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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th December, 2020
+ **W.P.(C) 5534/2020**

RADHIKA BYRN Petitioner
Through: Mr. Jaspreet Singh, Advocate
versus
UNION OF INDIA & ANR. Respondent
Through: Ms. Shubhra Parashar & Mr. Virender
Pratap Singh Charak, Advocates for
UIO & ROC.

+ **AND**
W.P.(C) 5550/2020

VIDUR NANDA Petitioner
Through: Mr. Jaspreet Singh, Advocate
versus
UNION OF INDIA & ANR. Respondent
Through: Ms. Shubhra Parashar & Mr. Virender
Pratap Singh Charak, Advocates for
UIO & ROC.
Mr. Rajendra Sahu, Advocate for UIO
& ROC.

CORAM:
HON'BLE MS. JUSTICE PRATHIBA M. SINGH
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

Prathiba M. Singh, J.(Oral)

1. This hearing has been done by video conferencing.

W.P.(C) 5534/2020 & CM APPL.34969/2020 (for reactivation of DIN and DSC)

W.P.(C) 5550/2020 & CM APPL.34971/2020 (for reactivation of DIN and DSC)

2. The Petitioners are Directors of Nanda Industrial Consultants Private

Limited. The present writ petitions have been preferred seeking directions for reactivation of their Director Identification Numbers (*hereinafter* 'DINs') and Digital Signature Certificates (*hereinafter* 'DSCs') numbers in order to enable them to file the necessary documents. The said numbers of the Petitioners have been deactivated owing to non-compliance and non-filing of balance sheets and returns of the Company for several years. The Petitioners were initially disqualified from acting as Directors, under Section 164(2)(a) of the Companies Act, 2013 which then resulted in deactivation of DIN and DSC numbers.

3. The writ petition was initially listed before a Id. Single Judge of this Court. In view of the fact that the legality and validity of circular dated 15th September 2017 by which disqualification was effected by the Office of the Registrar of Companies, NCT of Delhi/Haryana, was challenged, vide order dated 21st August 2020, the petitions were directed to be listed before the Ld. Division Bench to be taken up along with other petitions raising identical issues. On 27th August 2020, notice was issued by the Ld. Division Bench and the matters were listed on 1st October 2020.

4. The submission of the Petitioners/Applicants is that the present case is squarely covered by the judgment of the Id. Single Judge in ***Mukut Pathak & Ors. V. Union of India & Ors., 265 (2019) DLT 506*** and since there is no stay of the judgement of the Ld. Single Judge, the DSC and DIN numbers be reactivated to enable the Petitioner to avail of the "Companies Fresh Start Scheme 2020" (*hereinafter*, "*Scheme*").

5. Heard Mr. Jaspreet Singh and Ms.Parashar, Id Counsels for the parties. The disqualification of the Petitioners is two fold – firstly on 6th September 2017 and 12th September 2017 from acting as Directors in any

company for a period of five years w.e.f. 1st November 2014 to 31st October 2019. Subsequently vide circular dated 15th September 2017 the Petitioners have been disqualified under Section 164(2)(a) of the Act from being a Director in any company, for a period of five years effective from 1st November 2016 to 31st October 2021.

6. The present applications seek re-activation of the DINs and the DSCs, as the Petitioners wish to avail of the Scheme of 2020, which is available until 31st December 2020. As per the said scheme, the Directors can make good their defaults, by filing the returns in terms of the scheme. The details of the said scheme have also been considered by a Ld. Single Judge in judgment dated 2nd September 2020, in **WP(C) 5490/2020**, titled **Sandeep Agarwal and Anr. Union of India and Anr., dated 2nd September 2020**. The Court has held:

“11. In the present case, the facts and circumstances show that the Companies Fresh Start Scheme (CFSS) is a new scheme, which has been notified on 30th March, 2020. This Scheme was not invoked before the Ld. Division Bench. The scheme is obviously launched by the Government in order to give a reprieve to such companies who have defaulted in filing documents and they have been allowed to file their requisite documents and to regularize their operations, so as to not face disqualification. The Scheme also envisages non-imposition of penalty or any other charges for belated filing of the documents. The relevant provisions of the said Scheme are set out below:

“4. In order to give such an opportunity to the defaulting companies and to enable them to file the belated documents in the MCA-21 registry, the Central Government in exercise

of powers conferred under section 460 read with section 403 of the Companies Act, 2013 has decided to introduce a Scheme namely “Companies Fresh Start Scheme, 2020 (CFSS-2020) condoning the delay in filing the above mentioned documents with the Registrar, insofar as it relates to charging of additional fees, and granting immunity from launching of prosecution or proceedings for imposing penalty on account of delay associated with certain filings. Only normal fees for filing of documents in the MCA-21 registry will be payable in such case during the currency of CFSS-2020 as per the provisions of section 403 read with Companies (Registration Offices and Fee) Rules, 2014 and section 460 of the Act.

