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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 12th December, 2022

+ **W.P.(C) 6793/2022 & CM APPL. 20634/2022**
MAHA NAND SHARMA & ANR. Petitioners

Through: Mr. Himanshu Harbola with Mr.
Ketan Madan, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Ankit Raj, Advocate for R-1.
Mr. Gautam Narayan, ASC.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioners- Mr. Maha Nand Sharma and Ms. Ahilya Sharma seeking reactivation of the Director Identification Number (DIN) and the Digital Signature Certificate (DSC) of the Petitioners, which were deactivated upon disqualification of the Petitioners under Section 164(2)(a) read with Section 167 of the Companies Act, 2013. The said disqualification was effected for 2015-16 to 2017-18 due to non-filing of balance sheet and other returns with the Registrar of Companies.
3. Petitioner No.1 is a director in the following companies:
 - SHRI MAHANAND LEISURE VALLEY PRIVATE LIMITED
 - BHAVYEH HOTELS & RESORTS PRIVATE LIMITED

- SKY GANGA CONSTRUCTION PRIVATE LIMITED
- SABHYA INFRABUILD PRIVATE LIMITED
- VINCENT BUILDCON PRIVATE LIMITED

4. Petitioner No.2 is a director in the following companies:

- SHRIMAHANAND LEISURE VALLEY PRIVATE LIMITED
- BHAVYEH HOTELS & RESORTS PRIVATE LIMITED
- VINCENT BUILDCON PRIVATE LIMITED

5. The grievance of the Petitioners is that they have been disqualified without issuing any show cause notice, or giving any giving any opportunity to present their case. It is the case of the Petitioners that Respondent No.1 never published any list disqualifying the Petitioners. The deactivation of the Petitioners' DIN and DSC is preventing them from filing any documents with regards to active companies which are registered where the Petitioners hold the office of directors.

6. Submission on behalf of the Respondents is that the Respondent No.3- Registrar of Companies, Uttarakhand, which deactivated the DIN, is in Uttarakhand. Ld. counsel for the Petitioners, however, submits that one of the companies is registered in Delhi and therefore, part of the cause of action arises in Delhi. Ld. counsel for the Petitioners further submits that one of the companies i.e., "BHAVYEH HOTELS & RESORTS PRIVATE LIMITED" has also been revived by NCLT, Allahabad Bench vide order dated 11th June, 2019.

7. As per the writ petition, all the companies, of which the Petitioners are the directors, are active. This Court has considered the legal position relating to activation of DIN/DSC in *Anjali Bhargava & Anr. v. UOI & Anr. [W.P.(C) 11264/2020, decided on 6th January, 2021]*. The relevant portion of the said order reads:

“4. There are four categories of Directors that are approaching Courts seeking setting aside of disqualification and activation of DIN/DSC numbers.

(a) Directors who have been disqualified prior to 7th May 2018, qua other companies in addition to the defaulting company:

As per the proviso to Section 167(1) (a) of the Companies Act, 2013, once a director is disqualified qua one company i.e., the defaulting company, the office of the said director would become vacant in all companies. The said proviso, has, however, come into effect only on 7th May, 2018. In Mukut Pathak (supra) it was held that this proviso cannot have retrospective effect and would only apply if the disqualification took place after 7th May 2018. Paragraph 98 of Mukut Pathak (supra) reads as under:

"98. In view of the above, the petitioners would not demit their office on account of disqualifications incurred under Section 164(2) of the Act by virtue of Section 167(1)(a) of the Act prior to the statutory amendments introduced with effect from 07.05.2018. However, if they suffer any of the disqualifications under Section 164(2) on or after 07.05.2018, the clear implication of the provisos to Section 164(2) and 167(1)(a)

of the Act are that they would demit their office in all companies other than the defaulting company."

