IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2018

DATE OF DECISION : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.25455, 25456, 25729, 26654, 26655, 26932, 27106 to 27108, 27140, 27293, 27366, 27367, 27369, 27408, 27546, 27547, 27558 to 27561, 27565, 27717, 27852,, 27902 to 27905, 27911 to 27914, 27937 to 27940, 28032 to 28034, 28062 to 28064, 28065, 28066, 28209, 28248, 28280, 28281, 28621, 28622, 28631, 28635, 28643, 28737, 28813 to 28816, 28820, 28821, 28870, 28871, 28931, 29055, 29141, 29147, 29148, 29151 to 29155, 29224, 29499, 29500, 29625 to 29628, 29629, 29630, 29669, 29679, 29683, 29684, 29707, 29708, 29710, 29760 to 29762, 29763, 29836, 29846, 29847, 29917 to 29919, 29937 to 29941, 30034 to 30036, 30040, 30041, 30147, 30148, 30149, 30152, 30177 to 30179, 30281, 30282, 30317, 30321 to 30323, 30345, 30347, 30369, 30372, 30400, 30401, 30405 to 30407, 30436, 30565 to 30567, 30577 to 30580, 30621 to 30625, 30627, 30679, 30680, 30742, 30743, 30813, 30814, 30842, 30843, 30864, 30869, 30943 to 30945, 30947, 30950, 30971 to 30973, 30984, 31013 to 31015, 31019, 31059, 31060, 31092 to 31094, 31122, 31123, 31124, 31153, 31190 to 31192, 31211, 31291, 31331, 31333, 31334, 31367 to 31371, 31372 to 31374, 31501 to 31509, 31522, 31543, 31560, 31561, 31582 to 31584, 31592 to 31595, 31606, 31607, 31707, 31708, 31723, 31724, 31740, 31772 to 31774, 31793, 31797, 31800, 31802, 31805, 31806, 31850, 31884 to 31887, 31916 to 31918, 31965 to 31967, 32080, 32081, 32192, 32202 to 32206, 32310 to 32312, 32340, 32373, 32427, 32441 to 32444, 32450, 32462 to 32465, 32484, 32485, 32513 to 32517, 32587, 32604, 32611, 32612, 32656 to 32658, 32664 to 32666, 32721 to 32726, 32732 to 32734, 32735 to 32738, 32804, 32805 to 32807, 32813, 32814, 32848, 32849, 32864, 32872, 32882, 32901,

32904 to 32907, 32950 to 32953, 32968, 33031, 33038, 33047, 33050, 33051, 33052, 33095 to 33097, 33128, 33156 to 33160, 33195, 33196, 33197, 33198, 33247 to 33254, 33260 to 32364, 33287, 33300 to 33303, 33311, 33370 to 33373, 33378, 33379, 33425, 33460 to 33464, 33473 to 33476, 33501, 33502, 33523 to 33528, 33531, 33532, 33554, 33555, 33564, 33579, 33584, 33596, 33597, 33623 to 33627, 33660 to 33665, 33772, 33773, 33774, 33795 to 33797, 33801 to 33804, 33805 to 33807, 33808, 33811, 33812, 33825 to 33829, 33833, 33834, 33835, 33837 to 33844, 33846, 33847, 33849, 33850, 33862, 33864, 33865, 33868 to 33870, 33875, 33876, 33881, 33882, 33883 to 33886, 33939 to 33942, 33948 to 33953, 33955, 33956, 33959 to 33963, 33982, 34000, 34005, 34006, 34149, 34158, 34250, 34258, 34259, 34366, 34367, 34435, 34438, 34440 to 34446 of 2017, 9, 15, 16, 357, 528 to 530, 610, 611, 685, 686, 753 to 757, 826, 887 to 890, 921, 948, 962, 963, 1090, 1264, 1265, 1279, 1467, 1516, 1539, 1540, 1580, 1581, 1613, 1623, 1728, 1763, 1781 to 1784, 1931, 1932, 1951 to 1953, 1996 to 2000, 2135, 2136, 2138, 2142, 2186, 2199, 2200, 2203, 2204, 2302, 2303, 2331, 2332, 2433 to 2436, 2446, 2447, 2448 to 2450, 2503, 2507, 2508, 2533, 2545, 2553, 6176, 7662, 7663, 7687, 7688, 7768, 7772 to 7775, 7843 to 7845, 7949, 7950, 7970, 8021, 8046, 8047, 8079, 8171, 8172, 8216, 8265, 8266, 8309, 8420, 8572, 8590 to 8592, 8620 to 8624, 8703, 8856, 8857, 8938, 8942, 9088, 9139, 9148, 9149, 9156, 9164, 9240, 9277 to 9281, 9282 to 9284, 9331, 9332, 9389, 9404, 9405, 9436, 9437, 9439, 9440, 9458, 9459, 9516, 9517, 9531, 9532, 9579, 9585, 9586, 4305 to 4307, 9646, 9647, 9666, 9667, 9741, 9742, 9766, 9833, 9866 to 9868, 9869 to 9874, 9893, 9914, 9917, 9924, 9925, 9934, 9940, 9957, 9958, 10004, 10016 to 10020, 10057 to 10060, 10158, 10176, 10224, 10225, 10228, 10231, 10244, 10263, 10264, 10268, 10269, 10279, 10372, 10383, 10387, 10384, 10401 to 10403, 10466 to 10468, 10500, 10501 to 10504, 10539, 10557 to 10560, 10582, 10615, 10651, 10655, 10676, 10677, 10715, 10721, 10722, 10724, 10749, 10750, 10751 to 10754, 10768, 10771, 10786, 10803, 10858, 10859, 10873, 10904, 10905, 10916, 10971, 10974, 10982, 11058, 11059, 11060, 11066, 11079, 11089,

11090, 11109, 11117, 11118, 11122 to 11124, 11126, 11127, 11128 to 11130, 11169, 11222, 11223, 11237, 11263, 11297, 11354, 11355, 11359, 11360, 11371, 11386, 11387, 11400, 11411, 11412, 11419, 11472, 11473, 11521, 11525, 11545, 11546, 11550, 11551, 11557, 11558, 11568 to 11572, 11576, 11577, 11578, 11579, 11600, 12761 to 12765, 13782 to 13785, 13835 to 13837, 13838 to 13840, 13879, 13940, 13946, 13953, 14044, 14048, 14054, 14055, 14091, 14092, 14227, 14228, 14241, 14242, 14279 to 14282, 14304 to 14306, 14324, 14355, 14360 to 14362, 14363, 14381, 14385, 14391, 14395, 14417, 14418, 14432, 14602, 14603, 14640 to 14642, 14645 to 14648, 14667, 14668, 14734 of 2018, 32167 to 32174, 32331 to 32334, 33622, 33778 of 2017, 4282, 4284, 4292, 4314, 4322 to 4326, 4354, 4443, 4444, 4460, 4461, 4462, 4463, 4464, 4490, 4504 to 4507, 4511, 4512, 4553 to 4556, 4634, 4635, 4648, 4687, 4688, 4691, 4693, 4705, 4706, 4714, 4715, 4812, 4837, 4928 to 4931, 4959, 4976, 4980, 4988, 5058, 5059, 5066, 5067, 5068 to 5071, 5094, 5095, 5115, 5120, 5161, 5193, 5208 to 5210, 5244, 5245, 5248, 5257, 5268, 5282, 5283, 5326, 5373, 5374, 5399, 5426 to 5428, 5433, 5453 to 5456, 5457, 5460, 5461, 5472, 5480, 5481, 5508, 5521, 5522, 5537, 5540, 5541, 5542, 5543, 5545, 5547, 5588, 5589, 5634, 6605, 6617, 6660, 6712, 6781, 6782, 6791, 6816, 6878, 6879, 15163, 15241, 15269 to 15273, 15427, 13586, 3928, 7318 of 2018, 33019, 28607 of 2017, 3053, 3070, 4233, 5852, 5861, 5881, 5889, 5989, 6004, 6005, 6008, 6016, 6019, 7129 to 7131, 7458, 7459, 7460, 7461, 7462, 7463, 7464 to 7466, 7467, 7468, 7469 to 7471, 7522, 7523, 7539, 7541, 7545, 7546, 7547, 7548, 7553, 7554, 7556, 7559 to 7562, 7563, 7564, 7565, 7566, 15688, 15689, 15745, 15838, 15848, 16043, 16044, 16458 of 2018, 26351, 26352, 26357 to 26363, 26420, 26432, 26433, 26470 to 26473 of 2017, 2727, 5798, 5974, 6111, 6112, 7133, 12151, 12228, 6083, 6113, 6114, 2326, 2327, 3221, 3222, 3312, 13543, 78, 79, 124, 175, 541, 542, 2490, 2534, 2535, 2584, 2592, 2645, 2646, 2674, 2675, 2676, 2677, 2798 to 2800, 2825, 2826, 2868, 2869, 2927, 2993 to 2999, 3197, 3198, 3207, 3245, 3273, 3277 to 3279, 3341, 3359, 3362, 3393, 3394, 3442, 3512 to 3515, 3599, 3600, 3621, 3623, 3651, 3678,

