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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.16912 & 16913 of 2021

and

WMP.Nos.17902 & 17903 of 2021

and

WMP.17904 & 17905 OF 2021

Alwin ... Petitioner in WP.No.16912 of 2021

Devadass Jebhasheela Alwin ... Petitioner in WP.No.16913 of 2021

Versus

1. Union of India

Rep., by its

Ministry of Corporate Affairs,

Shastri Bhawan, Dr.Rajendra Prasad Road

New Delhi - 110 001.

2. Registrar of Companies

Tamilnadu, Chennai

Block No.6, B Wing 2nd Floor

Shasthri Bhavan

26 Haddows Road,

Chennai - 600 006.

.. Respondents in both WPs

WP.No.16912 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent relating to the impugned order dated 17.12.2018, uploaded and hosted on the website of the 1st Respondent on 18.12.2018 in so far as the Petitioner herein is concerned, and quash the status "Disqualified under Section 164(2)" against his Director Identification Number (DIN No:02145756) as illegal, arbitrary and devoid of merits 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 or to act as Director in any Active Company without any hindrance.



WP.No.16913 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent relating to the impugned order dated 17.12.2018, uploaded and hosted on the website of the 1st Respondent on 18.12.2018 in so far as the Petitioner herein is concerned, and quash the status "Disqualified under Section 164(2)" against his Director Identification Number (DIN No:03321197) as illegal, arbitrary and devoid of merits 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 or to act as Director in any Active Company without any hindrance.

For Petitioner : Mr. C.V. Shailandhran
in both the writ petitions

For Respondents : Mr. J. Madhanagopal Rao, CGSC
in both the writ petitions

COMMON ORDER

In both the writ petitions, the respective petitioner prays for quashing the order dated 17.12.2018 passed by the second respondent, which was uploaded in the website of the first respondent on 18.12.2018, disqualifying the petitioners under Section 164 (2) of The Companies Act, insofar as the petitioners are concerned and consequently direct the respondents to permit the petitioners to get appointed or re-appointed as Director in any company.

2. The second respondent released a list of disqualified Directors, who have been disqualified under Section 164(2)(a) of the Companies Act, 2013, with effect from 01.11.2016, in which, the names of the petitioners were also included. In other words, the second respondent, by including the names of the petitioners, has disqualified them as Director under Section 164(2)(a) of the Companies Act, 2013 for non-filing of financial statements or annual returns for continuous period of three financial years by the defaulting companies on whose board, the petitioners serve as Director. On account of such an order defaulting the petitioners, they are prohibited from being appointed or re-appointed as director in any other company for a period of 5



years. Assailing such action of the second respondent as arbitrary and unreasonable, the petitioners have filed the present writ petitions with the aforesaid prayer.

3. Today, when the writ petitions are taken up for consideration, the learned counsel appearing for the parties jointly submitted that the issue involved herein is no longer res integra. Earlier, this Court by order dated 03.08.2018 in WP.No.25455 of 2017 etc. batch, in Bhagavan Das Dhananjaya Das case reported in (2018) 6 MLJ 704, allowed those writ petitions and set aside the orders dated 08.09.2017, 01.11.2017, 17.12.2018, etc. 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 WP.No.13616 of 2018 etc. batch (Khushru Dorab Madan v. Union of India) which were dismissed by order dated 27.01.2020. The said order of the learned single judge was challenged by some of the petitioners therein before the Division Bench of this Court in W.A.No.569 of 2020, etc. batch (Meethelaveetil Kaitheri Muralidharan v. Union of India, 2020 SCC OnLine Mad 2958 : (2020) 6 CTC 113). The Division Bench of this Court has elaborately dealt with the issue as to whether the RoC is entitled to deactivate the Director Identification Number (DIN) and allowed those writ appeals on 09.10.2020. The relevant passage of the Judgment of the Division Bench of this Court can profitably be extracted below:

"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



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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."



4. Therefore, following the aforesaid decision of the Division Bench of this Court, mentioned supra, the writ petitions are allowed, in the terms as indicated in the judgment in Meethelaveetil Kaitheri Muralidharan's case. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Ministry of Corporate Affairs,
Union of India
Shastri Bhawan, Dr.Rajendra Prasad Road
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Block No.6, B Wing 2nd Floor
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WP Nos. 16912 & 16913/2021

KSM(CO)
CB(29/11/2021)