

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.16587, 16647, 16786, 16855, 16721 & 16740 of 2020,
and

W.MP.Nos.20569 & 20572 of 2020,20645, 20646, 20800, 20801,
20908, 20911, 20740, 20738,20760 & 20763 of 2020

W.P.No.16587 of 2020,
Mohan Nair

Petitioner

vs.

1.Union of India,
Represented by its Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.

2.The Registrar of Companies Tamil Nadu, Chennai,
Block No.6, B Wing 2nd Floor,
Shastri Bhawan 26,
Haddows Road,
Chennai-600 006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order dated 13.12.2019 which is uploaded in the website of the 1st respondent in so far as the petitioner [DIN :03498616] herein and quash the same, consequently direct the respondents herein to permit the petitioner to get reappointed as director of any company or appointed as director in any company without any bar and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

W.P.Nos.16647 of 2020
Sasi Maijo

..

Petitioner

vs.

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1.The Registrar of Companies

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

2.Union of India,

Represented by its Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi-110 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in so far as the petitioner is concerned with (DIN) Director Identification Number 00374573 under section 164(2) (a) of the companies Act, 2013 relating to the Impugned Notice dated 13.12.2019 uploaded in the website of the 2nd respondent in so far as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents herein to permit the petitioner to get reappointed as Director of the Company or appointed as Director in any company without any hindrance.

W.P.No.16786 of 2020

Deepti Ashish Baru

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Petitioner

VS.

1.Union of India,

Represented by its Secretary,
Ministry of Corporate Affairs,
A Wing, Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.

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

.. Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order dated 13.12.2019, uploaded in the website of the 1st respondent under Sl.No.392 in so far as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents herein to re-active the Director Identification Number (DIN) /Designated Partner Identification Number (DPIN) of the Petitioner with immediate effect and permit the Petitioner to get reappointed as a Director of any company or appointed as director in any company without any hindrance and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

W.P.No.16855 of 2020
Muthukaruppan Ravi ..

Petitioner

vs.

1.Union of India,
Represented by its Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi-110 001.

2.The Registrar of Companies, Tamil Nadu, Chennai,
Block No.6, B Wing 2nd Floor,
Shastri Bhawan 26,
Haddows Road,
Chennai-600 006.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order dated 13.12.2019, uploaded in the website of the 1st respondent in so far as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents herein to permit the Petitioner to get reappointed as a Director of any company or appointed as director in any company without any hindrance and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

W.P.Nos.16721 & 16740 of 2020

Balasubramanian Saknara Iyer

..Petitioner in WP.No.16721/2020

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Shankar Sathyanarayanan Balasubramanian

..Petitioner in
WP.No.16740/2020

vs.

1.Union of India,
Represented by its Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi-110 001.

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

.. Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to the impugned order dated 01.11.2017, uploaded in the website of the 1st respondent in so far as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents herein to permit the Petitioner to get reappointed as a Director of any company or appointed as director in any company without any hindrance and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

In all Writ Petitions

For Petitioner : Mr.T.V.Suresh Kumar in
WP.16587/2020
to Genicon & Associates
Mr.K.M.Anand in WP.16647/2020
Mr.B.Kishore in WP.16786/2020
Mr.S.Sathish in WP.16855/2020
Mr.P.Malmarugan in WP.Nos.16721
and 16740/2020

For Respondents : Mr.J.Madhanagopal Rao
in all WP's

COMMON ORDER

The Writ Petitions have been filed for the issuance of a Writ of Certiorarified Mandamus calling for the records of the

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second respondent, Registrar of Companies, Chennai with relation to the impugned order dated 13.12.2019, uploaded in the website of the first respondent, namely Ministry of Corporate Affairs New Delhi and quash the same.

2. As the issues raised in all the Writ Petitions and the grievance of the writ petitioners are similar, by consent of all the counsel, a common order is passed in all the Writ Petitions.

3. As an illustration, the facts in WP.No.16587 of 2020 is stated.

4. The case of the petitioner is that he had been appointed as Director having Identification Number 03498616 in Glotex Fashions Private Limited, bearing Company Identification Number (CIN)-U18202TN2011PTC081081 which was incorporated on 15.06.2011 (herein after called as 'company'). It is the averment made by the petitioner that the company has filed its financial statements till 31.3.2014 complying with various provisions of the Companies Act, 1956. However, due to inadvertence and lack of professional guidance, the company could not file annual returns from the financial year 2014-15 with the 2nd respondent. Thereafter the petitioner came to know that the company was struck off under the provisions of section 248 of the Companies Act, 2013, by the 2nd respondent. In this connection on verification it was found that the 2nd respondent had uploaded in the 1st respondent's website, a notice for removal of the name from the register of companies vide notice dated 2.8.2019, in Form No.STK-5. Subsequently on 29.10.2019, and thereafter, the 2nd respondent had passed the impugned order disqualifying the petitioner as Director and deactivated the TIN number and the same was uploaded in the 1st respondent website on 13.12.2019. Challenging the same, the present petition is filed.

