

(2018) 01 DEL CK 0270

In the Delhi High Court

Case No : Civil Writ Petition No. 110 Of 2018, Civil Miscellaneous Application No. 487, 488 Of 2018

Lalit Tanwar & Anr

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 08-01-2018

Acts Referred:

Companies Act, 1956 — Section 164(2), 248(1), 248(2), 252

Citation : (2018) 01 DEL CK 0270

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

Bench : Division Bench

Advocate : Dhruv Gautam, Devashish Chauhan, Vinod Diwakar, Akshaya Agarwal, Sanjay Pal

Final Decision : Disposed Of

Judgement

Gita Mittal, J

1. Right at the outset, Mr. Dhruv Gautam, Advocate who appears for the petitioners submits that by bonafide error, there is an erroneous statement on page 5 of the synopsis to the following effect :

"The petitioners have regularly filed their income tax returns within the stipulated time period for the all companies in which they were the directors and have always conducted their business in accordance with law."

2. We are informed by Mr. Gautam that it is not so inasmuch as no business was commenced by the said company. The correct position as informed today is taken on record.

3. The petitioners have filed the present petition, inter alia, impugning a "lists of disqualified directors" published by respondent nos. 1 and 2 to the extent that it includes the name of the petitioners.

4. The petitioners claim that these are the Directors of a private company named

M/s Billionaire Entertainment Private Ltd. (hereafter "the Company") and have incurred the disqualification under Section 164(2) of the Act.

5. The learned counsel appearing for the petitioners makes an unequivocal statement, after seeking instructions, that the petitioners are desirous of availing of the Condonation of Delay Scheme -2018 (hereafter "CODS - 2018"). However, since the Company has been struck off from the Register of Companies, it has been disabled from availing the benefits of CODS - 2018.

6. The petitioner is also not in a position to seek revival of the company by filing an appeal under Section 252 of the Act, since admittedly the Company has not carried out any business and was liable to be struck off from the Register. The petitioners state that, in fact, it would voluntarily seek dissolution of the Company under Section 248(2) of the Act, if they have the opportunity to do so.

7. This Court is of the view that since, admittedly, the Company is not carrying out any business and its bank account has not been operated for over three years, the petitioners ought to be provided the benefit of the CODS - 2018. Accordingly, this Court directs as under:-

(a) The petitioners may file all the requisite returns in relation to the Company to avail the CODS - 2018.

(b) The petitioners may also file the necessary resolutions for voluntarily striking off the name of the Company as required under Section 248(2) of the Act.

(c) The petitioners would also make a necessary application under CODS - 2018 alongwith the requisite charges.

(d) The aforesaid documents and applications will not be submitted online but in hardcopies to the Registrar of Companies.

8. The Registrar shall scrutinize the same, and if the same are found to be otherwise in accordance with Section 248(2) of the Act, the petitioners would be granted the benefit of the CODS - 2018. The removal of the Company from the Register under Section 248(1) of the Act would be deemed as striking off the Company under Section 248(2) of the Act, and the petitioner's application under CODS - 2018 would be sympathetically considered by the Registrar.

9. Since an unequivocal statement is made by the petitioners that they would pay the necessary charges and make the necessary application under the CODS - 2018, the impugned list of the disqualified directors, in as much as it includes the name of the directors, is stayed till 31.03.2018 or up till such time as the respondents take a final decision in the matter.

10. It is clarified that if the petitioners do not avail of the CODS-2018 or file the necessary documents as required for dissolution of the company under Section 248(2) of the Act as stated above; in addition to other consequences, the petitioners would also be liable to be prosecuted for contempt of Court.

11. 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 petitioners would be liable to be proceeded against contempt of court in addition to being subjected to other proceedings.

12. The petition and the pending applications are disposed of. Dasti.