15.06.2022
sayandeep
Sl. No. 02
Ct. No. 05

WPA 9481 of 2021

Rashmi Jhunjhunwala
-Versus-
Union of India & Ors.

Mr. Saptarshi Banerjee
Mr. Somesh Kumar Ghosh
...... for the petitioner

Mr. Siddhartha Lahiri
Mr. Shiv Chandra Prasad
..... for the U.O.I.

The petitioner prays for cancellation and setting aside of the Director Identification Number (DIN) detail from the MCA Government Portal showing that the petitioner's DIN has been disqualified by the Registrar of Companies (RoC) under Section 164(2) of The Companies Act, 2013, from 01.11.2017 - 31.10.2022.

The petitioner is a director of one Salasar Kunj Pvt. Ltd. which committed default in non-filing of annual returns and balance sheets from 2014-2017. The petitioner claims to be unaware of the reason for her disqualification as the petitioner was not served with any show-cause notice before such disqualification was given effect to.

The petitioner claims to be the director of only one company, namely Salasar Kunj Pvt. Ltd.

Learned counsel appearing for the Union of India relies on sections 164 and 167 of the 2013 Act before and after the amendment which was brought into effect on and from 7.5.2018.

Since the disqualification was from 01.11.2017, the un-amended section 164 read with section 167 will have to be considered in the present case; the amendment being of 2018.

Section 164(2) of the Companies Act, 2013, reads as follows:

> *"164. Disqualification for appointment of director*
> *.....*
> *(2) No person who is or has been a director of a company which -*
> *(a) has not filed financial statements or annual returns for any continuous period of three financial years; or*
> *(b) ....*
> *shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years on which the said company fails to do so."*

Section 167 of the Companies Act, 2013, which came into effect from 01.04.2014 read as hereunder:

> *"167. Vacation of office of director*
> *(1) The office of a director shall become vacant in case -*
> *(a) he incurs any of the disqualifications specified in section 164.*
> *............."*

The provisions as on 01.11.2017, being the date of disqualification, read together, would mean that the director would have to vacate office if he/she incurs any of the disqualifications in section 164 which would include non-filing of final statements or annual returns for a continuous period of three years. The Company in question, namely Salasar Kunj Pvt. Ltd., where the petitioner was a director at the relevant point of time was disqualified for non-filing of annual return and balance-sheets from 2014-2015, 2015-2016 and 2016-2017. This has been admitted in paragraph 3 of the writ petition. Paragraph 3 states that the Company again became active pursuant to an order passed by NCLT, Kolkata Bench, on 23.12.2020. It is the respondents' case that the said order was made subject to the Company paying a fine of Rs. 1,00,000/-.

Since the amendment to sections 164 and 167 was given effect to on 7.5.2018, the petitioner cannot take the benefit of amendment particularly to the proviso under section 167(1)(a) where the office of the director shall become vacant in all companies other than the company which is in default under section 164(2). In any event, there is only one company of which the petitioner was a director as of 01.11.2017, namely Salasar Kunj Pvt. Ltd.; hence the question of vacation of office of other companies does not apply in the present case.

The second objection taken by the petitioner with regard to the respondent not having the power to automatically disqualify the petitioner on the default of the Company in question is without substance since there is no provision either in the 2013 Act or any of the Rules framed under the Act including the Companies (Specification of Definition Details) Rules, 2014 which casts an obligation on the respondent to notify the director in question or follow a procedure before deactivating the DIN. In fact, both sections 164 and 167 of the 2013 Act indicate that the vacation of office of a director, on the incurring of the disqualifications in section 164, is automatic.

Moreover, the petitioner was disqualified from 01.11.2017 but has approached the Court only on 9.4.2021 after almost four years.

The decisions relied on behalf of the petitioner are of no assistance to the petitioner. *Satya Narayan Banik vs Union of India (W.P.A. No. 8450 of 2021)* was on totally different facts. The Court however held that the rules of natural justice cannot be read into the process of operation of sections 164(2) and 167(1) of the 2013 Act. The Court also commented on the laudable object of both the sections which were enacted for ensuring good governance and a high standards of probity for the benefit of the shareholders. In *Subhas Kumar Biswas vs. Union of India; W.P. No. 700(W) of 2020,* a learned Single Judge clarified that the amendment of 7.5.2018 would have a bearing on the other companies where the petitioner was a director. Since the amendment of

7.5.2018 has been held to be not applicable in the present case, being prospective in nature, this Court finds no merit in the writ petition which is accordingly dismissed without any order as to costs.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Moushumi Bhattacharya, J.)