



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 3465 OF 2021 (GM-RES)

BETWEEN

1. MR. DILIPRAJ PUKKELLA
S/O. THIRUMALARAO PUKKELLA
DWARAKA,
AGED ABOUT 44 YEARS,
2. MR. MUHAMMED IMTHIYAZ
S/O. MUHAMMED IQBAL,
AGED ABOUT 48 YEARS,

BOTH ARE DIRECTORS OF
M/S. VIHAAN DIRECT SELLING
(INDIA) PRIVATE LIMITED,
HAVING REGISTERED OFFICE AT
GROUND FLOOR, E1 BLOCK (BEECH),
MANYATA EMBASSY BUSINESS PARK,
OUTER RING ROAD,
BENGALURU-560 045.

...PETITIONERS

(BY SRI. SHREEHARI KUTSA., ADVOCATE)

AND

1. UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF CORPORATE AFFAIRS,
A-WING, SHASTRI BHAVAN,
DR. RAJENDRA PRASAD ROAD,
NEW DELHI-110 001.
2. THE REGIONAL DIRECTOR





(SOUTH EAST REGION),
3RD FLOOR, CORPORATE BHAWAN,
BANDLAGUDA, NAGOLE,
TATTIANNARAM VILLAGE,
HAYAT NAGAR MANDAL,
RANGA REDDY DISTRICT,
HYDERABAD, TELENGANA-500 068.

3. THE REGISTRAR OF COMPANIES
E-WING, 2ND FLOOR,
KENDRIYA SADAN,
KORAMANGALA,
BENGALURU,
KARNATAKA-560 034.

.... RESPONDENTS

(BY SRI. ARAVIND KAMAT ASG FOR
SRI. M.N. KUMAR., CGC FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE ACTION OF THE RESPONDENTS DISQUALIFYING AND BLOCKING THE DIN'S OF THE PETITIONERS AND PREVENTING THE PETITIONERS FROM FILING ANY DOCUMENT (E-FORMS) WITH THE RESPONDENT NO.3 THROUGH MCA PORTAL THROUGH THEIR DIN/DSC NO. 07590137 & 07590139, AS UNCONSTITUTIONAL AND IN VIOLATION OF THE FUNDAMENTAL RIGHTS OF THE PETITIONERS AS GURANTEED BY ARTICLE 19(1)G) OF THE CONSTITUTION OF INDIA AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 07.07.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ



CAV ORDER

1. The Petitioners are before this Court seeking for the following reliefs:

- i. Declare that the action of the Respondents disqualifying and blocking the DINs of the petitioners and preventing the petitioners from filing any document (e-Forms) with the Respondent No.3 through MCA portal through their DIN/DSC No.07590137 & 07590139, as unconstitutional and in violation of the fundamental rights of the Petitioners as guaranteed by Article 19(1)(g) of the Constitution of India, and*
- ii. Pass such other/ further order(s) as deemed fit by this Hon'ble Court in view of the facts and circumstances of the present case in the interest of justice and equity.*
- iii. Grant such other relief that this Hon'ble Court be pleased to deem fit in the facts of the present case.*

2. The petitioners claim to be the directors of M/s Vihaan Direct Selling (India) Private Limited (hereinafter referred to as "**M/s Vihaan**") who were appointed as directors in the year 2016. When the company attempted to file its annual returns and statutory filings for the year 2017-18 and 2018-19, a pop-up dialogue box on the official web portal of Respondent No.1-Ministry of Corporate Affairs



displayed the message "the Directors disqualified under the provisions".

3. It is in that background that the petitioners made certain representations to the Respondent No.3-the Registrar of Companies and requested Respondent No.3 to activate the Director Identification Number ("**DIN**") of the directors to enable the company to comply with the statutory filings.
4. On 07.08.2018, the company was informed by the Ministry of Corporate Affairs that an inspection of the books of account and other books of records and papers of the company would be carried out under Section 206 (5) of the Companies Act, 2013 and the petitioners were called upon to furnish certain information and documents. Subsequent to, the inspection vide letter dated 12.12.2018 respondent No.2-the Regional Director had informed the company about certain irregularities and called upon



to provide explanation/information along with documentary evidence in relation thereto.

5. Thereafter a show-cause notice came to be issued on 21.5. 2019 by the Registrar of Companies, which after some time, the company provided a reply to on 04.06.2019. On 07.06.2019, a petition was filed by the Registrar of Companies for the winding up of the company before the National Company Law Tribunal. It is from those documents that the petitioners came to know about their disqualification from all companies as directors. In that background, several correspondences were exchanged when the same did not yield any result, the petitioners have filed the above proceedings seeking for the aforesaid reliefs.
6. The submission of Sri.D.R.Ravishankar., learned Senior Counsel appearing for the petitioners is that;
 - 6.1. The petitioners cannot be disqualified as an interim measure from all companies, the said disqualification causes immense harm and



injury to the interests of the petitioners. It is on account of such disqualification that the petitioners have been unable to file the returns and documents relating to the company, thereby resulting in further delay and violation.

