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

\+ **W.P.(C) 211/2019**

SHASHIKANT TULSIAN ..... Petitioner

Through: Ms Pragya Parijat Singh and Mr Prashant Singh, Advocates with Ms Rupali Grover, AR of the petitioner.

versus

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

Through: Mr Ashim Sood, CGSC with Mr Aditya Kumar, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **11.01.2019**

1. Issue notice. The learned counsel appearing for respondent no.1 accepts notice.

2. The petitioner has filed the present petition, on being reflected as a defaulting director of a 'Vanishing Company' in the records of respondent no.1.

3. The petitioner states that he is a market analyst with experience spanning over four decades. It is further submitted that the petitioner is a qualified Chartered Accountant and Company Secretary and a graduate in Commerce and Law.

4. It is stated that the petitioner joined a company, namely, Manav Pharma Ltd. (hereafter 'the Company') as a Non-Executive Director on

15.01.1993. The petitioner continued to be a Non-Executive Director of the company till his resignation on 27.07.1995. The petitioner states that the Company was incorporated on 28.04.1992 and he was not the promoter of the said Company and did not hold any shares in the company even during the period when he was a Non-Executive Director of the Company.

5. The petitioner has also enclosed the copy of the annual returns filed by the company for the years 1995-96 and 1996-97, which disclosed that the Company had duly declared that the petitioner had resigned as a Director on 27.07.1995.

6. Apparently, the Company had failed to comply with the Listing Agreements and had failed to make disclosures as per listing agreements and, therefore, in the year 2000, Securities and Exchange Board of India (SEBI) issued a show cause notice dated 10.01.2000 calling upon the petitioner to show cause as to why action should not be taken against the Company.

7. The petitioner duly responded to the said show cause.

8. The Company also defaulted in filing the balance sheet for the financial year 1999-2000. Thereafter, a show cause notice dated 29.05.2002 was issued to the petitioner and all other persons who were Directors of the Company alleging that the Company had failed to implement the project for which public issue of equity was made.

9. Thereafter, a criminal case was filed by the Registrar of Companies (being Criminal Case bearing No. 200068/2003) under Section 63, 68 and 628 of the Companies Act, 1956 before the Additional Chief Metropolitan Magistrate, Ahmedabad.

10. On 23.04.2014, another show cause notice was issued by SEBI calling

upon the noticees to show cause as to why the Company should not be declared as a 'Vanishing Company'. Subsequently, by an order dated 21.10.2016, the Company was declared as a vanishing company and directions were issued to all the Directors including the petitioner to disassociate themselves in every respect from the capital market related activities; not to raise funds from the capital market; not to deal in securities; and not to be associated with any of the intermediaries in the capital market for a period of five years from the date of the order.

11. The petitioner being aggrieved by the order dated 21.10.2016 filed a representation dated 24.10.2016, *inter alia*, contending that the petitioner was a Non-Executive Director of the Company for a brief period between 15.01.1993 and 27.07.1995 and during the said period there was no default attributable to the Company. However, the petitioner as a Non-Executive Director was not involved in the day-to-day functioning and therefore could not be visited with the penalty as imposed.

12. SEBI accepted the representation of the petitioner and by an order dated 27.10.2016 revoked the directions and observations qua the petitioner in the aforesaid order dated 21.10.2016.

13. Copy of the aforesaid order was also forwarded to the respondent no.1 as well as other stock exchanges.

14. On 24.08.2018, the learned Additional Chief Metropolitan Magistrate, Ahmedabad passed an order rejecting the complaint filed by the ROC (case no. 200068/2003) under Section 63, 68 & 628 of the Companies Act 1956.

15. The petitioner's grievance is that despite being absolved of the allegations of misconduct/default, the respondent continues to reflect the petitioner as a defaulting Director of a 'Vanishing Company'.

16. The learned counsel appearing for the petitioner has also drawn the attention of this Court to a letter dated 07.02.2017 issued by the Deputy Registrar of Companies (ROC) indicating that the petitioner's name as a defaulting Director cannot be removed as the said list has been released by the Ministry of Corporate Affairs (respondent no.1)

17. It is apparent from the averments made in the petition that the petitioner cannot be held as a defaulting director of a vanishing company. In this view, the petition is allowed and respondent no.1 is directed to remove the petitioner's name as a defaulting director of a 'Vanishing Company', including from the list as published on its website.

18. However, if the respondent no.1 is of the view that there is material to indicate that the petitioner is an officer in default, it will be open for respondent no.1 to issue a separate show cause notice indicating the material on which such a view is premised and take an appropriate decision after hearing the petitioner. All contentions of the parties in this regard are reserved.

19. The petition is disposed of in the aforesaid terms. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JANUARY 11, 2019
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