

B.D Pawar vs Union Of India, Through Ministry Of ... on 10 September, 2020

Author: Vibhu Bakhru

Bench: Vibhu Bakhru

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 1285/2020

B.D PAWAR

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Through Mr Mukul Rohatgi, Senior Adv
Mr Vikram Nankani, Senior Advocate w
Mr Vijay Aggarwal, Mr Arvind Lakhawa
Ms Misha Rohatgi, Mr Mudit Jain, Mr
Aggarwal, Ms Barkha Rastogi and Mr S
Pandey, Ms Mansi Khanna, Advocates.

versus

UNION OF INDIA, THROUGH MINISTRY
OF CORPORATE AFFAIRS & ANR.

..... Respo

Through Mr Chetan Sharma, ASG with
Mr Anurag Ahluwalia, CGSC, Mr Abhigyan
Siddhant, Mr Amit Gupta, Mr Anish Roy,
Mr Sahej Garg, Advocates for R1 and R2(UO
with Mr Hari Kishan, Prosecutor, SFI0.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER

% 10.09.2020 [Hearing held through video conferencing]

1. Allowed, subject to all just exceptions.

CRL.M.A.12512/2020 (amendment of writ)

2. This is an application filed on behalf of the petitioners seeking to amend the writ petition and also impleading National Spot Exchange of India Limited (NSEL) as respondent no.3.

3. Considering that the present petition is at an initial stage and the counter affidavit has not been filed, the application is allowed and the amended petition is tsaken on record.

W.P.(CRL) 1285/2020 & CRL.M.A. 11295/2020 (interim relief) CRL.M.A. 12513/2020 (interim relief)

4. The petitioner has filed the present petition impugning an order dated 15.10.2018 passed by the Central Government, inter alia, authorizing Serious Frauds Investigation Office (SFIO) to institute proceedings under Section 241 of the Companies Act, 2013.

5. It is contended on behalf of the respondents that SFIO has been authorised to institute the said proceedings in respect of M/s National Spot Exchange Limited (NSEL).

6. The petitioner states that NSEL was operating a Commodities Exchange but it has ceased operations in the year 2013. The trading on the commodities exchange was suspended sometime in the year 2013 and the licence for operating such a exchange was terminated on 19.09.2014.

7. It is submitted on behalf of the petitioner that the Central Government, can apply to the National Company Law Tribunal (NCLT) for relief against oppression and mismanagement under section 241(2) of the Companies Act, 2013 "if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest". Since the functioning of NSEL remains suspended since the past over six years, there is no reason for the Central Government to have formed an opinion that its affairs are being conducted in a manner prejudicial to public interest.

8. It is contended that the impugned order can be faulted on other grounds as well and a note regarding the questions of law that arise for consideration, was submitted at the previous hearing.

9. Mr Ahluwalia, learned counsel appearing for respondent nos. 1 and 2 seeks time to file a counter affidavit to the amended writ petition. Let the same be filed within a period of four weeks from today. Rejoinder, if any, be filed within two weeks thereafter.

10. Since the affairs of operation of NSEL have been suspended for almost over six years, prima facie, it would be difficult to accept that a petition under Section 241 (2) of the Companies Act, 2013 would be maintainable. Mr Ahluwalia states that he requires instructions to respond to this contention. He states that he would require some time for the said purpose as the concerned officers are currently not available because two of them have been diagnosed positive for Covid-19.

11. At the request of Mr Ahluwalia, list on 15.10.2020.

12. In the meanwhile, the SFIO shall not pursue any proceedings in the NCLT pursuant to the authorisation granted in terms of the impugned order to institute proceedings under Section 241 of the Companies Act, 2013 till the next date of hearing. If any such proceedings have already been instituted, the concerned parties shall jointly request that the same be adjourned till the next date of hearing.

VIBHU BAKHRU, J SEPTEMBER 10, 2020 pkv