6.2. His submission is that not only have the petitioners been disqualified from the company- M/s Vihaan, as regards which allegations have been made, but also as regards any other company. Thus, the actions and/or activities of M/s Vihaan have come to an end, the petitioners not being directors in any other company the same has not adversely affected them.

6.3. Lastly, he submits that even if there is a power for disqualification and exercising such power if any order is passed, the said order can only be enforced for a period of five years. In the present case, the order having been passed in



the year 2018, the period of five years has expired in the year 2023, and as on today, there cannot be any embargo on the petitioners exercising their directorship in any company, including M/s Vihaan.

7. Sri.Aravind Kamath., learned Additional Solicitor General appearing for the respondents, would submit that;

7.1. There have been serious allegations which have been made against M/s Vihaan and its directors, and necessary action has been taken. There are violations which have been alleged against the directors, in view of the dubious conduct of the company as also on account of various complaints which have been received alleging Ponzi scheme to have been conducted by the company, which has resulted in losses to several thousand depositors. It is in that background that action was taken against the



directors who have violated the various applicable provisions of the Companies Act.

7.2. He, however, fairly submits that the period of five years having expired, the order has spent itself and there is no particular provision for extending the said order. The said order has come to an end, and the authorities will be taking necessary action in relation thereto.

7.3. On enquiry as to whether any proceedings have been initiated against the petitioners and the company as regards the allegations made in the objections filed in the present proceedings and the documents which have been produced, he submits that several actions have been taken and many of which are pending.

8. Heard Sri.D.R. Ravishankar., learned Senior Counsel appearing for the petitioners and Sri.Arvind Kamath, learned Additional Solicitor General, appearing for the respondents, perused papers.



9. The points that would arise for consideration are;

- 1. Whether under Section 164 of the Companies Act 2013, a director can be disqualified from being a director in the company as regards which the allegations are made, as well as regarding any other company in which he or she is a director, for which no allegations are made?**
- 2. Whether there is any power with the concerned authorities to extend a period of disqualification beyond a period of five years?**
- 3. What order?**

10. I answer above points are as under;

11. **Answer to point No.1: Whether under Section 164 of the Companies Act 2013, a director can be disqualified from being a director in the company as regards which the allegations are made, as well as regarding any other company in which he or she is a director, for which no allegations are made?**

11.1. Section 164 of the Companies Act 2013 is reproduced hereunder for easy reference;

164. Disqualifications for appointment of director.—

(1) A person shall not be eligible for appointment as a director of a company, if —

(a) he is of unsound mind and stands so declared by a competent court;



(b) he is an undischarged insolvent;

(c) he has applied to be adjudicated as an insolvent and his application is pending;

(d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;

(f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(h) he has not complied with sub-section (3) of section 152.

[(i) he has not complied with the provisions of sub-section (1) of section 165.]

(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 re-appointed 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:

[Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.]

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

[Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.]

11.2.Sub-section (1) of Section 164 deals with disqualification in general in as much as if any of the grounds under Sub-section (1) of Section 164 are attracted, then a person cannot be appointed as a director; that is, this would



apply to a situation where he has not already been appointed as a director.

11.3.If the grounds listed under Sub-section (1) of Section 164 were to occur after a person has been appointed as a director, then from that date, such person would be disqualified from continuing as a director, and also from being appointed as a director in any other company.

11.4.In the present case, the disqualification which is alleged against the petitioners is under Sub-section (2) of Section 164, an account of the directors having failed to repay the deposit accepted by the company or to pay interest thereon etc.,

11.5.None of the ingredients of Sub-section (1) of Section 164 has been applied in the present case. It is Clause (b) of Sub-section (2) of Section 164 which has been made applicable,



read with Clause (a) of Sub-section (1) of Section 167.

11.6. In terms of Sub-section (2) of Section 164, if any of the grounds under Sub-section (2) are attracted, no person who has or has been a director of a company 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.

11.7. The proviso would indicate that even if there is a default, no person would incur the disqualification for a period of six months from the date of his appointment. That is to say, if only there is a non-compliance with Clause (a) and Clause (b) of Sub-section (2) of Section 164 after a period of six months from the date of appointment of a director only then would the disqualification occur.



11.8. Section 167 of the Companies Act 2013 is reproduced hereunder for easy reference;

167. Vacation of office of director.—(1) *The office of a director shall become vacant in case—*

(a) he incurs any of the disqualifications specified in section 164:

[Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section];

(b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;

(e) he becomes disqualified by an order of a court or the Tribunal;

(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:

[Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—

(i) for thirty days from the date of conviction or order of disqualification;



(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or

(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.]

(g) he is removed in pursuance of the provisions of this Act;

(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

*(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable 1*** with fine which shall not be less than one lakh rupees but which may extend to 2 [five lakh rupees].*

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

11.9. In terms of Clause (a) of Sub-section (1) of
Section 167, if a director incurs any



disqualification specified in Section 164, the office of the director becomes vacant. In terms of proviso to Clause (a) of Sub-section (1) of Section 167, it is categorically stated that where a director incurs a disqualification under Sub-section (2) of Section 164, the office of the director shall become vacant in all the companies other than the company which is in default under that Sub-section.

