

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.5539 & 5543 of 2020

and

W.M.P.Nos.6481, 6483, 6489 and 6490 of 2020

Vaheeda

.. Petitioner in
W.P.No.5539/2020

Mehroof Manalody

.. Petitioner
in W.P.No.5543/2020

.Vs.

1. The Registrar of Companies,
Block No.6, B Wing, 2nd Floor,
Shastri Bhawan, 26, Haddows Road,
Chennai - 600 034.

2. The Secretary,
Ministry of Corporate Affairs,
5th Floor, 'A' Wing,
Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110 001.

..Respondents in both
writ petitions

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the Notification passed by the 1st respondent dated 13.12.2019 published in the official website of the MCA and quash the same under Sec. 164(2) of the Companies Act as void, illegal and unconstitutional as far as petitioner with regard to GLOSOFT TECHNOLOGIES PRIVATE LIMITED and direct the respondent to activate the DIN, thereby permitting the petitioner to continue as director of GLOSOFT TECHNOLOGIES PRIVATE LIMITED, non-defaulting company.

* * *

For Petitioner in: Mr.Murugesh Kasivel
both W.Ps.

For Respondents : Ms.M.P.Jaisha
in both W.Ps. Central Government Standing Counsel

C O M M O N O R D E R

Challenge is laid to the order of the second respondent dated 13.12.2019, insofar as the petitioners are concerned, and consequential direction is sought for to direct the respondents to activate the DIN, thereby permitting the petitioners to continue as directors of GLOSOFT TECHNOLOGIES PRIVATE LIMITED, non-defaulting company.

2. Heard the learned counsel on either side and perused the materials placed before this Court.

3. The learned counsel appearing for the petitioners requested that the order may be passed, in the same line as that of the First Division Bench passed in W.A.No.569 of 2020 etc. batch (Meethelaveetil Kaitheri Muralidharan V. Union of India, 2020 SCC OnLine Mad 1958).

4. The issue involved in these writ petitions is no more a res integra. It is to be stated that the Registrar of Companies (RoC) has been disqualifying the Directors under Section 164(2) (a) of the Companies Act, 2013 by order dated 8.09.2017. Another list was published in the website of the first respondent on 01.11.2017 disqualifying the Directors. Yet another list of Directors were disqualified on 17.12.2018 by the RoC.

5. Several of the Directors so disqualified under the above mentioned notifications dated 08.09.2017 and 01.11.2017 challenged the same before this Court and this Court by order dated 03.08.2018 in Bhagavan Das Dhananjaya Das V. Union of India , (2018) 6 MLJ 704, allowed the batch of writ petitions and set aside the aforesaid notifications/orders.

6. The notification dated 17.12.2018, which was uploaded in the website by the first respondent on 18.12.2018 was challenged on the strength of the judgment of this Court in Bhagavan Das case (cited supra). However, they were dismissed by this Court, and such orders were passed on 27.01.2020 and 10.02.2020, etc. The said orders were put to challenge in a batch of writ appeals, which were dealt with by the Hon'ble First Bench of this Court in W.A.No.569 of 2020, etc. batch (Meethelaveetil Kaitheri Muralidharan V. Union of India, 2020 SCC OnLine Mad 1958). The Hon'ble Division Bench in the said order dealt with the powers of the RoC in the light of Sections 164 and 167(1) of the Companies Act, 2013 and Rule 14 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 and also has elaborately considered as to whether the RoC is entitled to deactivate the Director Identification Number (DIN) by referring to the Rules 19, 10 and 11 of the said 2014 Rules and held as follows :

"41. As is evident from the above, Rules 9 and 10 deals with the application for allotment of DIN. Rule 10(6) specifies that the DIN is valid for the life time of the applicant and shall not be allotted to any other person. Rule 11 provides for the cancellation or surrender or deactivation of the DIN. It is very clear upon examining Rule 11 that neither cancellation nor deactivation is provided for upon disqualification under Section 164(2) of CA 2013. In this connection, it is also pertinent to refer to Section 167(1) of CA 2013 which provides for vacating the office of director by a director of a Defaulting Company. As a corollary, it follows that if a person is a director of five companies, which may be referred to as companies A to E, if the default is committed by company A by not filing financial statements or annual returns, the said director of company A would incur disqualification and would vacate office as director of companies B to E. However, the said person would not vacate office as director of company A. If such person does not vacate office and continues to be a director of company A, it is necessary that such person continues to retain the DIN. In this connection, it is also pertinent to point out that it is not possible to file either the financial statements or the annual returns without a DIN. Consequently, the director of Defaulting Company A, in the above example, would be required to retain the DIN so as to make good the deficiency by filing the respective documents. Thus, apart from the fact that the AQD Rules do not empower the ROC to deactivate the DIN, we find that such deactivation would also be contrary to Section 164(2) read with 167(1) of CA 2013 inasmuch as the person concerned would continue to be a director of the Defaulting Company.

43. In the result, these appeals are allowed by setting aside the impugned order dated 27.01.2020. Consequently, the publication of the list of disqualified directors by the ROC and the deactivation of the DIN of the Appellants is hereby quashed. As a corollary to our conclusion on the deactivation of DIN, the DIN of the respective directors shall be reactivated within 30 days of the date of receipt of a copy of this order. Nonetheless, we make it clear that it is open to the ROC concerned to initiate action with regard to disqualification subject to an enquiry to decide the question of attribution of default to specific directors by taking into account the observations and conclusions herein. No costs.

Consequently, connected miscellaneous petitions are closed."

7. In view of the aforesaid position, following the decision of the Hon'ble First Bench of this Court in Meethelaveetil Kaitheri Muralidharan's case (supra), these writ petitions are allowed, in the terms indicated in the aforesaid judgment. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Registrar of Companies,
Block No.6, B Wing, 2nd Floor,
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Chennai - 600 034.
2. The Secretary,
Ministry of Corporate Affairs,
5th Floor, 'A' Wing,
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Rajendra Prasad Road,
New Delhi-110 001.

+4cc to M/s.A.Raja Mohamed, Advocate, S.R.No.37350 & 37351

सत्यमेव जयते

W.P.Nos.5539 & 5543 of 2020

rsi (co)
rr ii (10/12/2020)

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