

Vishal Jayanti Lonkar And Ors vs Ministry Of Corporate Affairs And Anr on 10 February, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1615/2021 & CM APPLs. 4608/2021, 4609

VISHAL JAYANTI LONKAR AND ORS

Through: Mr. Depaish Tangoriya, Ad
7428075886).

versus

MINISTRY OF CORPORATE AFFAIRS AND ANR Respo

Through: Mr. Sumit Nagpal, Advocate

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 10.02.2021

1. This hearing has been done through video conferencing.

2. The Petitioners were directors in Happy Landing Services Pvt. Ltd., which Company has been struck off from the Register of companies due to non-filing of its balance sheets and annual returns. Simultaneously, the Petitioners were also disqualified under Section 164(2) of the Companies Act, 2013 and their DINs/DSCs were also deactivated.

3. The Petitioners now intend to become directors in a newly incorporated Company and, accordingly, pray for reactivation of their DINs/DSCs.

4. This Court has considered the legal position relating to activation of DIN/DSC numbers of directors of defaulting companies in Anjali Bhargava & Anr. v. UOI & Anr. [W.P.(C) 11264/2020, decided on 6th January, 2021]. The relevant portion of the said order reads:

"4. There are four categories of Directors that are approaching Courts seeking setting aside of disqualification and activation of DIN/DSC Digitally Signed By: DINESH SINGH NAYAL Signing Date: 11.02.2021 14:35:08 numbers.

(a) to (c).....

(d) Disqualified directors of struck off companies seeking appointment as directors in other/new companies:

The purpose of CFSS-2020 has been elucidated in the circular of the Ministry of Corporate Affairs as follows:

"In furtherance of the Ministry's Circular No 11/2020, dated 24th March, 2020 and in order to facilitate the companies registered in India to make a fresh start on a clean slate, this Ministry has decided to take certain alleviative measures for the benefit of all companies."

This scheme has been introduced in view of the COVID-19 pandemic with the aim to enable a fresh start to defaulting companies and directors of such companies. The disqualification of defaulting companies was a step which was taken sometime in 2016-17 in order to ensure that filing of regular returns and compliances are undertaken strictly as per the provisions of the Act. It was also meant to be a measure to ensure that entities that are not conducting businesses are not misused as 'shell companies' for any improper activities. A substantial part of the disqualification period has already been completed. The introduction of the CFSS is itself a step for 'providing a fresh start'. Under such circumstances, continuation of the disqualification would defeat the Scheme and its purpose.

5. In furtherance of the purpose of this scheme, directors of struck off companies who seek to be appointed as directors of other/new companies, ought to be provided an opportunity to avail of this scheme, provided that they have undergone a substantial period of their disqualification. The scheme clearly Digitally Signed By:DINESH SINGH NAYAL Signing Date:11.02.2021 14:35:08 seeks to provide a fresh start for directors of defaulting companies who seek appointment in other companies or wish to start new businesses. Therefore, if a substantial period has passed since the disqualification of such directors, they ought to be given an opportunity to avail of the scheme."

5. Following the judgments of this Court in Anjali Bhargava (supra) and Tapash Kumar Samaddar & Anr. v. Ministry of Corporate Affairs & Anr. [W.P.(C) 87/2021, decided on 6th January, 2021], the Petitioner would fall under category 'd' as the disqualification took place on 6th and 12th September, 2017 for the period from 1st November, 2017 to 31st October, 2022. A substantial period of disqualification has already been undergone

6. Accordingly, the DIN/DSC of the Petitioner is directed to be reactivated within one week by the Registrar of Companies, Delhi.

7. The petition is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J FEBRUARY 10, 2021 Rahul/T