IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

WRIT PETITION NO.54566 OF 2018 (GM-RES)

BETWEEN:

SMT SHANMUGAM JYOTHILAKSHMI
AGED ABOUT 43 YEARS
D/O SRI NACHIMUTHU PALANISWAMY SHANMUGAM
R/O NO 38 SRI LAKSHMI NILAYAM 4TH FLOOR
10TH C MAIN 1ST BLOCK JAYANAGAR
BENGALURU – 560 041

… PETITIONER

(BY MR. S K RAVI, ADV.)

AND:

1. UNION OF INDIA
   REPRESENTED BY MINISTRY OF CORPORATE AFFAIRS
   SHASTRI BHAWAN
   DR RAJENDRA PRASAD ROAD
   NEW DELHI - 110 001

2. THE REGISTRAR OF COMPANIES KARNATAKA
   E-WING 2ND FLOOR KENDRIYA SADAN
   KORAMANGALA BENGALURU – 560 034

… RESPONDENTS

(BY SMT ANUPAMA HEGDE, CGC)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT, DECLARE THAT SECTION 164(2)(a) OF THE COMPANIES ACT, 2013 AND THE PRESS RELEASE DTD:6.9.2017 AT ANNEXURE-A DISQUALYFYING THE DIRECTORS OF PRIVATE LIMITED COMPANY IS UNCONSTITUTIONAL, IS IN VIOLATION AND INCONTRAVENTION OF THE PROVISIONS OF PART III OF THE CONSTITUTION OF INDIA AND ETC.

THIS WRIT PETITION COMING ON FOR *PRELIMINARY HEARING IN 'B' GROUP* THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Learned counsel for the parties jointly submit that the controversy involved in the instant petition is squarely covered by an order dated 12.06.2019 passed in W.P.No.52911/2017 and connected matters.

2. In view of the aforesaid submission and for the reasons assigned by a Bench of this Court in the aforesaid order, the writ petition is disposed of on same terms and with the following directions:

(i) Where the disqualification of the petitioners is based by taking into consideration any financial year "prior to 01.04.2014 as well as subsequent thereto" while reckoning continuous period of three financial years under Section 164(2) (a) of the Act, irrespective of whether the petitioners are directors of public companies or

private companies, such a disqualification being bad in law, the Writ petitions are allowed and the impugned list is quashed to that extent only;

(ii) *If the disqualification of the petitioners is based by taking into consideration any financial year prior to 01.04.2014 only i.e., the disqualification has occurred under the provisions of the 1956 Act in respect of the public companies, the writ petitions are dismissed.*

(iii) *If the disqualification of the directors is based by taking into consideration of three continuous financial years subsequent to 01.04.2014, irrespective of whether the petitioners are directors of public companies or private companies, they stand disqualified under the Act;*

(iv) *Where the disqualification of the directors is based by taking into consideration any financial year prior*

to 01.04.2014 in respect of private companies, such disqualification being bad in law, the writ petitions are allowed to the aforesaid extent only;

(v) The writ petitions, wherein the challenge is also made to the vires of Section 164(2)(a), and/or 167(1)(a) and/or proviso to Section 167(1)(a) of the Act, are dismissed to the aforesaid extent;

(vi) The respondents are directed to restore the DIN of those directors whose disqualification has been quashed by this Court;

(vii) Those petitioners who have challenged only the striking off of the companies in which they are directors have an alternative remedy of filing a proceeding before National Company Law Tribunal (NCLT) under Section 252 of the Companies Act, 2013, which provides for an appeal to be filed within a period of three years from the date of passing of the order

dissolving the company under Section 248 of the Act. Hence, those writ petitions are dismissed reserving liberty to those petitioners who are aggrieved by the dissolution of the companies under Section 248 of the Act (struck off companies) to approach NCLT, if so advised;

(viii) Parties to bear their own costs.

Interim order passed in this writ petition stands vacated.

Accordingly, the writ petition is disposed of.

Sd/-
JUDGE

SS