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

\+ W.P.(C) 1750/2019

THOMAS CRAIG BRODIE .....Petitioner

Through: Mr.Vikas Goel, Mr.Pragon Dua and Mr.Harmanbir Singh, Advocates

versus

REGISTRAR OF COMPANIES & ANR. .....Respondents

Through: Mr.Vikram Jetly, CGSC with Ms.Shreya Jetly, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 14.07.2025

1. By way of the present petition, the petitioner seeks to assail the decision of the respondents disqualifying the petitioner from acting as a Director and further deactivating his DIN No. 01070489.

2. Briefly stated, petitioner claims that he is a foreign national based in the Isle of Man who was appointed as the Director of a company named Dynamic Gaming Software Solutions India Pvt. Ltd. (hereinafter *'the Company'*) having it's registered office in India on 30.09.2007. It is claimed that the petitioner has resigned from the directorship of the company vide his resignation letter dated 05.03.2010. The petitioner's name was included in the list of disqualified Directors issued by the Respondent No. 1 on 15.09.2017 for alleged default in filing the financial statements and Annual Returns by the Company for Financial Years ending on 31.03.2014, 31.03.2015 and 31.03.2016. Consequently, the petitioner was disqualified to be appointed as a Director in any company in India for five years (01.11.2016 to 31.10.2021) under Section 164(2)(a) of the Companies Act, 2013.

3. Before this Court, learned counsel for the petitioner has primarily raised a twofold contention: *firstly,* it is submitted that Section 164(2) is applicable prospectively w.e.f. 01.04.2014 and thus, the Petitioner could not have been disqualified w.e.f. 01.11.2016 since the three year period was not complete. Reliance is also placed on General Circular dated 04.04.2014 to argue that that in so far as requirements for filing of various documents for the period prior to 01.04.2014 were concerned, the provisions of old Act i.e., Companies Act, 1956 would apply. It is submitted that the above interpretation has been held as correct by various High Courts. Reliance in this regard is placed on the decisions in Bhagavan Das Dhananjaya Das vs. Union of India & Ors, [1] Gaurang Balvantlal Shah vs. Union of India[2] and Yashodhara Shroff vs. Union Of India.[3]. *Secondly,* it is contended that on account of the aforesaid disqualification, the petitioner has been held to be ineligible for appointment/re-appointment as Director for his business in New Jersey, USA and is suffering on this account.

4. Learned counsel for the respondent vehemently opposes the present petition and submits that the argument of the petitioner as to the inapplicability of Section 164(2) to filings for financial year 2013-14 has already been held to be misconceived by a Co-ordinate Bench of this Court, in Mukut Pathak and Ors. v. Union of India and Anr, **W.P.(C) 9088/2018** and Other Connected Matters, decided on 04.11.2019. It is further submitted that the petitioner's disqualification has ended due to efflux of time, rendering the petition infructuous and the question of law merely of academic value. Reliance is placed on Division Bench decisions in *Amarjeet*

[1] 2018 SCCOnLine Mad 13820
[2] 2018 SCC OnLine Guj 4866

Singh Chawla and Anr. vs. Union of India & Anr., decided on 24.05.2022 in **W.P.(C) 62/2019** along with the connected matters, and Union of India & Anr V. Shri Mukut Pathak & Ors, decided in **LPA 281/2020** and other connected matters on 18.08.2022. Lastly, it is submitted that the Ministry of Corporate Affairs has preferred SLP No. 18693-18703/2018, titled as Registrar of Companies, Mumbai &Anr. V/s Shailendrajit Charanjit Rai & Anr., wherein Supreme Court has stayed the order dated 06.08.2018 of Division bench of Bombay High Court where a contrary view was taken. The SLP is stated to be pending consideration.

5. In rejoinder, the decision in Mukut Pathak (Supra) is sought to be distinguished by stating that the same failed to take into account the General Circular dated 04.04.2014.

