(2021) 01 DEL CK 0156

In the Delhi High Court

Case No : Civil Writ Petition No. 281 Of 2021

Anuj Mittal & Anr APPELLANT

Vs

Union Of India & Anr RESPONDENT

Date of Decision : 15-01-2021

Acts Referred:
Companies Act, 2013 — Section 164(2), 167(1)(a)

Citation : (2021) 01 DEL CK 0156

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Nikhil Kumar Verma, Nawal Kishore Jha, Santosh Kumar

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done by video conferencing.

CM APPL. 711/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 281/2021 & CM APPL. 712/2021 (for interim directions)

3. The Petitioners were directors in Nalini Pic and Pac Private Limited (hereinafter, â??Nalini Limitedâ??). Due to alleged non-compliance/default in

Nalini Limited under Section 164(2)(a) of the Companies Act, 2013 i.e., non-filing of financial statements or annual returns for any continuous period

of three financial years, the said Petitioners were disqualified as directors from 1st November, 2017 to 31st October, 2022. Their DINs and DSCs

were de-activated. Nalini Limited has also been struck off from the Register of Companies. The Petitioners claim to be Directors in other active

companies and also now wish to start a fresh business.

4. This Court has considered the legal position relating to activation of DIN/DSC numbers of directors of defaulting companies in Anjali Bhargava &

Anr. v. UOI & Anr. [W.P.(C) 11264/2020, decided on 6th January, 2021]. The relevant portion of the said order reads:

â??4. There are four categories of Directors that are approaching Courts seeking setting aside of disqualification and activation of

DIN/DSC numbers.

(a) Directors who have been disqualified prior to 7th May 2018, qua other companies in addition to the defaulting company:

As per the proviso to Section 167 (1) (a) of the Companies Act, 2013, once a director is disqualified qua one company i.e., the defaulting

company, the office of the said director would become vacant in all companies. The said proviso, has, however, come into effect only on 7th

May, 2018. In Mukut Pathak (supra) it was held that this proviso cannot have retrospective effect and would only apply if the

disqualification took place after 7th May 2018. Paragraph 98 of Mukut Pathak (supra) reads as under:

â??98. In view of the above, the petitioners would not demit their office on account of disqualifications incurred under Section 164 (2) of

the Act by virtue of Section 167(1)(a) of the Act prior to the statutory amendments introduced with effect from 07.05.2018. However, if they

suffer any of the disqualifications under Section 164(2) on or after 07.05.2018, the clear implication of the provisos to Section 164(2) and

167(1)(a) of the Act are that they would demit their office in all companies other than the defaulting company.â??

Since there is no stay on the judgment in Mukut Pathak (supra), it continues to hold the field. Thus, in cases where directors have been

disqualified prior to 7th May, 2018, the proviso to Section 167(1)(a) would not apply and the directors would continue to be directors in

companies other than the defaulting company. The disqualification of such directors qua active companies would therefore be liable to be

set aside and their DIN and DSCâ??s reactivated.

(b) Directors who have been disqualified post 7th Â May 2018, qua other `activeâ?? companies:

As held in Mukut Pathak (supra), in all cases where the directors have been disqualified on or after 7th May, 2018, the proviso to Section

167 (1) (a) would apply and such directors would cease to be directors in all companies including the defaulting company. In March, 2020,

in light of the COVID- 19 pandemic, the Ministry of Corporate Affairs vide General Circular No. 12/2020 introduced CFSS-2020 to allow a

fresh start for defaulting companies and directors of such companies. This Court, in Sandeep Agarwal (supra) has analyzed CFSS-2020 to

conclude that the purpose of the scheme is to provide an opportunity for â?? activeâ?? companies i.e., companies whose names have not

been struck off, who may have defaulted in filing of documents, to put their affairs in order.

â?¦

Applying the scheme to the facts of the case, this Court in Sandeep Agarwal (supra) directed reactivation of the DINs and DSCs of directors

of two companies â?" one whose name had been struck off and one, which was still active. Thus, the DINs and DSCs of disqualified

directors of struck off companies, who are also directors in active companies, may be reactivated qua the active companies, in line with the

spirit of the CFSS-2020.

(c) Directors of â??activeâ?? companies who have been disqualified:

In cases where directors of â??activeâ?? companies have been disqualified, CFSS-2020 would squarely apply. Such directors would be

entitled to avail of CFSS-2020 and file documents of the defaulting company. In Radhika Byrn (supra), the Court permitted reactivation of

the DINs and DSCs of the directors of active companies under CFSS-2020.

(d) Disqualified directors of struck off companies seeking appointment as directors in other/new companies:

The purpose of CFSS-2020 has been elucidated in the circular of the Ministry of Corporate Affairs as follows:

â??In furtherance of the Ministryâ??s Circular No 11/2020, dated 24th March, 2020 and in order to facilitate the companies registered in

India to make a fresh start on a clean slate, this Ministry has decide to take certain alleviative measures for the benefit of all companies.â??

This scheme has been introduced in view of the COVID-19 pandemic with the aim to enable a fresh start to defaulting companies and directors of such companies. The disqualification of defaulting companies was a step which was taken sometime in 2016-17 in order to

ensure that filing of regular returns and compliances are undertaken strictly as per the provisions of the Act. It was also meant to be a

measure to ensure that entities that are not conducting businesses are not misused as `shell companiesâ?? for any improper activities. A

substantial part of the disqualification period has already been completed. The introduction of the CFSS is itself a step for `providing a

fresh startâ??. Under such circumstances, continuation of the disqualification would defeat the Scheme and its purpose.

5. In furtherance of the purpose of this scheme, directors of struck off companies who seek to be appointed as directors of other/new

companies, ought to be provided an opportunity to avail of this scheme, provided that they have undergone a substantial period of their

disqualification. The scheme clearly seeks to provide a fresh start for directors of defaulting companies who seek appointment in other

companies or wish to start new businesses. Therefore, if a substantial period has passed since the disqualification of such directors, they

ought to be given an opportunity to avail of the scheme.â??

5. Mr. Santosh Kumar, Registrar of Companies, Delhi was requested to join the proceedings. He has joined the proceedings today. On a specific

query from the Court, he has informed the Court that the Companies Fresh Start Scheme-2020 has expired as on 31st December, 2020. However, he

submits that in case struck off companies are willing to file their annual returns and balance sheets, the restoration of these companies is being

considered by the ROC. He further informs the Court that in the case of more than 2000 companies, restoration of the struck off companies has been

permitted by the NCLT and the jurisdiction for restoring the struck-off companies rests with the NCLT.

6. Accordingly, in terms of the judgment in Anjali Bhargava (supra) the Petitioners would fall in category â??dâ??. Further, since the disqualification

of the Petitioners is prior to 7th May, 2018, the Petitioners would also fall in category â??aâ??. In terms of the judgment in Mukut Pathak & Ors. v.

Union of India & Ors., 265 (2019) DLT 506 and Anjali Bhargava (supra), the DINs and DSCs of the Petitioners shall be re-activated within a period of ten days. If, in addition, the Petitioners wish to seek restoration of the struck off company, the Petitioners are permitted to seek their remedies in

accordance with law before the NCLT.

7. The petition is disposed of in the above terms. All pending applications are also disposed of.

8. The digitally signed copy of the order shall be treated as the certified copy of the order for being filed before the ROC.