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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 692/2016 & CM No.2826/2016**

% **Date of decision : 16th April, 2018**

DINESH KOTHARI & ORS ..... Petitioners

Through : Ms. Sanjana Srikumar, Adv.

versus

UNION OF INDIA & ORS ..... Respondents

Through : Ms. Mrinalini Sen and Ms. Kritika Gupta, Advs.for R-1 to 4

Mr. C. Mukund, Mr. M.B. Elakkunanan and Ms. Geethika Mitta, Advs. for R-5

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition was filed on 28th November, 2015 complaining of violations of the provisions of Foreign Exchange Management Act, 1999 (FEMA) and the FDI Policies framed by the Department of Industrial Policy and Promotion (DIPP) (*respondent no.2 herein*) seeking the following prayers :

> *"1. Conduct an inquiry/investigation into the affairs and transactions of all FDI recipient companies/websites regarding violation indulged in by them through various mechanisms directly*

or indirectly or even clandestinely with their closely held business entities,

2. Direct that the FDI recipient companies/ websites who are directly/indirectly carrying out the business activities in E-Commerce Retail sector in India, in violation of the extant FDI policy/FEMA guidelines, be restrained/stopped from operating.

3. Direct that the required legal action be initiated as per the law against the companies/e-commerce sites/entities who have violated of the provisions of FEMA and the rules/bye-laws/guidelines framed there under,

4. Direct the Respondents to place on record the Action Taken Report before this Hon'ble Court."

2. It appears that during the pendency of the writ petition, the Government of India has clarified the FDI Policy. In the counter affidavit which has been filed by the respondent no.2 (at page 454), it is stated that the Government of India has since put in place a strong and latest policy framework on foreign investments which have been arrived at after detailed consideration with all stakeholders; that a review of the FDI Policy is an on-going process and significant changes have been effected in such policy from time to time to ensure that India remains a desired investment destination. So far as violation of the policy and action which is taken by the respondents is concerned, the same is set out in para 8 of the counter affidavit thus :

"Detailed FDI policy on various sectors indicating therein sector-wise FDI limits is provide in 'Consolidated FDI Policy Circular of 2016, hereinafter referred as FDI Policy, as amended

from time to time. Para 3 of Annexure 6 of the Consolidated FDI Policy Circular of 2016 stipulates that FDI is a capital account transaction and any violation of FDI regulations are covered by the penal provisions of the FEMA. Reserve Bank of India administers the FEMA and Directorate of Enforcement under the Ministry of Finance is the authority for the enforcement of FEMA. True copy of the FDI policy is annexed and marked as ANNEXURE A-1."

3. The counter affidavit filed on record would show that for violation of the declared FDI Policy, the Enforcement Directorate has taken action against the violators. The Enforcement Directorate has also filed a counter affidavit (page 662) pointing out that it is inquiring into e-commerce entities which are guided by self gain or motive other than in public interest and that the Bangalore Zonal office of the answering respondent had initiated enquiries against ten (10) e-commerce entities and in 5 out of these 10 of those enquiries, investigations are reported to be underway. Chargesheets have been prepared in 4 out of 5 cases in which investigation has been completed and the same are pending consideration. Besides that, enquiries were also initiated against *Firstcry.com* and *Infibeam.com* by the Mumbai and Ahmedabad offices respective of the answering respondent and the same are under progress.

4. It would appear that therefore the respondents are conscious of their responsibilities and are taking action for violation of the applicable

FDI Policy. Needless to say, the required action upon completion of the investigation would have to abide by the procedure prescribed by law.

5. In view thereof, no further orders are called for in the present writ petition which is hereby disposed of.

CM No.2826/2016

In view of the disposal of the petition, this application does not survive for adjudication and is dismissed.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 16, 2018/kr

HIGH COURT OF DELHI
सत्यमेव जयते