

## Through : Ms. Seema Singh, Mr. Abhishek ... vs 12. A Grievance Is Made By Some Of The ... on 21 March, 2018

**Author: C.Hari Shankar**

**Bench: C.Hari Shankar**

\$~18-21,23,24,27-29,31,33-35,37,39-43,45,47-50,52-59,61-65,67-69,71-72,74,75,77-80

\*IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9439/2017 & CM No.38418/2017;  
W.P.(C)No.9788/2017, CM Nos.39820/2017 & 8378/2018;  
W.P.(C) 470/2018, CM Nos.2020/2018, 8379/2018; W.P.(C)  
693/2018, CM Nos.2995/2018 & 10092/2018; W.P.(C)10226/2017  
& CM No.41718/2017; W.P.(C) 10257/2017 & CM  
No.41860/2017; W.P.(C) 10808/2017 & CM No.44315/2017;  
W.P.(C) 10979/2017 & CM No.44894/2017; W.P.(C)11143/2017  
& CM No.45587/2017; W.P.(C)11397/2017 & CM  
No.46515/2017; W.P.(C) 11466/2017 & CM No.46741/2017;  
W.P.(C)11467/2017 & CM No.46743/2017; W.P.(C)11524/2017 &  
CM No.46964/2017; W.P.(C)208/2018, CM No.845/2018 &  
10094/2018; W.P.(C)469/2018 & CM No.2018/2018; W.P.(C)  
694/2018 & CM No.2997/2018; W.P.(C)816/2018 & CM  
No.3484/2018; W.P.(C)1125/2018; W.P.(C) 1166/2018 & CM  
No.4861/2018; W.P.(C)1470/2018 & CM No.6040/2018;  
W.P.(C)1509/2018 & CM No.6172/2018; W.P.(C)1510/2018 &  
CM No.6174/2018; W.P.(C)1624/2018 & CM No.6680/2018;  
W.P.(C)1675/2018 & CM No.6904/2018; W.P.(C)1712/2018 &  
CM No.7103/2018; W.P.(C)1826/2018 & CM No.7555/2018;  
W.P.(C)1913/2018, 1914/2018, 1915/2018 & CM No.7968/2018;  
W.P.(C)2021/2018 & CM No.8311/2018; W.P.(C)2062/2018 &  
CM No.8508/2018; W.P.(C)2185/2018 & CM No.9031/2018;  
W.P.(C)2259/2018 & CM No.9343/2018; W.P.(C)2288/2018 &  
CM No.9477/2018; W.P.(C)2298/2018 & CM No.9561/2018;  
W.P.(C)2405/2018 & CM No.10032/2018; W.P.(C)2434/2018 &  
CM No.10110/2018; W.P.(C)2435/2018 & CM No.10112/2018;  
W.P.(C)2436/2018 & CM No.10114/2018; W.P.(C)2438/2018 &  
CM No.10118/2018; W.P.(C)2439/2018 & CM No.10120/2018;  
W.P.(C)2441/2018 & CM No.10124/2018; W.P.(C)2491/2018 &  
CM No.10307/2018; W.P.(C)2664/2018, 2737/2018 & CM  
No.11110-11/2018; W.P.(C)2784/2018 & CM No.11263-64/2018;  
W.P.(C)2785/2018 & CM No.11268-69/2018

Through : Ms. Seema Singh, Mr. Abhishek Chauhan, Mr. B.K.  
Mishra, Mr. Vinay Shukla, Mr. Shadab Anwar, Mr.

page 1 of 9

Zartab Anwar, Mr. Mrinal Mahadev, Mr. Sameer  
Rohatgi, Mr. Abhishek Singh, Mr. Tarunesh Kumar,  
Mr. Kaushikesh Kumar, Mr. G.P. Madaan, Mr. Ishaan  
Madaan, Mr. Manu Padalia, Mr. Vijay Kasana, Mr.  
Nikhil Verma and Mr. Sarthak, Advs.

