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W.P.No.10885 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2022

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.10885 of 2022
and W.M.P.Nos.10499 & 10500 of 2022

Eswaran

.. Petitioner

Vs.

1.The Registrar of Companies,
AGT Business Park, Avinashi Road,
Civil Aerodrome Post, Coimbatore,
Tamil Nadu.

2.Union of India,
Through its Secretary,
Ministry of Corporate Affairs,
5th Floor, A Wing,
Shashtri Bhavan,
New Delhi – 110 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of 1st respondent relating to the impugned notice dated 07.12.2018 uploaded in the website of 2nd respondent, insofar as the petitioner herein is concerned, quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondents herein to permit the petitioner to get reappointed as Director of the Company or appointed as Director in any company, without any hindrance.



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For Petitioner : Mr.G.Sudhakar

For Respondents : Mr.K.Subbu Ranga Bharathi
Central Government Standing Counsel

ORDER

This Writ Petition has been filed challenging the disqualification of the petitioner as a Director under Section 164(2)(a) of the Companies Act, 2013. The petitioner has challenged the impugned order dated 07.12.2018, disqualifying him as a Director from M/s. Sri Agathur Amman Chits Private Limited.

2. Heard Mr.G.Sudhakar, learned counsel for the petitioner and Mr.K.Subbu Ranga Bharathi, learned Central Government Standing Counsel appearing for the respondents.

3. Learned Central Government Standing Counsel appearing for the respondents would submit that the present Writ Petition has been filed after a delay of 4 ½ years, as the impugned order was passed disqualifying the petitioner as a Director on 07.12.2018. Since there is a long delay, he would submit that the orders passed by this Court earlier, involving a similar issue,



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will not be applicable to this petition. According to him, on the ground of latches, the Writ Petition will have to be dismissed.

4. However, the learned counsel for the petitioner would submit that the reason for the delay is that the petitioner came to know about his disqualification as a Director only when he submitted a fresh application seeking for appointment as a Director for another company. The said application was sought to be filed only recently, just before filing of this Writ Petition. An affidavit to that effect, has also been filed by the petitioner before this Court. The same is recorded.

5. This Court is satisfied with the reasons given by the petitioner for the delay in filing this Writ Petition even though the impugned order was passed on 07.12.2018, disqualifying him as a Director under Section 164(2)(a) of the Companies Act, 2013. Admittedly, in this case also, no notice was given to the petitioner before disqualifying him as a Director.

6. This Court has quashed similar orders in a series of decisions and one such decision is the order dated 17.06.2022 passed by this Court in



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WP.No.6604 of 2022.

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7. The issue raised in this Writ Petition is covered by the decision of the Division Bench of this Court in '**Meethelaveetil Kaitheri Mudalidharan Vs. Union of India & another**' dated 09.10.2020 in W.A.Nos.569, 718, 720, 721, 841 and 842 of 2020. In the said Division Bench judgment, the same issue was involved where notice was not issued to the Director prior to his/her disqualification. The Hon'ble Division Bench set aside the disqualification order and passed the following order:

“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.”

8. The petitioner in the instant case is similarly placed. Therefore, the order of the Division Bench referred to supra applies to this case also and



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similar direction needs to be issued in favour of the petitioner also by this Court.

9. Accordingly, the impugned order dated 07.12.2018 passed by the first respondent, uploaded in the website of the second respondent insofar as the petitioner herein is concerned, is quashed. The status of disqualification under Section 164(2)(a) against the Director Identification DIN No.2025196 is declared to be arbitrary, illegal and devoid of merits.

10. With the above observations, this Writ Petition is allowed as prayed for. No costs. Connected miscellaneous petitions are closed.

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Speaking/Non-speaking order

Index: Yes/No

Internet: Yes/No

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ABDUL QUDDHOSE,J.

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To

- 1.The Registrar of Companies,
AGT Business Park, Avinashi Road,
Civil Aerodrome Post, Coimbatore,
Tamil Nadu.
- 2.Secretary,
Union of India,
Ministry of Corporate Affairs,
5th Floor, A Wing,
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