(2021) 02 KL CK 0072

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3219, 3250, 7604, 7612, 7833 Of 2020

Thefra Technopark Pvt. Ltd And Ors APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 23-02-2021

Acts Referred:

Companies Act, 2013 — Section 203, 203(5), 469
Companies (Appointment And Remuneration Of Managerial Personnel) Rules, 2014 — Rule 8(A), 25(A)

Citation : (2021) 02 KL CK 0072

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : Deepu Thankan, Ummul Fida, Lakshmi Sreedhar, P. Vijayakumar, Sreekala K.L, S. Sreelakshmy, R. Prasanth Kumar

Final Decision : Disposed Of

Judgement

1. The petitioners, who are Companies incorporated with the Registrar of Companies, Kerala, have filed these writ petitions seeking to direct the

respondents to permit the petitioners to file e-form ACTIVE, INC-22A without insisting on appointment of a whole-time Company Secretary. The

petitioners have also sought to declare that the restriction imposed in filing e-form ACTIVE, INC-22A with regard to non-compliance of Section 203

of a whole-time Company Secretary or Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 is arbitrary

and illegal.

2. The petitioners submit that the 1st respondent-Union of India, in exercise of its powers under Section 469 of the Companies Act, 2013 amended the

Companies (Incorporation) Rules, 2014 as per Notification dated 21.02.2019. As per the new added Rule 25A, every Company incorporated on or before 31.12.2017 shall file the particulars of the Company and its registered office in e-form ACTIVE (Active Company Tagging Identities and

Verification) on or before 25.04.2019. It is the contention of the petitioners that the website of the Ministry of Corporate Affairs is not accepting e-

form ACTIVE submitted by the petitioners for the reason that the paid up capital is more thanR s.5 Crores and still the petitioners-Companies have

not appointed whole-time Company Secretary.

3. It is the case of the petitioners that as per Section 203(5), if any Company makes any default in complying with the provisions, such Company shall

be liable for a penalty of Rs.5 lakhs and Directors and Key Managerial Personnel are personally liable for a penalty of Rs.50,000/- and if the default is

a continuing one, with a further penalty of Rs.1,000/- for each day.

4. The petitioners contend that they have part-time Company Secretaries and Auditors to properly look after the affairs of their Companies and for the

last so many years, they have been functioning well within the provisions of the Act without giving any room for initiating any penalty proceedings. On

these premises, the petitioners contend that they should not be forced to appoint a whole-time Company Secretary and should be permitted to file e-

form ACTIVE, INC-22A without insisting on the appointment of a whole-time Company Secretary.

5. When these writ petitions came up for admission, interim orders were passed by this Court permitting the petitioners to file e-form ACTIVE, INC-

22A, Form PAS-03 (change in paid up capital) and Form DIR-12 (change in Director except cessation) without insisting on appointment of a whole-

time Company Secretary provisionally, pending further orders in these writ petitions.

6. When these writ petitions came up for hearing today, the Central Government Counsel representing the respondents argued that as per the existing

rules, the petitioners are bound to appoint whole-time Company Secretaries, as their paid up capital is more than Rs.5 Crores. The petitioners cannot

be granted any exemption from the Rules.

7. The Central Government Counsel further argued that non-appointment of Company Secretary by petitioners-Companies is an offence under Section

383A (1A) vide Companies (Amendment) Act, 1988 with effect from 01.12.1988. If a Company fails to comply with the requirement regarding the appointment of Company Secretary, the Company and every officer of the Company who is in default shall be punishable with fine which may extend

to Rs.500/- per every day during which the default continues.

8. Heard learned counsel for the petitioners and learned Central Government Counsel appearing for the respondents.

9. As things stand now, the petitioners have been permitted to file e-form ACTIVE, INC-22A without insisting the appointment of a whole-time

Company Secretary, on a provisional basis. Section 203(5) of the Companies Act provides that if any Company makes any default in complying with

the provisions of Section 203 relating to appointment of Key Managerial Personnel, such Company shall be liable to a penalty ofR s 5 lakhs and every

Directors and Key Managerial Personnel of the Company, who is in default, shall be liable to a penalty of Rs.50,000/- and where the default is a

continuing one, with further penalty of Rs 1,000/- for each day after the first during which such default continues but not exceeding Rs.5 lakhs.

10. It is evident that the petitioner-Companies have not adhered to the provisions of the Companies Act, especially Section 203 thereof. In such

circumstances, the respondents are empowered to proceed against the petitioner-Companies, in accordance with law.

In the circumstances, the writ petitions are disposed of granting liberty to the respondents to proceed against the petitioner-Companies for violating

Section 203 of the Companies Act, if they are so advised. It is made clear that the interim orders passed in these writ petitions shall not be taken as

pronouncement on merits on the legality of Section 203 of the Companies Act, 2013 or Rule 8A of the Companies (Appointment and Remuneration of

Managerial Personnel) Rules, 2014.