

**14.09 hrs.**

**Title: Statutory resolution regarding Disapproval of Companies (Amendment) Ordinance, 2001 (resolution withdrawn) and Companies (Third Amendment) Bill, 2001 (Bill Passed.)**

SHRI V.P. SINGH BADNORE (BHILWARA): Sir, I stand to support the Companies (Third Amendment) Bill, 2001.

Sir, the Members from the Opposition Benches have raised a few questions, namely, why this Bill was brought in firstly and what was the hurry in bringing an Ordinance when Parliament was to meet in another couple of weeks. Sir, the market sentiment has been weak.

Even before the September 11<sup>th</sup> terrorist attack, the capital market was sliding down. After the September 11<sup>th</sup> the share prices of companies which have a very good track record, companies which are doing very good, have come down to such a bearish level that they started getting worried. They could go, have a general meeting, have a resolution passed in that meeting. But all that takes time. Naturally that worry creeps into the company because they had such a good NAV, they had such a good management, and the slide is so much. That is the only reason why an Ordinance was promulgated and this Companies (Third Amendment) Bill has been introduced.

I would like to say that another point which has been mentioned here is that this Bill is not investor-friendly; and the small investors will be ruined. I would like to say that it is just the opposite in the sense that this Bill gives the option to a small investor that if the slide is so much, the company is ready to buy it back. Let us say, a share of Philips or HLL which are doing very good slides down so low that the investor gets worried and wants to sell it, which makes it even more bearish, these companies can step in. If these companies are having a slide of shares and the investor's confidence in the company is getting eroded, that is the time this Bill comes into play so that the company can give confidence to the investor saying that it is ready to buy it at a particular rate and that will bring the share prices back. That is the main reason for promulgating this Ordinance and introducing this Bill.

Actually what happens is that there is a floating stock of a company. It can be reduced by the company buy back. When they feel that the share prices have gone up again, they can reissue that share. That is the only reason for bringing this Bill.

I will give you another example. There are two ways of how an investor gets benefited from buying share in the capital market. Firstly, the prices of shares go up. Secondly, he gets a bonus and a dividend. There are companies like Microsoft which never gives either bonus or dividend. But the share prices have gone so many times higher than the issue price. This Bill is only to get the confidence back to the company so that the company feels that the investor is not let down. That is why it has been introduced and that is how the market is looking up.

One of the things that this Bill has also done is to look into the sentiments of the market. That is why even after the share prices, sensex, volume and liquidity were really down, it has managed to recover and now it is looking up. This is exactly what happened after the September 11<sup>th</sup> terrorist attack in America. Even in America they put a lot of money to see that the sentiment, the liquidity and the volumes are not decimated in the American NYSE, NASDAQ.

This is one of the Bills which has been introduced to get the sentiments back and win the confidence of the investors.

DR. NITISH SENGUPTA (CONTAI): Sir, I thank you very much for giving me this opportunity.

I rise in support of this Bill which is really a part of the on-going exercise that has been going on for sometime to modernise the Companies Act, 1956 which, in many respects, has become rather antiquated and antediluvian and not taking into account the realities of the present day situation.

I think some of my friends are unnecessarily seeing the ghost in multinational corporations. They seem to have the tendency to see a ghost that does not exist. The way I look at the provisions of the Act is that it does not make any distinction between the multinational or domestic investors. As I see it, originally the Companies Act, 1956 did not provide for a company holding its shares. But that was on the basis of a provision in the then British Companies Act which did not provide for a company holding its shares. But subsequently, with the changes in the situation, the English Company Law was changed and rather, our Company Law was falling behind for a very long time. I think, about two years ago, a salutary attempt was made to enable the company to hold its own shares. I have been a strong votary of the provision or the principle of allowing a company to buy back shares. In fact, I had written articles in *The Economic Times* at least four to five years ago. Now, what is the present position?

SHRI RASHID ALVI (AMROHA): Sir, I am on a point of order. There is no quorum in the House nowâ€¦*(Interruptions)*

**डॉ. नीतीश सेनगुप्ता :** जब शुरू हुआ था तब कोरम था। एक बार शुरू हो गया तो ठीक है।*(व्यवधान)*

MR. CHAIRMAN : When the debate started, there was quorum.

SHRI RASHID ALVI : Sir, but there is no quorum now. And how can you continue with the business of the House when there is no quorum?

