IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.18796, 18800, 18801,
18803, 18806 & 18808 of 2020
and
W.M.P.Nos.23359, 23361, 23365, 23367, 23369, 23370,
23374, 23377, 23378, 23379, 23381 & 23382 of 2020

Bava .. Petitioner in Wps.18796,18800 & 18801/2020
Hexer Ali Mepurath .. Petitioner in Wp.18803/20
Mohammed Haneefa Nalagatha .. Petitioner in Wp.18806/20
Muhamed Mansoor Karakat .. Petitioner in Wp.18808/20

Vs.

1. The 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,
   Chennai, Tamil Nadu,
   Block No.6, B Wing, 2nd Floor,
   Shastri Bhawan, 26, Haddows Road,
   Chennai - 600 034. .. Respondents in all WPs

Prayer in W.P.No.18796/2020: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent relating to the impugned order dated 01.11.2017, 18.12.2018,18.12.2018,18.12.2018,18.12.2018 and 18.12.2018 respectively uploaded on the website of the 1st respondent insofar as the petitioner herein is concerned (DIN No. 1725420 at Sl.No.14895),Sl.NO.14350 & 14353 DIN No. 2791611 at Sl.No.9641 DIN No. 3090789 at Sl.No.9643 and DIN No. 2791620 at Sl.No.9642 respectively quash the same as illegal, arbitrary and devoid of merit and consequentially 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 hindrance.

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For Petitioner in all W.Ps. : Mr.N.Murali

For Respondents in all W.Ps. : Mr.K.B.Arul
Addl. Central Govt. Standing Counsel

COMMON ORDER

Mr.K.B.Arul, learned Additional Central Government Standing Counsel takes notice for the respondents.

2. By consent of the parties, these writ petitions are taken up for final disposal at the admission stage itself.

3. Challenge is laid to the orders of the second respondent dated 01.11.2017 and 18.12.2018, insofar as the petitioners are concerned, and consequential direction is sought for to direct the respondents herein to permit the petitioners to get reappointed as Directors of any Company or appointed as Directors in any company without any hindrance.

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

5. 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.

6. 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.

7. 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

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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.
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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

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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."

8. 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. It is open to the petitioners to avail the benefits of the Companies Fresh Start Scheme, 2020, which is open till 31.12.2020. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

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

+6ccs to Mr.N.Murali , Advocate SR.No.41029 to 41034,
+5ccs to Mr.M.Sathyam , Advocate SR.No. 41503 to 41507
+1cc to Mr.M.Sathyam , Advocate SR.No. 41508 A.SK(07.01.2021)

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A.Sk(23.12.2020)

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