3704 to 3707, 3725, 3726, 3728, 3729, 3775, 3798, 3809 to 3812, 3916, 3917, 3971, 4037, 4038, 5668, 5669, 5670, 5706 to 5709, 5718, 5719, 5742 to 5744, 5766, 5767, 5815 to 5817, 5825, 5838 to 5840, 5843, 5844, 5859, 5860, 5873, 5886, 5887, 5905 to 5907, 5911 to 5913, 5924, 5943, 5947, 6033, 6157, 6162, 6163, 6168, 6179, 6185 to 6187, 6188 to 6190, 6191 to 6193, 6198 to 6200, 6208, 6209, 6210, 6234, 6238, 6366, 6329, 6396, 6402, 6403, 6568, 6569, 6587, 6588 to 6591, 15883, 15884, 15919, 15920, 15968, 15969, 16035, 16038, 16039, 16096, 7212, 7213, 7214 to 7216, 7234, 7240, 7241, 7249, 7250, 7255, 7256, 7279, 7280, 7309 to 7311, 7338, 7343 to 7347, 7356 to 7360, 7405, 7414, 7419, 7420, 7439, 7440, 13629, 14942, 14943, 14952, 14953, 15014, 15068, 15069, 15238, 15454, 15468 to 15473, 15533, 15540 to 15542, 15552, 15553, 15628, 15664, 15705, 15708 to 15710, 15744, 15826, 15868, 15869, 16034, 16245, 16246, 16350 to 16352, 16463, 16532, 16534, 16539, 16540, 16610 to 16613, 16657, 16658, 16757, 16773, 16840, 16841, 16898, 16902, 16903, 16970, 16995, 16999, 17151, 17161 of 2018

W.P.No.25455 of 2017:

Bhagavan Das Dhananjaya Das .. Petitioner

-vs-

1. Union of India
   Rep. by its Ministry of Corporate Affairs
   Shastri Bhawan
   Dr. Rajendra Prasad Road
   New Delhi 110 001

2. Registrar of Companies
   Tamilnadu Chennai
   Block No.6, B Wing 2nd Floor
   Shastri Bhawan
   No.26 Haddows Road
   Chennai 600 006 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the impugned order dated 08.09.2017 uploaded in the

website of the first respondent inso far as the petitioner herein is concerned, quash the same as illegal arbitrary and devoid of merit and consequentially direct the respondent herein to permit petitioner to get reappointed as Director of any company or appointed as Director in any company without any hindrance.

For Petitioner :: Mr.P.H.Aravind Pandian
Senior Counsel for
Mr.C.V.Shailandhran

For Respondents :: Mr.G.Rajagopalan
Additional Solicitor General of India
assisted by Dr.V.Venkatesan
Senior Central Government
Standing Counsel and
Mr.T.V.Krishnamachari
Senior Central Government
Standing Counsel

COMMON ORDER

The petitioners in this bunch of writ petitions have challenged the respective impugned orders dated 8.9.2017, 1.11.2017 etc., passed by the Registrar of Companies, Tamil Nadu, Chennai, the second respondent herein, uploaded in the website of the Ministry of Corporate Affairs, New Delhi, the first respondent herein disqualifying them to hold the office of Directorship of the companies under Section 164(2)(a) of the Companies Act 2013, which came into effect from 1.4.2014, to quash the same as illegal, arbitrary and devoid of merits with a consequential direction to the respondents herein to permit the petitioners to get reappointed as Director(s) of any company or appointed as Director(s) in any other company without any hindrance.

2. Since the raised raised in all the writ petitions is common, for convenience, the facts as pleaded in W.P.No.25455 of 2017 are alone referred to in this order.

3. Mr.P.H.Aravind Pandian, learned senior counsel appearing for the petitioner in W.P.No.25455 of 2017, leading the arguments, assailing the impugned order as arbitrary, unreasonable and unconstitutional, submitted that the petitioner being the Director in Birdies and Eagles Sports Technology Private Limited, a private limited company incorporated under the Companies Act, 1956 on 19.7.2006 with a share capital of Rs.1,00,000/-, initially under the name of Birdies and Eagles Resorts Private Limited and then renamed as Birdies and Eagles Sports Technology Private Limited in September 2012, occupied the position as Director in another company viz., Senhati Events Private Limited, a private limited company incorporated under the Companies Act, 1956 on 28.1.2011 with a share capital of Rs.1,00,000/-. Since the original promoters of Birdies and Eagles Sports Technology Private Limited were Mr.Jayanan Sadagopal and Mr.Ram Prasad holding equal number of shares, the company had no operations and was lying dormant till the year 2012. In the same year 2012, they have prepared a plan to revive the said company by developing sports based software to monitor performance, virtual coaching lessons etc., and as such, the Board was reconstituted with the induction of three directors in the new Board comprising the following persons, viz., Ishwar Achanta bearing DIN No.00828146, Mr.Swaminatha Balasubramanian Swaminathan bearing DIN

No.01905301, Mr.Jayanan Sadagopal bearing DIN No.03074495, Mr.Bhagavan Das Dhananjaya Das bearing DIN No.03379887. The said new management also infused additional capital into Birdies and Eagles Sports Technology Private Limited, accordingly, the paid up capital of the company rose to Rs.9,70,000/- and as per the share holding pattern, Mr.Swaminatha Balasubramanian Swaminathan was having 33,000 shares, Mr.Jayanan Sadagopal was having 32,000 shares, Mr.Bhagavan Das Dhananjaya Das was having 32,000 shares totalling to 97,000 shares. Even after the change in the new management, the proposed revival plan did not fructify, as a result the Birdies Eagles Sports Technology Private Limited was unable to commence its business activities. Therefore, when there was no business activity, the annual returns also were not filed with the Registrar of Companies, Chennai from the financial year 2012-13. The last financial return filed with the Registrar of Companies related to the financial year 2011-12. While so, the first respondent issued a show cause notice vide letter No.ROC/S.248/Stk1/2017/SK/BS/VR dated 18.3.2017 under Section 248(1) of the Companies Act, 2013 to Birdies and Eagles Sports Technology Private Limited for striking off the name of the company from the Register of members for non-filing of the annual returns for a continuous period of three financial years. On receipt of the show cause notice, the company conveyed its no objection for striking off the name, since there were no intentions to revive the company by letter dated 1.6.2017. Subsequently thereafter, the petitioner also came to know that the name of Birdies and Eagles Sports Technology Private Limited was struck off under Section 248 of the

Companies Act, 2013 by the Registrar of Companies by the issue of a gazette notification dated 5.7.2017 and a list was also released by the second respondent on 8.9.2017 disqualifying the directors under Section 164(2)(a) of the Companies Act with effect from 1.11.2016. To the shock of the petitioner, his name along with other directors were also found disqualified in the said list in item no.44650 under Section 164(2)(a) of the Companies Act, 2013. In view of the consequential disqualification resulting from the striking off the Birdies and Eagles Sports Technology Private Limited, the petitioner as Director is also prohibited from being appointed or reappointed as Director in any other company for a period of five years until 31.10.2021.