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6. The details of the Scheme are as under:-

(i) The scheme shall come into force on the 01.04.2020 and shall remain in force till 30.09.2020

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(iv) Manner of payment of normal fees for filing of belated documents and seeking immunity under the Scheme – Every defaulting company shall be required to pay normal fees as prescribed under the Companies (Registration Offices and Fee) Rules, 2014 on the date of filing of each belated document and no additional fee shall be payable. Immunity from the launch of prosecution or proceedings for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any delay associated with the filings of belated documents

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(ix) Scheme not to apply in certain cases – This scheme shall not apply :-

- a. to companies against which action for final notice for striking off the name u/s 248 of the Act (previously section 560 of Companies Act, 1956) has already been initiated by the Designated authority;*
- b. where any application has already been filed by the companies for action of striking off the name of the company from the register of companies;*
- c. to companies which have amalgamated under a scheme of arrangement or compromise under the Act;*
- d. to vanishing companies;*
- e. Where any increase in authorized capital is involved (Form SH-7) and also charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9);”*

12. The salient features of the Scheme are:

- i) It has been launched to facilitate a fresh start, on a clean slate, for companies registered in India;*
- ii) Alleviative measures under the Scheme are for the benefit of all companies. It gives an opportunity to file belated documents in the MCA-21 Registry in respect of annual filings, without being subject to higher additional fee on account of delay;*
- iii) It grants immunity from launch of prosecution or of proceedings for imposition of penalty on account of delay associated with certain filings. For the said filings, only*

normal fee would be payable;

iv) Any defaulting company can file the belated documents, which were due for filing on any given date, as per the Scheme. Normal fee would be payable for such filing by the defaulting company under the Companies (Registration Offices and Fee) Rules, 2014 and no additional fee shall be payable;

v) To the extent that any prosecution has been launched or penalty has been imposed for the delay associated with the filings of belated documents, it provides that the same shall not be launched and immunity has been provided;

vi) Applications can be made for seeking immunity in respect of belated documents. Once the documents are taken on file or approved by the designated authority, such applications would have to be filed within six months from the date of closure of the Scheme;

vii) To avail benefit of the Scheme, the defaulting company would have to withdraw any appeal that it may have filed against prosecution launched or orders passed by a court or adjudicating authority under the Act;

viii) If a final notice of striking off of a company has already been initiated or in certain other situations as enumerated in Clause 6(ix), the Scheme would not apply;

ix) If immunity is granted, the Scheme provides that prosecution shall be withdrawn before the concerned Court and the proceedings for penalties shall also be closed.

x) The Scheme also extends to inactive companies who can file the requisite documents and get themselves declared as dormant companies under Section 455 or

apply for striking off the name of the company.

13. This Scheme provides an opportunity for active companies who may have defaulted in filing of documents, to put their affairs in order. It thus provides Directors of such companies a fresh cause of action to also challenge their disqualification qua the active companies. In the present case, the Petitioners are Directors of two companies – one whose name has been struck off and one, which is still active. In such a situation, the disqualification and cancellation of DINs would be a severe impediment for them in availing remedies under the Scheme, in respect of the active company. The purpose and intent of the Scheme is to allow a fresh start for companies which have defaulted. In order for the Scheme to be effective, Directors of these companies ought to be given an opportunity to avail of the Scheme.....”

7. Mr. Singh, Id. counsel for the Petitioners/Applicants, submits that if the DINs/ DSCs are being reactivated, he does not press the prayers challenging the constitutional validity of Section 164 of the Companies Act, 2013.

8. The judgement in ***Mukut Pathak & Ors (supra)*** is still under consideration before the Id. Division Bench in similar matters. However, the last date to apply under the Scheme is 31st December 2020. As observed in ***Sandeep Agarwal (supra)***, the purpose of the Scheme is to give an opportunity to companies to regularize their affairs. In the present cases, the first period of disqualification has already ended. The second period of disqualification of five years as per notice dated 15th September 2017 ends on 31st October 2021. A substantial period of the disqualification has already been undergone by the Petitioners. Re-appointment of new directors,

seeking approval for the same and then filing documents of the Company under the Scheme, would be an impractical solution. Thus, while leaving the questions of law open, in the facts and circumstances of these two cases, in order to enable the Petitioners/Directors to avail of the Scheme, this Court directs that the DINs and DSC of the Petitioners be reactivated within 24 hours. Since the Id. counsel for the Registrar of Companies (ROC) are appearing before this court today, the ROC need not wait for a copy of this order in order to reactivate the DINs/ DSCs.

9. Both the writ petitions are disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J
(VACATION JUDGE)

SUBRAMONIUM PRASAD, J
(VACATION JUDGE)

DECEMBER 28, 2020

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