

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	WP Nos.11258/18, 11261/18, 11217/18 & 7527/18
2	Parties Name	Suprabhat Chouksey & others Vs. Union of India and Another
3	Date of Judgment	19/7/2018
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	Shri Vijayesh Atre, Shri H.Y. Mehta and Ms. Soumya Sharma, learned counsel for the petitioners. Shri Dharmendra Chelawat, learned counsel for the respondents.
8	Law laid down	On striking off the name of the defaulting company on the ground of not filing the financial statement or annual returns for the statutory period as contemplated under Section 164(2) of the Companies Act, 2013, the directors of the defaulting company become ineligible for being reappointed as Director of that company or appointed as Director in other companies for 5 years and on incurring the said disqualification the office of the Director becomes vacant under Section 167 of the Act in all the companies other than the defaulting company. Hence, in such an eventuality the ROC is entitled to show the DIN status of directors of the defaulting company as disqualified under Section 164(2) and in that case DIN of such Directors gets eclipsed and cannot be used till the disqualification continues.
9	Significant paragraph numbers	9 to 15

(PRAKASH SHRIVASTAVA)
J u d g e

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

WP No.11258/2018

Suprabhat Chouksey & Anr. Vs. Union of India & Anr.

Shri Vijayesh Atre, learned counsel for the petitioners.
Shri Dharmendra Chelawat, learned counsel for the
respondent.

WP No.11261/2018

Sumer Singh Rajpoot & Anr. Vs. Union of India & Anr.

Shri Vijayesh Atre, learned counsel for the petitioners.
Shri Dharmendra Chelawat, learned counsel for the
respondent.

WP No.7527/2018

Pankaj Maheshwari Vs. Union of India & Anr.

Ms. Soumya Sharma, learned counsel for the petitioner.
Shri Dharmendra Chelawat, learned counsel for the
respondent.

WP No.11217/2018

Arpit Surana & Anr. Vs. Union of India & Anr.

Shri H.Y. Mehta, learned counsel for the petitioners.
Shri Dharmendra Chelawat, learned counsel for the
respondent.

ORDER

(Passed on 19/7/2018)

1/ This order will govern the disposal of WP Nos.11258/18, 7527/18, 11261/18 & 11217/18 since the issue involved in all these petitions is identical.

2/ For convenience the facts are being noted from WP

No.11258/2018.

3/ By this writ petition the petitioners have challenged Annexure P/1 which is the list of disqualified directors under Section 164(2)(a) of the Companies Act, 2013 (for short “the Act”) issued by the ROC, Gwalior as also Annexure P/8 showing the status of the petitioner’s DIN as “disqualified by ROC under Section 164(2)” of the Act.

4/ The brief facts are that the petitioners are the directors of M/s. ADI Softech Pvt. Ltd. They are also the directors of other four companies, a list of which is filed as Ex.P/7. The Registrar of Companies had issued the notice dated 10.3.2017 for striking off the name of M/s. ADI Softech Pvt. Ltd. and thereafter he had passed the order and published the notice in Form No.STK-7 under Section 248(5) of the Act dated 9.6.2017 striking off the name of M/s ADI Softech Pvt. Ltd. along with many other companies and declaring them as dissolved. Further case of the petitioners is that they had filed the annual returns and balance sheets from the date of incorporation of above company till financial year 2012-13 but subsequently the company became non operational and could not carry out any profitable business, hence annual returns and balance sheets were not filed after 2013 and that they could not avail the benefit of Condonation of Delay Scheme, 2018 (CODS 2018) and the action of the respondent in suspending the petitioner’s DIN is unjust and illegal.

5/ It is also the case of the petitioners that they are Directors of as many as five companies and the default has been committed by only one company i.e. ADI Softech Pvt. Ltd. but on account of the action taken under Section 164(2) of the Act now the petitioners are being disqualified to act as Director

in all other four companies. A further grievance has been raised that since the DIN status has been shown to be “as disqualified under Section 164(2)”, therefore, now the petitioners cannot act or become director of any of the company for a period of 5 years. The stand of the petitioners is that they want to file the previous balance sheets of the ADI Softech Pvt. Ltd. with ROC and want to close down the said company so that they would be able to utilize their DIN and act as Director in other companies.

