(2021) 12 CAL CK 0018

In the Calcutta High Court

Case No : Writ Petition No. 6458 Of 2020

Mohan Gupta & Others APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 08-12-2021

Acts Referred:

Companies (Acceptance and Deposits) Rules, 2014 — Rule 1(2), 2(1)(c)(viii), 2(1)(c)(xiii)
Companies (Acceptance of Deposits) Rules, 1975 — Rule 2(b)(ix), 2(b)(xi)
Companies Act, 2013 — Section 2(31), 18(3), 73, 74, 74(1)(b), 74(2), 164, 164(2), 164(2)(b), 167
Income Tax Act, 1961 — Section 43B

Citation : (2021) 12 CAL CK 0018

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioners are the Joint Managing Directors of a Company, namely, the Gupta Machine Tools Private Limited. The present writ petition has been filed against disqualification of the petitioners as Directors under Section 164(2)(b) of the Companies Act, 2013 (hereinafter referred to as 'the Act').

2. The learned Senior Advocate appearing for the petitioners argues that no notice was given to the petitioners prior to such disqualification under Section 164(2)(b) of the Act.

3. Secondly, it is argued that the deposits could not have been termed as 'unpaid' within the purview of Section 74 of the Act. In this context, the learned Senior Advocate refers to Section 74(1)(b) of the Act and submits that the deposits were renewed from time to time, which is permitted under the said provision. Thus, there does not remain any question of any dues being unpaid.

4. That apart, it is argued by the petitioners, the Company was converted to a

private limited company with effect from May 26, 2016. As such, it is argued that on the subsequent date of disqualification, the Company could not have incurred any liability under Section 74.

5. It is next argued that the deposits were only accepted from the Promoters/ Directors/Share-holders of the Company and not from the public in general, thereby attracting the exemption under Rules 2(1)(c)(viii) and (xiii) of the Companies (Acceptance and Deposits) Rules, 2014 (for short, 'the 2014 Rules').

6. The learned Senior Advocate argues that the 2014 Rules are clarificatory in nature and, as such, have retrospective occupation. In support of such proposition, the petitioners cite Allied Motors (P) Ltd. vs. Commissioner of Income Tax, reported at AIR 1997 SC 1361.

7. The learned Senior Advocate for the petitioners further argues that the Company itself, as well as the Full-Time Director thereof, was discharged in a criminal proceeding on the same allegations. As such, it is argued, the other Directors, that is, the petitioners could not have suffered the consequences of disqualification of their Directors Identification Number (DIN) as the allegation against the petitioners was regarding the defaults committed by the company.

8. Learned counsel appearing for the respondents contends that the 2014 Rules came into operation with effect from April 01, 2014. Hence, the same could not be applicable with retrospective effect to the petitioners.

9. It is next argued that Section 18(3) of the Act specifically provides that the registration of a Company under the said Section, which deals with conversion of Companies already registered, shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion and those will be inferred in the manner as if such registration had not been done. It is, thus, contended that the mere conversion of the Company into a Private Limited Company did not absolve either the Company or its Directors from the liabilities incurred previously in the capacity of a public Company.

10. It is next argued by the respondents that the discharge of the Company and the Full-Time Director in a criminal action is not conclusive and/or binding on this Court.

11. That apart, it is argued that the discharge took place on September 30, 2019, that is, after the decision of disqualification in respect of the petitioners was alleged by the Registrar of Companies (ROC). Hence, the discharge could not have any material bearing on the present case.

12. Upon taking due note of the submission of the parties and the materials on record, the first argument of the petitioners, that is, the absence of notice to the petitioners before the disqualification under Section 164(2) of the Act, does not vitiate such disqualification in any manner. Section 164 of the Act does not contemplate any such prior individual notice; more so, since notice had been

issued to the Company itself and the Full-Time Director as well and the present petitioners could not feign ignorance thereof.

13. That apart, there is no statutory right of hearing of the Directors prior to disqualification, which eliminates the requirement of a prior notice.

14. As far as the operation of the 2014 Rules is concerned, Rule 1(2) clearly prescribes that the same shall come into force on the 1st day of April, 2014. In the teeth of such specific prospective operation having been provided in the Rules, there is no scope of argument that the said Rules have retrospective operation. The ratio laid down in Allied Motor (supra) was laid down in a different factual context than the present case and does not, in view of the specific language of Rule 1(2) of the 2014 Rules, help the petitioners in any manner whatsoever. The said judgment was rendered in the context of the Income Tax Act, 1961. The Supreme Court held therein that the rule of reasonable construction must be applied while construing a statute and literal construction should be avoided if it defeats the manifest object and purpose of the Act.

