

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1224 OF 2018

Satish Kumar Gupta ... Petitioner  
versus  
Union of India and Anr. ... Respondents

WITH

WRIT PETITION NOS.1731/2018, 1812/2018, 1830/2018,  
1849/2018, 2001/2018, 2012/2018, 2034/2018, 2058/2018,  
2065/2018, 2084/2018, 2261/2018, 2286/2018, 2323/2018,  
2333/2018, 2394/2018, 2424/2018, 2481/2018, 2654/2018,  
2768/2018, 2802/2018, 2949/2018, 2958/2018, 3113/2018,  
3124/2018, 3142/2018, 3255/2018, 3402/2018, 3520/2018,  
3560/2018, 3572/2018, 3594/2018, 3675/2018, 157/2019,  
159/2019, 410/2019, 520/2019, 557/2019, 628/2019, 688/2019,  
693/2019, 745/2019, 758/2019, 759/2019, 1066/2019,  
1215/2019, 1236/2019, 1241/2019, 1372/2019, 1448/2019,  
1450/2019, 1456/2019, 1478/2019, 1495/2019, 1503/2019,  
1524/2019, 1525/2019, 1533/2019, 1562/2019, 1563/2019,  
1564/2019, 1584/2019, 1587/2019, 1591/2019, 1696/2019,  
1767/2019, 1784/2019, 1964/19, 1969/2019, 2005/2019,  
2014/2019, 2108/2019, 2322/2019, 2439/2019, 2465/2019,  
2537/2019, 2590/2019, 2697/2019, 2718/2019, 2721/2019,  
2723/2019, 2812/2019, 3034/2019, 3088/2019, 3089/2019,  
3117/2019, 3493/2019, 60/2020, 75/2020, 181/2020,  
304/2020, 379/2020

AND

WRIT PETITION (L) NOS.2400/2018, 2925/2018, 3238/2018,  
3239/2018, 3316/2018, 3317/2018, 3319/2018, 3898/2018,  
3951/2018, 3954/18, 4003/2018, 4195/2018, 4219/2018,  
4313/2018, 259/2019, 1446/2019, 1471/2019, 1503/2019,  
1507/2019, 1527/2019, 1565/2019, 1566/2019, 1572/2019,  
1597/2019, 1646/2019, 1650/2019, 1668/2019, 1675/2019,  
1692/2019, 1706/2019, 1707/2019, 1708/2019, 1710/2019,  
1711/2019, 1716/2019, 1718/2019, 1719/2019, 1720/2019,  
1722/2019, 1723/2019, 1819/2019, 1821/2019, 1823/2019,  
1829/2019, 1988/2019, 1989/2019, 1990/2019, 1996/2019,  
2018/2019, 2019/2019, 2032/2019, 2304/2019, 2319/2019,  
2523/2019, 2674/2019, 2828/2019, 2829/2019, 2963/2019,  
3015/2019, 3086/2019, 3132/2019, 3445/2019, 39/2020,  
72/2020

**CIVIL APPELLATE JURISDICTION**

WRIT PETITION NOS.7773/2018, 8411/2018, 14325/2018,  
404/2019, 1848/2019, 1967/2019, 1968/2019, 3032/2019,  
3033/2019, 4212/2019, 5648/19, 5650/19, 11189/2019,  
11428/2019, 11430/2019, 11431/2019, 11432/2019, 112/2020  
AND  
WPST NOS.19133/2019, 10203/2019, 19268/2019, 19288/2019,  
21493/2019, 25745/2019, 30607/2019, 30608/2019,  
30611/2019, 30612/2019, 1952/2020

Ms.Deepika Bhargava i/b J. Sagar Associates for  
the Petitioner in WP/1224/2018.

Mr.Rahul Kedar a/w Shweta Rankhambe i/b  
Aagam J. Doshi for the Petitioner in WP/  
1731/2018, WP/1812/2018, WP/2012/2018 & WP/  
1478/2019.

Mr.Mahesh Pandey a/w K.R.Tiwari and Aarti  
Gouri for the Petitioner in WP/2001/2018.

Mr.Roshan Tanna for the Petitioner in  
WP/2058/2018.

Jasmeet Kaur a/w Dattatray Adarkar i/b Solicis  
Lex for the Petitioner in WP/2065/2018.

Mr.Ranjeev Carvalho a/w Mr.Ayush Kothari i/b  
Sabeena Mahadik for the Petitioner in WP  
2084/2018.

