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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 148 OF 2018

Shailendrajit Charanjit Rai & anr. ...Petitioners
Vs.
The Registrar of Companies, Maharashtra,
Mumbai & anr. ...Respondents

WITH
WRIT PETITION NO. 153 OF 2018

Bina Engineer ...Petitioner
Vs.
Union of India & anr. ...Respondents

WITH
WRIT PETITION (L) NO. 375 OF 2018

Kunal Mahendra Bhakta ...Petitioner
Vs.
Union of India & anr. ...Respondents

WITH
WRIT PETITION NO. 526 OF 2018

Jayant Dwivedy & anr. ...Petitioners
Vs.
Union of India & anr. ...Respondents

WITH
WRIT PETITION (L) NO. 724 OF 2018

Suresh Sanwormal Toddi ...Petitioner
Vs.
Registrar of Companies & anr. ...Respondents

WITH
WRIT PETITION (L) NO. 725 OF 2018

Shyamsunder Nathmal Todi ...Petitioner
Vs.
Registrar of Companies & anr. ...Respondents

WITH
WRIT PETITION (L) NO. 777 OF 2018

Mudhit Madanlal Gupta ...Petitioner
Vs.
Registrar of Companies & anr. ...Respondents

WITH
WRIT PETITION (L) NO. 828 OF 2018

Amit Upadhyay ...Petitioner
Vs.
Union of India & anr. ...Respondents

WITH
WRIT PETITION (L) NO. 861 OF 2018

Akshay Motilal Vani & anr. ...Petitioners
Vs.
Registrar of Companies & anr. ...Respondents

WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3079 OF 2018

Ankit Suresh Wadhawa ...Petitioner
Vs.
Union of India & anr. ...Respondents

WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3090 OF 2018

Suresh Lokhomal Wadhawa ...Petitioner

Vs.
Union of India & anr. ...Respondents

**WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3253 OF 2018**

Jay Vidhyachandra Shah & anr. ...Petitioners

Vs.
Union of India & anr. ...Respondents

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Mr. R.A. Dada, Sr. Adv. a/w. Mr. T. Agrawala, Mr. J. Kapadia, Mr. F. Lakdawala and Mr. S. Agrahari i/by. M/s. Little and Co. for Petitioner in (OS) WP/148/2018.

Mr. Fredun DeVitre, Sr. Adv. a/w. Ms. Gulnar Mistry, Mr. Nirav Shah and Mr. Preet Chheda i/by. M/s. DSK Legal for Petitioner in (OS) WP/153/2018.

Mr. Prakash Shinde and Mr. Chirag Bhavsar i/by. M/s. MDP and Partners for Petitioner in (OS) WPL/375/2018.

Mr. Sharan Jagtiani a/w. Mr. Vishnu Peri i/by. M/s. Dhru and Co. for Petitioner in (OS) WP/526/2018.

Mr. Anupam Chattopadhyay for Petitioner in (AS) WP Nos. 3079 and 3090 of 2018.

Mr. Rahul Singh i/by. M/s. Legal Catalyst for Petitioner in (OS) WP Nos. 724 and 725 of 2018.

Mr. Vedchetan Patil a/w. Ms. Radha Agrawal i/by. M/s. Lexim Associates for Petitioner in (OS) WPL/777/2018.

Mr. Kunal Katariya i/by. Mr. Aagam J. Doshi for Petitioner in (OS) WPL/828/2018.

Mr. Anant Baburao Bobe for Petitioner in (AS) WP/3253/2018.

Ms Armin Wandrewala a/w Mr. Manan Jaiswal I/b Mr. Sutapa Saha for Petitioner in W. P. (L) No. 861/2018

Mr. Anil C. Singh, ASG a/w. Mr. Aditya Thakkar, Mr. Ashish Mehta, Ms. Carina Xavier, Mr. Shashwat Rai and Ms. Kajal Malkan for Respondent- Union of India.

