

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION LOD. NO.2765 OF 2017

Ashni Biyani .. Petitioner  
Versus  
Union of India & Anr. .. Respondents

Mr. Janak Dwarkadas, Senior Advocate with Rohan Rajadhyaksha, Sonali Mathur, Ms. Shreevardhini Parchure and Mr. Ashwini Vaidialingam i/b. AZB & Partners for petitioner  
Mr. Aditya Thakkar with Ashish Mehta i/b. Ashish Mehta for respondents.

CORAM : SHANTANU S. KEMKAR &  
G.S.KULKARNI, JJ

DATE : OCTOBER 12, 2017

P.C.:

1. Learned Counsel for the respondents seeks three weeks time to file reply. He prayed that the matter be posted after Diwali vacation.

2] We have considered the prayer made by the learned Counsel for the petitioner for grant of ad-interim relief which reads thus:-

(c) that pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay the effect and/or operation and/or implementation of the impugned disqualification dated September 7, 2017 (Exh."E" hereto) insofar as it relates to this petitioner."

3] Prima facie, in our considered view, grant of the aforesaid interim relief would tantamount to grant final relief. We have also gone through the provisions contained in section 164(2)(a) of the Companies Act, 1956 pertaining to the disqualification for appointment of Director. Having gone through the said provision, it is clear that provision contemplate that no person who is or has been a Director of the Company which has not filed financial statement or annual returns for any continuous period of three years, suffer disqualification for appointment of Director.

4] In the present case, as per the impugned notification, the alleged disqualification is on the basis of non filing of financial statement or annual returns for a continuous period of three years i.e. 2014, 2015 and 2016.

5] We are not prima facie, in agreement with the submission made by the learned Senior Counsel for the petitioner that the default of filing of financial statements for the year 2014 cannot be reckoned for the purpose of calculation of three years disqualification or to the contention that the respondents are giving retrospective effect to the provisions contained in section 164(2)(a) of the Act. We are also of the view that the order of disqualification has come into effect from 7<sup>th</sup>

September 2017 and as per the provisions contained in section 167 of the Act, the effect of the disqualification has already taken place by operation of law. As a result we decline to grant interim relief.

6] However, pendency of this petition will not preclude the petitioner from filing an application under Rule 14(5) of the Companies (Appointment of Directors) Rules, in Form DIR-10. In case such an application is filed by the petitioner, the authority is free to take appropriate decision on it in accordance with law.

7] Reply to the petition be filed within three weeks. S.O. to 6<sup>th</sup> November 2017. H.O.B.

(G.S.KULKARNI, J)

(SHANTANU S. KEMKAR, J.)

सत्यमेव जयते