Mr.Saurabh Pandya for the Petitioner in WP/  
2261/2018, WP/2394/2018, WP/2424/2018, WP/  
2768/2018, WP/3124/2018 & WPL/3898/2018,  
WPL/152/2019, WPL/2674/2019 &  
WPL/2829/2019.

Mr.Jayom Shah a/w Ruchika Motwani i/b  
Priyanka Mishra for the Petitioner in  
WP/2286/2018.

Mr. Zal Andhyarujina a/w Ms Khushboo Shah

Rajani, Disha Ponda, Ishani Khanwilkar i/b AKR Advisors LLP for the Petitioner in WP/2323/2018.

Mr.Rohan Sawant a/w Krishma Shah i/b ANP Partners for the Petitioner in WP/2333/2018.

Mr.Apporv Srivastav with Avinash Lalwani, Kanchan Singh i/b Shubro Dey for the Petitioner in WP/2481/2018.

Mr.Nitesh Menon i/b MDP & Partners for the Petitioner in WP/2802/2018.

Mr.Cyrus Ardeshir with Ferzana Behramkamdin & Bharti Bhansali, i/b FZB & Associates for the Petitioner in WP/ 3142/2018.

Ms.Prachi Wazalwar a/w Heena Vichare, Aditi Abhyankar for the Petitioner in WP/3255/18, WP/1527/2019, 3954/2018 and ASWP/11428/2019.

Mr.Akshay Petkar a/w Mr.Aniket Malu for the Petitioner in WP/2858/18, WP/3250/18, ASWP/8411/18, WPL/2925/18, WPL/2019/19, ASWPL/19268/19, WP/19288/19, WP/21493/19 and WPL/1668/19.

Mr.Kevik Setalvad-Senior Advocate a/w Mr.Anil Jarial i/b Legal Associates for the Petitioner in WP/3560/18.

Mr.Sanjay Rego i/b Deven Dwarkadas & Partners for the Petitioner in WP/3572/18, WPL/4219/18.

Mr.Adwait Bhonde for the Petitioner in ASWP/7773/18, WP/11430/19, WP/11431/19, WP/11432/19 and WPL/19133/19.

Mr.Abhay Wadhwa i/b Pankaj B. Singh for the Petitioner in ASWP/14325/18, WP/112/2020, WPL/30607/19, WPL/30611/19, WPL/30612/19 and WPL/30608/19.

Mr.Aditya Khanna a/w Mr.Kartik K. Tiwari for the Petitioner in WP/157/19, WP/1969/19, WPL/3238/18, WPL/3239/18, WPL/3316/18, WPL/3317/18 and WPL/3319/18.

Sheeja John i/b M/S M.P.Savla & Co. for the Petitioner in ASWP/404/19.

Ms.Gayatri Ramchandran i/b Acuity Law for the Petitioner in WP/410/19.

Mr.Navankur Pathak i/b Darshan Furia for the Petitioner in WP/520/19.

Mr.G.C.Mohanty i/b Mohanty & Associates for the Petitioner in WP/628/19.

Mr.Ajit S. Tawar i/b Ajit S. Tawar & Co. for the Petitioner in WP/688/19, WP/745/19, WP/2537/19 and WP/2590/19.

Ms.Dipti Kuber i/b Roy's Law Firm for the Petitioner in WP/693/19.

Mr.Sunny Shah i/b Hemant Sethi & Co. for the Petitioner in WP/758/19, WP/759/19, WP/60/2020 and WPL/1829/19.

Mr.Shrey Fatterpekar a/w Natasha Bhot i/b M.Mulla Associates for the Petitioner in WP/1066/19.

Mr.Zal Andhyarujina a/w Keanan Nagporwala i/b Kochhar & Co. for the Petitioner in WP/1215/19.

Ms.Kavita Mohan Kutty for the Petitioner in WP/1236/19.

Ms.Deepali Jaiswar i/b Jyoti Muley for the Petitioner in WP/1241/19.

Mr.Ieshan Sinha a/w Aayesh Gandhi, Rajeev Kumar i/b Wadia Gandhi & Co. for the Petitioner in WP/1372/19.

Mr.Pankaj R. Dubey for the Petitioner in

WP/1448/19 and WPL/1507/19.

Ms.Shrushti Relekar i/b India Law Alliance for the Petitioner in WP/1450/19 and WP/1456/19.  
Mr.Nikhil Sakhardande a/w Shubra Swamy i/b Sonu Tandon for the Petitioner in WP/1503/19.

