IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 22435 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 10234 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 11817 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 13876 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 1842 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 21344 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 22436 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 23153 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 2383 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 2384 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 3165 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 3367 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 3831 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 3924 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 4492 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 4865 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 4897 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 4982 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 647 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 6594 of 2018
With

R/SPECIAL CIVIL APPLICATION NO. 6824 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 9281 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE BELA M. TRIVEDI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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GAURANG BALVANTLAL SHAH S/O BALVANTLAL SHAH
Versus
UNION OF INDIA

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Appearance:
MR SALIL M THAKORE(5821) for the PETITIONER(s) No. 1,2
MR PP MAJMUDAR for the PETITIONER
MR PRATIK Y JASANI for the PETITIONER
MR DHAVAL SHAH for the PETITIONER
MR SS IYER for the PETITIONER
MR MRUGESH JANI for the PETITIONER
MR AS VAKIL for the PETITIONER
MR MONNAL DAVAWALA with MR MR BS SOPARKAR for the PETITIONER
MRS SANGEETA PAHWA for the PETITIONER
MR JAYENDRA M SHAH for the PETITIONER
Ms NATASHA SUTARIA for the PETITIONER
MR RAHEEL S. PATEL for NANAVATY ADVOCATES for the PETITIONER
MR SD MOTWANI for the PETITIONER
MR VS PANDYA for the PETITIONER
MR JAIMIN DAVE for the PETITIONER

MR VIJAL P DESAI for the PETITIONER

MR DEVANG VYAS(2794) for the RESPONDENT(s) No. 1,2
MR KSHITIJ M AMIN for the Respondent No.2
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CORAM: **HONOURABLE MS.JUSTICE BELA M. TRIVEDI**

Date : 18/12/2018

CAV JUDGMENT

1. The basic challenge in all this batch of petitions is, to the action of the respondent No.1 Ministry of Corporate Affairs ((hereinafter referred to as "MCA"), Union of India in publishing the list dated 12.9.2017 of Directors associated with "struck off companies" under Section 248 of the Companies Act, 2013 (hereinafter referred to as "the Act of 2013") on the Website of the Ministry of Corporate Affairs, Government of India, to the extent, the said list shows the status of the petitioners as "disqualified" Directors. The petitioners have also challenged the action of the respondents in deactivating their DINs (Directors Identification Numbers) as a consequence of the publication of the said list. There being common questions of law and facts involved in

all the petitions, they were finally heard together at the admission stage with the consent of the learned Advocates for the parties and are being disposed of this common order.

2. For the sake of convenience, the facts of the lead matter Special Civil Application No.22435 of 2017 are narrated herein under.

2.1 The petitioners of Special Civil Application No.22435 of 2017 - the Directors of Kalashree Investment Private Limited (hereinafter referred to as "the said Company"), have mainly prayed for the following reliefs:-

> "A) That the Hon'ble Court be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to enable the Director Identification Numbers (DIN) of the petitioners being 00165052 and 00183374 respectively, to permit the petitioners to operate and access the website of the Ministry of Corporate Affairs, Government of India and further commanding the respondents to treat the petitioners as qualified Directors and restraining the respondents from treating or taking any steps treading the petitioners as disqualified Directors;
>
> B) That the Hon'ble Court be pleased to

> issue a writ of or in the nature of certiorari quashing and setting aside the list of Directors associated with Struck Off Companies dated 12.9.2017 published on the website of the Ministry of Corporate Affairs, Government of India to the extent it includes the names of the petitioners as disqualified Directors."

2.2 According to petitioners, they are also Directors in various other companies. On 9.3.2017, the respondent No.2 Registrar of Companies, Ahmedabad sent notice to the said company, stating *inter alia* that the company was not doing any business or operation, and therefore, the respondent No.2 intended to remove the name of the company from the Register of companies, and called upon the company to send its representation along with copies of relevant documents, if any, within 30 days from the date of receipt of the said notice. The said company thereafter was struck off from the register of companies as per Section 248 of the Act, 2013. According to the petitioners, the said company having been struck off from the register of companies and dissolved on 21.6.2017, the question of filing financial statements and annual returns did not arise, and

therefore, the question of disqualification as contemplated under Section 164(2)(a) of the Act of 2013 also did not arise. However, the names of the petitioners were included in the list of disqualified Directors associated with the "struck off companies", dated 12.9.2017 published on the Website of the Ministry of Corporate Affairs. The DINs i.e. Director Identification Numbers of both the petitioners were also disabled though the petitioners had not incurred any disqualification. As a result thereof, the petitioners were unable to utilize their DINs for filing the documents so far as the other non-defaulting companies in which they were the Directors were concerned. The petitioners, therefore, have filed the petition.

2.3 The petition has been resisted by the respondents by filing the reply challenging the very maintainability of the petition contending *inter alia* that the petitioners had stood disqualified by operation of law and upon fulfillment of the essential criteria contained in Section 164(2)(a) read with Section 167(1)(a)

of the Act of 2013. The company had failed to file annual returns and financial statements during the last three consecutive years and it was the duty of the Directors of the companies to make statutory compliance within the time prescribed under the Act. There was also violation on the part of the petitioners to comply with Rule 14(3) of the Companies (Appointment of Directors) Rules, 2014 (hereinafter referred to as "the Rules of 2014"), which required them to file Form DIR-8 with the companies and in turn the company to file the Form DIR-9 with the Registrar of Companies. The disqualification of the petitioners was the consequence of the continuous violation on the part of the company to file their statutory returns and under the circumstances, there was no question of following the principles of natural justice. The respondent No.1 had only identified the disqualified Directors from the system and displayed the list by flagging in the system.

