IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. Nos.19892 and 19894 of 2020
and
WMP Nos.24555, 24556, 24561 and 24562 of 2020

Chandra Santhosh Kumar ... Petitioner in W.P.No. 19892 of 2020

Santhosh Kumar ... Petitioner in W.P.No. 19894 of 2020

Vs

1. Union of India
rep. By its Ministry of Corporate Affairs
Shastri Bhawan, Dr. Rajendra Prasad Road
New Delhi.

2. Registrar of Companies
Block No.6, B Wing, II Floor
Shastri Bhawan
26 Haddows Road
Chennai 600 006. ... Respondents in both writ petitions

Common Prayer: Both Writ Petitions 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 second respondent relating to the impugned order dated 1/11/2017 which is uploaded in the website of the first respondent in so far as the petitioners herein and quash the same and consequently, directing the respondents to permit the petitioners to get reappointed as Directors of any Company or appointed as Directors in any Company without any bar.

For petitioners in both W.P.s ... Mr.K.Thyagarajan
For respondents in both W.P.s ... Mr.Pavesh Kannan CGSC

COMMON ORDER

Mr.Paresh Kannan, learned CGSC takes notice for respondents.

2. These writ petition have been filed challenging the

disqualification of the petitioners as Directors under Section 164(2) 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 01.11.2017 passed by the second respondent on the ground that without affording opportunity to the petitioners, the said orders have been passed.

3. Heard Mr.K.Thyagarajan, learned counsel for the petitioner and Mr.Paresh Kannan, learned CGSC for the respondents.

4. It is also contended by the learned counsel for the petitioners that the impugned orders both dated 01.11.2017 have been passed in violation of the provisions of the Companies Act, 2013 and therefore the said orders are 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 petitioner before disqualifying them as Directors of the subject Company.

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. Accordingly, the impugned order dated 01.11.2017 passed by the second respondent disqualifying the petitioners as Directors of the subject Company under Section 164(2) of the Companies Act, 2013 are hereby set aside in the terms indicated in the aforesaid judgment and these writ petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Vsi2

To

1. The Ministry of Corporate Affairs
   Union of India
   Shastri Bhawan
   Dr. Rajendra Prasad Road
   New Delhi.

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

+4cc to Mr.K.Thiyagarajan, Advocate, S.R.No.336 & 335

W.P. Nos.19892 and 19894 of 2020

NMI(CO)
GN(04/02/2021)