(2018) 12 UK CK 0073

In the Uttarakhand High Court

Case No : Writ Petition No. 3677, 3678 (M Of S) Of 2018

Subhash Arora & Others — APPELLANT

Vs

Union Of India & Others — RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Companies Act, 2013 — Section 164, 164(2)

Citation : (2018) 12 UK CK 0073

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Arvind Vashistha, Tarun Pande, Sanjay Bhatt

Final Decision : Disposed Off

Judgement

Lok Pal Singh, J

1) Since the controversy involved in both the writ petitions is identical, therefore, they are being decided together by this common judgment and order for the sake of brevity.

2) Both the writ petitions have been filed seeking following reliefs:

i) Issue a writ of mandamus or a writ of any other nature or direction declaring that the disqualification of the petitioner by the respondent nos. 1 and 2 is arbitrary and illegal;

ii) Alternatively, issue a writ of mandamus or a writ of any other nature or any other direction / order extending the benefit of the Condonation of Delay Scheme, 2018 (annexed herewith) as a special case in the peculiar facts and circumstances of the present case, to enable the petitioners to make compliances and avail benefit under CODS;

iii) Issue a writ of mandamus or a writ of any other nature or any other direction / order directing the respondent nos. 1 and 2 not to treat the petitioners as "disqualified director" under Section 164 of the Companies Act, 2013 and for any consequential measures and / or effects arising / contemplated therefrom and change the status of the petitioners in the records of the respondent nos. 1 and 2 from "disqualified director";

iv) Issue a writ of mandamus or a writ of any other nature or any other direction / order directing respondent nos. 1 and 2 to unfreeze the Directors Identification Number and Digital Signature Certificates of the petitioners thereby enabling the petitioners to act as Directors and to file the documents and returns on behalf of the respondent no. 3 as well as all other companies on which petitioners serve as directors.

3) The petitioners are claiming that they are the Directors of the respondent no. 3 company Amenity Sports Academy Private Limited, D1, D2, Rudrapur, Udham Singh Nagar.

4) Being the Directors of the respondent no. 3 company, the petitioners could not upload the annual returns and financial statements in regard to the affairs of the company in exercise of the provisions contained in Section 164(2) of the Companies Act, 2013. The Director Identification Numbers (DIN) and Digital Signature Certificates (DSC) of the petitioners have been blocked disabling them from filing or certifying any documents or making any compliances pertaining to the companies where they are Directors.

5) The disqualification for appointment of director is defined in Section 164(2) of the Companies Act, 2013. In the present case the petitioners are not seeking any re-appointment and they have come before this Court with the prayer that the respondent nos. 1 and 2 be directed not to treat them as "disqualified Directors" under Section 164 of the Act.

6) Section 164(2) of the Companies Act, 2013 (Amended vide Act no. 1 of 2018 on 3rd January 2018) is excerpted here-in-below for convenience:

164. Disqualifications for appointment of director.- (1) A person shall not be eligible for appointment as a director of a company, if -

(a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152. (2) No person who is or has been a director of a company which- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, 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.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b),he shall not incur the disqualification for a period of six months from the date of his appointment.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualification referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification."

7) Learned counsel appearing on behalf of the petitioners would submit that since the DIN and DSC have been blocked, therefore, the petitioners, who are ready to furnish the complete details of annual returns and financial statements of respondent no. 3 company, were unable to submit the same within time.

8) Mr. Sanjay Bhatt, learned counsel appearing for the respondents would submit that there is no provision for submitting the off-line annual returns and financial statements.

9) It is settled proposition of law that no one should be left remediless. Since remedy is not available to the petitioners, therefore, in view of the settled position of law that the petitioners could not submit their annual returns and financial statements within time solely for the reason that they have completely been debarred from the Directorship and no opportunity of hearing has been provided to them.

10) Having considered the submission of learned counsel for the parties, a writ of mandamus is issued directing respondent nos. 1 and 2 to unfreeze the Director Identification Number (DIN) and Digital Signature Certificates (DSC) of the petitioners and to permit them to upload the annual returns and financial statements within a further period of fifteen days. it is also directed that the disqualification of the petitioners, as Directors of the respondent no. 3 company, shall be kept in abeyance for a period of fifteen days from toady provided the petitioners move applications separately, duly supported by affidavits, before the Ministry of Corporate Affairs, Govt. of India, New Delhi requesting to activate their Director Identification Number (DIN) and Digital Signature Certificates (DSC). If the petitioners failed to submit their complete annual returns and financial statements within the time stipulated, the impugned order debarring them to act as Directors of respondent no. 3 company shall revive automatically.

11) Both the writ petitions are, accordingly, disposed of. (All pending applications also stand disposed of).

12) Let certified copy of the order be supplied to learned counsel for the petitioners today itself, on payment of usual charges.