2.4 It is further stated in the reply that the

respondent No.1 had decided to introduce a scheme known as “Company Law Settlement Scheme, 2014” in the year 2014, for giving one time opportunity to the defaulting companies, except the companies whose names were already struck off under Section 248(2) of the said Act, subject to the order of NCLT under Section 252 of the said Act on the application seeking revival of struck off companies filed during the period of the scheme, however, the petitioners had not availed of the benefits of the said scheme. It is further stated that the respondent No.1 in September 2017 identified 3,09,614 Directors associated with the companies that had failed to file the financial statements or annual returns for continuous period of three financial years i.e. 2013-14, 2014-15, and 2015-16 in terms of the provisions contained in Section 164(2) read with Section 167(1)(a) of the said Act, and they were barred from accessing on-line registry. As a result thereof, a spate of representations from industries, defaulting companies and their Directors, seeking an opportunity for the

defaulting companies to become compliant and normalize the operations were received. The Central Government, therefore, in exercise of the powers conferred under Sections 403, 459 and 460 of the Act of 2013 had decided to introduce for a period of three months starting from 1.1.2018, a scheme namely “Condonation of Delay Scheme 2018”, to give one time opportunity to such defaulting companies, except the companies whose names were struck off under Section 248(2) of the Act of 2013, subject to the order of NCLT under Section 252 on the applications seeking revival of struck off companies filed during the period of the scheme. Thus, according to the respondents, the petitioners having failed to avail the benefits of the said scheme also, and the Court having no jurisdiction to cure the disqualification incurred by the petitioners on account of the operation of law, the petition deserved to be dismissed.

2.5 It appears that the Court vide the order dated 26.12.2017 had passed an interim order staying the order of the respondents

disqualifying the petitioners to act as the Directors of the company or any other company. The said interim order is continued till this date.

3. The factual position of the other petitions may be summarized as under:-

Sr. No.	SCA No.	Petitioner's name and DIN No	Name of the company	Status of company – whether struck off or not	Interim Order, if any	Broad reliefs claimed
1	22436/ 2017	Amit Pramukhlal Shah & Ors 00090079; 00287154; 00175060	Shree Equinox Information Systems Pvt. Ltd.	"Struck off" after notice under Section 248	Yes on 26.12.2017	For setting aside the list dated 12.9.2017 to the extent it includes the petitioners, to enable the DIN to operate on the Website of MCA
2	23153/ 2017	Ashok Madhavdas Khurana & Ors 00003617; 00003626; 00011066; 02075609; 00027350; 02114144	Mansha Textile Pvt. Ltd.	"Struck off", statutory returns not filed since 2012	Yes, on 8.1.2018	For setting aside the impugned list of disqualified Directors
3	647/ 2018	Babubhai Kanjibhai Patel 01342839	Unique Smacs Technology (I) Pvt. Ltd.	"Struck off" last AGM held in 2011 – petitioner resigned	Yes, on 16.1.2018	For setting aside the impugned list and permit to use the DIN
4	1842/ 2018	Nilay Jashbhai Patel 2533086	Popular Reality Pvt. Ltd.	"Struck off" - petitioner resigned in February, 2017	Yes, on 5.3.2018	For setting aside the impugned list
5	2383/ 2018	Bijal Dharmeshbhai Desai 00292319	Sea and Me Projects Pvt. Ltd.	"Struck off" - company did not file returns since incorporation – petitioner resigned in 2014	Yes, on 22.2.2018	Status of the petitioner as disqualified Director be removed
6	2384/ 2018	Dharmeshbhai Vinodbhai Desai 00292502	Sea and Me Projects Pvt. Ltd.	"Struck off" - company did not file returns since incorporation – petitioner resigned in 2014	Yes, on 22.2.2018	Status of the petitioner as disqualified Director be removed
7	3165/ 2018	Llewellyn Lincoln Rozario 02074355	Axe Import and Export Pvt. Ltd.	"Struck off" - petitioner resigned in 2008	Yes, on 23.2.2018	Remove the name of the petitioner from the impugned list of disqualified Directors
8	3367/ 2018	Rajesh Jadavbhai Patil & Ors. 159809; 327850; 2530629; 2530663	Moonshine Films Pvt. Ltd.	"Struck off" - petitioners were removed as Directors u/s 283(1)(g) – various litigations filed – they were	Yes, on 28.2.2018	Set aside the action of ROC in disqualifying petitioners by publishing the impugned list

				restored by CLB's order in 2006 – no meetings of Board of Directors held since 2010		
9	3831/2018	Jaiprakash Khanchand Ahswani 00021449	Galaxy Organisers Pvt. Ltd.	"Struck off" - petitioner resigned in 2010 giving notice – ROC received the letter	No	Set aside impugned list u/s 248, so far as the petitioner is concerned
10	3924/2018	Prabodchandra Vasantlal Shah & Ors. 498261; 498420; 520987; 2384071	UAP Pharma Pvt. Ltd.	"Struck off" - company has been demerged by order dated 10.12.2012 by High Court while sanctioning the scheme of arrangement	No	To remove the names of petitioners from the impugned list dated 12.9.2017
11	4492/2018	Arpit Mehta & Ors. 00213945; 00213996	Luv Kush Realty Pvt. Ltd.	"Struck off" - No facts are stated in the petition – only pressing of law and grounds stated	No	To remove the names of the petitioner from the impugned list
12	4865/2018	M/s.Desh Cam Technological Resources Pvt. Ltd. thro. Amit Ajay Deshmukh & Ors. 2936080; 02936110; 02936139	M/s.JSND Systems Pvt. Ltd. and Shree Renuka Electricals Pvt. Ltd.	"Struck off" - applied for CODS but could not open	No	Set aside the impugned list – permit petitioners to use DIN and to access Website
13	4897/2018	Alpesh Pramodbhai Prajapati and Ors 03628759; 03600360; 03600348	Raa Automation Pvt. Ltd.	"Struck off"	No	Set aside the impugned list
14	6824/2018	Deepal Vrajlal Raval oo176254; 01292764; 01682750	Additol Lubricants Ltd	"Struck off" - company did not file returns – petitioner resigned in 2014	Yes	Set aside the impugned list of disqualified Directors - permit petitioner to use DIN and to access Website
15	4982/2018	Amitkumar Rameshchandra Agarwal & Ors. 00481676; 00481732; 03092322	M/s.Hi-Tech Technical Textile Park (I) Pvt. Ltd.	"Struck off" - company did not file returns since incorporation, as not commenced its operation/business – later restored as "Active" by order dated 25.4.2018 of NCLT.	No	Set aside the impugned list of disqualified Directors
16	6594/2018	Anil Shantilal Parekh & Ors. 01831985; 01832017	Arsh Terpene and Catalytsts Pvt. Ltd.	"Struck off" - company did not file returns since incorporation, as not commenced its operation/business – petitioners resigned in 2009	No	Set aside the impugned list of disqualified Directors and to take decision on the representation dated 31.1.2018 and 5.3.2018
17	21344/2018	Anil Bhikabhai Virani 00279789	M/s.Parceria Real Estate Developers Pvt. Ltd.	"Struck off" - company did not file returns – petitioner resigned in 2010	Yes 27.11.2017	Set aside the impugned list of disqualified Directors
18	9281/2018	Kuljeetsingh Ujjalsingh	U S Cargo Handlers Pvt. Ltd.	"Struck off" - company did not file returns, as	No	Set aside the impugned list of disqualified