MR. CHAIRMAN: The bell is being rung-

Now, there is quorum. The hon. Member, Dr. Nitish Sengupta may continue.

DR. NITISH SENGUPTA: Sir, there are two or three very big reasons as to why I strongly support this Bill.

First of all, what has been the general plight of the ordinary shareholder in our whole system? Normally, if those company managers who have the controlling block are good managers, they do well but there are quite a number of unscrupulous people who exploit the shareholders. They never give back what they actually deserve. They run their company, milk as much as they can and deprive the normal shareholders of their share. Now, this Bill gives the common shareholders an opportunity to sell their shares to the company management. And to that extent, I do not think it will be correct to say that it is not investor-friendly. In fact, I make bold to say that it is investor-friendly.

Mr. Chairman, with the liberalisation of the economy and the on-going deregulation, sometimes the managements of companies are feeling threatened with raiders and unscrupulous operators who are trying to corner shares in the market, displace the existing management from the companies. Therefore, legitimate managements of companies are naturally looking for their opportunity to strengthen the shareholding base so that they can beat back these raiders and interlopers. So, this is a very salutary provision which will enable these company managements to beat back these raiders and strengthen their hold over the companies.

Thirdly, we can see the result after the introduction of this Bill. Actually, the share market position is improving. Our share markets were doing very well since and I make bold to say this, the anti-national Tehelka conspiracy started the process of total decline of the economy. I do not know who planned this Tehelka but those who did it, did a very antinational act to the extent that it is from that time that the current dismal state of the Indian economy started. To that extent, in the last few weeks, if you see some encouraging signs of recovery, I think this introduction of this Bill will have some role to play. So, I support the Bill because it is an attempt to modernise our Company Law. The time limit has been changed from the Ordinance. But that is because, the idea is that where a major block is being bought back, then the shareholders will have the right to know and to that extent, anything higher than 10 per cent of buying and all that will require the approval of the shareholders in general. Otherwise, the company management and the Board of Directors can take a decision to buy the shares, make an offer to the shareholders and buy back some shares. They need not wait for all the paraphernalia of holding a general meeting to get it approved there but if it is much larger than 10 per cent, then certainly, it will need the shareholders' approval.

To sum up, I strongly support this Bill as an attempt to modernise the Companies Law, as an attempt to bring our Companies Law in line with the Companies Law of other advanced countries of the world, as an attempt to provide certain security to managements wherever they are performing well and wherever they would like to buy some shares, strengthen their position and wherever common shareholders will be willing to sell them. It is because they will get a good price. Lastly, it will provide an opportunity to common shareholders, whose voice nobody has heard so far, to make their presence felt and to book their profit and then get out of the company, if necessary. Therefore, I strongly support the Bill.

**श्री गिरधारी लाल भार्गव (जयपुर) :** सभापति महोदय, कम्पनियों की शिकायतें दूर करने और समय की बचत करने के लिए यह बिल माननीय मंत्री जी द्वारा सदन में विचार करने के लिए प्रस्तुत किया गया है जिसके लिए माननीय मंत्री जी और सरकार धन्यवाद की पात्र है।

महोदय, कम्पनीज एक्ट, 1956 और अन्य जो कानून हैं, अन्तरराष्ट्रीय आधार पर यह जरूरी हो गया था कि जो कम्पनियां ठीक प्रकार से काम नहीं कर रही हैं या जिन कम्पनियों को पुनर्जीवित किया जा सकता है, उन सब कम्पनियों के बारे में विचार करने के लिए यह बिल सरकार के द्वारा लाया गया है।

जस्टिस वी बालकृष्ण रेड्डी की अध्यक्षता में कमेटी बनी। उन्होंने जो कम्पनियां कानूनन दिवालियापन या बंद होने के कगार पर थीं, उस संबंध में कुछ सुझाव दिए हैं। उन्हीं सुझावों के आधार पर सिका, 1985, रिवाइवल ऑफ डेट टू बैंक, सिक्स्योरिटी कांटेक्ट एक्ट, 1956 - इन सब सिफारिशों के आधार पर विचार करते हुए सरकार यह बिल हमारे सामने लाई है। मुझे इसी आधार पर निवेदन करना है, जिस रिकोमेंडेशंस के आधार पर यह बिल सदन में लाया गया है। किसी कम्पनी का रिवाइवल करना हो या रिहेबिलिटेशन किसी सिक कम्पनी का करना हो, उसमें जो कर्मचारी काम कर रहे हैं, उनकी सेवाओं और उन्हें पेमेंट ऑफ वेजेज़ का क्या होना चाहिए, उनकी रक्षा करने के लिए यह बिल लाया गया है। इस नाते एक नेशनल कम्पनी लॉ ट्रिब्यूनल बनाया गया है, जो इन सब बिन्दुओं पर विचार करेगा। उसकी जो सिफारिशें होंगी उस पर ट्रिब्यूनल की सिफारिशें लागू होंगी और लागू होने पर उसने यदि कोई प्रपोज़ल नहीं दिया। यदि कम्पनी बंद होने वाली है, तो भी इसकी जो सिफारिशें होंगी वे उस कम्पनी पर लागू होंगी, पहली बात इसमें यह कही गई है।

