IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19 of 2018
Date of Decision.05.01.2018

Manoj Pant ....Petitioner

Vs

The Union of India ....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL
HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rohit Kumar, Advocate with petitioner in person for the petitioner.

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<u>AMIT RAWAL J.(ORAL)</u>

Affidavit by the petitioner complying with the requirements of the Maintainability of Public Interest Litigation Rules, 2010 dealing with the maintainability and entertainment of the petition has been filed in Court and the same is taken on record.

The petitioner has approached this Court with the following prayer:-

"Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of a writ of mandamus or any other writ of mandamus to direct the respondent herein to initiate proceedings in public interest to amalgamate to six (6) bank loan defaulters companies as mentioned above in petition with their group companies as per Section 237 of the Companies Act, 2013;
(a) for costs;
(b) for such other and further reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the present case and thus render justice.

AND

Any other writ, order of direction as this Hon'ble High Court may deem fit and proper in facts and circumstances of the case.

The contention of the petitioner is that the Government had resorted to certain measures, instruments and power which have failed to resolve the problem of Non Performing Assets (NPAs) in any substantive manner. In this regard, a reference has been made to Section 237 of the Companies Act, 2013, which reads as under:-

> ***"237. Power of Central Government to provide for amalgamation of companies in public interest -***
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> *(1) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.*
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> *(2) The order under sub-section (1) may also provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.*
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> *(3) Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor, and in case the interest or rights of such member or creditor in or against the transferee company are less than his interest in or rights against the original company, he shall be entitled to compensation to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.*
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> *(4) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within a period of thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.*
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> *(5) No order shall be made under this section unless—*
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> *(a) a copy of the proposed order has been sent in draft to each of the companies concerned;*

(b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and

(c) the Central Government has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(6) The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

As per the aforementioned provisions, it has been stated that the respondent is in the process of bailing out companies having huge liability, despite have been declared as Non Performing Assets (NPAs) long ago. A reference has been made to the order of the High Court of Bombay in writ petition bearing No.2743 of 2014 wherein the action of the Government while exercising the power under Section 396 of the Companies Act, 1956 (repealed) and Section 237 of the new Act i.e. Companies Act, 2013 whereby the National Spot Exchange Limited (NSEL) and 63 Moons Technologies Limited, formerly known a Financial Technologies (India) Limited (FTIL) were ordered to be amalgamated was challenged. The aforementioned writ petition had been dismissed vide order dated 04.12.2017 (Annexure P-3).

The contention of the petitioner is that despite the fact that in the interest of public, the Government had amalgamated the two aforementioned companies/exchanges but that various other companies having huge liability and declared NPAs, no action has been taken against them for the reason best known and therefore, there is blatant violation of public interest. He further submits that this writ petition may be treated as representation and may be given an opportunity to appear before the respondent-Union of India represented by the Secretary, Ministry of Corporate Affairs.

We have heard learned counsel for the petitioner and appraised the paper book. Without going into merits and demerits of the case, we are of the view that the present writ petition be treated as representation. Accordingly, we dispose of the writ petition with a direction to the respondent to treat the present writ petition as representation submitted by the petitioner and pass a speaking order thereon within a period of four weeks from the date of receipt of certified copy of this order, after affording an opportunity of hearing to the petitioner. The petitioner shall appear before the respondent next week with liberty to file additional documents, if any, in support of his averments made in the writ petition to be treated as representation. He shall also be at liberty to assail the order passed on the representation, if aggrieved.

(AMIT RAWAL)
JUDGE

(ANIL KSHETARPAL)
JUDGE

January 05, 2018
Pankaj*

Whether speaking/reasoned	**Yes**
Whether reportable	**No**