		Kochar & Ors. 00296514; 06561162		the company has not done any substantial business		Directors and permit
19	11817/ 2018	Purushottam Ramani & Anr. 01940704; 02783171	Morar Developers Pvt. Ltd.	"Struck off" - company did not file returns	No	Set aside the impugned list of disqualified Directors and permit
20	13876/ 2018	Dharmendra Popatlal Rami & Ors 00630925; 07229352	Sucha Exports Pvt. Ltd.	"Struck off" - company did not file returns	No (By NCLT order dated 13.7.2018, company is restored)	Set aside the impugned list of disqualified Director
21	10234/ 2018	Bhupatbhai Bhayani 00595732	Yug Gems Pvt. Ltd.	"Struck off" - company did not file returns	No	Set aside the impugned list of disqualified Directors

4. Heard the learned Sr. Advocate Mr.Pahwa, learned Advocate Mr.A. S. Vakil, learned Advocate Mr.Sahil Thakore, learned Advocate Mr.Iyer,learned Advocate Mr.J. R. Dave, learned Advocate Mr.Monnal Davawala and other learned Advocates for the petitioners and the learned ASG Mr.Devang Vyas with learned Advocate Mr.Kshitij Amin for the respondents.

Submissions:-

5. The learned Advocates for the petitioners submitted as under:-

(i) The list of disqualified Directors published on the Website of the Ministry of Corporate Affairs, Government of India dated

12.9.2017 was in violation of the principles of natural justice as no opportunity was given to the petitioners before publishing the said list showing the status of the petitioners as disqualified Directors.

(ii) Section 164(2) of the Act of 2013 came into force with effect from 1.4.2014 and can apply only prospectively and can not retrospectively. In this regard reliance is placed on the decision of the Supreme Court in case of **Keshavan Madhava Menon Vs. The State of Bombay, reported in AIR 1951 SC 128** to submit that every statute is presumed to be prospective.

(iii) The three financial years beginning from 1.4.2014 would be financial year 2014-15 to 2016-17 and the date for filing financial statements for the third financial year (1.4.2016 to 31.3.2017) was 30.10.2017 (with regular fees) and 27.7.2018 (with additional fees under Section 403 which provides for additional period of 270 days). Hence, no default attracting

disqualification under Section 164(2) could be said to have taken place before the said dates.

(iv) The respondents could not have treated the Directors as disqualified with effect from 1.11.2016, which is a date relating to the second financial year from 1.4.2015 to 31.3.2016, as even for the second financial year, the date for filing financial statements and returns was 27.7.2017 and 26.8.2017 respectively and not 1.11.2016. Section 164(2) of the said Act can not, in any manner, be interpreted to be applicable to the financial year 2013-14, ending on 31.3.2014 as that could amount to giving retrospective effect to the said provision.

(v) Relying upon the decision of the Supreme Court in case of **Dilip Kumar Sharma and Ors. Vs. State of M. P., reported in AIR 1976 SC 133** and in case of **Tolaram Relumal and Anr. Vs. The State of Bombay, reported in AIR 1954 SC 496**, it is submitted that when two interpretations are possible, the

one favouring the subject ought to be made applicable especially in case of penal statute. Reliance is also placed on the decision of the Supreme Court in case of State of **Madhya Pradesh Vs. Narmada Bachao Andolan and Anr., reported in (2011) 7 SCC 639** to submit that an interpretation, which is just, fair and sensible should be made and not an interpretation, which results in drastic consequences.

(vi) When a Company is struck off, it ceases to exist and the question of filing documents with ROC would not arise, nor any obligation to hold AGM would arise. The obligation to file returns and financial statements arise only if there is obligation to hold an AGM and if the company is struck off the AGM could not be held.

(vii) Section 403 of the Act of 2013 would be applicable to the Section 94(4) and Section 137(1) of the said Act, as the word “document” used in Section 403 would cover the documents as contemplated under Section

2(36) of the said Act. In this regard, reliance is placed on the decision of the Supreme Court in case of **State Bank of Patiala thro. GM Vs. Commissioner of Income Tax, Patiala, reported in (2015) 15 SCC 483** and the Judgement of the **Queen's Bench Division in case of Gough Vs. Gough**.

(viii) Even if it is presumed for the sake of argument that a disqualification is attracted in case of the petitioners, they can not be disqualified in continuing as Directors in non-defaulting companies. Section 167(1)(a) targets continuance as Director in the same company and not continuance in the non-defaulting companies. The proviso to Clause-A of Sub-section (1) of Section 167 was added by the amendment, which came into force in January 2018 and would not be applicable to the Companies which are already struck of prior to the amendment in 2018. The decision of the Bombay High Court in respect of availing the benefits of the scheme could not be made

applicable to the facts of the present case.

(ix) Reliance is placed on the decision of the Madras High Court in case of **Bhagavan Das Dhananjaya Das Vs. Union of India and Anr. (W. P. No.25455 of 2017) delivered on** 3.8.2018, to buttress their submissions.