Mr.Zain Mookhi a/w Ms.Surbhi Soni, Rohini Menon i/b Manish G. Varma for the Petitioner in WP/1524/19, WPL/1821/19, WPL/1832/19.

Mr.Vivek Kantawala a/w Amey Patil, Vivek M.Sharma i/b Vivek Kantawala & Co. for the Petitioner in WP/1525/19, WP/1562/19, WP/1563/19, WP/1564/19, WP/1591/19, WP/2718/19, WP/2723/19 and WPL/1706/19, WPL/1707/19, WPL/1708/19, WPL/1710/19, WPL/1711/19, WPL/1716/19, WPL/1718/19, WPL/1719/19, WPL/1720/19 and WPL/1722/19.

Mr.Ravichandra S. Hegde a/w Mr.Robin Shah, Geetika Jain, Ankita Roy i/b Parinam Law Associates for the Petitioner in WP/1533/19.

Mr.Gaurav Srivastav a/w Angela Singh i/b Simeen Shaikh for the Petitioner in WP/1696/19.

Mr.Sujit Lahoti a/w Mr.Shubham Agrahari i/b Anoma Law Group LLP for the Petitioner in WP/1784/19.

Ms.Ujwala Karpe i/b Ashutosh S. Kale for the Petitioner in ASWP/1848/19.

Mr.Anuj Desai i/b Bijal K. Rathod for the Petitioner in WP/1964/19.

Ms.Niyati Merchant i/b MDP & Partners for the Petitioner in ASWP/1967/19.

Mr.Hasit Seth a/w Aniketh Nair, Dev Motta i/b Mustafa Motiwala for the Petitioner in WP/2005/19.

Mr.Benny Joseph i/b B.J.Law Offices LLP for the Petitioner in WP/2014/19, WP/2108/19.

Mr.Vishesh Srivastav for the Petitioner in WP/2439/19.

Mr.Vindu Prakash Pandey a/w Pramodkumar Pandya i/b Legal Edge LLP for the Petitioner in WP/2465/19.

Mr.Vishal Kanade a/w Komal Khushalani, Shadab S. Jan i/b M/S Crawford Bayley & Co. for the Petitioner in WP/2721/19.

Ms.Pooja Yadav i/b Expert Jurist LLP for the Petitioner in WP/2812/19.

Mr.Anupam Chattopadhyay for the Petitioner in ASWP/3032/19, ASWP/3033/19, ASWP/5648/19, ASWP/5650/19 and ASWPL/10203/19.

Mr.Ashutosh Singh for the Petitioner in WP/3034/19, WP/3088/19.

Mr.Abhay Wadhwa i/b Sanjay M.Yegurwar for the Petitioner in WP/3089/19 and WPL/1597/19.

Ms.Ritu Shetty i/b Hariani & Co. for the Petitioner in WP/3117/19.

Ms.Alisha Khan i/b RMG Law Associates for the Petitioner in WP/3493/19.

Mr.Rahul D. Oak a/w Siddhesh J. Shetye for the Petitioner in ASWP/4212/19 and WPL/4313/18.

Mr.Nikhil Kulkarni a/w Meher Puja Mathur for the Petitioner in ASWP/11189/19.

Ms.Gaurangi Patil a/w Mr.Amit Mishra i/b GP & Associates for the Petitioner in WP/181/2020.

Mr.Jeetendra Ranawat i/b Pranav C. Khatku for the Petitioner in WP/304/2020 and WPL/39/2020.

Mr.Anuj Desai a/w Prachi Pandya i/b Corporate Attorneys for the Petitioner in WP/379/2020.

Mr.Navid Yunus Memon for the Petitioner in WPL/4003/18.

Mr.Pankaj Kode i/b Himanshu Kode for the Petitioner in WPL/259/19.

Mr.Ativ Patel i/b AVP Partners for the Petitioner in WPL/1446/19.

Mr.Ajit N. Jakhadi a/w Amol Chile for the Petitioner in WPL/1471/19.

Mr.Sidharth Samantaray i/b Fauzan Shaikh for the Petitioner in WPL/1565/19 & WPL/1566/19.

Mr.Shadab S. Jan a/w Komal Khushalani i/b Crawford Bayley & Co. for the Petitioner in WPL/1692/19.

Noelle Ann Park for the Petitioner in WPL/1723/19.

