

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.20350 of 2020

and

WMP Nos.25148 and 25149 of 2020

1. Mahesh Babumuvva (DIN 01009246)  
2. Ajay Babumuvva (DIN 1518549) ... Petitioners

Vs

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,  
Andaman & Nicobar Islands  
Shastri Bhavan,  
2<sup>nd</sup> Floor,  
26, Haddows Road,  
Chennai - 600 006.

... Respondents  
सत्यमेव जयते

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the 2<sup>nd</sup> respondent relating to both the Companies along with the impugned order dated 2<sup>nd</sup> August 2019, uploaded and hosted on the website of the 1<sup>st</sup> respondent in so far as the both the petitioners herein are concerned thereafter declare both the Companies viz., South East Projects Pvt. Ltd. [CIN :U45200TN2008PTC070073] & South East Constructions Pvt. Ltd. [CIN : U70109TN2008PTC070072] as have been duly struck - off & closed, consequentially quash the impugned order dated 2<sup>nd</sup> August 2019 as illegal, arbitrary and devoid of merit, thereby

permitting the Petitioners to get reappointed and / or reappointed as Directors of any Company(ies) without any hindrance.

For petitioner ... Mr.Gaurav Chatterjee

For respondents ... Mr. Madana Gopal Rao  
ACGSC

#### ORDER

This writ petition has been filed challenging the disqualification of the petitioners as Directors under Section 164(2) (a) of the Companies Act, 2013 on the ground that they have not submitted financial statements for three consecutive financial years. The petitioners have challenged the impugned order dated 02.08.2019 passed by the second respondent on the ground that without affording opportunity to the petitioners, the said order has been passed.

2. Heard Mr.Gaurav Chatterjee, learned counsel for the petitioner and Mr.Madana Gopal Rao, learned ACGSC accepts notice for the respondents.

3. By consent of both the parties, this writ petition is taken up for final disposal at the time of admission itself.

4. It is also contended by the learned counsel for the petitioner that the impugned order dated 02.08.2019 has been passed in violation of the provisions of the Companies Act, 2013 and therefore the said order is bad in law.

5. The issue raised in these writ petitions 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.

6. The case on hand stands on the same footing. In the instant case, also, no notice was given to the petitioners before disqualifying them as Directors of M/s.South East Projects Pvt. Ltd. and M/s.South East Constructions Pvt. Ltd.

7. 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 cases also.

8. There are two limbs in the prayer sought for in this writ petition. In so far as the first limb of the prayer is with regard to the disqualification of the petitioners and the second limb of the prayer is to declare both the Companies South East

Projects Pvt. Ltd. [CIN : U45200TN2008PTC070073] & South East Constructions Pvt. Ltd., [CIN: U45200TN2008PTC070072] where the petitioners were Directors to have been duly struck off and closed.

9. Insofar as the first limb of the prayer is concerned the issue is now well settled for the aforementioned reasons and the said relief is granted by this Court. However, insofar as second limb of the prayer is concerned, the second respondent shall consider the petitioner's representation, dated 17.08.2020 and pass final orders on merits and in accordance with law.

10. Accordingly, the impugned order dated 02.08.2019 passed by the second respondent disqualifying the petitioners as Director of M/s.South East Project Pvt. Ltd. and M/s.South East Constructions Pvt. Ltd., under Section 164(2) (a) of the Companies Act, 2013 is hereby set aside in the terms indicated in the aforesaid judgment and this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Union of India  
Ministry of Corporate Affairs  
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