(x) As regards SCA No.3367 of 2018, it was submitted that two rival groups of Directors of the company were litigating since the year 2005 and the litigation is pending before the Supreme Court as well as before the NCLT, Ahmedabad. In view of the restraint order passed in the said litigations, the annual general meeting of the company could not be held and as a result the financial statements or annual returns could not be filed. Hence, the default or failure of the company in not filing the final statements or annual returns could not be said to be deliberate, conscious or willful, and therefore, no disqualification under Section 164(2) could be attracted. Even if it is assumed that

the disqualification under Section 164 read with Section 167 happens by operation of law, the respondent No.1 ought to have issued notice to the Directors before discontinuing their DIN.

(xi) As regards Special Civil Application Nos.4982 of 2018, 3924 of 2018 and 1842 of 2018, it has been submitted that the Sub-section (2) of Section 164 does not provide for any disqualification *per se*. It provides only for the eligibility criteria namely that he would not be reappointed as a Director or appointed in any other company for a period of five years.

(xii) Considering the provisions contained in Section 92, Section 96, Section 137(1) and Section 403, it clearly emerges that the impugned action of the respondents in disqualifying the petitioners without giving opportunity of hearing was illegal and premature, more particularly when the statute is silent about giving opportunity of hearing, and when the respondent

authorities have to follow a fair procedure consistent with the principles of natural justice. In this regard, reliance is placed on the decisions of the Supreme Court in case of **A. K. Kraipak and Ors. Vs. Union of India, reported in AIR 1970 SC 150**, in case of **Dharampal Sathyapal Limited Vs. Deputy Commissioner of Central Excise and Ors., reported in 2015(8) SC 519** and in case of **Shriyans Prasad Jain Vs. Income Tax Officer and Ors., reported in 1993(4) SCC 727**.

6. Learned ASG Mr.Devang Vyas for the respondent authorities has made the following submissions:-

(i) Section 164 of the Act of 2013 corresponds to the Section 274 of the erstwhile Companies Act 1956 and Section 167 of the Act of 2013 corresponds to the Section 283 of the Act of 1956. Hence, from the conjoint reading of the said provisions, it is clear that for the defaults covered under Section 164, the person would disqualify himself from being Director of any company as also would become ineligible

for reappointment or appointment as Director in any other company for five years.

(ii) Section 92 of the Act of 2013 corresponds to Sections 169, 160, 161, and 162 of the Act of 1956, which pertained to filing of annual returns. The said provision applies to every company. Section 164(2)(a) would include filing of financial statements and annual returns falling due after 1.4.2014, which would include annual returns for the year 2013-14 as well. The Section *inter alia* provides that annual returns for any continuous period of three financial years would thus include the annual returns that fell due after 1.4.2014. Hence, if the filing of financial statements and annual returns for any continuous three years after 1.4.2014 is considered, the same would come to annual returns for the year 2013-14, 2014-15, and 2015-16 and the default would start after 1.4.2017.

(iii) Keeping in mind the resultant disqualification, the Company Law Settlement

Scheme 2014 was floated vide the Circular dated 12.8.2014, which came into force from 15.8.2014 remained in force up to 15.10.2014. The said scheme was for giving an opportunity to the defaulting companies to enable them to make their default good. While clarifying that the provisions of Section 164(2) was applied only to the prospective defaults, the said scheme contemplated that companies who failed to avail benefits of the said scheme and are in default in filing the requisite documents, necessary action under the Act would be taken.

(iv) Another opportunity was also given to the erring companies by way of condonation of delay scheme on 29.12.2017. The said scheme had come into force from 1.1.2018 and was extended up to 1.5.2018. The said delay condonation scheme was for giving opportunity to file returns for the financial years 2013-14 to 2015-16.

(v) The provision of Section 164(2) has

been applied only prospectively and not retrospectively. The statutory filing of returns and financial statements were mandatory even under the old Act for both private and public limited companies, and the consequence of non-compliance included disqualification of the Directors.

(vi) The Sub-section (3) of Section 274 of the Act of 1956 provided that a private company may in its Article provide for disqualification of appointment as Director in addition to the grounds over and above those specified in the Section itself. The corresponding Section 164 also contains similar provisions. If Section 274 of the Act of 1958 was read as a whole, it provided that a person shall not be capable of being appointed as Director of the company if the contingencies enumerated in Clause (a) to (g) were attracted. There was no distinction sought to be drawn by the legislature with regard to the same being applicable only to the public companies.

(vii) Disqualification happens pursuant to the operation of law and the Section only enumerates the disqualification as a consequence statutorily provided for non-compliance with Section 164. Thus, the vacation of office is by operation of law where no hearing is contemplated.

7. At the outset, it may be noted that the petitioners in all the petitions have broadly challenged the action of the respondents in publishing the list dated 12.9.2017 of Directors associated with the “struck off companies” under Section 248, whereby the status of the petitioners has been shown as “disqualified” with effect from 1.11.2016 to 31.10.2021. However, it is further required to be noted that most of the petitions lack basic facts with regard to the status of the company of which they were Directors and now shown as “struck off”. The petitioners have not even bothered to annex the copies of the relevant pages under challenge from the portal of the Ministry of Corporate Affairs. In most of the petitions

only a copy of the relevant page of the impugned list showing the status of the concerned company and the Directors has been annexed, which in the opinion of the Court could not be said to be a "complete document" to challenge the same in the writ petition invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. It is needless to say that every petition must contain basic facts and particulars, and the certified/true copies of the complete documents under challenge, failure thereof otherwise would entail dismissal of petition on that ground alone. The very basis of the writ jurisdiction rests on the disclosure of true, complete and correct facts. In this regard, a very pertinent observations made by the Supreme Court in case of **Prestige Lights Ltd. Vs. State Bank of India, reported in (2007) 8 SCC 449** deserve to be reproduced as under:-

> "33. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a

Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in R v. Kensington Income Tax Commissioners, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:

> "It has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, not law. He must not misstate the law if he can help it. The Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement".