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**CORAM : SHANTANU S. KEMKAR &
M.S.KARNIK, JJ.**

**RESERVED ON : 20th MARCH, 2018.
PRONOUNCED ON : 22nd MARCH, 2018**

ORDER (PER M.S. KARNIK, J.):-

The issue involved in all these petitions is common. The petitioners are challenging their disqualification as directors under Section 164 (2) of the Companies Act, 2013 (hereinafter referred to as 'the said Act' for short) for non filing of financial statements and annual returns by the respective companies of which they are directors for the consecutive period of three years vide Notification dated 7/9/2017 issued by the respondents with effect from 1/11/2016. The default in question pertains to the year 2013-2014, 2014-2015 and 2015-

2016. In so far as Writ Petition No. 148 of 2017 is concerned, it is the case of the petitioners that the returns were never filed as the company did not carry out any business or transaction since inception. In some of the matters also the case is similar but in other matters the company carried out the business or transaction but stopped it after some years. In any case, learned Counsel for the petitioners have unequivocally stated that the company has not carried out any business and its bank account is also not in operation for the past three years. The petitioners also did not file the requisite returns as required under the said Act. Consequently, the petitioners have incurred the disqualification under Section 164(2) of the said Act.

2. Learned Senior Counsel Shri Dada appearing for the petitioners in Writ Petition No. 148 of 2017 invited our attention to the order dated 21/12/2017 passed by the Learned Single Judge of the Delhi High Court in the case of **Trilokchand M. Kothari & ors. Vs. Union of India & ors. W.P.(C) No. 11381 of 2017** as also the order dated 6/3/2018 passed by Delhi High

Court in **Sandeep Jain & anr. Vs. Union of India & ors. W.P.(C) No.2051 of 2018**. He submits that the case of the petitioners is squarely covered by the said decisions of the Delhi High Court. Learned Senior Counsel has also placed reliance on the decision of the High Court of Hyderabad in the case of **Dr.Reddy's Research Foundation Vs. Ministry of Corporate Affairs in Writ Petition No. 32575 of 2017 decided on 6th October, 2017**. In terms of the order passed by the Delhi High Court, learned Senior Counsel Shri Dada appearing for the petitioners makes an unequivocal statement, on instructions of the petitioners, that the petitioners are desirous of availing the 'Condonation of Delay Scheme, 2018 (hereinafter referred to as 'CODS-2018'). However, since the company has been struck off from the Register of the companies, they have been disabled from availing the benefits of CODS-2018.

3. Learned Senior Counsel and the Counsel appearing in all other matters would submit that the petitioners are also not in position to seek revival of the company by filing appeal

under Section 252 of the said Act as, admittedly, the company has not carried out any business and was liable to be struck off from the register. They submit that in fact, they would voluntarily seek dissolution of the company under Section 248(2) of the said Act, if they are given an opportunity to do so.

4. Learned Additional Solicitor General Shri Anil Singh appearing for the respondents opposed the Writ Petitions. It is pointed out that the orders passed by the Delhi High Court have been challenged by the Department by filing 17 appeals. Learned ASG opposes the petitions on the ground that the petitioners admittedly allowed shell company to run for several years. He submits that no action is taken all these years by the petitioners as required under law. According to the learned ASG, the CODS-2018 only condones the delay in filing returns and the respondents – Government has no power to revive a company once struck off. It is only the NCLT in an appeal under Section 252 can revive the company. Learned ASG would contend that once the petitioners admit that the companies never carried out

any business they ought to have applied for declaring the company as a dormant company under Section 455 or apply under Section 248 (2) to have the company struck off. He submits that once the default is admitted the consequence of law for non compliance thereof must follow. In his submission, the petitioners are virtually seeking amendment of the CODS-2018 which does not cover the petitioners. He invited our attention to the decision of the Apex Court in the case of State of J & K Vs. A.R. Zakki reported in 1992 Supp (1) SCC 548 in support of his submission that it is settled law that the Court cannot amend or direct the Government to amend either law or subordinate legislation. In his submission, the petitioners who have allowed their companies to merely exist on paper without doing any business and without having taken appropriate steps to comply with the provisions of the said Act cannot now be heard to complain of the consequences of breach.