4. Mr.P.H.Aravind Pandian emphatically submitted that when Section 164(2)(a) of the Companies Act, 2013 came to be notified on 1.4.2014 stating that 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 other company for a period of five years from the date on which the said company fails to do so, the corresponding Section 274(1)(g) of the Companies Act, 1956 was repealed. In view of the new Section 164(2)(a) coming into force, the disqualification would apply to private companies in case the private company fails to file annual accounts or annual returns for three years. By virtue of this new Section 164(2)(a) of the 2013 Act, the word 'company' was used as against 'public company' that was used under the 1956 Act and the new

section does not exempt the private companies from the ambit of disqualification. To put it clearly, he pleaded that the disqualification would apply to private companies also in case the private company fails to file annual accounts and also annual returns for three years. Similarly, the appointment or reappointment of directors would not confine only to public companies like in 1956 Act, but also extended to all types of companies. However, when Section 164 of the new Act came into effect from 1.4.2014 clearly referring to "financial statements or annual returns for any continuous period of three financial years", the first financial year for the purpose of Section 164(2)(a) of the Companies Act, 2013 would be 31.3.2015 viz., 1.4.2014 to 31.3.2015 and as such, the second and third financial years would be for the period 1.4.2015 to 31.3.2016 and 1.4.2016 and 31.3.2017 respectively. By virtue of the first proviso under Section 96(1) of the 2013 Act, the Annual General Meeting for the year ending on 31.3.2017 can be held within six months from the closing of the financial year i.e., 30.9.2017. However, for private companies, the third financial year would be 2016-17 ending on 31.3.2017 and the last date for conducting the Annual General Meeting is 30.9.2017. Therefore, the last date for filing the annual return is 29.10.2017 and for filing the balance sheet is 30.10.2017. By virtue of the aforementioned provision, any disqualification for not filing the annual returns for a period of three years would commence only on or after 30.10.2017. Sadly and against the law, the second respondent even before the deadline, erroneously and unlawfully disqualified the petitioner as director, as a result the petitioner being the director in the other company is prohibited from being appointed as

director in any company in India. The impugned order per se is arbitrary, unreasonable and unlawful, hence, liable to be set aside.

5. Continuing his arguments, it is further pleaded that under Section 164(2)(a) of the Companies Act, 2013, the disqualification of a director could be done only in cases where the company has not filed the financial statements or annual returns for a continuous period of three years. The three year period is the minimum requirement and a sine quo non for disqualifying the director of a company under the above section. Making a comparison with the old 1956 Act, it is further pleaded that under the old Act, non-filing of the financial statement of a private company for three consecutive years or more was neither an offence nor a cause for disqualification on the part of the director, unless the financial year period 1.4.2013 to 31.3.2014 is covered by the old Act of 1956. Hence, the disqualification of a director under Section 164(2)(a) under the new Act is not applicable to the present scenario, for the simple reason that the non-filing of the financial statements for the financial years 2013-14, 2014-15, 2015-16 does not disqualify the petitioner to hold the office of directorship. Moreover, there is no provision at all in the new Act to disqualify the petitioner for the financial year 2013-14, a period covered by the old Act of 1956. This vital aspect ought to have been considered by the Registrar of Companies, the second respondent herein that prior to coming into force of the Companies Act 2013, there was no liability attached to the director of a private company. Moreover, under the Companies Act 2013, for the first time, such a liability being imposed, cannot be

made applicable to the period prior to 1.4.2014. Proceeding further, it was also contended that the provisions of the Companies Act, 2013 ought to be read prospectively and cannot relate to occasions prior to its coming into force, failing which the said provision would become unconstitutional under Article 20(3) of the Constitution of India. In view of the disqualification and removal of the company's name, all the petitioners were unable to file their returns for all three years and the DIN numbers had become inactive now. As a matter of fact, as per the General Crcular No.08/2014 dated 4.4.2014, the financial year earlier than 1.4.2014 shall be governed by the relevant provisions/schedules/rules of the Companies Act, 1956, whereas in respect of financial year commencing on or after 1.4.2014, the provisions of the new Act shall apply. In view of this vast difference, the impugned order disqualifying the petitioner to be appointed as director in any company or continuing as director in any other company is wholly arbitrary, unreasonable and unconstitutional for being against the established principles of natural justice, as laid down by the Apex Curt in **Maneka Gandhi v. Union of India, (1978) 2 SCC 248**. Once a company was struck off, no notice was issued to any of the directors holding directorship in any other company for their disqualification. This is against the principles of natural justice.

6. In order to maintain the present writ petitions, Mr.Aravind Pandian further contended that the petitioners do not have an alternative remedy much less any effective, efficacious remedy to challenge the action of the Registrar of Companies, the second respondent herein in disqualifying the petitioners as

directors in the respective companies under Section 164(2)(a) of the Companies Act, 2013. Therefore, the writ petitions filed under Article 226 is legally maintainable. Inasmuch as when the petitioners have got a remedy under Section 252 of the Companies Act, 2013 to challenge the order striking off their company, so far as the issue of disqualification of directorship in the same company or any other company is concerned, no remedy is available to them. Hence, Article 226 being extraordinary jurisdiction, they are entitled to invoke the power of this Court under this provision. Again comparing both the old Act and the new Act, Mr.Aravind Pandian submitted that although Section 274(1)(g) of the old Act was brought into the statute with effect from 13.12.2000, that section had clearly stated that "three financial years commencing on and after the first day of April 1999", whereas the new Section 164(2)(a) of the new Act uses the words "for any continuous period of three financial years". Therefore, if the definition of "financial year" is looked into, the financial year as defined in Section 2(41) of the Act, 2013 shows that the financial year in relation to any company or body corporate means the period ending on the 31st day of March of every year. Where it has been incorporated on or after the first day of January of the year, the period ending on the 31st day of March of the following year in respect whereof the financial statement of the company or body corporate is made up. In this context, if we look into Section 164, the same was made effective only from 1.4.2014. Therefore, the first financial year for the purpose of Section 164 of the new Act would be 31.3.2015 i.e., 1.4.2014 to 31.3.2015. He has repeated his argument stating that the second and third financial years

would be 1.4.2015 to 31.3.2016 and 1.4.2016 to 31.3.2017 respectively. In view of this clear provision of law, the stand taken by the respondents in the counter affidavit, more particularly, in paragraphs 17 & 24 trying to place reliance on three continuous years without placing reliance on the word 'financial', has to be read and understood that Section 164 is given effect only from 1.4.2014. Therefore, the law demands that the first financial year would be 31.3.2015, namely, 1.4.2014 to 31.3.2015 and the second and third financial years would be 1.4.2015 to 31.3.2016 and 1.4.2016 to 31.3.2017 respectively. If that legal position is correctly applied in the cases on hand, the disqualification under Section 164(2)(a) of the new Act will have effect to vacate the office of directorship only on or after 31st October, 2017. As it was already argued, the time limit to file the annual returns under Section 92(4) of the 2013 Act being sixty days from the date of annual general meeting or the last date on which the annual general meering ought to have been held, the time limit to file the balance sheet under Section 137(1) of the 2013 Act being thirty days from the annual general meeting, under the new Section 164 which came into force from 1.4.2014, for any company the third financial year for 2016-17 would be the year ending on 31.3.2017 and the last date for convening the annual general meeting is 30.9.2017 and hence the last date for filing the annual returns is 29.11.2017 and the balance sheet to be filed only on 30.10.2017. Therefore the disqualification could take place only on or after 30.10.2017 and not before that, he pleaded.