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant

> materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

8. In the instant petitions, it was incumbent on the part of each of the petitioners to place on record the full and correct facts necessary for deciding the issues involved, more particularly about the status of the company prior to the publication of the impugned list, their own status as the Directors of the concerned company, about the resignation, if any given by them, and if given whether the requisite procedure was followed by them and the company as required to be followed under the Act and Rules. For example, SCA No.4492 of 2018 does not contain any facts. Only provisions of law and legal submissions have been stated in the petition. Needless to say that application of law would depend on facts of each case. As observed by the Supreme Court in the afore-

stated decision, the applicant should make full and fair disclosure of all material facts – facts, not law, as the Courts know nothing about the facts of the case. Such petitions deserve to be dismissed at the threshold, however, since all the petitions were heard simultaneously, the Court without being technical in the matter proceeds to decide the broad issues involved in the petitions.

9. As transpiring from Annexure-A annexed to the lead petition, Special Civil Application No.22435 of 2017, a list of Directors associated with the "struck off companies" under Section 248 of the said Act of 2013 was published by the MCA on 12.9.2017 on its portal. Section 248 of the said Act empowers the Registrar to remove the name of the Company from the register of companies, after following the procedure laid down therein, where the Registrar has reasonable cause to believe that a company has failed to commence its business within one year of its incorporation or a company is not carrying on any business or operation for a period of two

immediately proceeding financial year and has not made any application within such period for obtaining the status of a dormant company under Section 455. It is pertinent to note that though in the impugned list dated 12.9.2017 published by the MCA, the companies of which the petitioners were Directors, have been shown as the "struck of companies", none of the petitioners or the concerned companies appear to have challenged the said status of the concerned company as "struck off companies" by filing appropriate proceedings before the Tribunal as contemplated under Section 252 of the said Act of 2013, nor the petitioners have made any averment in the present set of petitions with regard to the non-following of the procedure laid down in Section 248 of the said Act by the Registrar. On the contrary in all cases, it appears from the memo of petitions that the concerned companies had either not commenced their businesses right from their incorporation or had become nonfunctional since last many years.

10. So far as the provisions contained in Section 248 are concerned, Sub-section (5) thereof provides that on the expiry of the time mentioned in the notice issued in the prescribed manner, the Registrar may strike off the name of the company from the register of the companies and on the publication of the notice thereof in the official gazette, the company stands dissolved. As per Section 250, such company which has stood dissolved under Section 248, ceases to operate as a company and the certificate of incorporation issued to it, is deemed to have been cancelled from such date, except for the purpose of realizing the amount due to the company and for repayment or discharge of liabilities or obligations of the company. Meaning thereby, even if the company is struck off and stands dissolved under Section 248, it could still realize the amount due to the company, as also it is obliged to discharge the liabilities or obligations of the company. Hence, in the opinion of the Court, even if the company is struck off and has stood dissolved under Section 248 of the Act of 2013, it is

liable to discharge its liabilities and obligations, more particularly the statutory obligations.

11. However, the moot questions that fall for consideration are whether the status of the Directors of the "struck off" companies could have been shown as "disqualified" for a period of five years as shown in the impugned list dated 12.9.2017 and whether their DINs could have been deactivated by the respondents, as a consequence thereof ?

12. In order to advert to the said questions, it would be useful to refer to some of provisions of the Act of 2013 and the Rules of 2014, made thereunder. The provision pertaining to disqualification of Director in the Act of 2013 is Section 164, which reads as under:-

> "**164. Disqualifications for appointment of director.—** (1) A person shall not be eligible for appointment as a director of a company, if —
>
> (a) he is of unsound mind and stands so declared by a competent court;

(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152.

(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.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2):

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall not take effect—

(i) for thirty days from the date of conviction or order of disqualification;

(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed off; or

(iii) where any further appeal or

> petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed off."

13. As per Rule 14 of the said Rules of 2014, the Director is required to inform the company concerned about his disqualification, if any, under Sub-section (2) of Section 164 in the prescribed form DIR-8, before he is appointed or reappointed. Similarly the company is also required to file form DIR-9 to the Registrar in case of defaults specified in Sub-section (2) of Section 164, during the relevant financial years.

14. Section 167 of the Act of 2013 pertains to the vacation of office of director. Clause (a) of Sub-section (1) of Section 167 states that the office of a director shall become vacant in case he incurs any of the disqualifications specified in Section 164. Recently the said Section 167 has been amended by the Companies (Amendment) Act, 2017, published in the official gazette on 3.1.2018, whereby a proviso is added to the said Clause (a) of Sub-section (1) of Section 167. The said amendment having been published on

3.1.2018, that is pending the present petitions, the Court is not required to deal with the same. It is also not clear whether the same has come into force as on the date, as it had to come into force from such date as the Central Government may by notification in the official gazette appoint.

15. The liability to file the annual returns has been incorporated in Section 92 of the said Act. Sub-section (4) thereof states that every company shall file with the Registrar, a copy of the annual returns within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year, within 60 days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees, as may be prescribed within the time specified under Section 403. Sub-section (5) thereof prescribes punishment if the company fails to file its annual returns under Sub-section (4).

16. As per Section 96, every company other than one person company has to hold in addition to any other meeting, a general meeting as its annual general meeting in each year within six months from the date of closing of the financial year. It is further provided that not more than 15 months should elapse between the date of one annual general meeting of a company and that of a next.

17. Similarly, as per Section 137, it is obligatory on the part of the company to file a copy of the financial statements, including consolidated financial statement, if any, along with all the documents, duly adopted at the annual general meeting of the company within 30 days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under Section 403.

18. Section 403 envisages filing of documents required to be submitted, filed, registered or recorded, any fact or information required to register under the Act, to be submitted, filed,

registered or recorded within the time specified in the relevant provisions on the payment of the prescribed fees, and as per the first proviso thereof within 270 days from the date by which it should have been submitted on the payment of additional fees as prescribed. As per second proviso to Section 403(1), any such document, fact or information could be submitted, filed or recorded after the said period of 270 days on payment of additional prescribed fees, however, the same would be without prejudice to any other legal action or liability under the Act.

