
(2020) 01 CAL CK 0132

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 669, 22859, 23992, 29008 Of 2018, 4733 Of 2019, 698, 699, 700, 963, 1121 (W) Of 2020

Subhas Kumar Biswas And Another

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 22-01-2020

Acts Referred:

Companies Act, 2013 — Section 167(1)(a), 164(2), 174(2)

Citation : (2020) 01 CAL CK 0132

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Saptarshi Banerjee, A.K. Upadhyay, Saptarshi Banerjee, Somesh Ghosh, Kamal Singh, Subhankar Chakraborty, Shiv Chandra Prasad

Final Decision : Disposed Of

Judgement

Sabyasachi Bhattacharyya, J

1. The common question involved in all the present writ petitions is, whether the disqualification of the petitioner's Director Identification Number (DIN) would operate in respect of the defaulting company only or all other companies in respect of which the petitioner is a Director.

2. Learned counsel appearing for the petitioner in the respective cases rely upon three unreported judgments of this court, which are as follows:

(i) Chetan Chokhani vs. Union of India and others [W.P. No. 21504(W) of 2019], dated November 22, 2019;

(ii) Dhiraj Kumar Mantri vs. Union of India and others [W.P. No. 22071(W) of 2019], dated December 3, 2019; and

(iii) Moti Lal Mohata vs. Union of India [W.P. No. 24191(W) of 2019], dated January 3, 2020.

3. In all the said judgments, it was held that the disqualification of the DIN of a Director operate only in respect of the defaulting company and not the other companies in respect of which he is a Director.

4. Learned counsel for the petitioner also cites an unreported judgment of Mukut Pathak & Ors. Vs. Union of India and Anr. [W.P.(C) 9088/2018 & CM Appln. No. 35006/2018], dated November 4, 2019, wherein a learned Single Judge of the Delhi High Court held, inter alia, that the petitioners would not demit their office on account of disqualifications incurred under Section 174(2) of the Companies Act, 2013 (hereinafter referred to as "the Act of 2013") by virtue of Section 167(1)(a) of the 2013 Act prior to the statutory amendments introduced with effect from May 7, 2018. It was held, however, if they suffer any of the disqualifications under Section 164(2) on or after May 7, 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.

5. Section 164(2) of the 2013 Act, if construed in proper perspective, indicates that the legislature intentionally made a distinction in the language of the first part of the said sub?section with the second part thereof. Sub?section (2) of Section 164 starts with the expression "no person, who is or has been a Director of a company", which has committed defaults specified therein, while the sub?section ends with the expression "shall be eligible to be re?appointed as a Director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so".

6. Thus, a specific distinction is made in the sub?section between the directorship of a person of a defaulting company, in respect of which the eligibility of 're?appointment' as a Director has been prevented, whereas, as regards other companies, the term 'appointed', as opposed to 're?appointed' has been deliberately used, thereby indicating only fresh appointments. There could not be any other meaning attributed to the user of the terms 're?appointed' and 'appointed' in two parts of the said sub?section, in respect of directorship in the defaulting company and in respect of other companies respectively.

7. Section 167 of the 2013 Act and the proviso to sub?section (1)(a) thereof shows that the said proviso came into force after disqualification of the petitioner by the respondents. Hence, the proviso is not applicable to cases where the disqualification took place before enactment of the said amendment.

8. Applicability of Rule 14 of the 2014 Rules pertains ex facie to the company at default and not to other companies and, as such, it cannot be mandatory for the Director to comply with the provisions thereof in respect of all other companies of which she/he is a Director but which are not at default, but in respect of defaulting company only.

9. Such interpretation is logically more feasible as well, since otherwise, for the default of one or some companies, the person concerned will be disqualified from directorship in respect of other non?defaulting companies as well, in which case

the penalty would far exceed the offence, instead of being commensurate therewith.

10. Accordingly, W.P. No.700(W) of 2020, W.P. No. 699(W) of 2020, W.P. No. 698(W) of 2020, W.P. No. 23992(W) of 2018, W.P. No. 22859(W) of 2019, W.P. No.4733(W) of 2019, W.P. No.669(W) of 2018, W.P. No. 29008(W) of 2017, W.P. No.1121(W) of 2020 and W.P. No. 963(W) of 2020 are thus disposed of, thereby setting aside the disqualification of the DIN of the respective petitioners in respect of other companies, than the company in respect of which the default has been allegedly committed. However, such disqualification shall continue to operate in respect of the defaulting company.

11. It is, however, made clear that in cases where the disqualification took place after the introduction of the Amendment to the 2013 Act dated May 7, 2018, in respect of Section 167(1)(a) of the Act, the Director has to demit office, being deemed to be disqualified in respect of all the companies in respect of which he is a Director, other than the company which is in default under Section 164(2).

12. There will be no order as to costs.

13. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.