Through : Ms. Maninder Acharya, ASG with Mr. Kirtiman Singh, Mr. Ravi Prakash, Mrs. Bharthi Raju, Mr. Vikram Jetley, Mr. Rajesh Gogna, Mr. Ajay Digpaul, Mr. Manish Mohan, Mr. Vivek Goyal, Ms. Amrita Prakash, Mr. Prasanta Varma, Mr. Akshay Makhija, Mr. Anil Panwar, Mr. Ripu Daman Bhardwaj, Mr. Bhagwan Swarup Shukla, Mr. Dev P. Bhardwaj, Ms. Shiva Laxmi, Ms. Suparna Srivastava, CGSCs along with Mr. Harshul Choudhary, Ms. Seerat Deep Singh, Mr. Sahil Sood, Mr. Tushar Mathur, Mr. Suraj Kumar, Mr. Amrit Pal Singh, Mr. Waize Ali Noor, Mr. Prateek Dhanda, Ms. Shalu Goswami, Mr. Farman Ali, Mr. Nitish Gupta, Ms. Anoosha Panwar, Mr. Rajiv Ranjan Shahi, Mr. Harsh Pandit, Mr. P.S. Singh, Ms. Annu Singh, Ms. Prema Priyadarshi, Mr. Ashish Shaw, Mr. Ruchir Ranjan Rai, Mr. Siddharth Singh, Ms. Saakshi Agrawal, Mr. Sanjay Kumar, Mr. Jitesh Srivastava, Mr. Santosh Kumar Pandey, Mr. T.P. Singh, Mr. Brajesh Kumar, Ms. Shubhra Parashar, Mr. Saeed Qadri and Mr. Viplav Acharya, Advs. along with Mr. Rakesh Kumar Tiwari, ROC.

CORAM:  
HON'BLE THE ACTING CHIEF JUSTICE  
HON'BLE MR. JUSTICE C.HARI SHANKAR  
ORDER

% 21.03.2018

1. This bunch of writ petitions have been filed by persons who were directors in companies incorporated under the provisions of page 2 of 9 the Indian Companies Act, 1956. Apart from these companies, these petitioners have stated in the writ petitions that they were directors of other companies as well. In several cases, we are informed that the companies in which they were directors are still active.
2. This writ petition has been instituted in view of the notice dated 6th September, 2017 and 12th September, 2017 issued under Section 164(2)(a) of the Companies Act, 2013 by the respondents disqualifying the petitioners as Directors in all the Companies wheresoever they may be Directors. This disqualification has resulted for the reason that there was default in submitting returns which were statutorily required to be filed with the Registrar of Companies with regard to the affairs of the Company in question, for a continuous period of three financial years.
3. The writ petitions inter alia seek quashing of the said notices dated 6th September, 2017 and 12th September, 2017.
4. Many of these companies are stated to be such companies which have not commenced any business, have no bank accounts and no transaction of any kind have been conducted by them. These companies are not interested in revival of business.

5. The matter however does not rest here. Apart from the disqualification under Section 164(2)(a), the writ petitioners have stated that in purported exercise of power under Section 248(1) of the Companies Act, 2013, the Registrar of Companies has additionally struck off the name of the said companies from the page 3 of 9 register of companies.

6. These writ petitioners have raised several questions of fact and law challenging this acts and orders of the Registrar of Companies.

Inter alia, in some of the writ petitions, it has been contended that the action of the Registrar of Companies in disqualifying the petitioners under Section 164(2)(a) as well as the striking off the name of the company under Section 248 of the Companies Act, 2013 are both in gross violation of the principles of natural justice.

7. A challenge has also been laid to the retrospective application of provisions of the Companies Act, 2013 especially given the fact that the consequences of the respondents' action are in the nature of a penalty upon the petitioners as well as the companies concerned. In this regard, reliance has been placed on behalf of the petitioners on the pronouncements of the Constitution Bench of the Supreme Court reported at (2015) 1 SCC 1 Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Pvt. Ltd. and another pronouncement reported at (2018) SCC OnLine SC 59 Commissioner of Income Tax 5 Mumbai v. M/s Essar Teleholdings Ltd. through its Manager which relies on Vatika (supra).

8. Drawing our attention to the mandatory requirement under Section 248(1), upon the Registrar of Companies to send a notice to the company and all directors of the company, it has been page 4 of 9 contended by the petitioners that such notice had to be issued and served in the manner prescribed by law i.e. in compliance with Rule 3(2) of the Companies (Removal of Names of Companies from the Registrar of Companies) Rules, 2016. The petitioners contend that this has not been done and that the action of the respondents in disqualifying the petitioners in striking off the names of the companies from the register of companies cannot be sustained for this reason as well.

9. On behalf of the respondents, Ms. Maninder Acharya, learned ASG disputes all these submissions made on behalf of the petitioners. It has been submitted that in some of the writ petitions, challenge has not been laid to the orders passed under Section 248 of the Companies Act, 2013. It is further submitted, upon instructions from the Registrar of Companies, that notices under Section 248(1) have been sent to the Companies and the directors.

10. It cannot be denied that the issues raised in this bunch of writ petitions require adjudication and are of grave importance so far as the working of the spirit, intent and object of the Companies Act, 2013, more specifically the manner in which the respondents would operate Sections 164 and 248 of the enactment.

11. At the time of issuing notice to show cause in the writ petition, we had also granted interim stay of the impugned notices dated 6th September, 2017 and 12th September, 2017 so far as they concern the writ petitioners.

12. A grievance is made by some of the petitioners before us that page 5 of 9 these interim orders have not been complied with and that the DIN numbers of the petitioners have not been activated.

