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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 195/2018 & CM APPL. 14089-14091/2018

UNION OF INDIA & ANR ..... Appellants

Through: Ms. Shiva Lakshmi, CGSC and Mr. Ripu Daman Bhardwaj, CGSC Mr. Kushagra Kumar, Advocate. Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Adv. for UOI/ROC

versus

SYED MUZAFFAR ALI KHAN & ORS ..... Respondents

Through: Mr. Rohit Chaudhary, Advocate for respondent. Ms. Kavita Jha and Mr. S. P. Singh Chawla, learned Amicus Curiae

% Date of Decision: 19th January, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

MANMOHAN, J: (ORAL)

1. Present appeal has been filed by the Union of India challenging the judgment and order passed by the learned Single Judge, whereby the Court has directed that the removal of the company from the Register of Companies under Section 248(1) of the Companies Act, 2013 would be deemed to be voluntarily struck-off under Section 248(2) of the Companies Act, 2013 and that the respondent-company would be entitled to a

sympathetic consideration by the Registrar of Companies under the Condonation of Delay Scheme, 2018.

2. Learned counsel for the appellant-Union of India states that the appellant-Union of India is not in a position to comply with the impugned direction of the learned Single Judge as the company in question has been struck-off under Section 248(1) of the Companies Act, 2013 and necessary gazette notification thereof has been issued. She states that the computer software does not permit the stuck-off company to be transposed as voluntarily struck-off company. According to her, the remedy for such struck-off company is by filing a revival application before the National Company Law Tribunal (NCLT) under Section 252 of the Companies Act, 2013.

3. However, learned counsel for the Union of India, on instructions of Registrar of Companies, NCT of Delhi and Haryana, who is personally present in Court, states that as the period of disqualification of the respondents-original writ petitioners as directors have now expired by efflux of time, he has no objection if the present appeal is disposed of in accordance with the order dated 11th November, 2022 passed by this Court in a batch of writ petitions in which lead writ petition was W.P.(C) 62/2019.

4. Learned counsel for the respondents-original writ petitioners states that though in the original writ petition there was a prayer that original writ petitioners be permitted to avail Condonation of Delay Scheme, 2018 and also be permitted to voluntarily seek removal of the name of respondent No.3 from the Register of Companies, yet he has instructions not to press for the aforesaid two reliefs.

5. Learned counsel for the respondents-original writ petitioners states that they would be satisfied if the relief granted vide order dated 11th November, 2022 is granted to them.

6. Since the present respondents-original writ petitioners are similarly placed to the writ petitioners in a batch of writ petitions (in which lead writ petition was W.P.(C) No.62/2019) which have already been disposed of by this Court, the present appeal is disposed of holding that as the period of disqualification of respondents-original writ petitioners/directors has expired by efflux of time i.e. on account of lapse of five years, the respondents-original writ petitioners are eligible for appointment/re-appointment as directors. However, it is clarified that the writ petitioners, who carried on as directors due to subsistence of interim order passed by this Court, shall not be visited with any civil or penal consequences. It is further clarified that the writ petitioners will not be eligible for appointment/re-appointment as directors if they have incurred any other disqualification or were disqualified for any subsequent period on account of non-filing of returns.

7. The questions of law and fact raised by the appellant-Union of India are left open.

8. With the aforesaid direction, the present appeal along with pending applications stand disposed of.

MANMOHAN, J

SAURABH BANERJEE, J

JANUARY 19, 2023/js