6/ Learned counsel appearing for the petitioner has advanced following arguments:-

- i. Learned counsel submits that there is no provision in the Act providing for suspension of DIN and that under Section 164(2) of the Act disqualification is only in respect of reappointment as a director of that company or appointment in any other company for 5 years, but there is no disqualification in respect of all the existing directorship.
- ii. He has also submitted that under Rule 11 of the Companies (Appointment and Disqualification) Rules, 2014 the conditions of cancellation or deactivation of DIN have been mentioned and the petitioners case does not fall under any of those conditions. He has also submitted that Section 248(2) gives a right to the petitioner to move to the Registrar for striking off the name of the company but by virtue of the impugned action that right has been taken away.
- iii. He has also submitted that in terms of the proviso to Section 167(1)(a) the disqualification is only in respect of the defaulting company, therefore, on the basis of the

said disqualification petitioner's right to act as director in other companies cannot be closed. He has further submitted that Section 152 of the Act provides for issuance of DIN and Rule 11 provides for cancellation, surrender or deactivation of DIN and apart from these two provisions there is no other provision providing for the suspension of DIN, hence by invoking the provisions of Section 164(2) of the Act, petitioner's DIN cannot be suspended.

7/ Shri Dharmendra Chelawat, learned counsel for the respondents has supported the impugned action submitting that ROC has acted in accordance with the provisions of the Companies Act.

8/ Having heard the learned counsel for the parties and on perusal of the record, it is noticed that undisputedly the petitioners have committed default in filing the annual return and balance sheet of ADI Softech Pvt. Ltd. whose name has been struck off and the petitioners have been disqualified as directors under Section 164(2)(a) of the Companies Act, 2013 and therefore, their DIN status is shown vide Annexure P/8 as disqualified.

9/ The Director Identification Number (DIN) is issued to an individual intending to be appointed as director of a company under Section 154 of the Act. In terms of sub-section (3) of Section 152 no person can be appointed as a director of a company unless he has been allotted the DIN under Section 154 or any other number as may be prescribed under Section 153. In terms of Section 156 it is obligatory for every existing director to intimate the DIN to the Company or all the

companies wherein he is a director, within the stipulated period of one month and in terms of Section 157 it is obligatory for every company to furnish the DIN of all its directors to the Registrar or any other specified authority in the prescribed manner within the stipulated period of 15 days and in terms of Section 158, it is obligatory for every person or company to mention DIN in reference to any director, while furnishing the return, information or particulars as are required to be furnished under this Act. Hence as per the scheme of the Act, every director must have one DIN by which he is identified and he cannot have more than one DIN. Under the scheme of the Act the return and the financial statement in every financial year is required to be filed at regular interval. Section 164(2) provides for the consequence of not filing the annual return and its effect on the right to continue as director on the following terms:-

“Section 164. Disqualifications for appointment of director.

(1) *****

(2) No person who is or has been a director of a company which-

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so:

[Provided that where a person is appointed as a director of a company which is in default of clause(a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.]”

10/ Section 164(2)(a) explicitly provides that in the default of not filing financial statement or annual return for any continuous period of 3 financial years, the disqualification for reappointment as director in the defaulting company or appointment in other company for a period of five years follows.

11/ Section 167 relates to vacation of office of Director and proviso to Section 167(1)(a) provides that:-

“S.167. Vacation of office of director

(1) The office of a director shall become vacant in case-

(a) he incurs any of the disqualification specified in Section 164:

[Provided that where he incurs disqualification under sub-section(2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.]”

12/ In terms of above proviso, on incurring the disqualification under Section 164(2) the office of the Director becomes vacant in all other companies except the defaulting company, hence by operation of law the director of the defaulting company ceases to be the Director in other company.

13/ Section 92 deals with the annual return and sub-section (4) thereof provides for the period within which the annual return of the company is to be filed before the Registrar of Companies and Section 137 deals with filing of copy of the financial statement with the Registrar and it also prescribes the time limit within which it is to be filed. Undisputedly in the present case the annual returns have not been filed within the prescribed time.

