

HIGH COURT OF MADHYA PRADESH

W.P. No. 7229/2018

(Prakash Chand Adwani and another Vs. Union of India and others)

Indore, Dated: 28/3/2018

Shri Pushyamitra Bhargav learned counsel for petitioners.

Shri Deepak Rawal learned ASG for respondents.

With consent heard.

By this writ petition the petitioners have challenged the order dated 14th June 2017 passed by respondent no. 2 striking of the name of company Shankar Oil Refinery Pvt. Ltd. (SORPL).

The case of petitioners is that they are only directors of the SORPL and that the company had committed a default in submitting the annual return for consecutive period of 3 years on account of non operational business thereof. Hence the impugned action has been taken against the SORPL and that petitioners are also not in a position to seek revival of the said company by filing an appeal under Section 252 of the Companies Act, 2013.

The limited issue which has been raised by petitioners is that petitioner no. 1 is also the director in M/s Sarvottam Vegetable Oil Refinery Pvt. Ltd. which is active and functional but on account of provisions contained in Section 164 (2)(a) of the Act the petitioner no.1 would not be competent to file any document or return for making compliance as his Director identification number (DIN) is blocked and suspended. Further stand of petitioners is that they want to avail the benefit of Condonation of Delay Scheme 2018 (CODS-2018) but since the name of company has been struck off under section 248(5)

of the Act, whereas the benefit of scheme can be availed under Section 248(2) of the Act, therefore, the petitioners are not able to avail the benefit.

Learned counsel for petitioners submits that in identical situation, the Division Bench of Bombay High court in WP No. 148/18 in the matter of **Shailendrajit Charanjit Rai and another Vs. The Registrar of Companies Maharashtra** and in connected writ petitions by common order dated 22nd March 2018 has issued certain directions. He submits that said directions have been issued on the basis of earlier pronouncement on the point by Delhi High court in case of **Trilokchand M. Kothari and others Vs. Union of India and others Writ Petition (C) No. 11381/2017** and **Sandeep Jain and another Vs. Union of India and others WP (C) No. 2051/2018** as also Hyderabad High court in the case of **Dr. Reddy's Research Foundation Vs. Ministry of Corporate Affairs in WP No. 32575 of 2017**. He also submits that subsequently the Division Bench of Delhi High court in WP (C) No. 9439/2017 and in connected writ petitions by order dated 22/3/2018 has granted similar relief. He has also submitted that the petitioners undertake not to revive the company in future. He prays for disposal of the present writ petition on the same term.

Learned counsel for respondents has not disputed the fact that case of petitioners stand on same footing.

Having regard to the aforesaid and on perusal of the record it is noticed that undisputedly identical fact situation was involved before the Bombay High court in the case of

Shailendrajit Charanjit Rai (supra) and the Bombay High court referring to the judgments of the Delhi High court (supra) and Hyderabad High court (supra) referred and relied upon by counsel for petitioner, has held as under:

“7. Though several contentions have been raised challenging the impugned order of disqualification as a director but during the course of the arguments learned Counsel appearing for the petitioners have prayed that they will be satisfied in case this Court is willing to accept their contention about their entitlement for availing the benefit of CODS-2018. In this view of the matter we are not going into the matter of disqualification. All contentions thereto are kept open. We are inclined to adopt the view taken by the Delhi High Court in the facts and circumstances of the present case. Learned ASG has pointed out that the appeals against the order passed by the learned Single Judge of the Delhi High Court are pending. It is, however, pointed out that the operation of the order passed by the Delhi High Court has not been stayed. It is stated across the bar that in fact the order passed by the Delhi High Court is already implemented in several cases.

8. Be that as it may, learned counsel appearing for the petitioners have made an unequivocal statement, on instructions of the petitioners, that the petitioners are desirous of availing the CODS-2018. Learned counsel appearing for the petitioners, on instructions, have submitted that they undertaken not to revive in future the companies which were struck off from the register of company on account of non filing of requisite statements and annual returns.

9. The petitioners were appointed as directors on the Board of Directors of the companies. The names of those companies were struck off from the register of the companies on account of failure to file requisite financial statements and annual returns. Furthermore, the petitioners submitted that the companies have not been carrying on business for more than three years. It is pointed out that the petitioners are also the directors

on the Board of other companies, which are active and functional. As the names of the petitioners were included in the impugned list of disqualified directors, their role as directors is impeded in so far as other companies are concerned which are active and running. Learned counsel for the petitioners undertaken that they do not wish to revive the company of which they were directors and that they would take steps under Section 248(2) of the said Act in consonance with the directives contained in Writ petition (C) 11381 of 2017 of the Delhi High court in the case of **Trilokchand M. Kothar & ors Vs. Union of India & ors.** as also in the case of **Sandeep Jain & anr. Vs. Union of India** (supra)

10. Furthermore learned counsel for petitioners submits that the petitioners would also like to avail the benefit of the CODS-2018.
11. In this view of the matter and having regard to the submissions made by the learned counsel, we are of the view that the petitions can be disposed off with the directions that the respondents will follow the directives contained in Trilokchand (supra). It is made clear that the directives contained therein will apply to the petitioners mutatis mutandis.
12. The petitioners to take immediate steps in consonance with the provisions under Section 248(2) of the said Act, 2013 and under the CODS-2018 in any case within a period of seven days from today.
13. In order to facilitate this exercise, the operation of the impugned list, in so far as it concerns the petitioners, will remain stayed till 31/3/2018 or till such time the respondents take requisite decision with regard to the request of the petitioners made to them in consonance with the provisions under Section 248(2) of the said Act, 2013 and under the CODS-2018.
14. As indicated above, the petitioners forthwith to do the needful, in any case within a period of seven days from today. In addition thereto, for the present, the Registrar of Companies will also activate the petitioner's DIN and DSC.
15. The writ petitions are disposed of in the above terms.
16. Parties to act on the authenticated copy of this order.

Since undisputedly the case of petitioners stands on same footing since the petitioners are also not disputing the default of company in submitting the return and have also made a statement that the company concerned is not inclined to file an appeal for its revival and they are only seeking the benefit of CODS-2018 by attracting the provisions of Section 248(2) of the Act, therefore, the present writ petition is also disposed off on the same terms as are contained in the order of Division Bench of Bombay High court in case of Shailendrajit Charanjit Rai (supra) by holding that direction contained therein will apply mutatis mutandis in the case of present petitioners also.

C.C. today.

(Prakash Shrivastava)
Judge

BDJ