6. I have heard learned counsel of the parties and gone through the record.

7. It has been brought to the notice of this Court that the issue raised in the present petition already stands decided by a Co-ordinate Bench of this Court, in Mukut Pathak and Ors. v. Union of India and Anr (Supra)**,** while dealing with the challenge of other disqualified Directors to the inclusion of their name in the aforesaid list dated 15.09.2017, categorically held that even though Section 164(2) of the Act operates prospectively, however, said prospective operation would entail taking into account failure to file the financial statements pertaining to the financial year ending 31.03.2014 on or before 30.10.2014. The relevant extract of the aforesaid decision is reproduced hereunder:-

"46. ***The penal consequences of not filing returns for three consecutive***

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[3] 2019 SCC OnLine Kar 682

__financial years would be attracted on section 164 of the Act coming into force. Section 164 of the Act came into force on 01.04.2014 and thus, the failure of a company/its directors to file annual returns (for three financial years) thereafter would result in the directors incurring the disqualification as specified under Section 164(2) of the Act. It is of little consequence that such defaults relate to filing annual returns that pertain to a period prior to 01.04.2014.__ Undisputedly, the concerned companies (and vicariously the petitioners) were obliged to file the financial statements for the financial year 2013-14 after 01.04.2014. As noticed above, the failure to do so would be in violation of Section 137(2) of the Act and this Court finds no reason why such defaults should not be considered for the purposes of Section 164 of the Act. __Merely, because the returns to be filed pertain to a period prior to 01.04.2014, is of no relevance considering that the default in doing so has occurred after the provisions of section 164 of the act had become applicable__.

...

52.Concededly, Section 164(2) of the Act operates prospectively. __However, such prospective operation would entail taking into account failure to file the financial statements pertaining to the financial year ending 31.03.2014 on or before 30.10.2014. This Court is of the view that the taking into account such default does not amount to a retrospective application of Section 164 of the Act and the contentions advanced by the petitioners in this regard, are unmerited__. ”

Although the said decision is sought to be distinguished by contending that it does not consider Circular dated 04.04.2014, however, a perusal of the judgement would show that the same line of arguments involving the circular were put forth even in that case.

8. Furthermore, concededly, the disqualification of the petitioner has come to an end with the efflux of time. The same has been noted by the Division Bench of this Court in <u>Amarjeet Singh</u> (Supra) and it has clearly been stated that now the Directors so disqualified are again eligible for appointment/re-appointment as Directors. The relevant portion is extracted hereunder:-

“Since present writ petitioners are similarly placed to the writ petitioners whose writ petitions have already been disposed of by this Court, the present writ

petitions along with pending applications are disposed of holding that as the period of disqualification of Directors has expired by efflux of time i.e. on account of lapse of five years, the petitioners are eligible for appointment/re-appointment as Directors. However, it is clarified that the petitioners, who carried-on as Directors due to subsistence of interim orders passed by this Court, shall not be visited with any civil or penal consequences.

It is further clarified that none of the petitioners will 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 return."

Relying on the aforesaid decision, another Division Bench of this Court in Union of India V. Mukut Pathak(Supra) has disposed of similar petitions as infructuous since the question raised is now is of mere academic value.

9. Though the petitioner has claimed that the petitioner is suffering irreparable loss due to the ineligibility for appointment as director for his business in New Jersey, USA on account of said disqualification, his claim is not supported by any material and nothing has been placed on record to substantiate the said claim, the same being merely a bald averment. Without any specific detail, the said contention is of no help to the petitioner in distinguishing his case from those of other similarly placed persons. Even otherwise, this Court is bound by the decisions of the Division Benches and finds no reason to take a contrary view in the present case.

10. Therefore, considering the aforesaid and in view of the ruling of the Division Benches, I find no ground to merit in the present petition. Accordingly, the same is dismissed along with the pending applications.

MANOJ KUMAR OHRI, J

JULY 14, 2025/rj