19. From the conjoint reading of Sections 92, 96, 137 and 403, it is discernible that the company is statutorily obliged to file a copy of the annual returns within 60 days and copy of financial statements within 30 days from the date on which the annual general meeting is held, and that the AGM has to be held once in the financial year and within six months from the date of closing of financial year, latest before the expiry of 15 months of the last AGM. Hence, if the AGM of previous year is held on

31st March, the next AGM has to be held latest by 30th September of the next year and the annual returns could filed within 60 days and financial statements within 30 days of holding of the last AGM, i.e. latest by 30th of November and 3oth of October respectively. Further, the first proviso to Section 403(1) allows documents to be submitted, filed or registered within a period of 270 days from the date by which they could have been submitted, filed or registered, as the case may be, on the payment of additional prescribed fees. The second proviso thereof allows the same to be filed, submitted or registered even after the said period of 270 days, however, the same would be without prejudice to any other legal action or liability under the said Act. Thus, though the second proviso to Section 403(1) permits the delayed filing of annual returns and financial statements, such filing would be without prejudice to the other legal action or liability under the Act. The necessary corollary would be that if the documents are not filed or submitted within the time specified in the relevant

provision and also not filed within the period permissible under the first proviso to Section 403, the legal action or liability under the Act would follow. In any case, even if the additional period provided in the first proviso to Sub-section (1) of Section 403 is not availed of, the company could file its annual returns latest by 30th of November and financial statements by 30th of October for the relevant financial year ending on 31st of March, in view of Section 92 and Section 137 read with Section 96 of the Act of 2013.

20. So far as Section 164 of Act of 2013 is concerned, it is titled as “Disqualifications for appointment of Director”. On close reading of the said Section 164, it transpires that Sub-section (1) thereof speaks about the ineligibility or disqualification of a person to be appointed as a director in future, whereas Sub-section (2) speaks about the ineligibility of the director, who is already working as a director or has worked as a director in the past, in the company which has committed

defaults as mentioned therein, to be reappointed as a director of that company or appointed in other company. As such, there is no procedure required to be followed by the respondent authorities for declaring any person or Director ineligible or disqualified under the said provision. A person would be ineligible to be appointed as Director, if he falls in any of the Clauses mentioned in Sub-section (1) and the person is or has been a Director in a company, and the company makes defaults as contemplated in Clause (a) of (b) of Sub-section (2) thereof, he would be ineligible to be reappointed in the said defaulting company and appointed in any other company. The ineligibility is incurred by the person/director by operation of law and not by any order passed by the respondent authorities, and therefore, adherence of principles of natural justice by the respondents is not warranted in the said provision, as sought to be submitted by learned Advocates for the petitioners. As such, as per Rule 14 of the said Rules of 2014, the Director has to inform the company in Form DIR-8 and the company has to

inform the Registrar in Form DIR-9, when its director incurs disqualification under Section 164(2) of the Act. However, the question still remains to be examined as to whether the respondents could have shown the status of the petitioners as disqualified in the impugned list?

21. As per Clause (a) of Sub-section (2) of Section 164, no person, who is or has been a Director of a company, which has not filed financial statements or annual returns for any continuous period of three financial years shall be eligible to be reappointed as a Director of that company or appointed in any other company for a period of five years from the date on which the said company fails to do so. The said provision has come into force w.e.f. 1.4.2014. Hence, three financial years, if counted from the said date would be the financial years 2014-15, 2015-16, and 2016-17. At this stage, it is pertinent to note that the Companies Act, 1956 has stood repealed in view of Section 465 of the Act of 2013, and the corresponding Section 274 of the

Act of 1956 regarding disqualification of the directors did not prescribe disqualification for the Directors of a private company for not filing financial statements or annual returns for continuous period of three financial years. Of course, it was incumbent on the part of every company not having a share capital, to file with the Registrar annual returns as per Section 160 and failure to file such returns entailed penal consequences as per Section 162 of the Act of 1956. However, no such disqualification as under Section 164(2) of the Act of 2013, was being incurred by the Directors of private company under Section 274 of the Act of 1956, inasmuch as, Clause (g) of Sub-section (1) of Section 274 of the Act of 1956 contemplated disqualification of a Director of a public company only. It is only by virtue of Section 164(2) the Director of any company would become ineligible to be reappointed as Director in the defaulting company or appointed as Director in other company, if the defaults under the said provision applied. The said provision having come into force w.e.f. 1.4.2014, the three

financial years contemplated in the said provision would be 2014-15, 2015-16, and 2016-17 only. The submission of Mr.Devang Vyas for the respondents that filing of documents due after 1.4.2014 would include the documents to be submitted for the year 2013-14 as well, and therefore, failure to file the documents continuously for three financial years for the purposes of Section 164(2)(a) would be 2013-14, 2014-15, and 2015-16, could not be accepted, as it would tantamount to giving effect to the Section 164(2)(a) retrospectively.

22. It cannot be gainsaid that every statue is *prima facie* prospective, unless it is expressly or by necessary implication made to have retrospective operation. As this juncture, it would be useful to reproduce the general principles concerning retrospectivity, as narrated by the Supreme Court in case of **Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited, reported in (2015) 1 SCC 1** :-

"General Principles concerning retrospectivity:

27. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in **Phillips vs. Eyre**, a retrospective legislation is contrary to the general

principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in **L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd.** Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the

justification to treat procedural provisions as retrospective. In **Government of India & Ors. v. India Tobacco Association**, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of **Vijay v. State of Maharashtra & Ors.** It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

31. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors.

32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labeled as “declaratory statutes”. The

circumstances under which a provision can be termed as "declaratory statutes" is explained by Justice G.P. Singh in the following manner:

> "Declaratory statutes
>
> The presumption against retrospective operation is not applicable to declaratory statutes. As stated in **CRAIES** and approved by the Supreme Court : "For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a preamble, and also the word 'declared' as well as the word 'enacted'. But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is

declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

The above summing up is factually based on the judgments of this Court as well as English decisions.

