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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th April, 2021

+ **W.P.(C) 4293/2021 & CM APPL. 13053-54/2021**

SANDEEP AHUJA

..... Petitioner

Through: Mr. Himanshu Harbola, Ms. Kaveri
Verma and Mr. Ketan Madan,
Advocates. (M:9818993836)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Aman Malik, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode (physical and virtual hearing).
2. The Petitioner is a Director in the following five companies:
 - (i) M/s Princely Infrapromoters Pvt. Ltd. – ROC, Delhi
 - (ii) M/s Smart Home Infra Projects Pvt. Ltd. – ROC, Mumbai
 - (iii) M/s Credence Hometech Pvt. Ltd. – ROC, Mumbai
 - (iv) M/s Richa Lifestyle Pvt. Ltd. – ROC, Mumbai
 - (v) M/s SD Digitech Solutions Pvt. Ltd. - – ROC, Mumbai
3. Due to non-filing of annual returns and balance sheets in one of the companies, the Petitioner was disqualified as a director in 2017 with effect from 1st November, 2017 to 31st October, 2022 under Section 164(2)(a) of the Companies Act, 2013. His DIN/DSC was also deactivated. All the five companies are active. Hence, ld. counsel appearing for the Petitioner prays for the Petitioner's DIN/DSC to be reactivated to enable the Petitioner to file

the compliances in respect of the companies.

4. Mr. Aman Malik, Id. Counsel appearing for the Respondents submits that the writ petition is hopelessly barred by delay and latches as the disqualification took place in 2017 and the Petitioner approached this Court only now i.e., in 2021. He relies on the following two judgments:

(i) *State of Orissa & Anr. v. Mamata Mohanty, (2011) 3 SCC 436;*

(ii) *Chairman/MD, U.P. Power Corporation Ltd. & Ors. v. Ram Gopal, 2020 SCC OnLine SC 101*

5. The disqualification of the Petitioner and deactivation of his DIN/DSC results in a continuing cause of action inasmuch as the Petitioner is unable to file any compliances owing to the five-year disqualification. Since the period of disqualification itself is not yet completed, the writ petition cannot be held to be barred by delay and latches. The question of delay and latches has also been considered by this Court in *Sandeep Agarwal & Anr. v. Union of India & Anr. [W.P.(C)5490/2020, decided on 2nd September, 2020]*. Similar orders for restoration have also been passed in *Radhika Byrne v. UOI & Anr. [W.P.(C) 5534/2020, decided on 28th December, 2020]*.

6. Insofar as the *Chairman/MD, U.P. Power Corporation Ltd. (supra)* is concerned, it lays down the position that in cases where there is an unexplained delay, writ courts ought to be reluctant in exercising their discretionary jurisdiction and must not encourage fence-sitters. In the present case, the disqualification took place in 2017 but various issues have been raised as to whether the list of disqualified directors was published in time. Moreover, no individual communication has been sent by the RoC to any of the directors informing them of their disqualification. It is noticed

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that in most cases, it is only when an application is made to the ROC for filing the relevant documents that a director is informed of his/her disqualification. The disqualification period is also currently underway and during this period it cannot be said that the disqualification cannot be challenged or that the Petitioners were 'fence-sitters'.

7. Insofar as *Mamata Mohanty (supra)* is concerned, this case dealt with a recurring cause of action with respect to the pay-scale. Here, since there was delay and latches, the Court refused to entertain the relief *qua* the past period. In the present case, the Petitioners have suffered a substantial part of the disqualification and hence this judgement is distinguishable.

8. Considering the legal position as laid down by this Court in *Mukut Pathak & Ors. v. Union of India & Ors., 265 (2019) DLT 506 and Anjali Bhargava & Anr. v. UOI & Anr. [W.P.(C) 11264/2020, decided on 6th January, 2021]* and since the disqualification of the Petitioner took place prior to 7th May, 2018, the Petitioner's disqualification *qua* the other active companies is set aside and his DINs/DSCs is directed to be reactivated.

9. The present order shall be served by the Petitioner on the ROC, Delhi and Mumbai and the Petitioner's DIN/DSC shall be reactivated within a period of 10 days from service of the order.

10. The present petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M.
SINGH
JUDGE**

APRIL 7, 2021

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(Corrected and released on 13th April, 2021)