7. Again indicating the stand taken by the respondents in paragraphs 22 and 23 of the counter affidavit that they have only identified the directors by operation of law and such information has been made public on the web portal of the respondents, he stated that the said reason is again wholly untenable. The reason being if the respondents had applied Section 164(2)(a) of the 2013 Act correctly, then these petitioners would not have been disqualified. Even the identification made at paragraphs 22 & 23 of the counter affidavit that the directors who are going to be disqualified by operation of law also is equally bad, on the premise that even before the third financial year ending on 31.3.2017 and the last date for holding the annual general meeting viz., 30.9.2017 and the last date for filing the annual return viz., 29.11.2017 and the balance sheet on 30.10.2017, the respondents cannot even declare the petitioners to be disqualified as directors on the web portal of the respondents. This apart, even the second respondent issuing a notice under Section 248(1) of the new Act for striking off the name of the company from the Register of Companies stating that the company has not been carrying on any business or operation for a period of two financial years, has got nothing to do with the disqualification under Section 164(2)(a), for the foremost reason that a company can be struck off when it has not been carrying on any business for a period of two financial years, whereas for disqualification, the criteria is three financial years. Quoting an example, it is pleaded that if the company has not been carrying on business for two financial years ending 31.3.2015 and 31.3.2016, after giving due notice, the company can be struck off, whereas a director cannot be disqualified,

because only two financial years have come to an end. But for the disqualification, there should be three financial years. In other words, it is pleaded that if the company is struck off after 31.3.2016 but before 31.3.2017, there would not be any disqualification, because, before the third financial year, the company has been struck off. Continuing his arguments, it is submitted that although the petitioners have not challenged the constitutional validity of Section 164(2)(a) of the 2013 Act, all these writ petitions are filed asking the respondents to apply the provisions of the said section in the manner it ought to be applied without giving any retrospective effect. Finally, referring to Circular No.08/2014 dated 4.4.2014 issued by the Assistant Director (Policy) of Ministry of Corporate Affairs, the learned senior counsel submitted that the said circular has been specifically issued making the things absolutely clear that the financial statement, auditor's report and the board's report in respect of financial years that commenced earlier than first day of April, 2014 shall be governed by the relevent provisions/schedule/rules of the Companies Act 1956 and that in respect of financial years commencing on or after first day of April, 2014, the provisions of the newe Act shall apply. Having issued such a circular, for the purpose of disqualifying the directors, the first financial year to be taken only from 1.4.2014 upto 31.3.2015, because the provisions have come into force only with effect from 1.4.2014. Therefore, the disqualification issued contrary to the said circular deserves to be set aside forthwith.

8. Similarly, arguing on behalf of some of the petitioners, the learned

counsel Mr.T.K.Bhaskar, comparing both the provisions under the old Act of 1956 and the new Act of 2013, placed three-fold arguments. Firstly, he emphatically argued that under Section 274(1)(g) of the Companies Act 1956, if a public company fails to file its annual returns for any continuous three financial years, the director of that company is prohibited to be appointed as director in any other public company for a period of five years. Whereas under the new Act which came to be notified replacing the 1956 Act, if a director of a company under Section 164(2)(a) of the Companies Act, 2013 has not filed the financial statements or annual returns for any continuous period of three financial years shall not be eligible to be appointed as director of that company or appointed in any other company for a period of five years. When the new Act has obviously come into force with effect from 1.4.2014, making it clear to all that if a director of a company has not filed any financial statement for any continuous period of three financial years shall not be eligible to be reappointed as director of that company or in any other company for a period of five years, the second respondent, on a wrong interpretation of Section 164(2)(a), has disqualified the petitioners even before the provision came into force.

9. Continuing his arguments, he further submitted that when a statutory body like the Registrar of Companies misconstrues the provisions of a statute infringing the fundamental rights of the petitioners, the same can be challenged under Article 226 of the Constitution of India before this Court, which is the only remedy available to the petitioners. Again assailing the approach

adopted by the second respondent in calculating the first, second and third financial years for the purpose of effecting the disqualification on the directors, he argued that Section 164(2)(a) clearly refers to the "annual return" and "financial statement", the time limit to file the annual returns under Section 92(4) of the 2013 Act is sixty days from the annual general meeting or the last date on which the annual general meeting ought to have been held on or before 29.11.2017. Therefore, the time limit to file the financial statement under Section 137(1) of the 2013 Act is thirty days from the annual general meeting i.e., on or before 30.10.2017. However, as per the first proviso to Section 403 of the Companies Act 2013, as it stood prior to amendment, an additional period of 270 days is given to file any document from the date by which it should have been filed on payment of such additional fee. This provision has been now substituted by the Companies (Amendment) Act, 2017 with effect from 7.5.2018. By virtue of the amendment, as on the date of impugned list released by the second respondent, the petitioners had additional time of 270 days to file their returns with the second respondent, therefore, they should not be disqualified until 27.7.2018, for the simple reason that the second respondent has not rightly taken into account the 270 days for consideration. He further argued that Section 274(1) of the old Act was introduced on 13.12.2000 and the sub clause (g) states that a person who is already a director of public company which has not filed any accounts or annual accounts for any continuous period of three financial years commencing on or after the first day of April 1999, shall not be eligible for appointment in other public companies. Mr.Bhasker heavily submitted

that there is nothing under Section 164(2)(a) of the new Act which expressly or by implication covers the previous financial years to be taken into consideration so as to attract disqualification of the petitioners as directors as and when the provision has come into force. Hence the provisions ought to be read prospectively that the three financial years should be considered only from the date the provision came into effect viz., 1.4.2014 and no other interpretation is legally possible or permissible. In support of his submissions, he relied on the judgment of the Apex Court in **Govind Das and others v. Income Tax Officer and another, AIR 1977 SC 552,** while deciding the applicability of Section 171(6) of the Income Tax Act 1961, for assessment of Hindu Undivided Family under the old Act, wherein it is ruled that 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 term of the statute expressly so provide or necessarily require it.

10. Explaining further, he has contended that the action of the second respondent is not only erroneous, but also amounts to violation of the principles of natural justice, because the second respondent ought to have sent show cause notice, as it affects their right to continue as directors with other companies which are filing the accounts with the second respondent. The reason being, he pleaded, that the purpose of giving an opportunity is to prevent injustice. Therefore, the principles of natural justice should be observed. Explaining further that the petitioners have been greatly prejudiced by the

erroneous action of the second respondent, he has submitted that the petitioners, in view of facing disqualification, can not only function as directors in the company from which they were disqualified and in any other company, which is properly complying with the provisions of the new Act. Therefore, the principles of natural justice ought to have been followed so far as their continuance in other company which have followed the provisions of the new Act. Taking the Court further to the applicability of the principles of natural justice, he has pleaded that even if there is no statute or provision expressly spelling out the observance of principles of natural justice, it is implied that where any action of the authority affects the rights of persons or causes grave prejudice, the principles of natural justice were directed to be followed by the Apex Court in **A.K.Kraipak and others v. Union of India, AIR 1970 SC 150** succintly ruling that these rules of natural justice do not supplant the law of the land, but supplement it. Placing reliance again on the judgment of the Apex Court in **Dharampal Sathyapal Limited v. Deputy Commissioner of Central Excise and others, (2015) 8 SCC 519**, he has pleaded that the Apex Court in the said judgment has held that the show cause notice and personal hearing is necessary before saddling an assessee with additional demand. Therefore, it is a trite law that when a statute is silent with no positive words in the Act or Rules spelling out the need to hear the party whose right or interest is likely to be affected, the requirement to follow a fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise. Arguing on the principles of statutory interpretation, as contained in the

principles of statutory interpretation by Justice G.P.Singh, 14th edition and the judgments in **Queen v. Vine, (1875) 10 QB 195** and in **Re A Solicitor's Clerk, (1957) 3 All ER 617(DC)**, submitted that the facts in both cases are totally different from the present case, inasmuch as in the aforementioned cases, the persons stood disqualified were found convicted for an offence of felony. However, in the cases on hand, the directors of the private companies were not liable for disqualification under the old Act. It is only the new Act that the directors are penalised for non filing of the annual returns of the private company. As per the new Act, when a new liability is imposed, the same should be prospective and not retrospective. Moreover, when the new Act does not take into account the past financial years, but takes effect only prospectively from 1.4.2014, the judments relied upon by the respondents cannot be applied to the case of the petitioners. Finally, referring to the provisions of Section 210 dealing with failure for not filling the annual return or balance sheet, Section 160 dealing with failure to file annual return, Section 621A(4) dealing with the composition of certain offences, of the old Act, he has contended that when the regulatory offences like the default in filing the accounts or returns are compoundable in nature, whereas Section 164(2)(a) provides for disqualification of directors of private companies not only in the defaulting company, but also from the other company in which he is a director. Therefore, the action of the second respondent in reaching a conclusion on the past financial year even before the new provision came into effect for disqualifying the petitioner, is wholly arbitrary and also in violation of the principles of natural justice. Hence the impugned

order is liable to be quashed.