Mr.Vikhil Dhoka a/w Maulik Chokshi i/b GM Legal for the Petitioner in WPL/1996/19.

Ms.Kajal Sarvaiya i/b Reeti Law Associates for the Petitioner in WPL/2018/19.

Mr.Yashwardhan Tiwari for the Petitioner in WPL/2032/19.

Mr.Ayush Agarwal i/b Shete S. Lalasaheb for the Petitioner in WPL/2304/19, WPL/2319/19 and WPL/2523/19.

Mr.Saurabh Pakale i/b Pravin M. Kapadia for the Petitioner in WPL/2828/19.

Ms.Ayushi Agarwal a/w Mr.Ashish Pinto for the Petitioner in WPL/2983/19.

Mr.Dikshat Mehra a/w Krutika Cheulkar i/b Ms.Rajani Associates for the Petitioner in WPL/3015/19.

Ms.Meghna Lakhota i/b Keshav Borhade for the  
Petitioner in WPL/3086/19.

Mr.Shrey Fatterpekar a/w Mr.Vikram Jakhadi i/b  
VIS Legis Law Practice for the Petitioner in WPL/  
3132/19.

Ms.Bindu Bhatia i/b Ankur Kumar for the  
Petitioner in WPL/3445/19.

Hiral Thakkar i/b Fraser Alexander for the  
Petitioner in ASWPL/25745/19.

Mr.Pradeep Sancheti-Senior Advocate a/w  
Saurabh Bachhawat i/b Yashvi Panchal for the  
Petitioner in WPL/72/2020.

Mr.Asadullah Shaikh a/w K. Jain i/b AAK Legal  
for the Petitioner in ASWPL/1952/19.

None for the Petitioner in WP/1830/18,  
WP/1849/18, WP/2034/18, WP/2654/18,  
WP/2949/18, WP/3113/18, WP/3402/18,  
WP/3675/18, WP/159/19, WP/557/19,  
WP/1495/19, WP/1584/19, WP/1587/19,  
WP/1767/19, ASWP/1968/19, WP/2322/19,  
WP/2697/19, WP/75/2020, WPL/2400/18, WPL/  
3951/18, WPL/3954/18, WPL/4195/18,  
WPL/1503/19, WPL/1646/19, WPL/1650/19,  
WPL/1675/19, WPL/1819/19, WPL/1988/19  
WPL/1989/19, WPL/1990/19.

Mr.Anil Singh-Additional Solicitor General i/b  
Anusha P. Amin for Union of India in  
WP/2034/18, WP/410/19, WP/758/19,  
WP/759/19 and WPL/2537/19.

Ms.Anjani Kumar Singh for Union of India in WP/  
3675/18.

Mr.Ajinkya Jaibhave for Respondent Nos.1 and 2  
in ASWP/7773/18, WP/2697/19,  
ASWPL/10203/19.

M.S.Bhardwaj a/w Ashish Mehta for Respondent  
in ASWP/11189/19.

Mr.Niranjan P. Shimpi a/w Sanjay K. Gunjkar for  
the Respondent in ASWP/14325/18.

Mr.Anil Singh-Additional Solicitor General a/w  
Shailesh S. Pathak for Union of India in  
WP/1969/19.

Mr.Anil Singh-Additional Solicitor General with  
Sandesh Patil for Union of India in WP/1525/19,  
WP/1562/19, WP/1563/19, WP/1564/19,  
WP/1767/19, WP/2108/19, WP/2718/19,  
WP/2723/19, WP/1706/19, WP/1707/19,  
WP/1710/19, WP/1711/19, WP/1716/19,  
WP/1718/19, WP/1719/19, WP/1720/19,  
WP/1722/19.

Mr.Pravartak Pathak with Carina Xavier, Jayesh  
Gupta for Respondents in WP/1784/19,  
WP/3034/19, WP/3088/19, WP/3117/19,  
WP/75/2020, WPL/1988/19, WPL/1989/19, WPL/  
1990/19, WPL/2018/19, ASWPL/21493/19.

