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W.P.Nos.34017, 34581 & 34587 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.34017, 34581 & 34587 of 2018

and

M.P.Nos.39504, 40105 & 40112 of 2018

W.P.No.34017 of 2018:-

Prosper Soundron (DIN 02017269),
S/o.Late Mr.Soundron Blaise Issac,
No.2, Romain Rolland Street,
Pondicherry – 605 001.

... Petitioner

Vs.

1.Union of India,
Rep by Ministry of Corporate Affairs,
5th Floor, A Wing, ShastriBhawan,
Rajendra Prasad Road,
New Delhi – 110 001.

2.Registrar of Companies (Pondicherry),
7, Karuvadikuupam Main Road,
Pondicherry – 605 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Notification dated 01.11.2017 of the 2nd respondent uploaded in the Website of the 1st respondent and downloaded by the petitioner (DIN:02017269) and



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quash the same as void, illegal and unconstitutional and direct the respondent to permit the petitioner to get re-appointed without any hindrance.

For Petitioner : Mr.D.Sreenivasan

For Respondents : Mr.K.B.Arul
Central Government Standing Counsel
for R1
No Appearance
for R2

W.P.No.34581 of 2018:-

S.K.Radhakrishnan

... Petitioner

Vs.

1.Union of India,
Rep by its Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi.

2.Registrar of Companies,
No.7, AGT Business Park, I Floor, Phase II,
Avinashi Road, Civil Aerodrome Post,
Coimbatore – 641 014.

... Respondents

Prayer:- Writ Petition filed under Article 226 of 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 07.12.2018 which is uploaded in the website of the 1st respondent in so far as the petitioner herein



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and quash the same, consequently direct the respondents herein to permit petitioner to get reappointed as director of any company or appointed as director in any company without any bar.

For Petitioner : No Appearance

For Respondents : Mr.K.B.Arul
Central Government Standing Counsel
for R1
No Appearance
for R2

W.P.No.34587 of 2018:-

R.Savithiri

... Petitioner

Vs.

1.Union of India,
Rep by its Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi.

2.Registrar of Companies,
No.7, AGT Business Park, I Floor, Phase II,
Avinashi Road, Civil Aerodrome Post,
Coimbatore – 641 014.

... Respondents

Prayer:- Writ Petition filed under Article 226 of 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 07.12.2018 which is uploaded in the website of the 1st respondent in so far as the petitioner herein



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and quash the same, consequently direct the respondents herein to permit petitioner to get reappointed as director of any company or appointed as director in any company without any bar.

For Petitioner : No Appearance

For Respondents : Mr.K.B.Arul
Central Government Standing Counsel
for R1
No Appearance
for R2

COMMON ORDER

By this common order, all these writ petitions are being disposed of.

2. There is no representation on behalf of the petitioner in W.P.Nos.34581 & 34857 of 2018.

3. The learned counsel for the petitioner in W.P.No.34017 of 2018 submits that the issue is squarely covered against the petitioner in terms of the decision of the Hon'ble First Bench of this Court in W.A.Nos.569 of 2020 etc., batch vide order dated 09.10.2020. The learned Central Government Standing counsel for the 1st respondent is also confirms the same. Relevant portion of the aforesaid order reads as under:-



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“35. This leads to be next question as to whether the ROC is entitled to deactivate the DIN. For this purpose, it is necessary to closely examine the relevant rules. Rules 9, 10 and 11 of the AQD Rules are as under:

Rule-9:

“9.Application for allotment of Director

Identification Number:--

(1) Every individual, who is to be appointed as director of a company shall make an application electronically in Form DIR-3, to the Central Government for the allotment of a director Identification Number (DIN) along with such fees as provided in the Companies (Registration Offices and Fees) Rules, 2014.

(2) The Central Government shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought there in and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically--

- (i) photograph;
 - (ii) proof of identity;
 - (iii) proof of residence;
 - (iv) verification by the applicant for applying for allotment of DIN in Form DIR-4; and
 - (v) specimen signature duly verified.
- (b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -

- (i) a chartered accountant in practice or a company secretary in practice or a cost accountant



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in practice; or

(ii) a company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed as director.

Rule 10:

Allotment of DIN: (1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government.

(2) After generation of the provisional DIN, the Central Government shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(3) If the Central Government, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:

Provided that the Central Government shall-

(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;



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(b) treat and label such application as invalid in the electronic record in case the defects are not remove within the given time; and

(c) inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection of invalidation of application, the provisional DIN so allotted by the system shall get lapsed automatically and the fee so paid with the application shall neither be refunded or adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the Central Government before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

Rule - 11. Cancellation or surrender or Deactivation of DIN:-

The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in case--

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b)(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a



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person of unsound mind by a competent Court;
(e) if the concerned individual has been adjudicated an insolvent:

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

(f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN:

Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

Explanation.- For the purposes of clause (b) –

(i) the term “wrongful manner” means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation;

(ii) the term “fraudulent means” means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.

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



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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.

37. In light of the above analysis, we concur with the views of the Delhi High Court in **Mukut Pathak**, the Allahabad High Court in **Jai Shankar Agrahari** and the Gujarat High Court in **Gaurang Balvantlal Shah** to the effect that the ROC is not empowered to deactivate the DIN under the relevant rules. In **Yashodhara Shroff**, the Karnataka High Court upheld the constitutionality of Section 164(2) and proceeded to hold that a prior or post decisional hearing is not necessary. For reasons detailed in preceding paragraphs, we disagree with the view of the Karnataka High Court that prior notice is not required under Section 164(2) of CA 2013.

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



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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.

4. In view of the above, these writ petitions stand dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

17.10.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
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C.SARAVANAN, J.
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