13. The petitioner(s) whose DIN numbers have not been activated despite interim orders in their favour, shall inform Mr. Rakesh Tiwari, ROC of this fact. So far as the writ petitions in whose favour interim order staying the effect and operation of the notices dated 6th September, 2017 and 12th September, 2017 are concerned, the respondents shall forthwith activate the DIN number.

14. Our attention has been drawn to the Condonation of Delay Scheme, 2018 (hereinafter referred to the "CODS Scheme, 2018") floated by the respondents, enabling such defaulters to seek removal of the disqualification. It is submitted that in case the petitioners wish to avail the benefit of restoration of the directorship, they would be required to comport to the requirements of this Scheme. These requirements include payment of fees and other charges under Clause 4 as well as submission of the deficient returns and documents.

15. It appears that under the CODS-2018 Scheme, the respondents were accepting the returns under the Scheme only in an e-format. However, for the reason that the names of the Companies in which the petitioners are directors stand struck off, we are informed that the office of the Registrar of Companies would not accept any e-filing by these petitioners.

16. On a perusal of the Scheme, we also find that under Clause 4 page 6 of 9 of the CODS, the applicant company is required to pay several charges including the fee of Rs.30,000/- for filing the application. We are informed by Ms. Maninder Acharya, learned ASG that it would not be possible for the respondents to accept any charges for these companies.

17. The filing under the CODS-2018 Scheme is stated to be expiring on 31st March, 2018.

18. As on date, counter affidavits have not been filed in all the writ petitions. Pleadings are not complete and the writ petitions cannot be taken up for hearing today.

19. It also cannot be denied that so far as the legal submissions are concerned, the writ petitioners have raised identical questions of law and for this reason, are required to be heard together.

20. In order to balance equities and to ensure that no prejudice results to either party, it is directed that so far as the petitioners in whose favour interim orders stand passed are concerned, these petitioners would, without prejudice to rights and contentions of all parties, stand permitted to file the compliances under the CODS- 2018 Scheme as hard copies with the respondents. The filings by these petitioners shall be preserved by the respondents and shall abide further orders of this court.

21. Given the stand of the respondents, it is further directed that the petitioners shall ensure that the fee of Rs.30,000/- and any other charges which are payable under the CODS-2018 Scheme shall be deposited in the Registry of this court by way of a fixed deposit page 7 of 9 receipt in the name of the Registrar General of this court initially for a period of one year which shall be kept renewed till further orders of this court. Each of the petitioners shall, with the deposit, enclose a computation

and the basis on which the amount which has been deposited stands calculated. Let a copy thereof be furnished to the respondents.

22. Given the fact that the Registry is completely closed between 25th of March, 2018 till 1st April, 2018, the deposit of the charges with the Registry, and documents with the Registrar of Companies shall be positively made till 6th April, 2018.

23. We make it clear that in case it is held that the petitioner are entitled to avail the CODS-2018 Scheme, the submission of the documents with the Registrar of Companies and deposit made in this court shall be deemed to be compliances and deposits having been effected in due compliance with the requirements of CODS- 2018 Scheme with the respondents of course subject to making good any shortcomings which may be pointed out by the respondents.

24. We make it clear that so far as the deposits under the CODS- 2018 Scheme are concerned, the same have to be made by and on behalf of the Company concerned. As such, the payment or deposit by any one director shall be treated to have been made for and on behalf of the company. Other directors would not be required to duplicate the payments even though they may have filed separate writ petitions.

page 8 of 9

25. It is also made clear that in case any of the petitioners have made deposits of any amount, in any form, i.e. say by demand drafts or otherwise, with the Registrar of Companies, in purported compliance of the requirements of the CODS-2018 Scheme, such petitioners are not required to duplicate the payment or make deposits in this court. In case such payments have not been accepted by the Registrar of Companies so far, appropriate orders regarding revalidation/substitution of the drafts/instruments can be made at the time of final disposal.

27. We, therefore, direct that individual counter affidavits/additional affidavits (if counter affidavits stand filed), dealing with the factual averments in each of the writ petitions shall be filed separately in every case within a period of six weeks as prayed. The full details of the issuance and service of the notice(s) shall be placed on record with copies of the supporting documents. Rejoinder(s) thereto, if any, shall be filed before the next date of hearing.

28. The respondents shall produce the original records relating to each company with regard to the impugned notices before this court on the next date of hearing.

29. List on 24th July, 2018.

Dasti under signature of the Court Master.

ACTING CHIEF JUSTICE

Through : Ms. Seema Singh, Mr. Abhishek ... vs 12. A Grievance Is Made By Some Of The ... on 21 March, 2018

MARCH 22, 2018/aj

C.HARI SHANKAR, J