IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.13640 of 2019

Nitin Dugar ...Petitioner

vs.

1. Ministry of Corporate Affairs,
   Company Law Department,
   Shastri Bhawan A Wing, 5th Floor,
   Rajendra Prasad Road,
   New Delhi – 110 001.

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

3. SKAT India Clothing Apparels Pvt. Ltd.,
   No.1057, Poonamallee High Road,
   Arumbakkam,
   Chennai 600 106. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent in DIN – 02228349, dated 26.03.2019 and quash the erroneous impugned entry of disqualification for the period 01.11.2017 to 31.10.2022 without proper appreciation of the facts and the law applicable thereto.

For Petitioner : Mr.J.Balachander

For Respondents 1 & 2: No appearance

For 3rd Respondent : No appearance

O R D E R

Petitioner has come up with the present Writ Petition seeking to call for the records of the 2nd Respondent in DIN – 02228349, dated 26.03.2019 and quash the erroneous impugned entry of disqualification for the period 01.11.2017 to 31.10.2022.

2.According to the Petitioner, he was appointed as a Director of 18 Companies, vide DIN 02228349. With effect from 12.04.2016, out of 18 Companies, he resigned as a Director from 16 Companies. He also tendered his resignation as Additional Director of the 3rd Respondent/Company with effect from 24.12.2016 and the said resignation was duly incorporated and acknowledged by the Registrar of Companies in the website portal.

3.It is the case of the Petitioner that, as per the Registrar of Companies portal, the period of disqualification for failure to file Annual Accounts for three consecutive financial years by the 3rd Respondent herein has been entered as from 01.11.2017 to 31.10.2022, which is both factually and legally incorrect. The Petitioner's contention is that, by virtue of the fact that the 3rd Respondent has not filed the Annual accounts for a continuous period of three consecutive financial years, the period of disqualification of five years stipulated under Section 164(2) of the Act, starts from 01.10.2013 and ends on 01.10.2018 and not as stated in the portal. Stating that the action so taken by the 2nd Respondent is arbitrary and unreasonable, the Petitioner has filed the present Writ Petition for the aforesaid relief.

4.Learned counsel for the Petitioner drew the attention of this Court to the order dated 03.08.2018 passed by this Court in W.P.No.25455 of 2017 etc. batch, in the case of Bhagavan Das Dhananjaya Das reported in (2018) 6 MLJ 704, whereby, those Writ Petitions were allowed setting aside the impugned orders passed by the Registrar of Companies, disqualifying the Petitioners therein to hold the office of Directorship of the Companies under Section 164(2)(a) of the Companies Act, which came into effect from 01.04.2014. Thereafter, yet another set of disqualified Directors approached this Court by filing W.P.No.13616 of 2018 etc. batch (Khushru Dorab Madan v. Union of India), which were dismissed by an order dated 27.01.2020. Some of the aggrieved Petitioners challenged the said order of the learned Single Judge before the Division Bench of this Court in W.A.No.569 of 2020, etc. batch (Meethelaveetil Kaitheri Muralidharan v. Union of India, reported in (2020) 6 CTC 113. The Division Bench elaborately dealt with the issue as to whether the Registrar of Companies is entitled to deactivate the Director Identification Number (DIN) and allowed those Writ Appeals on 09.10.2020. Relevant portion of the said judgment is extracted hereunder:

> "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.

42. 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.

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."

5.Therefore, following the aforesaid decision, this Writ Petition is allowed in the terms as indicated in the judgment rendered in the case of Meethelaveetil Kaitheri Muralidharan (supra). No costs. Consequently, connected W.M.P.No.13711 of 2019 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

(aeb)
To:
1. Ministry of Corporate Affairs,
Company Law Department,
Shastri Bhawan A Wing, 5th Floor,
Rajendra Prasad Road,
New Delhi – 110 001.

2. The Registrar of Companies,
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Shastri Bhawan,
26, Haddows Road,
Chennai 600 034.

+1cc to Mr.J.Balachander, Advocate, S.R.No.60455

W.P.No.13640 of 2019

JPL(CO)
RGA(24/01/2022)