Since there is no stay on the judgment in Mukut Pathak (supra), it continues to hold the field. Thus, in cases where directors have been disqualified prior to 7th May, 2018, the proviso to Section 167(1)(a) would not apply and the directors would continue to be directors in companies other than the defaulting company. The disqualification of such directors qua active companies would therefore be liable to be set aside and their DIN and DSC's reactivated.

(b) Directors who have been disqualified post 7th May 2018, qua other 'active' companies:

As held in Mukut Pathak (supra), in all cases where the directors have been disqualified on or after 7th May, 2018, the proviso to Section 167(1) (a) would apply and such directors would cease to be directors in all companies including the defaulting company. In March, 2020, in light of the COVID- 19 pandemic, the Ministry of Corporate Affairs vide General Circular No. 12/2020 introduced CFSS-2020 to allow a fresh start for defaulting companies and directors of such companies. This Court, in Sandeep Agarwal (supra) has analyzed CFSS-2020 to conclude that the purpose of the scheme is to provide an opportunity for 'active' companies i.e., companies whose names have not been struck off, who may have defaulted in filing of documents, to put their affairs in order.

Applying the scheme to the facts of the case, this Court in Sandeep Agarwal (supra) directed reactivation of the DINs and DSCs of directors of two companies-one whose name had been struck off and one, which was still active. Thus, the DINs and DSCs of disqualified directors of struck off companies, who are also directors in active companies, may be reactivated qua the active companies, in line with the spirit of the CFSS-2020.

(c) Directors of 'active' companies who have been disqualified:

In cases where directors of 'active' companies have been disqualified, CFSS-2020 would squarely apply. Such directors would be entitled to avail of CFSS-2020 and file documents of the defaulting company. In Radhika Byrn (supra), the Court permitted reactivation of the DINs and DSCs of the directors of active companies under CFSS-2020.

(d) Disqualified directors of struck off companies seeking appointment as directors in other/new companies:

The purpose of CFSS-2020 has been elucidated in the circular of the Ministry of Corporate Affairs as follows:

"In furtherance of the Ministry's Circular No 11/2020 : MANU/DCAF/0066/2020, dated 24th March, 2020 and in order to facilitate the companies registered in India to make a fresh start on a clean slate, this Ministry has decide to take certain alleviative measures

for the benefit of all companies."

This scheme has been introduced in view of the COVID-19 pandemic with the aim to enable a fresh start to defaulting companies and directors of such companies. The disqualification of defaulting companies was a step which was taken sometime in 2016-17 in order to ensure that filing of regular returns and compliances are undertaken strictly as per the provisions of the Act. It was also meant to be a measure to ensure that entities that are not conducting businesses are not misused as 'shell companies' for any improper activities. A substantial part of the disqualification period has already been completed. The introduction of the CFSS is itself a step for 'providing a fresh start'. Under such circumstances, continuation of the disqualification would defeat the Scheme and its purpose.

5. In furtherance of the purpose of this scheme, directors of struck off companies who seek to be appointed as directors of other/new companies, ought to be provided an opportunity to avail of this scheme, provided that they have undergone a substantial period of their disqualification. The scheme clearly seeks to provide a fresh start for directors of defaulting companies who seek appointment in other companies or wish to start new businesses. Therefore, if a substantial period has passed since the disqualification of such directors, they ought to be given an opportunity to avail of the scheme."

8. Following the decision in ***Mukut Pathak & Ors. v. UOI & Ors.***,

[W.P.(C) No.9088 of 2018, decided on 04th November, 2019] and *Anjali Bhargava & Anr. v. UOI & Anr. [W.P.(C) 11264/2020, decided on 6th January, 2021]*, this Court directs that the DIN/DSC of the Petitioners be reactivated within 2 weeks to enable them to file the requisite documents in terms of the Companies Act, 2013 and effect compliances in respect of the companies. Their disqualification under Section 164 (2)(a) is also set aside, in respect of the active entities.

9. The petition, along with all pending applications, is disposed of.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 12, 2022/dk/sk