Mr.Anil Singh, Additional Solicitor General a/w  
Aditya Thakker, Ashish Mehta, Jonas Thomas,  
Gaurav Kotwani i/b Ethos Legal Alliance for  
Union of India in WP/1731/18, WP/1812/18, WP/  
2012/18, WP/2058/18, WP/2261/18,  
WP/2333/18, WP/2394/18, WP/2424/18,  
WP/2654/18, WP/2768/18, WP/2949/18,  
WP/2958/18, WP/3113/18, WP/3124/18,  
WP/3142/18, WP/3402/18, WP/3520/18,  
WP/3560/18, WP/3572/18, WP/8411/18,  
WP/159/19, WP/520/19, WP/557/19,  
WP/628/19, WP/693/19, WP/1066/19,  
WP/1215/19, WP/1236/19, WP/1372/19,  
WP/1448/18, WP/1450/19, WP/1456/19,  
WP/1478/19, WP/1495/19, WP/1503/19,  
WP/1524/19, WP/1533/19, WP/1696/19,  
WP/1848/19, WP/1968/19, WP/2005/19,  
WP/2721/19, ASWP/3032/19, ASWP/3033/19,  
ASWP/5648/19, ASWP/5650/19,

ASWP/11189/19, WP/2400/18, WP/3898/18, WP/  
3951/18, WP/3954/18, WP/4195/18, WP/259/19,  
WP/1503/19, WP/1723/19, WP/2963/19.

**CORAM :- S. C. DHARMADHIKARI &  
R.I.CHAGLA, JJ.**

**DATE :- FEBRUARY 07, 2020**

**P.C. :-**

- 1.** The matters were placed before us for considering the prayer for interim relief.
- 2.** On these petitions, on 15<sup>th</sup> October, 2019, an order was passed by a Division Bench, to which, one of us (S.C.Dharmadhikari, J.), was a party.
- 3.** The Court had, after quoting the sections, raised certain queries.
- 4.** Consistent with those queries, Mr.Anil Singh, learned Additional Solicitor General, submits that the prayers in these writ petitions are virtually to stay the operation, enforcement and effect of the law itself. Even when there is no challenge to the constitutional validity, the writ petitions contain a prayer by which the petitioners are calling upon this Court to go into the issue of the individual directors' disqualification and in that process, the Court is requested to virtually re-write the Section.

5. The attempt is made on several grounds to urge, according to Mr.Singh, that the law should not take effect at all.

6. However, with reference to queries posed in this order, Mr.Singh has been fair enough to point out that a challenge to the Constitutional validity of the provision has not been upheld.

7. He has also pointed out the judgments of Karnataka High Court, Madras High Court, Delhi High Court and Gujarat High Court. Though these judgments have been rendered by the learned Single Judges, the Karnataka High Court, Gujarat High Court and Madras High Court have held that the provision cannot be applied retrospectively. The Delhi High Court has clarified that in this case, there is no retrospective operation or application of the provision. Mr.Singh, however, submits that in this case, there is a ministerial or administrative act of filing the financial statements or annual returns. If they are not filed continuously for a period of three years, then, the disqualification is invited or incurred. He would submit that the provisions have been construed and interpreted by the above High Courts and in that process, the argument of the Central Government has been noted. In that regard, our attention is invited to the judgment and order of the High Court of Karnataka at Bengaluru reported in Indian Law Reporter 2019 Karnataka 3768 (*Yashodhara Shroff and Ors.*

*Vs. Union of India and Ors.*). Mr.Singh has invited our attention to para 191 of this judgment to urge that the Government argued that the proviso to Section 164(2) is only clarificatory in nature and, therefore, it has retrospective operation, by which, the petitioners would continue as directors of the defaulting company, but they would vacate office in all other companies. This position is envisaged even under Section 167(1) clause (a) of the Act and, therefore, the proviso only clarifies that the directors of the defaulting company would not vacate the office in the defaulting company in order to ensure that the defaulting company is not left without any director.

**8.** The learned Single Judge in para 193 of this judgment has held that the object of introducing Section 167(1)(a) of the Act, when such a provision was conspicuous by its absence in 1956 Act, is to bring in a higher degree of transparency and accountability in corporate governance so as to ensure control over the companies in the interest of shareholders and the public in general and in the interest of Indian economy. Therefore, the argument of the petitioners' advocate that Section 167(1)(a) of the Act did not envisage vacation of office of a director under Section 164(2) of the Act, is incorrect. Thereafter, the judgment refers to other arguments.

**9.** After having heard the learned Additional Solicitor General, Mr. Ardeshir, Mr. Andhyarujina and some other counsel, we are of the view that the order dated 15<sup>th</sup> October, 2019 passed on these petitions raising legal queries, sufficiently protects the interest of both sides. This Court has performed a balancing act. Therefore, taking that order and the queries further it is clear that Section 164 of the Companies Act, 2013 provides for disqualifications for appointment of director. By sub-section (1), the eligibility for appointment of the director of a company is the aspect dealt with. By sub-section (2), it is said 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 years, 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. Then, there is a proviso, which has been inserted by Act 1 of 2018.

