

(2018) 04 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Writs No. 6254 of 2018

Sharvan Kumar Kaler And Ors @APPELLANT@Hash Union Of India Ors

Date of Decision : 26-04-2018

Acts Referred:

Companies Act, 2013 — Section 164(2)(a), 167, 248(5)

Citation : (2018) 04 RAJ CK 0037

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : Rajendra Kumar, Anand Sharma

Final Decision : Disposed Off

Judgement

(1) Issue notice to the respondents. Mr. Samit Bishnoi is directed to accept notice on behalf of Union of India in all the cases. Two sets of each writ

petition be served upon him.

(2) Learned Counsel for the petitioners submits that the High Court of Delhi in Writ Petition No.2408/2018- Rishi Gupta & Anr. Vs. Union of India &

Ors. vide order dated 22.3.2018 has noted that the Union of India has come out with a Condonation of Delay Scheme, 2018 (hereinafter referred as

CODS, 2018) whereby the defaulting companies may submit their

returns upto 31.03.2018 which as per learned Counsel for the Union of India has been extended upto 30th April, 2018. The High Court has further

noted that the applicant Companies would be required to pay several charges including fees of Rs.30,000/- for filing application. Since the petitioners

are holding post of Director in the said defaulting Companies, the applications for condonation can only be filed if they continue to remain as Directors

in the said defaulting Companies. In the circumstances, the High Court of Delhi has permitted the Directors to file compliance under CODS, 2018.

(3) Taking cue from the order passed by the High Court of Delhi, learned Counsel submits that they cannot be treated as disqualified if they are

required to file the returns of the said defaulting companies upto 30.04.2018. It is also submitted that the rigor of Section 164(2)(a) as well as Section

167 of the Companies Act of 2013 ought not be applied in the circumstances noted above.

(4) Having heard learned Counsel, in order to balance the equities while the respondents rights to argue and make the submissions are reserved and

four weeks time is granted to file reply.

(5) In the meanwhile, this Court deems it appropriate to allow the petitioners to continue to hold the post of Director in the defaulting Companies as

well as other Companies so that they may be able to avail the benefit of CODS, 2018 during the pendency of the writ petition.

(6) Learned Counsel further submits that on account of Company in default names having been struck off in terms of Section 248(5) of the

Companies Act, 2013, the benefit of CODS, 2018 may not be allowed online. It is also prayed that they may be allowed to file hard copies of returns

under CODS, 2018 and the respondents may be directed to accept the same.

(7) The prayer seems to be reasonable in view of the provisions noted above.

(8) Accordingly, it is directed that if the petitioners submit returns relating to the defaulting Companies which have been struck off by filing hard copy,

the same shall be accepted and if any benefit is available under CODS, 2018, the same be extended to them. However, the aforesaid order shall not

create any right in favour of any of the petitioners and would be subject to final disposal of writ petitions.