

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORIGINAL SIDE

WP-LD-VC- 345 OF 2020

Mr.Navneet Sahay Verma and another. ... Petitioners.  
V/s.  
Registrar of Companies and another. ... Respondents.

AND  
WRIT PETITION (L) NO. 3219 OF 2020

Ms.Kamia Mulhotra. ... Petitioner.  
V/s.  
Union of India and another. ... Respondents.

AND  
LD-VC-LA- 1 OF 2020  
IN  
WRIT PETITION (L) NO. 1692 OF 2019

Vishal Sharma and another. ... Applicants.  
In the matter between  
Vishal Sharma and another. ... Petitioners.  
V/s.  
Union of India and another. ... Respondents.

AND  
INTERIM APPLICATION NO. 2734 OF 2020  
IN  
WRIT PETITION (L) NO. 2828 OF 2019

Ravishankar Balakrishna Aiyar. ... Applicant.  
In the matter between  
Ravishankar Balakrishna Aiyar. ... Petitioner.  
V/s.  
The Registrar of Companies. ... Respondent.

OS-WP-LD-VC-345.2020:

Mr.Vikramditya Deshmukh, Ms.Shreni Shetty and Ms.Krusha Maheshwari i/b. ANB Legal for the Petitioners.

WPL-3219.2020:

Ms.Divya Sharma with Mr.Pritesh Burad and Mr.Chinmay Paradkar i/b. Pritesh Burad & Associate for the Petitioner.

IA-1.2020 IN WPL-1692.2019:

Mr.Shadab S. Jan with Ms.Prerana Wagh and Mr.Yash Tembe i/b. M/s.Crawford Bayley & Co. for the Applicants.

IA-2734/2020 IN WPL 2828.2019:

Ms.Prachi Wazalwar with Mr.Saurabh Pakale i/b. Pravin Kapadia for the Applicant.

Mr.Anil Singh, Addl.Solicitor General with Mr.Aaditya Thakker, Mr.Ashish Mehta, Ms.Pranalee Pawar and Ms.Ruchira Halli i/b. Ethos Legal Alliance for Respondent-ROC in all matters.

**CORAM :** NITIN JAMDAR AND  
MILIND JADHAV, JJ.

**DATE :** 22 September 2020.  
(Through Video Conferencing)

**P.C. :**

Heard the learned counsel for the parties.

2. The Petitioners are directors who have been disqualified. Though the facts in each petition may slightly differ, the common relief sought at this stage by the Petitioners is to permit them to take benefit of the Scheme introduced by the Union of India

known as Companies Fresh Start Scheme, 2020 in respect of their respective companies. The Scheme is to end on 30 September 2020.

4. In WP-LD-VC-345/2020, the Petitioner No.1 is the director and promoter of the company. Petitioner No.2 is an erstwhile director. The Petitioners have challenged the action of their disqualification as directors. In Writ Petition (L) No.3219/2019, identical position exists where the Petitioner is both director and promoter and has challenged her disqualification and deactivation of DIN. In Writ Petition (L) No.1692/2019, an interim application is taken out by the directors challenging their disqualification and for activation of DIN. Writ Petition (L) No.2828/2019 is filed by a director, who has been disqualified, challenging the said action and also seeking a direction to permit the Petitioner to take necessary steps for striking of the name of the company. According to this Petitioner, there is discord with the other directors of the company who are not interested in its affairs.

5. As regards interim relief regarding disqualification is concerned, we note the order passed by the Division Bench of this Court on 7 February 2020 in a group of matters of which Writ Petition (L) No.2828/2019 was also a part. By a speaking order, the Division Bench has not granted any interim relief in respect of the disqualification.

6. The Petitioners, because of their disqualification, cannot apply under the Companies Fresh Start Scheme in respect of their companies. This Scheme is to end on 30 September 2020. They, therefore, seek a direction that they may be permitted to apply under the Scheme and for the said purpose their DIN should be activated.

7. The Companies Fresh Start Scheme, 2020 came into force on 1 April 2020 and is valid till 30 September 2020. The Scheme lays down various provisions regarding the applicability, the manner of payment of fees, withdrawal of appeal and special measures to be taken where the order of the adjudicating authority was passed but the appeal could not be filed. It deals with the applicability of immunity in respect of documents. Clause (ix) thereof specifies the cases in which the Scheme would not apply. Clause (ix) of the said Scheme reads thus:

*“(ix) **Scheme not to apply in certain cases** – This Scheme shall not apply:-*

- a. to companies against which action for final notice for striking off the name u/s 248 of the Act (previously section 560 of Companies Act, 1956) has already been initiated by the Designated authority;*
- b. where any application has already been filed by the companies for action of striking off the name of the company from the register of companies;*
- c. to companies which have amalgamated under a scheme of arrangement of compromise under the Act;*
- d. where applications have already been filed for obtaining Dormant Status under section 455 of the Act before this Scheme;*
- e. to vanishing companies;*
- f. Where any increase in authorized capital is involved (Form SH-7) and also charge related documents (CHG-1, CHG-4, CHG-8 and CHG-9);”*

8. The learned Additional Solicitor General submits that for the Company applying under the Scheme, the DIN of the petitioners does not need to be activated as there is a provision in the Companies Act 2013 itself which will serve the same purpose. The learned Additional Solicitor General has drawn our attention to section 167(3) of the Companies Act, 2013, which reads as under:

*167. Vacation of office of director.- (1) .....  
(2) .....  
(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), 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 the general meeting.*

The learned Additional Solicitor General submits that even though the directors of the company vacate their offices, the promoter/s can nominate a director to act. Relying on this provision, he submits that the promoter/s of the Petitioners- Companies can nominate a director/s to apply to take benefit of the Scheme.

10. The petitioners raised a doubt as to the applicability of Section 167 (3) submitting that if the disqualified directors of the company were also promoters and if there are no other directors, they may not be entitled to nominate a director. The learned Additional Solicitor General submitted that the provision refers to the promoter and director separately. He submitted that if a person is

acting in the capacity of director cum promoter and is disqualified as a director, for the purpose of this provision, he can continue to act in the capacity of a promoter to nominate any other person as a director. The learned counsel for the Petitioner in WP-LD-VC-345/2020 pointed out that the Petitioner has, in fact, applied under section 167(3) of the Companies Act as a promoter and has nominated his son as director. The learned Counsel for the petitioner/s in the other Petitions submitted that they would follow the course of action indicated by the learned Additional Solicitor General. As regards Writ Petition (L) No.2828/2019 is concerned, the theory of discord between the directors is too general to prove it by evidence. Nothing stops this Petitioner from persuading the other directors or the promoter from nominating any other person as a director to apply under the Scheme. We have to also keep in mind the delay and the stage at which the Petitioner has approached this Court regarding the Scheme.

11. Since the position has been clarified by the learned Additional Solicitor General as above, that in the capacity of promoter the Petitioner/s can nominate any person as a director and follow section 167(3) of the Act to apply under the Scheme, it is not necessary for us to issue any further directions. This course of action is, therefore, available to the Petitioner/s regarding the Scheme.

12. As regards the other questions raised by the Petitioners, they will be considered in due course after the Respondents file their

reply-affidavit. Stand over to 6 October 2020.

13. This order will be digitally signed by the Personal Assistant/ Private Secretary of this Court. All concerned to act on production by fax or email of a digitally signed copy of this order.

(MILIND JADHAV, J)

(NITIN JAMDAR, J)