Director Identification Number (03044823 in CP No.4/2019) and (02832825 in CP No.5/2019) to enable him to use his Director Identification Number.

For Petitioner (in both CPs) : Mr.K.M.Anand
For Respondents : Mr.T.V.Krishnamachari, [Senior Panel Counsel Central Govt.]

COMMON ORDER

These petitions are filed under Section 463 (2) of the Companies Act to relieve the petitioners from disqualification under Section 164(2)(a) of the Companies Act.

2. I heard the learned counsel for the petitioners and the learned Standing Counsel for the Registrar of Companies.

3. The learned counsel for the petitioners submitted that the Company had been struck off from the Registrar of Companies under Section 248 (5) of the Companies Act on account of non-filing of the financial statements and the annual returns. Pursuant to the order striking off the company, he submitted that a petition was filed before

the NCLT, Chennai and that by order dated 26.02.2019 in CA/1434/(252)/2018, the NCLT directed the restoration of the name of the Company in the Register of Companies and further directed the Company to file all the pending Financial Statements and Annual Returns with the Registrar of Companies as per the Act and Rules.

4. In compliance with the above order, the learned counsel for the petitioners submitted that the requisite filing fees was remitted, but the petitioners were not permitted to file the returns on the basis that the petitioners are disqualified directors and, therefore, the financial statements and the returns cannot be accepted from the petitioners. The learned counsel further submitted that they apprehend that they would be prosecuted for non-filing of the financial statements and non-filing of the annual returns under Section 137(3) and 167(2) of the Companies Act and that therefore, the petitioners should be relieved from disqualification under Section 164(2) (a) of the Companies Act.

5. On the contrary, the learned Standing Counsel appearing for the Registrar of Companies submitted that the petitioners are not officers of the Company and that, therefore, they are not entitled to

maintain the petition under Section 463(2) of the Companies Act. In this connection, he referred to and relied upon the earlier order of this Court dated 29.03.2019 in C.P.No.2 of 2019. In particular, he relied upon paragraph-36 of the said order wherein this Court held that a petition challenging the order of disqualification is not maintainable under Section 463 (2) of the Companies Act, 2013.

6. The records were examined and the oral submissions were considered carefully.

7. The question that arises for consideration is whether the petition under Section 463(2) of the Companies Act, 2013, is maintainable in respect of the order of disqualification. In the decision referred to by the learned Standing Counsel appearing for the Registrar of Companies, this Court considered the law on the subject and concluded that such a petition is not maintainable because the disqualification has already come into operation under the specific statutory provision. On that basis, this Court held that the petition has not been filed on reasonable apprehension of prosecution but filed in respect of disqualification that had already came in to force. I see no reason to disagree with the said decision.

8. In addition, it may be noticed that no show cause notice has been issued in respect of non-filing of the financial statements or non-filing of the annual returns. As such, at this juncture, there is no reason to exercise discretionary jurisdiction under Section 463(2) of the Companies Act.

9. On perusal of the order of the NCLT, I find that the company has been directed to file all pending financial statements and annual returns with the Registrar of Companies. Therefore, it is always open to the Company and its ex-directors to approach the NCLT if any difficulty is experienced in ensuring that the financial statements and the returns are taken on file.

10. In view of the foregoing discussion, these petitions are dismissed subject to the above observation.

25.10.2019

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Note: Issue Order copy on 25.10.2019

SENTHILKUMAR RAMAMOORTHY, J

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