**10.** Sub-section (2) of Section 164 has been, on the own showing of all parties before us, brought into effect on 1<sup>st</sup> April, 2014. So is Section 167. In that Section, we find that it deals with vacation of office of director. That office becomes vacant if any of the disqualifications specified in Section 164 are attracted. Those would include the aspect covered by sub-section (2) of Section

164. Additionally, *prima facie* we find that when the Section is containing a marginal heading “disqualification for appointment”, by sub-section (2) it covers a case of a person who has been a director of a company. If such a company has not filed financial statements or annual returns for any continuous period of three financial years, then, as further noted in the Section, the disqualification is incurred. He cannot be appointed in other company also for a period of five years from the date on which the defaulting company fails to do so. The office of the director will become vacant in terms of Section 167, if the disqualifications are incurred. The proviso is inserted to clause (a) of sub-section (1) of Section 167 with effect from 7<sup>th</sup> May, 2018. There, it is said that when the disqualification is incurred 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.** *Prima facie*, the queries that were posed in our order that the restriction is only on re-appointment and not from continuing as a director of the defaulting company would mean that a director would continue until the end of the extant term, but would not be eligible for reappointment for another five years thereafter. Further, if such a director had been appointed within

six months of the company becoming a defaulting company, he would not incur disqualification. The query that we raised with regard to interpretation of Section 167 sub-section (1) clause (a) is also in consonance with the intent of the legislation and we are of the opinion that the stand of the Central Government before the Karnataka High Court would sufficiently protect the interest of the petitioners before us. Section 167(1)(a) is also considered when this Court raised the above queries. Once the queries themselves denote that the Court was of the *prima facie* opinion that the re-appointment of director of that company, which has not filed financial statements or annual returns for any continuous period of three financial years would mean that the person can continue as noted in the order passed on 15<sup>th</sup> October, 2019 till the end of the extant term, but would not be eligible for re-appointment for another five years thereafter, then, there is sufficient opportunity to enable him to correct the affairs of that company. As far as Section 167(1)(a) is concerned, there, the vacancy would not occur in the case of a director, who has incurred the disqualifications specified in Section 164 more so, when he incurs that disqualification is sufficiently set out in the statute itself and in the order passed on 15<sup>th</sup> October, 2019. Therefore, the following order would sub-serve the ends of justice.

**12.** As far as the arguments on the applicability of principle of retrospectivity or that Section 164 could not have a retrospective operation, *prima facie*, with respect, we do not think that it will be proper to accept the interpretation based on the provision by Mr.Andhyarujina for the simple reason that it is filing of the financial statements or annual returns, which is contemplated in clause (a) of sub-section (2). If the company, in which the person is or has been a director, has not filed financial statements or annual returns for any continuous period of three financial years, on the date on which the company fails to do so, the disqualification is incurred. It is a ministerial or administrative act of filing which is to be performed by the Company. Therefore, if such financial statements or annual returns for any continuous period of three financial years have not been filed, then, the action is triggered.

**13.** *Prima facie*, we do not think that the Circular which has been issued by Ministry of Corporate Affairs and the notice dated 7<sup>th</sup> September, 2017 is in any way inconsistent or contravening the position emerging from the plain reading of this section. In the event, there is any inconsistency, then, statute must prevail. The Circulars are issued by the members of the Executive and is the same is position qua notices of the Department. However, the

interpretation of the legal provision is a job or task to be performed by the Court and understanding of the legal provisions by a member of Executive or any Executive functionary cannot be a substitute for that exercise. The Court cannot rely upon them to interpret the legal provisions. The interpretation of the legal provisions must be based on the language of the statute. In such circumstances, we do not think that the interim relief as sought can be granted. A blanket stay or a relief having far reaching legal consequences as sought cannot be granted. The prayers in that behalf are rejected. However, the Section shall operate consistent with the observations by this Court in the forgoing paragraphs. The application for interim reliefs is disposed of in these terms.

**14.** We clarify that this order only expresses our tentative and *prima facie* view and shall not influence the Court while finally deciding the matter and particularly the Constitutional challenge.

(R.I.CHAGLA, J.)

(S.C.DHARMADHIKARI, J.)