
(2019) 07 DEL CK 0400

In the Delhi High Court

Case No : Civil Writ Petition No. 6109 Of 2019

Vibhor Mehra

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

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

Citation : (2019) 07 DEL CK 0400

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Pankaj Bhagat, SadreAlam, Chiranjeev Kumar

Final Decision : Allowed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition impugning an order dated 07.09.2018 passed by Registrar of Companies (ROC).
2. By the said impugned order, the ROC has not accepted the petitioner's contention that he had resigned from the company, CTM Business Private Limited (the Company), on the ground that the said company had not filed a Form-32 and the petitioner had not filed Form DIR-11 with the ROC. The ROC has also held that since the said Form was not filed, the petitioner continued to be a Director of the said company.
3. It is the petitioner's case that he resigned from the Company on 29.03.2013. The petitioner states that he had sent his letter of resignation by a registered post as well as by an e-mail. In support of the said contention, the petitioner has also produced the copy of the postal receipt as well as the e-mail. The petitioner also states that he was a Nominee Director and did not have any equity stake in the Company. Since the Company had not sent the information regarding the petitioner's resignation from the Company, to ROC at the material time, he continued to be listed as a Director on ROC's record.

4. The Company was in default in filing its return and consequently was struck off from the Register of Companies under Section 248 of the Companies Act, 2013. The petitioner was included in the list of disqualified directors published by the respondent/ROC as being disqualified to be appointed as a director under Section 164(2)(a) of the Companies Act, 2013. This was on account of the defaults committed by the Company in filing the requisite returns for three consecutive years commencing from 01.11.2014.

5. The petitioner, being aggrieved by the aforesaid action, had approached this Court by filing a writ petition - W.P. (C) No. 4112/2018 captioned 'Vibhor Mehra v. Union of India and Ors'. The said writ petition was disposed of by an order dated 24.04.2018, inter alia, directing the ROC to consider the petitioner's contention and pass a speaking order.

6. In compliance with the said order, the ROC has passed the impugned order once again rejecting the petitioner's contention that he had resigned, inter alia, on the ground that the petitioner had not filed Form DIR-11 indicating his resignation from the Company. The petitioner contends that there was no requirement for filing Form DIR-11 at the material time. He reiterates that he resigned from the Company on 29.03.2013 and the Companies (Appointment and Qualification of Directors) Rules, 2014 had not come into force at the material time.

7. The learned counsel appearing on behalf of the respondents was pointedly asked whether the ROC was accepting Form DIR-11 in respect of the resignations that had been affected prior to the said Rules coming into force. The learned counsel has answered the question in the negative. It is pertinent to note that the said Rules came into force on 1st of April, 2014. Admittedly, the petitioner resigned from the Company on 29.03.2013. Clearly, there was no provision to file Form DIR-11 at the material time and the petitioner cannot be faulted for not doing so.

8. In view of the above, the reasoning that the petitioner continued to act as a Director as he had not filed Form DIR-11, is ex-facie erroneous.

9. The essential facts of the case are not disputed. There is no dispute that the petitioner was a Nominee Director and had no equity stake in the Company. There is also no material to doubt the petitioner's claim that he had tendered his resignation and dispatched the same by a registered post as well as an e-mail. Since the petitioner had resigned from the Board of Directors prior to 01.11.2014, he cannot be held to have been disqualified under Section 164(2)(a) of the Companies Act, 2013 on account of defaults committed by the said company for a period of three consecutive years commencing from 01.11.2014.

10. In view of the above, the impugned order is set aside.

11. This Court is informed that the petitioner's DIN and DSC have been restored. In view of the above, no further orders are required to be passed by this Court in

this regard.

12. It is clarified that if ROC finds any material to doubt the claim made by the petitioner that he had sent his resignation to the Company or that any of the statements made by him - including the statements that the petitioner did not act for the Company after his resignation and did not have any stake in the Company at any point of time - are found to be incorrect; the ROC would be at liberty to revoke the petitioner's DIN, DSC and take such actions in accordance with law.

13. The petition is allowed in the aforesaid terms.