

(2021) 01 DEL CK 0153
In the Delhi High Court
Case No : Civil Writ Petition No. 721 Of 2021

Sharad Kumar Sinha

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 18-01-2021

Acts Referred:

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

Citation : (2021) 01 DEL CK 0153

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Abhishek Aggarwal, Ayush Aggarwal, Arti Bansal

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done by video conferencing.
2. The Petitioner is a Director in Mafcons Buildwell Private Limited. The said company was struck off on 8th August, 2018. Due to alleged non-compliance/default in Mafcons Buildwell Private Limited under Section 164(2) of the Companies Act, 2013 i.e., non-filing of financial statements or annual returns for any continuous period of three financial years, the Petitioner was disqualified as a director from 1st November, 2017 to 31st October, 2022 and his DIN and DSC was also de-activated. The Petitioner now also wishes to start a fresh business.
3. 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:

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:

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.

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 DSCs reactivated.

(b) Directors who have been disqualified post 7th May 2018, qua other active 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 "active" 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.

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 "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 "active" companies who have been disqualified:

In cases where directors of "active" 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:

"In furtherance of the Ministry'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 decided to take certain alleviative measures for the benefit of all companies."

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 companies" 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 start". 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."

4. Accordingly, in terms of the judgment in *Anjali Bhargava* (supra) the Petitioner would fall in category "d". In view of the above and in terms

of the judgment of this Court in *Mukut Pathak & Ors. v. Union of India & Ors.*, 265 (2019) DLT 506 the DIN/DSC numbers are directed to be

reactivated within a period of one week, in order to enable him to start new companies.

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