14/ Section 248 of Companies Act empowers the

Registrar to remove the name of company from register of companies. The name of the company i.e. M/s ADI Softech Pvt. Ltd. has already been struck off by the Registrar by publishing notice in Form STK-7 on 9/6/2017 and this notice/order is not under challenge in this writ petition. The prayer in the writ petition is to permit voluntary dissolution of the company whereas by publishing notice dated 9/6/2017 the company has already been dissolved.

15/ Counsel for the petitioner has raised a submission that Rule 11 of Companies (Appointment and Disqualification of Directors) Rules, 2014 provides for the circumstances under which the DIN can be cancelled, surrendered or deactivated and none of the circumstances exists in the present case, therefore, the DIN of the petitioner cannot be cancelled or deactivated. In the present case Rule 11 has not been invoked, nor any order cancelling or deactivating DIN has been passed but since the petitioner has become disqualified under Section 164(2) of the Act, therefore, the DIN status is shown as "disqualified by ROC under Section 164(2)", which has eclipsed their DIN which they can not use till disqualification continues and by virtue of Section 164(2) the petitioner cannot be reappointed as Director of the defaulting company or appointed as director in any other company for five years.

16/ The issue of non compliance of the principles of natural justice has also been raised but the reply of the respondent reveals that prior to striking off the name of the Company, notice under Section 248(1) & (2) was served upon the concerned company, therefore, while striking off the name of the company due opportunity of hearing was given to the concerned company in respect of the default. Hence, the

petitioner being a director of the company had the opportunity at that stage to put forth the explanation in respect of the default. The disqualification of the petitioner under Section 164(2) of the Act is in respect of the default in relation to the company, hence it cannot be held that the principle of natural justice has been violated. That apart the Companies Act, 2013 has been notified on 30/8/2013. Thereafter the respondents had floated the Company Law Settlement Scheme, 2014 (CLSS 2014) vide General Circular No.34/14 as also Condonation of Delay Scheme, 2018 (CODS 2018), which remained operative up to 1.5.2018, therefore, the petitioners had sufficient opportunity for a period of almost 5 years to cure the default and to avoid the consequence of Section 164(2) which they have failed to avail.

17/ In WP No.7527/2018 an additional ground has been raised by learned counsel for the petitioner that the last balance sheet was filed as on 31.3.2011, therefore, the 3 years period in terms of Section 164(2)(a) should be counted from that date which will come to an end on 1.11.2014 and five years period will commence from that date, which will come to an end on 30.10.2019 but the disqualification as mentioned in the impugned communication on Page-43 of the writ petition is up to 30.10.2021, which is unsustainable. Such a submission can not be accepted because the letter dated 29.11.2017 issued to the petitioner-Company shows that the disqualification up to 2021 has been calculated considering the default of not filing the annual return for 3 years i.e. 2013-14, 2014-15 & 2015-16, hence the default of not filing the return subsequent to coming into force of Companies Act, 2013 has been taken into account which is just and proper.

18/ In WP No.11217/2018 learned counsel for the petitioners has raised the solitary argument that the petitioner No.1 had committed default in submitting the return for one Company i.e. Iprotek Solution Pvt. Ltd. whereas he is the director of five other active companies and the Petitioner No.2 had committed a default in respect of 2 companies namely Vimalsneh Real Estate Pvt. Ltd. and Iprotek Solution Pvt. Ltd., whereas he is the director in 4 other active companies, therefore, on the basis of the default committed in one/two companies the petitioners cannot be restrained from acting as director in other active companies. Such an argument has already been rejected referring to the provisions of the Act in earlier part of this order.

19/ Having regard to above analysis, I do not find any merit in these writ petitions which are accordingly dismissed.

20/ Signed order be kept in the file of WP No.11258/2018 and a copy thereof be placed in the file of connected WP Nos. 7527/18, 11261/18 & 11217/18.

(PRAKASH SHRIVASTAVA)
J u d g e

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