IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.18149 of 2018
and W.M.P.Nos.21439 & 21440 of 2018

Govindaraj ... Petitioner

Vs.

1.Union of India,
Represented by its
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.

2.Registrar of Companies,
Block No.6, B Wing, 2nd Floor,
Shastri Bhawan 26, Haddows Road,
Chennai – 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relating to the impugned order dated 01.11.2017 uploaded in the website of the 1st respondent in so far as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequentially direct both the respondents herein to permit petitioner to get reappointed as Director of any Company or appointed as Director in any company without any hindrance.

For Petitioner : Mr.A.M.Ilango

For Respondents : Mr.Madana Gopal Rao
CGSC



O R D E R

This writ petition has been filed challenging the disqualification of the petitioner as Director under Section 164(2)(a) of the Companies Act, 2013 on the ground that he has not submitted his financial statements or annual returns for three financial years consecutively. The petitioner has challenged the impugned order dated 01.11.2017 passed by the second respondent on the ground that without affording opportunity to the petitioner, the said order has been passed.

2.Heard Mr.A.M.Ilango, learned counsel for the petitioner and Mr.Madana Gopal Rao, learned CGSC for the respondents. By consent of both parties, this Writ Petition is taken up for final disposal at the admission stage itself.

3.It is also contended by the learned counsel for the petitioner that the impugned order has been passed in violation of the provisions of the Companies Act, 2013 and therefore the said order is bad in law.

4.The issue raised in this writ petition was considered by the Hon'ble Division Bench of this Court by its order dated 09.10.2020 in W.A. No.569 & Ors. of 2020 in the case of Meetgelaveetil Kaitheri Muralidharan Versus Union of India & Another and in paragraphs 36 and 38, it has been held as follows :

> 36. 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.

38. 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.The case on hand stands on the same footing. In the instant case, also, no notice was given to the petitioner before disqualifying him as a Director of M/s.Tejas Portfolio Management Services Limited.

6.For the foregoing reasons, the ratio laid down by the Hon'ble Division Bench of this Court, dated 09.10.2020 in W.A. No.569 & batch applies to the facts of the instant case also.

7.Accordingly, the impugned order dated 01.11.2017 passed by the second respondent disqualifying the petitioner as a Director of M/s.Tejas Portfolio Management Services Limited under Section 164(2)(a) of the Companies Act, 2013 is hereby set aside in the terms indicated in the aforesaid judgment and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.



Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.Union of India,
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.

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