5. The writ petitioners in all the other writ petitions also suffered the same fate. They all stood disqualified from the Company in which they were Directors wherein annual returns had not been filed for a continuous period of three years and as a consequence thereof, they had to vacate office in all the other companies where they held the office of Directorship. Their Director Identification numbers were also deactivated.

6. Learned counsel appearing for the petitioner submitted that the Companies Act deals with disqualification for appointment as a Director u/s 164 which came into force only from 1.4.2014 and that Section 164 (1) thereof sets out eight grounds of disqualification that are individual Director-specific and broadly corresponds to Section 274(1)(a)-(f) of the

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earlier Companies Act, 1956. Sub-section (2) thereof, which bears some resemblance of Section 274(1)(g) of Companies Act, 1956 has a wider in scope and deals with default by the company concerned in fulfilling its obligations and the default to the directors, thereby resulting in their disqualification. In these cases, this Court is concerned with Section 164(2)(a) which prescribes that a person who is or has been a Director of a company which has not filed financial statements or annual returns for any continuous period of three financial years is not eligible to be re-appointed as a director of the company or appointed as a director of any other company for five years from the date of default. In each of these cases, on the ground specified in Section 164(2)(a) of Companies Act, 2013, the name of each Petitioners/directors were included in a list of disqualified directors, which was published on the website of the first respondent. The learned counsel further submitted that the DIN of each petitioner/director was consequently deactivated. In the earlier round of litigation, similarly situated persons approached this Court on two main grounds on which the disqualification and deactivation were challenged, viz., (i) prior notice was not issued to the appellant concerned calling upon him to show cause as to why he should not be disqualified as a director; and (ii) the ROC is not entitled to deactivate the DIN of these directors as per Companies Act, 2013 and the rules framed thereunder. However the learned single Judge of this Court not accepting the grounds raised by the petitioners, dismissed those batch of writ petitions, thereby the order was challenged before this Division Bench of this Court in W.A.Nos.569/2020 batch, and this Division Bench by its order dated 9.10.2020 allowed the writ appeals and the same ratio would apply to the petitioners also. Accordingly he prays for allowing these petitions in terms of ratio laid down by the Division Bench of this Court.

7. On the above contention, this Court heard learned standing counsel for the respondents, who has no serious objection for considering the case of the petitioners case in the light of the directions issued in W.A.Nos.569/2020 batch, dated 9.10.2020.

8. The facts in the present cases are not disputed. Admittedly, The provisions are clear. This Court had not been called to give a ruling on the vires of Section 164(2)(a). According to this provision, if a person, who is a Director of a Company which had not filed financial statements or annual returns for a continuous period of three financial years, then he/she was not eligible to be reappointed as a Director on that Company or can be appointed in other Company for a period of

five years. A proviso was inserted in [Section 167\(1\) \(a\)](#) with effect from 07.05.2018, which stated that if disqualification is incurred then the office of Director shall become vacant in all other companies where the individual was a Director. As stated above, in the earlier round of litigation, the vires of this proviso was questioned and challenged before a Division Bench of this Court, wherein, the writ petitions filed by similarly situated persons were dismissed leading to the filing of the appeals in Writ Appeal Nos.569, 718, 720, 721, 841 and 842 of 2020 and the Division Bench of this Court, by its order dated 09.10.2020 allowed the writ appeals. The relevant portion of the said order is extracted hereunder:

"36. 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.

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37. In light of the above analysis, we concur with the views of the Delhi High Court in Mukut Pathak, the Allahabad High Court in Jai Shankar Agrahari and the Gujarat High Court in Gaurang Balvantlal Shah to the effect that the ROC is not empowered to deactivate the DIN under the relevant rules. In Yashodhara Shroff, the Karnataka High Court upheld the constitutionality of Section 164(2) and proceeded to hold that a prior or post decisional hearing is not necessary. For reasons detailed in preceding paragraphs, we disagree with the view of the Karnataka High Court that prior notice is not required under Section 164(2) of CA 2013.

38. 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. "

9. The above directions is squarely applicable to the facts of the present case. Therefore, the present petitioner are allowed by setting aside the impugned order dated 13.12.2019. Consequently, the publication of the list of disqualified directors by the ROC and the deactivation of the DIN of the petitioners is hereby quashed. As a necessary corollary to the above 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, this Court makes 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 passed by the Division Bench of this Court in Writ Appeal Nos.569, 718, 720, 721, 841 and 842 of 2020.

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10. These writ petitions are allowed with the aforesaid observations and directions. However in the said circumstances, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jrs

To

1.Union of India,
Represented by its Secretary,
Ministry of Corporation Affairs,
Shastri Bhawan,
Dr.Rajendra Prasad Road,
New Delhi-110 001.

2.The Registrar of Companies Tamil Nadu, Chennai,
Block No.6, B Wing 2nd Floor,
Shastri Bhawan 26,
Haddows Road,
Chennai-600 006.

+1cc to M/s.Genicon & Associates SR.38100

+2cc to Mr.K.M.Anand Advocate SR.38024

+1cc to Mr.S.Arjun Suresh, Advocate SR.38327

+2cc to Mr.P.Malmarugan, Advocate SR.37848

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GMR (CO)
CB(11/01/2021)

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