33. A Constitution Bench of this Court in **Keshavlal Jethalal Shah v. Mohanlal Bhagwandas & Anr.**, while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows:

"8. ...The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional juris-diction was before the amendment derived from Section 115, Code of Civil Procedure, and the legislature has by the amending Act attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."

34. It would also be pertinent to mention that assessment creates a vested right and

an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective.

35. We would also like to reproduce hereunder the following observations made by this Court in the case of **Govinddas v. Income-tax Officer**, while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1st April, 1962, the date on which the Income Tax Act came into force:

> "11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that
>
> 'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language

> which is fairly capable of either interpretation, it ought to be construed as prospective only.'"
>
> 36. In the case of **C.I.T., Bombay v. Scindia Steam Navigation Co. Ltd.,** this Court held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law affecting tax liability after that date though made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year."

23. So far as the issue involved in the present petitions is concerned, as discussed earlier, no disqualification was attached to the directors of private companies for not filing the annual returns and the financial statements by the concerned companies under the Act of 1956. Such provision of disqualification for the director of a company – public or private company, has been incorporated for the first time in Section 164(2) of the Act of 2013. Such being the case, the said provision has to be construed as having prospective effect. If retrospective effect is given to it, that would destroy, alter and affect the right of the Directors of private company existing under the Act of 1956. It is

also a settled legal position that Section 6 of the General Clauses Act, saves a right accrued and/or a liability incurred, under the repealed Act, whenever any Act is repealed. Learned Advocates for the petitioners have also rightly relied upon the decision of the Supreme Court in case of **Dilip Kumar Sharma and Ors. Vs. State of M. P. (supra)** and in case of **Tolaram Relumal and Anr. Vs. The State of Bombay (supra),** in which it has been held *inter alia* that when two interpretations are possible, one favouring the subject ought to be made applicable especially in case of penal statute. It is also held by the Supreme Court in case of **Madhya Pradesh Vs. Narmada Bachao Andolan and Anr. (supra)** that an interpretation, which is just, fair and sensible should be made and not an interpretation which results in drastic consequences.

24. In the light of the said legal position, it is required to be held that Sub-section (2) of Section 164 of 2013 could be made applicable only prospectively and not retrospectively. Therefore, the financial years contemplated in

the said provision have to be counted from 1st of April 2014 i.e. financial years 2014-15, 2015-16, and 2016-17. The disqualification under the said provision would be attracted, or the Director of a company would become ineligible to be reappointed as the Director of the defaulting company or appointed in other company for a period of five years, only if the company in which he was the Director had not filed the financial statements or annual returns for continuous period of three financial years from 2014-15.

25. As discussed herein above, the annual general meeting has to be held within six months from the date of closing of the financial year. In case of Financial Year 2016-17, AGM could be held up to 30th September 2017, and the annual returns could be filed within 60 days and financial statements within 30 days of holding of such AGM i.e. up to 30th of November and 30th of October 2017 respectively, even if the benefit of additional period available under Section 403 was not availed of. Under the

circumstances, the Director would incur disqualification or would become ineligible to be reappointed as a Director of a company or appointed in other company for a period of five years, for the defaults under Clause (a) of Sub-section (2) of Section 164, only after 30th of October or 30th of November, as the case may be, of the year 2017. Hence, the impugned list dated 12.9.2017 showing the petitioners as disqualified for a period of five years from 1.11.2016 to 31.10.2021, therefore, appears to be not only premature, but untenable at law.

26. Of course, such disqualification as contemplated under Section 164 would take place automatically on any of the eventualities as mentioned therein taking place, and therefore, would be incurred by operation of law. As rightly submitted by Mr.Vyas, as such no declaration is required to be made or any action required to be taken or any order required to be passed by any authority under the Act. However, the action of the respondents in publishing the impugned list on 12.9.2017 of the Directors associated with the

"struck off companies" under Section 248, showing the concerned Directors of the companies, including the petitioners as disqualified for a period of five years from 1.11.2016 to 31.11.2021 by no stretch of imagination is justified, and could not be said to be in consonance with the provisions contained in Section 164(2) of the Act of 2013. Neither the replies filed by the respondents to the petitions contain any explanation, nor Mr.Vyas in his submissions was able to explain as to how the petitioners could be shown as disqualified Directors for the period from 1.11.2016 to 31.11.2021, when even according to him, the provisions contained in Section 164(2) were applied prospectively, and the default would start after 1.4.2017. The Court, therefore, is of the opinion that the impugned list published on 12.9.2017 by the respondent No.1 deserves to be quashed and set aside.

27. In that view of the matter, the other issue with regard to some of the petitioners having tendered their resignations and having ceased to

become the Directors prior to the publication of the impugned list pales into insignificance, nonetheless, since the learned Advocates for the parties have made submissions on the said issue also, it is required to be dealt with and decided. Section 168 of the Act of 2013 pertains to the resignation of the Directors, which reads as under:-

> "168. **Resignation of director.**— (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:
>
> Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.
>
> The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:
>
> Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

> (3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting."

28. The Rules of 2014 also provide for the procedure to be followed in case where the Director resigns from a company. Rule 15 thereof requires that the company shall, within 30 days from the date of receipt of notice of resignation from a Director, intimate the Registrar in Form DIR-12 and posts the information on its website, if any. Rule 16 provides that where a Director resigns from his office, he shall within a period of 30 days from the date of resignation forward to the Registrar a copy of his resignation along with reasons for resignation in Form DIR-11 along with the requisite fees. Every company is also obliged to keep at its registered office a register of its Directors and key managerial personnel containing the requisite particulars thereof. Having regard to the provisions contained in Section 168 read with Rules 15, 16 and 17, it

clearly transpires that when a Director resigns from his office, by giving notice in writing to the company, the company is required to intimate the Registrar within 30 days of such notice, in Form DIR-12, and that the company is also required to place such resignation in the report of the Directors to be laid in the immediately following general meeting of the company. The Director is also required to forward a copy of his resignation to the Registrar within 30 days in Form DIR-11. Such resignation shall take effect from the date on which the notice is received by the company or the date, if any, specified by the Director in the notice, whichever is later. In none of the petitions, except SCA No.3831 of 2018, where the petitioners have claimed to have resigned, the Court finds any details as to whether the concerned company and the concerned petitioner Director had, in fact, intimated the Registrar as required under the said Rules and whether such resignation was incorporated in the report of the Directors laid in the general meeting of the company or not. Till such procedure as

required under Section 168 and Rules 15 and 16 of the said Rules is followed, neither the resignation could be said to have taken the effect, nor the petitioner Director, who claims to have resigned could be absolved from the statutory liabilities of the Director required to be discharged under the Act. In absence of any particulars showing that the resignation of the concerned petitioner Director was tendered and accepted as per the provisions contained in the Act and Rules, the concerned petitioner Director could not be exempted from discharging his statutory liabilities under the Act.