11. Heard Mr.A.M.Sridharan, Mr.G.Ramanujam, Mr.J.Vinoth, Mr.P.J.Rishikesh, Mr.K.Sakthivel, Mr.P.Mahadevan, Mr.B.Raviraja, Mr.K.S.Elangovan, Mr.S.Sathish, Mr.S.Sathyanarayanan, Mr.Dwarakesh Prabakaran, Mr.R.Rajesh, learned counsels appearing for the respective petitioners and also the other counsels, adopting the arguments of the learned senior counsel Mr.P.H.Aravind Pandian & Mr.T.K.Bhaskar, on similar lines.

12. Detailed counter affidavits have been filed by the respondents. Mr.G.Rajagopalan, learned Additional Solicitor General of India for the respondents, replying to the above contentions, contended that when the names of companies were struck off for not filing their returns with the consequential order disqualifying the petitioners as directors for a period of five years from the date of failure to file the statement/return for three continuous years, imposing the disqualification as a consequence of striking off the companies, the writ petitions not challenging the provision of Section 164(2)(a) but challenging only the retrospective effect are liable to be dismissed. He further submitted that when the directors of struck off companies were consequently disqualified, they cannot challenge only the retrospective effect. Explaining further the facts and circumstances under which the impugned proceeding disqualifying the directors of the companies were issued, the learned Additional Solicitor General pleaded that Section 164 of the Companies Act, 2013

was brought into force with effect from 1.4.2014, repealing the corresponding section 274(1)(g) of the Companies Act, 1956. Since the new provision under Section 164(2)(a) of the 2013 Act came into effect from 1.4.2014 has introduced 'company' in lieu of 'public company' under Section 274(1)(g) of the 1956 Act indicating therein that no person who is or has been a director of a company which has not filed the financial statement or annual return for any continuous period of three financial years shall be eligible to be reappointed as director of any other company for a period of five years from the date on which the said company fails to do so, the first respondent, after receiving various representations from stakeholders for grant of one time opportunity to enable them to file various pending documents and avoid penal action under the new Act, issued the General Circular No.34/14 on 12.8.2014 with the introduciton of Company Law Settlement Scheme, 2014 (CLSS-2014). The said scheme came to be availed from 15.8.2014 to 15.10.2014. The said scheme also clarified that on conclusion of the scheme, the Registrar would initiate necessary action under the Companies Act, 2013 against the companies who have not availed the same. Again on 15.10.2014, the first respondent issued another circular No.41/14 extending the CLSS-2014 till 15.11.2014. Starting from 5.7.2017, on various dates, the second respondent under Section 248(1)(4) of the Companies Act read with Rule 7 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 issued Form No.STK-5 Public Notice proposing to remove/strike off the names of the companies viz., list of 22,954 companies falling within the jurisdiction of the second respondent. Under the

said notice, objections to the proposed removal were also invited within thirty days from the date of publication of the notice. Again the Registrar of Companies, the second respondent herein also released a list of 20,747 companies on 8.11.2017 that were struck off from the register of companies including the companies in which the petitioners were directors. Again on 8.9.2017 and 1.11.2017, the Registrar of Companies, the second respondent herein released another list of disqualified directors, wherein the names of the petitioners also figured disqualifying them under Section 164(2)(a) of the Companies Act, 2013 and the said list was also uploaded in the website of the first respondent. Since then, i.e., 19.9.2017, many writ petitions were filed before this Court inter alia challenging the said list of disqualified directors released by the first respondent which are bereft of any merit.

13. The learned Additional Solicitor General further submitted that when the General Circular No.16/2017 dated 29.12.2017 was issued for Condonation of Delay Scheme, 2018 (CODS-2018), after receiving several representations of the industry and stakeholders by the first respondent, the said CODS-2018 scheme afforded an opportunity for non-compliant defaulting companies to rectify and file their annual financial statements and annual returns with the respondents. That clearly shows that sufficient opportunities were given to the petitioners to rectify the defaults. The petitioners should appreciate that the said scheme was introduced with a view to give an opportunity to the non compliant defaulting companies to rectify the defects and was never meant for

the companies which have already been struck off. The scheme was also made applicable to all defaulting companies viz., other than the companies which were struck off and whose names have been removed from the Register of companies under Section 248(5) of the Act. Therefore, a defaulting company was permitted to file its overdue documents which were due for filing till 30.6.2017 in accordance with the provisions of the scheme. Pursuant thereto, several writ petitions came to be filed and one such writ petition is W.P.No.25455 of 2017 on 21.9.2017. This Court also passed an interim order directing the Registrar of Companies, the second respondent herein to reactivate the DIN number of the director. Again in W.P.Nos.6896, 3268 and 3269 of 2018, this Court passed an order on 23.3.2018 granting the petitioners to avail the CODS 2018 and directed the Registrar of Companies, the second respondent herein to accept and preserve the hard copy to be submitted by the companies and thereafter, totally 476 companies, whose names were found on the list of struck off companies released by the Registrar of Companies, the second respondent herein on 15.7.2017 and 22.7.2017, approached the National Company Law Tribunal, Chennai Bench under Section 252 of the Companies Act, 2013 and among them, around 370 companies got their status as active in the said register. Adding further, the learned Additional Solicitor General submitted that as on the date of filing of the counter affidavit, around 1223 erstwhile directors whose names were found in the list of disqualified directors released by the second respondent on 1.11.2017 approached this Court for remedy and around 1141 DIN numbers were reactivated by virtue of the interim orders passed by this Court.

14. Under this background, the learned Additional Solicitor General submitted that the disqualification for appointment of directors contemplated under Section 164(2)(a) is necessarily to be read along with Section 167. A conjoined reading of both sections, the post of director shall become vacant in case he incurs any of the disqualification defined under Section 164. Therefore, if a director of a company has not filed the financial statement or annual return for a continuous period of three financial years, he/she shall not be eligible to be reappointed as director of a company, as a result, the office of directorship shall become vacant, because of incurring the disqualification under Section 164. Now by virtue of the operation of law, all the writ petitioners suffered disqualification by virtue of Section 164(2)(a) read with Section 167(1)(a). Hence, Section 164(2)(a) of the Companies Act, 2013 alone cannot be read in isolation. Mr.G.Rajagopalan further submitted that the petitioners have not approached this Court with clean hands and it is the duty of the directors to make statutory compliance within the time prescribed under the law. Since the petitioners have failed in their statutory duties for not filing the annual returns for a continuous period of three financial years, the striking off the names of the companies and the consequential effect of disqualification of their directorship in the same company or in any other company cannot be found fault with. Taking support from the judgment of the Calcutta High Court in **Nabendu Dutta v. Arindam Mukherjee**, **(2004) 55 SCL 146 (Cal.)**, it has been submitted that the Calcutta High Court has held that on the date of commencement of the amending Act, if any person has been a director in a defaulting company, he

shall also be debarred to be appointed as director of any company for a period of five years. Therefore, when Section 164(2)(a) have two limbs, the words "no person who is or has been director of a company" which are used in the present continous and present perfect continuous form, respectively and the words "has not filed financial statements or annual returns for any continuous period of three years" which are used in present perfect tense, meaning thereby that in case any company has defaulted in filing its financial statement or annual return for a continuous period of three years, then no person who is occupying the position of director shall be eligible for reappointment as director of that company and he shall be debarred to be appointed as director in any company for a period of five years. In the light of the above, actions have been taken by the answering respondent only in identification of the disqualified directors and in accordance with the operation of law as envisaged under Section 164(2)(a) read with Section 167(1)(a). Therefore, this Court does not have any jurisdiction to undo the disqualification which had occurred on account of operation of law. Referring to paragraph-15 of the counter affidavit, the learned Additional Solicitor General submitted that on verification of the statutory returns for the financial years 2013-14, 2014-15 and 2015-16, it was found that the defaulting companies in which the petitioners are directors, failed to file the statutory returns for the financial years 2013-14, 2014-15, 2015-16, hence, they would stand disqualified due to the operation of law under Section 164(2)(a) of the Companies Act, 2013.

