

(2018) 01 DEL CK 0551

In the Delhi High Court

Case No : Civil Writ Petition No. 9449 Of 2017, Civil Miscellaneous No. 38432 Of 2017

Amit Katyal

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Companies Act, 2013 — Section 164(2)(a), 167(1)(a), 248(1)

Citation : (2018) 01 DEL CK 0551

Hon'ble Judges : Gita Mittal, J;C.Hari Shankar, J

Bench : Division Bench

Advocate : Ranjeet Raut, Gaurav Rohilla

Final Decision : Disposed Of

Judgement

Gita Mittal, J

1. The petitioner in this case is a promoter Director in several companies engaged in the real estate business which forms part of the Krrish

Group. On 24th April, 2010, the petitioner was appointed as a Director of M/s Arnav Buildwell Pvt. Ltd. The writ petition states that the petitioner

does not have any shareholding in the company and was appointed in connection with a collaboration agreement in respect of some lands offered by

this company for being included in a licensed colony being developed by Brahma City Pvt. Ltd. (earlier known as Krrish Buildtech Pvt. Ltd.).

2. The petitioner claims to have tendered his resignation on 20th February, 2015 from the Board of Directors.

3. The petitioner came across a newspaper report on 20th September, 2017 wherein a list of Directors who had been disqualified for violation of

Section 164(2)(a) of the Companies Act, 2013 was released on the website of

the Ministry of Corporate Affairs, Government of India wherein the name of the petitioner appears at Serial no.6154 with respect to M/s Arnav Buildwell Pvt. Ltd.

4. Upon making inquiries, the petitioner found that the resignation which he had tendered on 20th February, 2015 to the company had not been filed with the Registrar of Companies.

This disqualification by the Ministry of Corporate Affairs has seriously impacted the petitioner's functioning as a Director in other companies

where he has responsibilities for decision making and the day-to-day affairs of those companies. The same is also impacting the relations of those

companies with several financial institutions inasmuch as the petitioner was decision making authority in those other companies.

5. The petitioner has challenged the disqualification as a Director inter alia for the reasons that the authorities have failed to comply with the principles

of natural justice and that no notice to show cause was issued to the petitioner.

6. It is further asserted that the petitioner ought to have been given a reasonable opportunity to cure defects for which no fault could be attributed to

him inasmuch as he has tendered his resignation.

7. We are informed by the Id. counsel for the petitioner that so far as M/s. Arnav Buildwell Pvt. Ltd. is concerned, this company is functional and has

not incurred any penalties under Section 248(1) of the Companies Act, 2013 and stands validly registered with the Registrar of Companies maintained

by the respondent no.2.

8. Premised on these facts, the petitioner inter alia has challenged his disqualification and also the constitutionality of Sections 164(2)(a) as well as

167(1)(a) of the Companies Act, 2013 by which the petitioner has been disqualified from occupying the office of Director in any company for

incurring the disqualification specified in Section 164(2)(a) of the Companies Act, 2013.

9. On behalf of the respondents, our attention is drawn to a Scheme floated by the respondent no.1 being the Condonation of Delay Scheme-2018

(hereinafter referred to as 'CODS-2018 Scheme').

10. Mr. Ranjeet Raut, Id. counsel for the petitioner, on instructions, submits that the petitioner is desirous of availing the benefit of CODS-2018

Scheme and that the petitioner may be permitted to do so. He further submits that all the steps which are necessary to be taken under the Companies

Act, 2013 so far as the company is concerned, would also be completed expeditiously to enable the petitioner to take benefit under CODS-2018

Scheme and that the petitioner is desirous of being given a fair opportunity to make good defects/faults.

11. In view of the above, it is directed as follows:

(i) The petitioner may file all the requisite returns in relation to the company in order to enable him to avail the benefits under the CODS-2018

Scheme;

(ii) The petitioner would also submit the necessary application under CODS-2018 Scheme along with its requisite charges;

(iii) The aforesaid documents and applications will be submitted online to the Registrar of Companies.

12. It is clarified that if the petitioner does not avail of the CODS-2018 or file the necessary documents as required, in addition to other consequences,

the petitioner would also be liable to be prosecuted for Contempt of Court.

13. It is further clarified that the aforesaid order is made on the basis of the unequivocal statements made on behalf of the petitioner above and in the

event the statements are found to be incorrect, the petitioner would be liable to be proceeded against contempt of court in addition to being subjected

to other proceedings.

14. Interim order passed by us by order dated 27th October, 2017 shall continue till the disposal of the application under the CODS-2018 Scheme.

The writ petition and the pending application are disposed of.

Dasti to parties.