11.10. The reason for the same is not far to see in as much as, if the office of the director were to be held to be vacant in the defaulting company, then a new director can be appointed even though the default continues. It is for that reason that in terms of proviso, it has been made clear that if the disqualification happens in view of Sub-section (2) of Section 164, then the office of director in the company in default will not become vacant. But as regards any



other company which is not in default, if a director were to be disqualified in terms of Sub-section (2) of Section 164 the office of director in that company would become vacant.

11.11. Needless to say, if the default by a director is made in two or more companies attracting Sub-section (2) of Section 164 even then it is only in respect to the companies which are in default of Sub-section (2) of Section 164 that Clause (a) of Sub-section (1) of Section 167 would be attracted and if there is no default by any other company where the same person is a director in that event the office of the director in that non-defaulting company will become vacant.

11.12. The submission of Sri.D.R.Ravishankar., learned Senior counsel that a director can only be disqualified in the company in default and not in a company in which he is not in default, cannot be sustained. The disqualification is not



with reference to a company but with regard to an action not taken by the director coming under Sub-section (2) of Section 164 i.e., if the company has not filed financial statements or annual returns for a continuous period of 3 years or has failed to repay the deposits accepted by it or failed to pay interest thereon or failed to redeem any debentures on the date due, etc., which is a positive act required to be done by the company, which has not been so done.

11.13. The vacation of office of the director under Clause (a) of Sub-section (1) of Section 167 applies to the reasons provided both under Sub-section (1) of Section 164 and Sub-section (2) of Section 164. However, the proviso restricts the vacation of the post of director only to the company in default.



11.14. The intent of Section 164 is to disqualify a director who is in default. The claim of the Sri.D.R.Ravishankar., learned Senior counsel that the same violates Article 19(1)(g) of the Constitution of India is therefore not sustainable. Since this disqualification has been incurred by a director on account of inaction by a director, unless it has been shown by a director, that the director has done everything possible at the hands of such director and for reasons not in the control of such director the annual returns could not be filed. For example; if the other director refuses to sign the balance sheets. In such a situation, provisions would have to be made to enable the filing of the financial statements or annual returns by a single director, so that such disqualification is not incurred by a director for reasons not in control of such director.



11.15. Insofar as Clause (b) of Sub-section (2) of Section 164 are concerned, this is as regarding repayment of the deposits etc., as indicated ***supra***. Insofar as these aspects are concerned, it is all the directors who would be jointly and severally responsible for such repayment and there cannot be any distinction made between one director and the other director. Thus, so long as any default is made to the requirement of Clause (b) of Sub-section (2) of Section 164, such a director would be disqualified as a director of that company or from appointment in any other company for a period of 5 years.

11.16. In terms of the proviso to Clause (a) of Sub-section (1) of Section 167, it is only the office of the director in the company in default that there would be a vacation of the office of the director. This is also for the reason that (i) if the offices are held to be vacant, a new director



could be appointed, as also for the reason that (ii) the defaulting director would continue to be liable for the violation as envisaged under Clause (b) of Sub-section (2) of Section 164. The Right to Trade and Business and practice profession under Article 19(1)(g) of the Constitution of India is not absolute but is subject to reasonable restrictions that may be imposed under law.

11.17. This restriction of disqualification and practice of trade and profession as a director being imposed by Section 164 and 167 of the Companies Act 2013, the reasons for the same have been expounded hereinabove, I am of the considered opinion that Section 164 and 167 are reasonable restrictions to the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. Thus, the claim under this



head of account by the petitioner is not sustainable.

11.18. Hence, the answer point No.1 by holding that the under Section 164 of the Companies Act 2013, a director can be disqualified from being a director in the company as regards which the allegations are made, as well as regarding any other company in which he or she is a director, for which no allegations are made.

12. Answer to point No.2; Whether there is any power with the concerned authorities to extend a period of disqualification beyond a period of five years?

12.1. Section 164 has been reproduced hereinabove.

In terms of Clause (b) of Sub-section (2) of Section 164, it is seen that no person who has or has been a director of company of which the reasons as indicated in Clause (a) and (b) of Sub-section (2) of Section 164 are attracted,



would be eligible to be reappointed as a director of that company or appointed in any other company for a period of 5 years from the date on which the said company fails to do so. The said Sub-section (2) of Section 164 does not provide for extension of the period of 5 years, the restriction can only be for a period of 5 years.

12.2. In the present case, the disqualification of the petitioners having occurred in the year 2018, the said 5 years expired in the year 2023 and therefore cannot be continued thereafter.

12.3. ***In that view of the matter, I answer point No.2 by holding that there is no power with the concerned authorities to extend a period of disqualification beyond a period of five years.***

13. **Answer to point No.3: What Order?**



13.1.No ground being made out in the writ petition stands ***dismissed***, with the observation that the disqualification of petitioners in the present case has come to end in the year 2023.

Sd/-
(SURAJ GOVINDARAJ)
JUDGE

SR
List No.: 2 SI No.: 2