15. Again referring to paragraph-23 of the counter affidavit, the learned Additional Solicitor General submitted that the respondents have not passed any order disqualifying the petitioner-directors and they have only identified their disqualification which had occurred by operation of law and only that information had been made public on the web portal of the answering respondent. Therefore, the provision of Section 164(2)(a) read with Section 167(1)(a) having not envisaged any opportunity of hearing to the errant companies and the actions taken thereunder are by operation of the relevant mandate of the Companies Act, 2013, the question of applying the principles of natural justice in that situation does not arise to anyone of them. The reason being the petitioners themselves are aware of the factor that they have not filed their statutory returns within the statutory period. Therefore, their companies are liable to be struck off and as a legal effect of strike off, they are also automatically liable to be disqualified. Concluding his arguments, the learned Additional Solicitor General submitted that the companies which have already been struck off cannot avail the benefit of CODS 2018, because the scheme provides that a struck off company, to avail the CODS 2018 scheme, should be restored by an order of the National Company Law Tribunal under Section 252 of the Companies Act, 2013. Since Section 164(2)(a) envisages the period of disqualification for five years from the third consecutive default, only after noticing the third consecutive default, their DIN numbers had been deactivated to prevent such directors to be appointed or reappointed as directors. Only under this background, their names have been displayed on the Ministry's

website for public information. Therefore, all the writ petitions are liable to be dismissed, he pleaded.

16. Heard learned counsel for the parties.

17. All the parties have admitted that no person who is or has been a director of a company which has not filed the financial statements or annual returns for a 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. To disqualify a director under Section 164(2)(a), it has to be established that three consecutive defaults have occurred for not filing the financial statements. To find out the three consecutive defaults, it is necessary to find out which is the first default. The expression "financial year" as defined under Section 2(41) of the 2013 Act in relation to any company or body corporate, means the period ending on 31st day of March every year and where it has been incorporated on or after the first day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up. To follow the first condition, it is also necessary to refer to Section 164 of the 2013 Act, as notified on 1.4.2014, which envisages the disqualification of directors. The corresponding new section under the 2013 Act viz., Section 164(2)(a) uses the word "company" as against "public company" that was used under Section 274(1)(g) of the 1956 Act. It is also relevant to see

that Section 274(1)(g) of the 1956 Act dealt with the disqualification of directors and the comparison of both the sections spell out the following:-

Section 274(1)(g) of the 1956 Act w.e.f.13.12.2000	*Section 164(2)(a) of the 2013 Act w.e.f.01.04.2014*
(1) A person shall not be capable of being appointed director of a company, if- (g) such person is already a director of a public company which,- (A) has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or (B) has failed to repay its deposit or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more: Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company, in which he is a director, failed to file annual accounts and annual returns under sub-clause (A) or has failed to repay its deposit or interest or redeem its debentures on due date or pay dividend referred to in clause (B)	(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 reappointed 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.

18. A careful reading of Section 274(1)(g) of the 1956 Act, which came into effect from 13.12.2000, clearly states that "three financial years commencing on and after the first day of April, 1999", whereas the new Section 164(2)(a) of the Companies Act 2013 uses the expression "for any continous period of three financial years". Therefore, when it is an admitted fact that Section 164(2)(a) was made effective from 1.4.2014, as per Section 2(41) of the 2013 Act, the first financial year for the purpose of Section 164 of the 2013 Act

would be 31.3.2015 viz., from 1.4.2014 to 31.3.2015. Therefore, the second financial year would be from 1.4.2015 to 31.3.2016 and the third financial year would be from 1.4.2016 to 31.3.2017. While so, the respondents in para-22 of the counter affidavit have stated that all the petitioners have committed default with regard to the filing of the statutory returns for the financial years 2013-14, 2014-15 and 2015-16. The relevant averment in paragraph-22 of the counter reads as follows:-

> "22....Therefore, the petitioners have not approached this Hon'ble Court with clean hands as the petitioners are at default with regard to filing of the statutory returns for the financial years 2013-14, 2014-15 and 2015-16. The petitioners thence do not deserve any relief, much less removing of disqualification, which has occurred as per the operation of law due to their own mistake..."

19. When Section 164 of the 2013 Act was made effective only from 1.4.2014 and Section 2(41) of the said Act defines the term "financial year", as follows,

> "S.2(41) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made

up:

> Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:
>
> Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.",

the first financial year commences only from 1.4.2014 to 31.3.2015. Therefore, the first and second respondents have wrongly taken the previous financial year i.e., 1.4.2013 that is not contemplated in Section 164(2)(a) of the 2013 Act either expressly or by implication that the financial year would be from 1.4.2013. The Registrar of Companies being a statutory body cannot be allowed to misconstrue the provisions of a statute which infringes the fundamental rights of the petitioners. Hence the writ petitions filed under Article 226 of the Constitution of India, which is the only remedy available to the petitioners, are maintainable and the wrong interpretation of Section 164(2)(a) of the 2013 Act for wrongly disqualifying the petitioners to be eligible to be appointed as director of that company or to be appointed in any other company for a period of five years by taking into account the default in filing of annual returns or financial

statements even before the provision came into force by the second respondent, is bad in law.

20. The said mistake committed by the statutory body in miscalculating the three consecutive financial years contemplated under Section 164(2)(a) can be again seen in paragraph-15 of the counter affidavit, which reads as follows:-

> "15. I submit that the petitioner/petitioners, as on the date of disqualification, was/were directors in defaulting companies. On verification of the statutory returns filing position for the financial years 2013-14, 2014-15 and 2015-16, it was found that the defaulting companies in which the petitioners are directors, failed to file the statutory returns for the financial years 2013-14, 2014-15 and 2015-16. In view of the said failure the petitioners have become disqualified due to the operation of law under section 164(2)(a) of the Companies Act, 2013."

21. A careful reading of the above paragraph clearly shows that the second respondent has wrongly applied Section 164(2)(a) of the 2013 Act to disqualify the petitioners as eligible to be appointed as director of that company or reappointed in any other company for a period of five long years, hence, the impugned orders, per se, on the face of it, glaring apparently, are liable to be set aside.

22. Even the disqualification cannot be given retrospective effect, as admittedly the provisions of the Act came into effect from 1.4.2014. The grievance of the petitioners shows that the Registrar of Companies, the second respondent herein has given effect to the provisions of the Act with retrospective effect and disqualified the petitioners from 1.11.2016 itself. As mentioned above, the first financial year is from 1.4.2014 to 31.3.2015 and the second and third financial years would be from 1.4.2015 to 31.3.2016 and from 1.4.2016 to 31.3.2017 respectively. As Section 164(2)(a) also refers to the annual return or financial statement, Section 92(4) of the new Act has given sixty days time limit to file the annual return from the annual general meeting or the last date on which the annual general meeting to be held viz., on or before 29.11.2017. For ready reference, Section 92(4) is extracted hereunder:-

> "92.Annual return.--(4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty 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."

23. In the light of the above section, when the annual general meeting for the year ending 31.3.2017 can be conducted within six months from the

closing date of financial year i.e., 30.9.2017 for private companies, the third financial year would be ending on 31.3.2017 and the last date for convening the annual general meeting is 30.9.2017. Again the last date for filing the annual return is 29.10.2017 and the balance sheet could be filed on 30.10.2017. When this is the legal position, as per Section 164 of the 2013 Act, the disqualification of directors of a private company can get trigerred only on or after 30.10.2017, hence, the list of disqualified directors published on the website of the first respondent in September, 2017 has no legal legs to stand up to the scrutiny of the Court under Article 226 of the Constitution of India.

