Court No. - 4

Case :- MISC. BENCH No. - 16173 of 2019

Petitioner :- Mohd. Tariq Siddiqui & Anr.
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 24293 of 2019

Petitioner :- Nasim Ansari
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 9921 of 2019

Petitioner :- Abhishek Kumar
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Anr.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 16375 of 2019

Petitioner :- Dileep Kumar Sainy
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Anr.
Counsel for Petitioner :- Rahul Roshan Dubey
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 11541 of 2019

Petitioner :- Pranav Kumar Singh & Anr.
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 13848 of 2019

Petitioner :- Vinay Kumar Agarwal & Ors.
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Ffairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 15134 of 2019

Petitioner :- Ajay Raj Agarwal
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 15681 of 2019

Petitioner :- Jai Govind Singh
Respondent :- U.O.I.Thru Secy. Min.Of Corporate Affairs,New Delhi And Anr.
Counsel for Petitioner :- Sudhir Kumar Mishra,Durgesh Kumar Maurya
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 21823 of 2019

Petitioner :- Rahul Singh And Another
Respondent :- Union Of India Thru Its Secy Minis.Of Corporate Affairs &Ors
Counsel for Petitioner :- Sri Shailendra Srivastava
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 21176 of 2019

Petitioner :- Bipin Kumar Srivastav
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 23766 of 2019

Petitioner :- Dinesh Kumar Tripathi & Anr.
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 19905 of 2019

Petitioner :- Rajendra Prasad
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 19984 of 2019

Petitioner :- Umesh Kumar
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 20306 of 2019

Petitioner :- Madan Mohan Khare
Respondent :- U.O.I. Thru Secretary Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 16165 of 2019

Petitioner :- Parvez Ahmad & Anr.
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.

And

Case :- MISC. BENCH No. - 24035 of 2019

Petitioner :- Pradeep Chandra Vishwakarma
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava
Counsel for Respondent :- A.S.G.,Anand Dwivedi

And

Case :- MISC. BENCH No. - 24213 of 2019

Petitioner :- Abhay Raj Agarwal & Anr.
Respondent :- U.O.I. Thru Secy. Ministry Of Corporate Affairs & Ors.
Counsel for Petitioner :- Sri Shailendra Srivastava,Aastha Mishra
Counsel for Respondent :- A.S.G.,Anand Dwivedi

Hon'ble Munishwar Nath Bhandari,J.
Hon'ble Alok Mathur,J.

1. Since all the writ petitions are connected and have been heard together, they are decided by this common judgment.

2. This batch of writ petitions has been filed to challenge the de-activation of the Director Identification Number by invoking Section 164(2) of the Companies Act, 2013 *(hereinafter referred to as 'the Act of 2013')* with a direction to activate the Director Identification Number allotted to the petitioners. The activation of the Director Identification Number is required, as the petitioners were dis-qualified to be Director for any of the Companies in reference to the dis-qualification occurred in one company.

3. Similar controversy was raised in other High Courts and after considering the issue at length, the Gujarat High Court decided batch of petitions led by Special Civil Application No. 22435 of 2017 by its order dated 18.12.2018. The Special Civil Application has been allowed. Therein also, the name of the petitioner was struck off from the list of Director of various companies. The publication of which was made under Section 248 of the Act of

2013. A direction to activate the Director Identification Number of the petitioner forthwith has been given, if not activated so far. It was however with the liberty to take legal action against the petitioner for any statutory default or non-compliance of the provisions of the Companies Act.

4. In the light of the aforesaid and taking into consideration that the similar issue has been decided by eight other High Courts taking similar view, we need to refer certain paras of the judgment of its application in this case also.

5. The relevant paras of the judgment of the Gujarat High Court in Special Civil Application No. 22435 of 2017 are quoted hereunder:.

> *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, layout 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. YamashitaShinnihon 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 preamended 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 jurisdiction 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 Subsection (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.

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.*

6. The similar view has been taken by Madras High Court as well as High Court of Madhya Pradesh.

7. In view of above, the writ petitions for challenge to the de-activation of the Director Identification Number are allowed. It was de-activated on account of dis-qualification in one company effecting Director Identification Number for the other companies. The opposite parties are directed to activate the Director Identification Number for use for other company. The opposite parties would however be at liberty to take legal action against the petitioners for any statutory default or non-compliance of the provisions of the Act of 2013. It would obviously be in accordance with the provisions of law.

Order Date:-15.10.2019

Ashish