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

Date of Decision : 25.09.2020

\+ **W.P.(C) 1281/2018 & CM Nos.5362/2018, 23242/2020**

(29) **W.P.(C) 1310/2018 & CM Nos.5419/2018, 23310/2020**

HANDOO & HANDOO LEGAL CONSULTANTS & ANR ..... Petitioners

M/S COSMOS ADVANCED DIAGNOSTICS LLP & ANR. ..... Petitioners

Through Mr.R.K. Handoo, Mr.T.Singhdev and Mr.Tarun Verma, Advs.

versus

UNION OF INDIA & ORS ..... Respondents

Through Mr.Ripudaman Bharwaj, CGSC along with Mr.Manjit Singh, Dy. ROC

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

This hearing has been held by video conferencing.

CM No. 23242/2020 and W.P.(C) 1281/2018 & CM No.5362/2018
CM No. 23310/2020 and W.P.(C) 1310/2018 & CM No.5419/2018

1. The above applications have been filed by the petitioner(s) praying that the petitioner(s) be allowed to avail the benefit of 'LLP

Settlement Scheme, 2020' dated 04.03.2020 read with the subsequent modification thereto vide Circular dated 30.03.2020.

2. By the said Scheme, the respondent no.1, exercising its power under Section 460 of the Companies Act, 2013 (extended to LLPs vide Gazette Notification No.G.S.R. 59 (E) Dated 30th January, 2020 under Section 67 (2) of the Limited Liability Partnership Act, 2008), allowed a one-time condonation of delay in filing statutorily required documents with the Registrar by the Limited Liability Partnerships. The said Scheme was floated by the respondent no.1 observing as under:

> *"2. It has come to the notice of Government that a large number of LLPs have defaulted in filing Form (3) viz. LLP Agreement and changes therein and statutory return viz. Form-8- Statement of Account & Solvency (Annual or Interim) and Form-11- Annual Return of LLP. In the event of requisite forms not being filed within prescribed time presently LLPs may file such documents on payment of additional fee for one hundred rupees for every day of such delay under Section 69 of the LLP Act in addition to any fee as is payable for filing of such document or return.*
>
> *3. A large number of representations were received from various quarters for waiver of fee or condonation of delay and relaxations in additional fee on the ground of excessive financial burden.*
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> *4. It is also noted that a large number of LLPs are not filing their due statutory documents (i.e. Information with regard to LLP agreement and changes etc., Notice of Appointment of Partner/ Designate Partner etc. and other*

Annual filing documents i.e. Statement of Account & Solvency and Annual Returns) in a timely manner with the Registrar. Form 3 is filed for filing Information with regard to LLP agreement and changes, if any made therein and Form-4 is for filing Notice of Appointment of Partner/ Designated Partner, his consent etc. which are required to be filed with the prescribed fee.

5. Due to this, the records available in the electronic registry are not updated and they are not available to the stakeholders for inspection. Further, due to not filing the required documents on time the LLPs and their designated partners are liable for criminal prosecution and the said LLPs cannot be closed till all compliances are completed.

6. As part of Government's constant efforts to promote ease of doing business it has been decided to give a Onetime relaxation in additional fees to the defaulting LLPs to make good their default by filing pending documents and to serve as a compliant LLP in future."

3. The Scheme, in paragraph 8(iii) states that the same is applicable to any "defaulting LLP" for the documents which were due to be filed till 31.10.2019. The "defaulting LLP" is defined in Clause 8(ii)(c) as under:

"8. ***The details of the scheme are as under****:*

xxx

(ii) ***Definitions****:*

xxx

(c) "defaulting LLP" means a LLP registered under the Limited Liability Partnership Act, 2008 which has made a default in filing of documents on the due date(s) specified under the LLP Act, 2008 and rules made there under."

4. The applicability of the Scheme is provide in Clause 8(iii), as under:

> "**(iii.) Applicability:** - Any "defaulting LLF' is permitted to file belated
> documents, which were due for filing till 31st October, 2019 in accordance with
> the provisions of this Scheme."