24. Moreover, the General Circular No.08/14 dated 4.4.2014 issued by the Ministry of Corporate Affairs also helps the case of both sides with regard to the applicability of the relevant financial years. It is relevant to extract the contents of the said circular as follows:-

> "A number of provisions of the Companies Act, 2013 including those relating to maintenance of books of account, preparation, adoption & filing of financial statements (and documents required to be attached thereto), Auditors reports and the Board of Directors report (Board's report) have been brought into force with effect from 1st April, 2014. Provisions of Schedule II (useful lives to compute depreciation) and Schedule III (format of financial statements) have also been brought into force from that date. The relevant Rules pertaining to these provisions have also been notified,

placed on the website of the Ministry and have come into force from the same date.

The Ministry has received requests for clarification with regard to the relevant financial year with effect from which such provisions of the new Act relating to maintenance of books of account, preparation, adoption and filing of financial statements (and attachments thereto), auditors report and Board's report will be applicable.

Although the position in this behalf is quite clear, to make things absolutely clear it is hereby notified that the financial statements (and documents required to be attached thereto), auditors report and Board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/schedules/rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April, 2014, the provisions of the new Act shall apply."

25. A perusal of the same clearly shows beyond any iota of doubt that the financial statement, auditor's report and board's report in respect of financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/schedules/rules of the Companies Act, 1956 and that in respect of financial years commencing on or after 1st April 2014, the provisions of the new Act shall apply. This general circular issued after the amendment Act

came into effect from 1.4.2014 has clarified the position beyond any pale of doubt as to the applicability of the relevant financial year. Inasmuch as the first respondent also has issued a General Circular No.08/14 stating that in respect of the financial year commencing on or after 1st April 2014, the provisions of the new Act shall apply, it is not known how the second respondent has applied the wrong financial year with effect from 1.4.2013, in a way to give retrospective effect. In this context, it is more relevant to refer to the ratio laid down by the Constitution Bench of the Apex Court in **Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited, (2015) 1 SCC 1**, wherein it has been observed as follows:-

> "*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 [(1870) LR 6 QB 1], 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, [(1994) 1 AC 486]. 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. Indian Tobacco Association, [(2005) 7 SCC 396], 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., [(2006) 6 SCC 289]. 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 (*sic* not) confronted with any such situation here.

31. In such cases, retrospectively 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.

43. There is yet another very interesting piece of evidence that clarifies the provision beyond any pale of doubt, viz., the understanding of CBDT itself regarding this provision. It is contained in CBDT Circular No.8 of 2002 dated 27.8.2002, with the subject "Finance Act, 2002 – Explanatory Notes on provision relating to Direct Taxes". This circular has been issued after the passing of the Finance Act, 2002, by which amendment to Section 113 was made.

> In this circular, various amendments to the Income Tax Act are discussed amply demonstrating as to which amendments are clarificatory/retrospective in operation and which amendments are prospective. For example, Explanation to Section 158-BB is stated to be clarificatory in nature. Likewise, it is mentioned that amendments in Section 145 whereby provisions of that section are made applicable to block assessments is made clarificatory and would take effect retrospectively from 1st day of July, 1995. When it comes to amendment to Section 113 of the Act, this very circular provides that the said amendment along with amendments in Section 158-BE, would be prospective i.e. it will take effect from 1.6.2002."

26. A perusal of the above observations also would show that if an authority has issued any clarificatory circular clarifying the position beyond any pale of doubt after the passing of the relevant Act, such circular issued after the passing of the Act has to be construed as an interesting piece of evidence that clarifies the position beyond pale of doubt. Therefore, when the General Circular No.08/14 dated 4.4.2014 issued by the first respondent also has made it clear that in respect of the financial year commencing on or after 1st April 2014, the provisions of the new Act shall apply, the first financial year for the purpose of Section 164(2)(a) shall be 1.4.2014 to 31.3.2015 and the second and third financial years would be from 1.4.2015 to 31.3.2016 and from 1.4.2016 to 31.3.2017 respectively. Moreover, the submission made by Mr.T.K.Bhaskar that the petitioner-directors cannot be disqualified had the respondents taken into consideration the additional period of 270 days available as per the first and second provisos to Section 403 of the Companies Act, 2013, as they stood prior

to amendment, stating as follows,

> "Provided that any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of two hundred and seventy days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed:
>
> Provided further that any such document, fact or information may, without prejudice to any other legal action or liability under the Act, be also submitted, filed, registered or recorded, after the first time specified in first proviso on payment of fee and additional fee specified under this section.",

to file any document from the date by which it should have been filed on payment of additional fee, cannot also be easily brushed aside, for the reason that although the additional period of 270 days granted to file any document has been substituted by the Act 1 of 2018 now, the fact remains that on the date of passing of the impugned orders, the first and second provisos under Section 403 granting additional time to the directors to file the returns with the second respondent were very much available. But this was also again overlooked by the respondents.

27. Coming to the violation of the principles of natural justice before invoking Section 248(1) of the Companies Act, 2013 for striking off and Section

164(2)(a) dealing with the disqualification of directors, the respondents have no doubt issued public notice from 5.7.2017. Illustratively, in W.P.No.25455 of 2017, when a notice under Section 248 of the Companies Act, 2013 for striking off the name of the company from the register of members for non filing of the annual returns for a continuous period of three financial years was issued, on receipt of the same, the petitioner also conveyed its no objection for striking off the name, since there was no intention to revive the company by its letter dated 1.6.2017. Thereafter, the name of Birdies and Eagles Sports Technology Private Limited was struck off under Section 248 of the Companies Act, 2013 by a gazette notification dated 5.7.2017. The notice dated 18.3.2017 in W.P.No.25455 of 2017 is under Section 248(1) of the 2013 Act for striking off the name of the company from the register of companies stating that the company has not been carrying on any business or operation for a period of two financial years. The notice purported to be sent by the second respondent on 24.8.2017 is only for the purpose of calling for explanation as to why the company should not be struck off from the register of members, since the company has not been carrying on any business or operation for a period of two financial years, whereas Section 164(2)(a) deals with the disqualification of the directors of that company or in any other company for a period of five years for not filing the financial statement and annual return for a continuous period of three financial years. The purpose of giving an opportunity of hearing is to prevent injustice. In the cases on hand, the petitioners have been greatly prejudiced by the action of the second respondent, as they cannot function as directors not only in the

company from which they are disqualified, but also in any other company which is in compliance of the provisions of the new Act. It may be noted here that a company can be struck off if that company has not been carrying on any business for a period of two financial years and if their directors had not filed the financial statements or annual returns for any continuous period of three financial years, they shall be, no doubt, disqualified to be reappointed as a director of that company for a period of five years from the date on which the said company fails to do so, whereas for disqualification of the directors under Section 164(2)(a), there must be a default for not filing the financial statement or annual return for a continuous period of three financial years. For instance, if the company has not been carrying on business for two financial years viz., year ending on 31.3.2015 and 31.3.2016, after giving due notice, the name of the company can be struck off, whereas the director cannot be disqualified, because only two financial years have ended. But for disqualification, there should be three financial years. This vital aspect also has been completely lost sight of by the second respondent and to avoid any such grave injustice, the second respondent, in my considered opinion, ought to have sent show cause notices to the petitioners before taking any action, as it affect their right to continue as directors in other companies which are complying with the provisions of law. Here again, the Constitution Bench of the Apex Court in **A.K.Kraipak and others v. Union of India, AIR 1970 SC 150**, reiterating the rule of the principles of natural justice, observed as follows:-

"The aim of the rules of natural justice is to secure justice

or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse jndex propria cause), and (2) no decision shall be given against a party without affording him a reasonable hearing (Audi alter partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith without bias and not arbitrarily or unreasonably But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect

than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, [1969] 1 SCR 317, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

28. In **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others, (2015) 8 SCC 519**, the Apex Court, while stressing the importance of natural justice, has held as follows:

"18....It is also trite that when a statute is silent, with no positive words in the Act or the Rules spelling out need to hear the party whose rights or interests are likely to be affected, requirement to follow fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise.

28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including *audi alteram partem,* have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a

decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

35. From the above discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K.Kraipak case (1969) 2 SCC 262 that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In Maneka Gandhi v. Union of India, (1978) 1 SCC 248 also the application of principle of natural justice was extended to the administrative action of the State and

its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required..."

