IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2020

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P. Nos.17216 and 17223 of 2020
and
W.M.P.Nos.21272, 21274, 21283 and 21284 of 2020

Venkatasami Arun ..Petitioner in W.P.No.17216 of 2020
Venkatasami Arvind ..Petitioner in W.P.No.17223 of 2020

Versus

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

2. Registrar of Companies,
Tamil Nadu, Chennai, Block No.6,
'B' Wing 2nd Floor,
Shastri Bhavan,
26, Haddows Road, Chennai 600 006 ..Respondents in both W.Ps

PRAYER in both W.Ps: Writ petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorarifed Mandamus, calling for the records of the second respondent relating to the impugned orders dated 01.11.2017 uploaded in the website of the first respondent insofar as the petitioners herein are concerned, quash the same as illegal, arbitrary and devoid of merit and consequentially direct the respondents herein to permit petitioners to get re-appointed as Directors of any Company or appointed as Directors in any Company without any hindrance.

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For Petitioners : Mr.S.Sathish
in both W.P.S

For Respondents : Dr.G.Babu
in both W.Ps CGSC

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COMMON ORDER

Challenge is laid to the orders of the second respondent dated 01.11.2017, insofar as the petitioners are concerned, and consequential direction is sought for to direct the respondents to permit the petitioners to get re-appointed as Directors of any Company or appointed in any other Company without any hindrance.

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

3. 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 08.09.2017. 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.

4. 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.

5. 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

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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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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."

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6. 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

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SUB-ASSISTANT REGISTRAR

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To

1. The Secretary,
   Union of India,
   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 Bhavan,
   26, Haddows Road, Chennai 600 006

+4CC to Dr.G. BABU, SR.NOs.39476, 39424

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