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

+ **W.P.(C) 3771/2020**

P PARAMESWARAM

..... Petitioner

Through: Revathy Raghavan and Ms Smita
Jain, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms Bharathi Raju, CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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23.07.2020

[Hearing held through video conferencing]

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) issue a writ of or in the nature of mandamus or any other appropriate writ, order or directions commanding the respondents to enable the Director Identification Numbers (DIN) of the petitioner being 03315007 an to permit the petitioner to operate and access the website of the Ministry of Corporate Affairs, Government of India and further commanding and restraining the respondents from treating or taking any steps treating the petitioners as disqualified Directors.”

2. It is averred in the petition that the petitioner was appointed as an independent director of Kerala Housing Finance Limited – a company incorporated under the Companies act 1956 – but had resigned on

22.05.2016. The petitioner states that he is not a shareholder of the said company.

3. The learned counsel appearing for the petitioner earnestly contends that the petitioner is not liable for any of the acts of Kerala Housing Finance Limited. She relies upon the decision dated 27.11.2019 rendered by the Securities Appellate Tribunal, Mumbai in Appeal No.05/2018 in support of her contention.

4. Ms Raju, learned counsel appearing for the respondent states that the petitioner was not only a Director in the Kerala Housing Finance Limited but was also Director in another company, namely, Shrek and Lee Debt Company Private Limited. She states that the name of the said company was also been struck off from the Register of Companies as Shrek and Lee Debt Company Private Limited had defaulted in filing annual returns as required under the Companies Act, 2013. She states that in view of defaults committed by the Kerala Housing Finance Limited and Shrek and Lee Debt Company Private Limited, the petitioner has been disqualified acting as a Director in terms of Section 164(2) and Section 167(1) of the Companies Act, 2013.

5. A bare perusal of the order dated 27.11.2019 passed by the Securities Appellate Tribunal, Mumbai (SAT) in Appeal No.05/2018, indicates that the petitioner was absolved of any liability in respect of contravention of provisions of Sections 56(1), 56(3), 60 and 73 of the Companies Act, 1956 and Sections 2(70), 33(1) and 40 of the Companies Act, 2013.

6. The said appeal (Appeal No. 5/2018] was filed against an order dated 31.07.2015 and 20.11.2015 passed by the Securities Exchange Board of India (SEBI) restraining the directors and promoters from approaching the

securities market or taking up any new assignment in any issue of debentures. SEBI found that Kerala Housing Finance Limited had defaulted in complying with the aforesaid provisions of the Companies Act as well as the provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations (ICDR Regulations) and Securities and Exchange Board of India (Disclosure and Investment Protection) Guidelines, 2000. The petitioner contended that he was not in active management of Kerala Housing Finance Limited and the said company had taken the decision to issue debentures at a meeting of the Board of Directors held prior to the petitioner's appointment as a director of the said company. SAT accepted the said contention and set aside the order passed by SEBI.

7. It is apparent from the above that the issues involved before the SAT are not the reasons why the petitioner has been disqualified to act as a director. Thus, the said decision has little relevance to the issues involved in the present petition.

8. The limited questions that fall for consideration of this Court are (i) whether the decisions of respondent in disqualifying the petitioner is illegal; and (ii) whether the decision of the respondents to deactivate his Director's Identification Number (DIN) is sustainable.

9. There is no dispute that the Kerala Housing Finance Limited had defaulted in filing its annual returns for three consecutive years. Further, Shrek and Lee Debt Company Private Limited has also been struck off from the Register of Companies on account of its defaults in filing the requisite returns under the Companies Act, 2013.

10. The petitioner claims that he had resigned from the Board of Directors

of Kerala Housing Finance Limited with effect from 26.05.2016. However, he had not filed the necessary form with the Registrar of Companies at the material time.

11. The question whether a director would be disqualified to act as a Director by virtue of provisions of Section 164(2)(a) and 167(1)(a) of the Companies Act is covered by the decision of this Court in ***Mukut Pathak & Ors. v. Union of India and Ors.: W.P.(C) 9088/2018 decided on 04.11.2019.***

12. Insofar as the petitioner's prayer that his Director Identification Number (DIN) be directed to be activated is concerned, the said issue is also covered by the decision of this Court in ***Mukut Pathak & Ors. (supra)***. It is not disputed that the petitioner's DIN had been deactivated only on account of his being disqualified to act as a Director. As held in ***Mukut Pathak's*** case, the said action is not sustainable. The DIN could be deactivated in terms of Rule 11 of the Companies Act (Appointment and Qualification of Director) Rules, 2014. But admittedly, the petitioner's DIN has not been deactivated in terms of the said Rules.

13. In view of the above, the petitioner's prayer that the respondent be restrained from treating the petitioner as a disqualified director, is rejected. However, the respondents are directed to activate the petitioner's DIN (DIN No.03315007).

14. The petitioner's prayer that he be permitted to access the website of Ministry of Corporate Affairs, Ministry of India cannot be acceded to. The petitioner has been disqualified as a Director, therefore, he cannot access the said website to file returns or forms as a Director of Kerala Housing Finance Limited or any other company.

15. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

JULY 23, 2020
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