29. This takes the Court to the next question as to whether the respondents could have deactivated the DINs of the petitioners as a consequence of the impugned list ? In this regard, it would be appropriate to refer to the relevant provisions contained in the Act and the said Rules. Section 152(3) provides that no person shall be appointed as a Director of a company, unless he has been allotted the Director Identification Number under Section 154. Section 153 requires

every individual intending to be appointed as Director of a company to make an application for allotment of DIN to the Central Government in such form and manner as may be prescribed. Section 154 states that the Central Government shall within one month from the receipt of the application under Section 153 allot a DIN to an applicant in such manner as may be prescribed. Section 155 prohibits any individual, who has already been allotted a DIN under Section 154 from applying for or obtaining or possessing another DIN. Rules 9 and 10 of the said Rules of 2014 prescribe the procedure for making application for allotment and for the allotment of DIN, and further provide that the DIN allotted by the Central Government under the said Rules would be valid for the lifetime of the applicant and shall not be allotted to any other person.

30. Rule 11 provides for cancellation or surrender or deactivation of DIN. Accordingly, the Central Government or Regional Director or any authorized officer of Regional Director may, on

being satisfied on verification of particulars of documentary proof attached with an application from any person, cancel or deactivate the DIN on any of the grounds mentioned in Clause (a) to (f) thereof. The said Rule 11 does not contemplate any *suo motu* powers either with the Central Government or with the authorised officer or Regional Director to cancel or deactivate the DIN allotted to the Director, nor any of the clauses mentioned in the said Rule contemplates cancellation or deactivation of DIN of the Director of the "struck off company" or of the Director having become ineligible under Section 164 of the said Act. The reason appears to be that once an individual, who is intending to be the Director of a particular company is allotted DIN by the Central Government, such DIN would be valid for the lifetime of the applicant and on the basis of such DIN he could become Director in other companies also. Hence, if one of the companies in which he was Director is "struck off", his DIN could not be cancelled or deactivated as that would run counter to the provisions

contained in the Rule 11, which specifically provides for the circumstances under which the DIN could be cancelled or deactivated.

31. In that view of the matter, the Court is of the opinion that the action of the respondents in deactivating the DINs of the petitioners - Directors along with the publication of the impugned list of Directors of "struck off" companies under Section 248, also was not legally tenable. Of course, as per Rule 12 of the said Rules, the individual who has been allotted the DIN, in the event of any change in his particulars stated in Form DIR-3 has to intimate such change to the Central Government within the prescribed time in Form DIR-6, however, if that is not done, the DIN could not be cancelled or deactivated. The cancellation or deactivation of the DIN could be resorted to by the concerned respondents only as per the provisions contained in the said Rules.

32. Much reliance was placed by the learned ASG Mr.Vyas on the condonation of delay scheme dated 29.12.2017 introduced by the Ministry of

Corporate Affairs after the publication of the impugned list, however, the said scheme would not justify the action of the respondents, in publishing the impugned list, which was absolutely contrary to the provisions of the Act of 2013 and the Rules made thereunder. The said scheme was in force from 1.1.2018 to 31.3.2018, which was extended up to May 2018, under which the Directors associated with the "struck of companies", which had failed to file financial statements or annual returns continuously for a period of three financial years from 2013-14 to 2015-16 were granted an opportunity to rectify the default, by following the procedure laid down therein. However, this Court has held hereinabove that the provisions of Section 164(2)(a) having come into force from 1.1.2014, three financial years for the purpose of the said provision would be financial years 2014-15, 2015-16 and 2016-17 only, and not 2013-14, 2014-15, and 2015-16. In any case, due to deactivation of the DINs, the concerned Directors were unable to take benefits of the said scheme also. Hence, the said scheme could

not be pressed into service for justifying the publication of the impugned list.

33. The upshot of the aforesaid discussion and findings may be summarized as under:-

(i) Section 164(2) of the Act of 2013, which had come into force from 1.1.2014 would have prospective and not retrospective effect.

(ii) The defaults contemplated under Section 164(2)(a) with regard to non-filing of financial statements or annual returns for any continuous period of three financial years would be the defaults to be counted from the financial year 2014-15 only and not 2013-14.

(iii) The respondents could not have treated the Directors as disqualified/ineligible for a period of five years from 1.11.2016 to 1.11.2021, while publishing the impugned list under Section 248 of the Act of 2013.

(iv) Even if the Registrar removes the name of a company from the register of companies, and even if such company would stand dissolved under Section 248, the statutory liabilities/obligations of such struck of company and its Directors would still remain to be discharged, in view of Section 250 of the said Act of 2013.

(v) The respondents could not have deactivated the DINs allotted to the Directors under Section 154 of the said Act, except under the circumstances mentioned in Rule 11 of the said Rules of 2014.

34. In view of the above, the impugned list dated 12.9.2017 of the Directors associated with the "struck off companies" under Section 248 published by the respondent No.1 is quashed and set aside. The respondents are directed to activate the respective Director Identification Numbers of the petitioners forthwith, if not activated so far. However, it is clarified that the respondents shall be at liberty to take legal action against the petitioners for any

statutory default or non-compliance, in accordance with law.

35. All the petitions stand allowed accordingly.

Sd/-
(BELA M. TRIVEDI, J)

V.V.P. PODUVAL