29. In fine,

(a) When the New Act 2013 came into effect from 1.4.2014, the second respondent herein has wrongly given retrospective effect and erroneously disqualified the petitioner-directors from 1.11.2016 itself before the deadline commenced wrongly fixing the first financial year from 1.4.2013 to 31.3.2014.

(b) By virtue of the new Section 164(2)(a) of the 2013 Act using the expression "for any continuous period of three financial years" and in the light of Section 2(41) defining "financial year" as well as their own General Circular No.08/14 dated 4.4.2014, the first financial year would be from 1.4.2014 to 31.3.2015, the second financial year would be from 1.4.2015 to 31.3.2016 and the third financial year would be from 1.4.2016 to 31.3.2017, whereas the second respondent clearly admitted in paras 15 and 22 of the counter affidavit that the default of filing statutory returns for the financial years commenced from 2013-14, 2014-15 and 2015-16 i.e., one year before the Act 2013 came into force. This is the basic incurable legal infirmity that vitiates the entire impugned proceedings.

(c) By virtue of the first proviso to Section 96(1) of the 2013 Act, Annual General Meeting for the year ending on 31.3.2017 can be held within six months from the closing of financial year i.e., 30.9.2017, additionally in the light

of Section 164(2)(a) referring to "annual return" and "financial statement", the time limit to file annual return under Section 92(4) of 2013 Act is sixty days from Annual General Meeting or the last date on which Annual General Meeting ought to have been held, hence, the time limit to file balance sheet under Section 137(1) of the 2013 Act is again thirty days from Annual General Meering. Therefore, in view of these legal position, the disqualification could get triggered off only on or after 30.10.2017 only, if any company fails to file annual forms for three financial years. Importantly, it is to be borne in mind that even beyond that time limit, additional time limit of 270 days was available by virtue of the then first proviso to Section 403.

(d) Although there is no statute or provision expressly spelling out the observance of the principles of natural justice against disqualification of directors, as the legal right of the petitioners to continue as director in other company or to be reappointed in any other company, which are scrupulously following the provisions of the Companies Act, have been deprived of, the principles of natural justice should have been adhered to by issuing proper notice to all the directors.

(e) When the disqualification clause was not attracted to the directors of private companies under the old Act of 1956, the same cannot be allowed to take a retrospective effect under the new Act, when the provision of Section 164(2)(a) came into force only from 1.4.2014. This is also for one more reason that the failure to file the annual returns has been adequately taken care of by the penal provision under Section 92, making it clear that every officer of the company who is in default shall be punishable with imprisonment for a term

which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both. Again under Section 137, the failure to file the financial statement visits punishment with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both. Further, under Section 441(4), the default in filing returns or accounts compoundable by Tribunal or Regional Director or by any officer authorized by the Central Government.

(f) In view of the above legal position, when the default in filing the accounts or returns are made as compoundable offence, Section 164(2)(a) providing the disqualification of director of private company not only in the defaulting company, but also from other company in which the petitioner is a director, diligently and meticulously following every provision of law, is certainly disproportionate to the lapse, as it is only regulatory in nature, because, notice to be sent under Section 248(1) of the Companies Act, 2013 by the Registrar of Companies for striking off the name of the company from the Registrar of Companies on the premise that the company has not been carrying on any business for a period of two financial years, is different from the disqualification under Section 164(2)(a), inasmuch as a company can be struck off, if the company has not been carrying on any business for a period of two financial years, whereas for disqualification, the criteria is three financial years. Therefore, in my considered opinion, although the petitioners have not challenged the provision of Section 164(2)(a), as the respondents have not

followed the principles of natural justice, extinguishing the corporate life of the directors to the extent of disqualifying them to hold the directorship in the other companies, the said provision is liable to be read down, hence, Section 164(2)(a) is read down to the extent it disqualifies the directors in other companies which are scrupulously following the requirements of law, making it clear that no directors in other companies can be disqualified without prior notice.

(g) However, it is made clear beyond any pale of doubt that the mischief of removal of the names of the companies by the Registrar of Companies and the disqualification of the directors in the defaulting company will go together, as it is inseparable, and the Registrar of Companies need not give fresh notice to the directors for their disqualification from the dormant company, if there is a failure to file the financial statement or annual return for any continuous period of three financial years as per Section 164(2)(a).

30. For all the aforementioned reasons, the impugned orders are set aside and the writ petitions shall stand allowed. Consequently, all the connected writ miscellaneous petitions are closed. However, there shall be no order as to costs.

31. Since this Court at the time of entertaining the writ petitions viz., in W.P.Nos.6896 of 2018 etc., vide order dated 26.3.2018 had directed the deposit of Rs.30,000/- and any other charges which are payable under the CODS 2018 Scheme in the Registry of this Court to the credit of their respective writ petitions

by way of fixed deposit receipts in the name of the Registrar General for a period of one year, the Registrar General of this Court is directed to transmit the said deposits to the Registrar of Companies, Tamil Nadu, Chennai to reconcile the same to the respective accounts of the companies.

Speaking order 03.08.2018

Index : yes

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To

1. The Secretary to Union of India
   Ministry of Corporate Affairs
   Shastri Bhawan
   Dr. Rajendra Prasad Road
   New Delhi 110 001

2. The Registrar of Companies
   Tamilnadu Chennai
   Block No.6, B Wing 2nd Floor
   Shastri Bhawan
   No.26 Haddows Road
   Chennai 600 006

3. The Registrar General
   High Court, Madras

4. The Section Officer
   Accounts Section
   High Court, Madras

T.RAJA, J.

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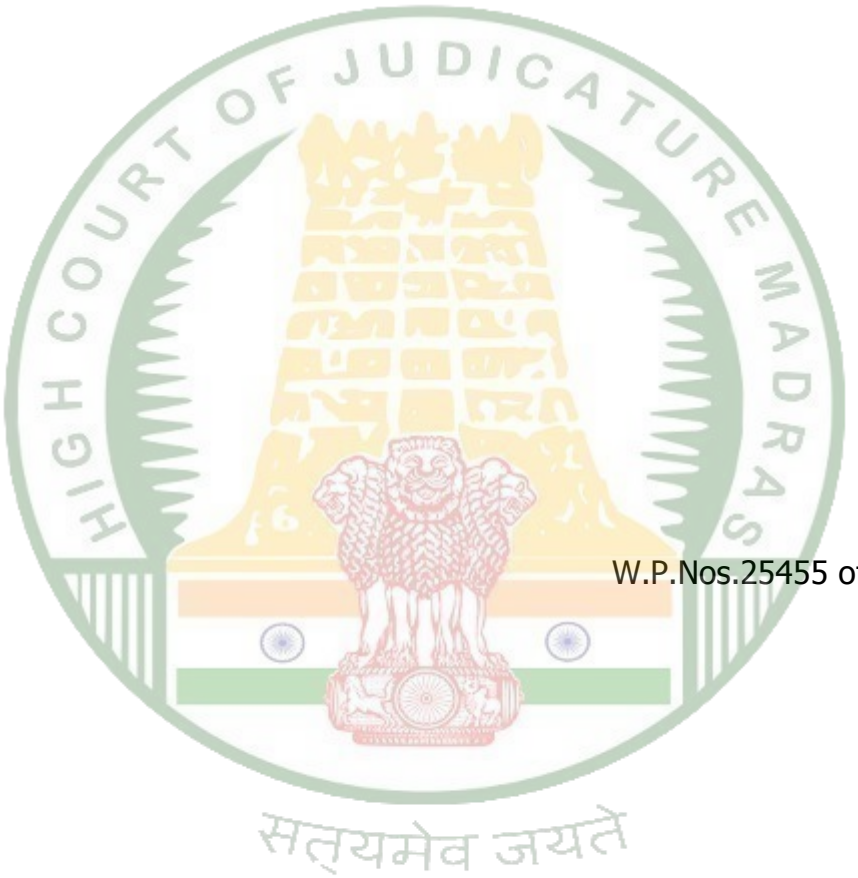

Order in

W.P.Nos.25455 of 2017 etc.

03.08.2018