

Explain removal of 1 lakh companies from RoC, action against directors: HC to MCA

The Delhi High Court has sought a formal explanation from the Ministry of Corporate Affairs for its twin circulars of September 2017 that deregistered over 1 lakh companies for failure to file annual returns for three years and disqualified their directors. The court also temporarily revived the identification numbers of the disqualified directors to allow them to function in other active companies.

The directives were challenged in the court by two directors of five private companies struck off from the register of companies who said they were constrained in functioning as directors in three of their other companies that were active.

“... issues raised in this writ petition require adjudication and are of grave importance so far as the working of the spirit, intent and objects of the Companies Act, 2013, more specifically the manner in which the respondents would operate Sections 164 and 248 of the enactment,” a two-judge bench comprising the acting chief justice Gita Mittal and justice C Hari Shankar said in their order.

The ministry, through circulars issued on September 6 and 12, 2017, removed over 1 lakh companies that had failed to file their annual returns and other documents from the register of companies in a crackdown on shell entities.

Over 3.5 lakh directors of such companies were disqualified with retrospective effect from April 1, 2014. Their director identification numbers (DINs) were deactivated, preventing them from acting in this capacity in other companies.

In the first such instance of its kind, the high court also revived the DINs of directors affected by the government’s move. “Their DINs will be revived forthwith,” the court said.

The order, allowing directors to function in other active companies for now, is expected to open the floodgates for other similarly placed individuals to move the courts for appropriate relief. The petition, filed through lawyers GP Madaan and Ishan Madaan, contended that the Companies Act of 2013 could not have been applied retrospectively to remove their companies from the register without first giving them a hearing under the 2016 rules.

It argued that the move to disqualify them retrospectively made all their earlier actions suspect under law. Besides, it would prevent them from filing papers for other companies which were otherwise active, adding to the already existing sick units.

The directors raised several important law points, including whether the 2013 law could penalise them for acts done before it came into force.

Companies can be struck off the register only after due notice, they argued. In this case, no such opportunity was given to the companies, they said.

The directors were not only disqualified from the companies struck off the list, but also new ones under Sections 164 (2) and 167 of the 2013 act. They contested the legality of Section 164 on the

ground that it was borrowed from Section 274 (1) (g) of the Companies Act, 1956, which applied only to public limited companies.

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