5. Clause 8(iv)and (v) of the Scheme, as amended by the Circular dated 30.03.2020, grants the following benefit to the 'defaulting LLPs':

> *"(iv) **Manner of payment of fee on filing of belated documents for seeking immunity under the Scheme**:- The defaulting LLPs may themselves avail this scheme for filing documents which have not been filed or registered in time on the payment of fee as payable for filing of such document or return.*
>
> *Provided that no additional fees shall be payable for filing any belated documents under this scheme.*
>
> *(v) **Immunity from prosecution in respect of document(s) filed under the scheme:-** The defaulting LLPs, which have filed their belated documents till 30th September, 2020 and made good the default, shall not be*

subjected to prosecution by the Registrar for such default."

6. The petitioners herein had filed the present petitions alleging that they could not upload the statutory forms required under the Act to be uploaded by them due to a glitch in the system of the respondents itself. This Court, by its order dated 06.12.2018, observed as under:

> *"4. It also appears that there are large number of LLPs, which had not filed Form-3 at the initial stage. Therefore, it may be apposite for the respondents to consider a onetime measure to enable all parties to complete the statutory filings.*
>
> *xxx*
>
> *6. In the meanwhile, the respondents shall take steps to enable the petitioners to upload the pending forms electronically, within a period of two weeks from today, without payment of any additional fees. The question of quantum of additional fee, if any, shall be determined at a subsequent stage. The petitioners accept that the fee, as finally indicated, shall be paid by them."*

7. Pursuant to the above order, the petitioners uploaded their forms.

8. As far as the additional fee required to be deposited under Section 69 of the Act, this Court by its subsequent order dated

11.04.2019, recorded the submission of the then learned ASG to the effect that the same is being considered by the appropriate authority.

9. On 16.09.2019, this Court observed as under:

> *"Pursuant to the orders dated 06.12.2018 and 11.04.2019, the learned counsel for the respondents hands over a copy of the Office Memorandum dated 30.05.2019 issued by the Ministry of Corporate Affairs, which inter alia directs as under:-*
>
> > *"(2) In respect of those LLPs which file forms 8 and 11 without filing Form-3, system generated notice by way an email would go to the last email address of the LLP, intimating the e-forms 8 and 11 filed by the LLP have been provisionally accepted subject to the LLP filing form-3 within 30 days time of, failing which the form 8 and 11 shall be marked as NTBR."*
>
> *The learned counsel for the petitioners submits that while the above quoted Office Memorandum takes care of the future instances where Form-3 has not been filed, the same does not address the issue of penalty imposed on the LLP(s) prior to the date of issuance of this Office Memorandum. He further submits that infact, a policy decision is also required to be taken if One Time Measure can be granted to enable all the parties to complete the statutory filing without penalties.*
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> *The respondents shall also address the above contention raised by the counsel for the petitioners and convey its decision thereon."*

10. On 13.01.2020, this court was informed that the decision was pending consideration before the Competent Authority.

11. The petitions could not thereafter be taken up for hearing due to the outbreak of Covid-19 pandemic. In the meantime, the respondents announced the above Scheme.

12. The plea of the petitioner(s) in the present applications is that they have been denied the benefit of the Scheme only on the ground that they uploaded the forms pursuant to the order dated 06.12.2018 of this Court.

13. The learned counsel for the respondents, on instructions, also reaffirms that the petitioner(s) have been denied the benefit of the Scheme as they cannot be considered in default as on 31.10.2019.

14. This, in my opinion, cannot be a valid ground for denying the benefit of the Scheme to the petitioners. The petitioner(s) cannot be denied the benefit of the Scheme as such denial would be totally arbitrary and unreasonable. The petitioner(s) cannot be put in a position worse than those who never challenged the position prevailing before the announcement of the Scheme, before this Court.

15. As noted hereinabove, the uploading of the documents was without prejudice to the rights and contentions of either party and was subject to further outcome of these petitions. The petitioner(s) cannot therefore be denied the benefit of the Scheme.

16. In view of the above, it is held that the petitioner(s) are entitled to the benefit of the Scheme and they shall not be denied the same only on the ground that their documents were uploaded pursuant to the order passed by this Court in the present petitions, prior to 31.10.2019.

17. The applications and the petitions are disposed of with the above directions.

NAVIN CHAWLA, J

SEPTEMBER 25, 2020/Arya