S/L 3
28.08.2024
Court No.14
Naren

WPA 22258 of 2019
With
CAN 1 of 2020 (Old No.CAN 4504 of 2020)
With
CAN 2 of 2020 (Old No.CAN 4505 of 2020)

Rajesh Pacheria & Ors.
Vs.
Union of India & Anr.

Mr. Vikas Baisya,
Mr. Dyutimoy Paul,
Ms. Ranjana Seal ... *for the Petitioners.*

Mr. Avinash Kankani ... *for Union of India.*

Affidavit-in-opposition filed by the respondents and a copy of the affidavit-in-reply in response thereto filed by the petitioners in Court today is taken on record. Be it recorded that the original affidavit-in-reply is not readily available with the learned Advocate of the petitioner. A photocopy is retained with the record with the leave granted to the petitioner to file the original affidavit-in-reply, if required, by reaffirming the same in the course of this week.

The petitioner nos. 1, 2 and 3 are the Directors of the petitioner no.4 / company. The petitioners are aggrieved by the show cause notice dated 8th June, 2018 alleging that the company contravened the provisions of the Companies (Acceptance of Deposits) Rules, 2014 under the Companies Act, 2013. The petitioners filed a reply to the show cause.

The Deputy Registrar of Companies, West Bengal vide a notice dated 24th May, 2019 came to a conclusion that the company failed to repay the outstanding deposits and hence, violated the provisions of Section 74(1)(b) of the Companies Act, 2013. The Deputy Registrar of Companies concluded that the offence under Section 74(1)(b) is punishable under Section 74(3) of the Act and compoundable within the meaning of Section 441 of the Act. Opportunity was given the company and its Directors for making an application for compounding within seven days, failing which prosecution will be launched.

The company filed a representation before the Assistant Registrar of Companies on 14th June, 2019 disclosing their stand.

It is the specific case of the petitioners that the deposit referred to cannot be treated as a 'deposit' in terms of Section 2(31) of the Act. Reference has been made to the RBI Circular No.05/2015 dated 30th March, 2015 wherein it has been clarified that amount received by private companies prior to 1st April, 2014 shall not be treated as 'deposit' under the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that the relevant private company shall disclose, in the notes to its financial statements for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts has been shown in the financial statement.

According to the petitioners, as the details of the deposits including the names of the depositors were intimated to the respondent authority, accordingly, the show cause notice and the punishment ought not to have been imposed.

Learned Advocate representing the respondents submits that the details of the deposit which has been reflected in its Balance Sheet on 31st March, 2014 does not contain the details of the shareholders. The amount of Rs.19,07,460.65/- which has been shown as short-term borrowings from other shareholders as reflected in the notes to the accounts annexed with the Balance Sheet of the company as on 31st March, 2018 does not mention the details either of the shareholders or the members from whom the money was collected.

The petitioners contend that they were never directed to disclose the details of the shareholders. It has been submitted that the details of the shareholders are uploaded in the official portal of the Ministry of Corporate Affairs. Learned advocate for the respondents asserts that the details of the shareholders were not uploaded in the official portal.

The petitioners pray for setting aside the show cause notice and the steps taken consequent thereto.

Upon hearing the parties and on perusal of the materials on record it appears that, admittedly, the petitioners filed a reply to the show cause which was issued in the year 2018. The authority submits that the reply was considered and subsequent steps were taken. From the documents annexed to the writ petition, it does not appear that there was any consideration of the reply to the show cause. The penal provision appears to have been invoked without granting any opportunity of hearing to the petitioners to disprove the allegations put forth in the show cause notice.

A representation appears to be pending consideration at the end of the Assistant Registrar of Companies. According to the petitioners, all details in reply to the penal provision are mentioned in the said representation.

To give one opportunity to the petitioners to disprove the allegations against them and in view of the fact that their representation is pending consideration before the Assistant Registrar of Companies, the instant writ petition is disposed of by directing the Assistant Registrar of Companies being the respondent no.2 herein or its authorized representative to consider the representation dated 14th June, 2019, which is pending consideration in accordance with law after giving a reasonable opportunity of hearing to the petitioners or their authorized representative and thereafter take a decision in the matter.

In the event the petitioners fail to produce documents in support of their submission, it will be open for the aforesaid respondent to proceed against them in accordance with law.

A decision shall be taken in the matter at the earliest but positively within a period of 60 days from the date of communication of this order. Any step taken in response to the show cause notice dated 8th June 2018 shall abide by the reasoned order to be passed by the aforesaid respondent upon consideration of the representation of the petitioners.

It is made clear that this Court has not entered into the merits of the allegation of the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representation.

Learned Advocate for the petitioners is directed to forward a copy of all documents in support of their case to the aforesaid respondent at the time of communicating the order of the Court.

Be it recorded that the disqualification of the petitioners under Section 164(2) of the Companies Act, 2013 for the period 1st April, 2018 to 31st March, 2023 has already been suffered by the petitioners and on expiry of the aforesaid period the directorship of the petitioners have been activated.

The writ petition stands disposed of.

With the disposal of the writ petition, the connected applications also stand disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)