15. The said judgment was rendered in the context that a proviso had been inserted to Section 43B of the Income Tax Act, 1961 and the Supreme Court clearly held that a proviso which is inserted to remedy the intended consequences and to make the provision workable, a proviso which supplies an obvious omission in the Section and is required to be read into the Section to give the Section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the Section as a whole. Such argument does not hold good in the present context in view of the specific enumeration in Rule 1(2) of the 2014 Rules as regards the date of commencement of the same being April 1, 2014.

16. That apart, such applicability of the 2014 Rules is irrelevant in any event since, at the relevant juncture when the alleged offences were committed by the Company, the 1975 Rules were applicable and not the 2014 Rules. The provisions of Rules 2(b)(ix) and (xi) of the 1975 Rules are on similar footing as those under which the petitioners and the Company were charged.

17. Section 2(c)(viii) of the 2014 Rules brings within the fold of exemptions any amount received from a person who, at the time of the receipt of the amount, was a Director of the Company and the Director furnishes to the Company at the time of giving the money declaration in writing to the effect that the amount is not being given out of funds acquired by him for operating or accepting loans of others. Sub-rule (xiii) thereof provides that any amount brought in by the Promoters of the Company by way of unsecured loan in persuasion of the stipulation of any lending financial institution or a bank, subject to fulfillment of the conditions following thereafter, would also be entitled to such exemption. There is no substantial distinction between the said provisions and those of Rules 2(1)(c)(viii) and (xiii) of the 2014 Rules. Hence, although there cannot arise any question of the 2014 Rules having any retrospective effect, since the same was

not merely clarificatory in nature as argued by the petitioners, even under the 1975 Rules, the petitioners were entitled to similar exemptions on which they were charged.

18. Section 18(3) of the Act clearly applies to the present case, since mere conversion of the Company into a Private Limited Company, in order to avoid previous defaults or otherwise, would not absolve the petitioners, as Directors, or the Company itself from the offences committed under Section 74 of the Act, in the event such defaults were actually proved and not exempted.

19. As regards the discharge of the Full-Time Director and the Company in a criminal action, not only did the same occur subsequent to the ROC complaint under Section 74(1)(b), the same was rendered in a different context, in which the standard of proof was "beyond reasonable doubt", unlike in the present matter.

20. The respondents are justified in arguing that the said order passed in a criminal action cannot debar this Court from deciding the matter or treat such order to be on the same footing as the principle of res judicata.

21. As per Section 74(1)(b) of the Act, the Company shall repay, within three years from the commencement of the Act or on or before expiry of the period for which the deposits were accepted, whichever is earlier. The said provision has to be read in context and in conjunction with Section 74(2), which clearly provides that the Tribunal may, on an application made by the Company, after considering the financial condition of the Company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the Company to repay the deposit. In the event of renewal in compliance with the said sub-section, it could not be said that the Company or, for that matter the petitioners, were guilty of any offence within the ambit of Section 164(2)(b) of the Act.

22. The term "deposits", as defined in Section 2(31) of the Act, envisages the same to include any receipt of money by way of deposit or loan or in any other form by a Company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

23. Sections 73 and 74 of the Act, on the other hand, prohibit acceptance of deposits from the public. Section 74, read in conjunction with Section 73, would have included the money taken by the Company unless, as discussed above, the exemptions were applicable to the withdrawals.

24. Hence, in view of the exemption under the 1975 Rules, more specifically Rules 2(b)(ix) and (xi) of the same, no liability within the contemplation of Sections 164 and 167 could have been imposed on the Company and/or the petitioners.

25. Since the petitioners were Joint Managing Directors of the Company, it would be unfair to indict the petitioners of an offence which was exempted within the

contemplation of the statute.

26. Hence, the disqualifications envisaged under Section 164 and Section 167 of the Act were not applicable to the petitioners and, as such, the decision disqualifying the petitioners' DIN and the consequential vacation of office were illegal and bad in the eye of law.

27. Hence, W.P.A. No. 6458 of 2020 is allowed, thereby setting aside the impugned decision of deactivate the DIN of the petitioners from January 24, 2019 to January 23, 2024. Consequently, the respondents shall take necessary steps to re-activate the DSC and DIN Nos. 005393026, 00596747 and 00603910 of the petitioners at the earliest, positively within one month from date.

28. There will be no order as to costs.

29. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.