5. With the assistance of learned Senior Counsel and

learned ASG we have gone through the relevant provisions of the said Act.

6. We have heard learned Senior Counsel as well as other Counsel appearing for the petitioners and learned Additional Solicitor General at length.

7. Though several contentions have been raised challenging the impugned order of disqualification as a director but during the course of the arguments learned Counsel appearing for the petitioners have prayed that they will be satisfied in case this Court is willing to accept their contention about their entitlement for availing the benefit of CODS-2018. In this view of the matter we are not going into the matter of disqualification. All contentions thereto are kept open. We are inclined to adopt the view taken by the Delhi High Court in the facts and circumstances of the present case. Learned ASG has pointed out that the appeals against the order passed by the learned Single Judge of the Delhi High Court are pending. It is,

however, pointed out that the operation of the order passed by the Delhi High Court has not been stayed. It is stated across the bar that in fact the order passed by the Delhi High Court is already implemented in several cases.

8. Be that as it may, learned Counsel appearing for the petitioners have made an unequivocal statement, on instructions of the petitioners, that the petitioners are desirous of availing the CODS-2018. Learned Counsel appearing for the petitioners, on instructions, have submitted that they undertake not to revive in future the companies which were struck off from the register of company on account of non filing of requisite statements and annual returns.

9. The petitioners were appointed as directors on the Board of Directors of the companies. The names of those companies were struck off from the register of the companies on account of failure to file requisite financial statements and annual returns. Furthermore, the petitioners submitted that the

companies have not been carrying on business for more than three years. It is pointed out that the petitioners are also the directors on the Board of other companies, which are active and functional. As the names of the petitioners were included in the impugned list of disqualified directors, their role as directors is impeded in so far as other companies are concerned which are active and running. Learned Counsel for the petitioners undertake that they do not wish to revive the company of which they were directors and that they would take steps under Section 248(2) of the said Act in consonance with the directives contained in Writ Petition (C) 11381 of 2017 of the Delhi High Court in the case of Trilokchand M. Kothari & ors. Vs. Union of India & ors. as also in the case of Sandeep Jain & anr. Vs. Union of India (*supra*)

10. Furthermore learned Counsel for the petitioners submits that the petitioners would also like to avail the benefit of the CODS-2018.

11. In this view of the matter and having regard to the submissions made by the learned Counsel, we are of the view that the petitions can be disposed of with the directions that the respondents will follow the directives contained in Trilokchand (*supra*). It is made clear that the directives contained therein will apply to the petitioners mutatis mutandis.

12. The petitioners to take immediate steps in consonance with the provisions under Section 248(2) of the said Act, 2013 and under the CODS-2018, in any case within a period of seven days from today.

13. In order to facilitate this exercise, the operation of the impugned list, in so far as it concerns the petitioners, will remain stayed till 31/3/2018 or till such time the respondents take requisite decision with regard to the request of the petitioners made to them in consonance with the provisions under Section 248(2) of the said Act, 2013 and under the CODS-2018.

14. As indicated earlier, the petitioners forthwith to do the needful, in any case within a period of seven days from today. In addition thereto, for the present, the Registrar of Companies will also activate the petitioners' DIN and DSC.

15. The Writ Petitions are disposed of in the above terms.

16. Parties to act on the authenticated copy of this order.

(M.S.KARNIK, J.)

(SHANTANU S. KEMKAR, J.)

17. At this stage the prayer has been made on behalf of the respondents to stay the operation of this order for a week.

18. Having considered the said prayer, we are of the view that since the Delhi High Court order has been acted upon by the respondents, no case is made out to stay the operation of the order.

(M.S.KARNIK, J.)

(SHANTANU S. KEMKAR, J.)