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W.P.No.29303 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.29303 of 2019

and

W.M.P.No.29104 of 2019

Giridharan Srivatchan

... Petitioner

Vs.

1.Union of India,
Represented by its
Ministry of Corporate Affairs,
Shastri Bhawan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respectively relating to the impugned order dated 17.12.2018 uploaded in the website of the 1st respondent in so far as the petitioner is concerned, and quash the same as illegal, arbitrary and devoid of merit and



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consequentially direct the respondents herein to permit the petitioner to get reappointed as Directors of any Company or appointed as Directors in any company and utilize his DIN without any hindrance.

For Petitioner : Mr.Rohan Rajasekaran

For Respondents : Mr.J.Madana Gopal Rao [R1]

ORDER

The Writ Petition is filed seeking for a Writ of Certiorarified Mandamus, to call for the records of the second respectively relating to the impugned order dated 17.12.2018 uploaded in the website of the first respondent in so far as the petitioner is concerned, and quash the same as illegal, arbitrary and devoid of merit and consequentially, to direct the respondents herein to permit the petitioner to get reappointed as Directors of any Company or appointed as Directors in any company and utilize his DIN without any hindrance.

2. The case of the petitioner is that, the petitioner is one of the Directors of M/s. Newtone Global Private Limited. However, the second respondent has disqualified the petitioner as a Director under Section 164(2)(a) of the Companies Act, 2013 through the impugned order dated



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17.12.2018 on the ground that the petitioner has not filed the annual returns for three consecutive Financial Year. Challenging the said impugned order, the present writ petition is filed before this Court.

3. Mr.Rohan Rajasekaran, learned counsel for the petitioner would submit that the very same impugned order was challenged by the similarly placed Director in W.P.No.3645 of 2021 and the same was allowed on 17.02.2021 by following the decision rendered by the Division Bench of this Court in W.A.No.569 & Ors. of 2020, in which, the impugned order disqualifying the Directors were set aside.

4. The Division Bench of this Court in W.A.No.569 & Ors. of 2020 in the case of ***Meethelaveetil Kaitheri Muralidharan Vs. Union of India & Another*** in paragraphs 36 and 38, has held as follows :

“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



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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 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.”

5. It is seen that the very same impugned order was quashed by this Court in W.P.No.3645 of 2021 by following the judgment of the Division Bench of this Court in W.A.No.569 & Ors. of 2020, dated 09.10.2022.



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6. The case on hand stands on the same footing. In the instant case also, no notice was given to the petitioner before disqualifying him as Director of M/s. Newtowne Global Private Limited.

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 & Ors. of 2020 applies to the facts of the instant case also.

8. Accordingly, the impugned order dated 17.12.2018 passed by the second respondent disqualifying the petitioner as Director of M/s.Newtone Global Private Limited under Section 164(2) (a) of the Companies Act, 2013 is hereby set aside in terms of the aforesaid judgment and the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

20.03.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

- 1.The Ministry of Corporate Affairs,
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New Delhi – 110 001.
- 2.The Registrar of Companies,
Tamilnadu, Chennai,
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