दूसरी बात यह कही गई है कि इसकी दस ब्रांचें होंगी। जो कम्पनी बंद होने वाली है, वे इस संबंध में विचार करेगी और उसके बाद निर्णय लेंगी। पहले ज्यादा समय लगता था, कम्पनी को कई वां लग जाते थे कि कब बंद होगी, बंद होगी या नहीं होगी, रिवाइवल होगा या नहीं होगा। मैं समझता हूँ कि कई वां बीत जाने से वहां के कर्मचारियों को कट और तकलीफ होती थी, इसलिए आज जो बिल लाए हैं निश्चित रूप से मैं उसका समर्थन करता हूँ। इन्होंने जो फंड बनाया है, उसके आधार पर उन कर्मचारियों का पेमेंट होगा, उस फंड के आधार पर, यही कहा गया कि कम्पनी जीवित करनी हो, कम्पनी को किसी प्रकार से नुकसान न हो, उन्हें सुविधा देने के नाते यह बिल लाया गया है। मैं इसका पुरजोर समर्थन कर रहा हूँ और माननीय मंत्री जी तथा भारतीय जनता पार्टी की सरकार को धन्यवाद दे रहा हूँ।

**डॉ. रघुवंश प्रसाद सिंह :** सभापति महोदय, अभी जो विधेयक आया है इसका नाम तीसरा कम्पनी अमेंडमेंट बिल है। पहले एक बड़ा अमेंडमेंट आया था, जो पास हो गया। कानून मंत्री जी, दूसरा संशोधन बिल कहां है, जिससे पता चले कि किसी राज्य में कार्पोरेट कम्पनी वाली लॉबी या उसका कितना बोलबाला है, उसकी कितनी चलती है। ये धड़ाधड़ कानून ला रहे हैं। जनता मरे, गरीब पिसे, इसकी इन्हें कोई चिन्ता नहीं है। माननीय मंत्री जी बताएं कि इसका दूसरा अमेंडमेंट कहां है, यह तीसरा है, पहला तो पास हो गया।

**विधि, न्याय और कंपनी कार्य मंत्री (श्री अरुण जेटली) :** पहला अमेंडमेंट पास नहीं हुआ।

**डॉ. रघुवंश प्रसाद सिंह :** पहला पास नहीं हुआ, दूसरा भी नहीं हुआ और ये तीसरा आर्डिनेंस ले आए। इसे ये किस समय लाए - 23 या 24 अक्टूबर को आर्डिनेंस लागू किया, 29 तारीख के पहले ही कैबिनेट ने विचार कर लिया होगा कि हम सदन की आहूत कर रहे हैं, सदन आहूत हो रहा है। 10-20 दिन भी प्रतीक्षा नहीं कर सके। इतने जबरदस्त कार्पोरेट लॉबी का दबाव है। आप लोग इतने दबने वाले हैं। कानून मंत्री जी इसका जवाब दें।

महोदय, इसका जो विषय है, उसमें जाना जाता है कि हमारा देश घोटाले और शेयर आदि में भ्रष्टाचार में कितना डूबा हुआ है - स्टॉक एक्सचेंज, हेराफेरी, कोई जेल में है, कस्टम, एक्साइज़, वी.पी. वर्मा आदि-आदि। महोदय, शेयर भी बाई बैक कर लेंगे। उसे लिब्रलाइज़ कर रहे हैं। पहले बड़ी सभा से प्रावधान था और अब यह छोटी सभा से हो जाए, इसे कानून मंत्री लाए हैं।

किस कीमत पर शेयर बाई-बैक होगा, इसको मंत्री जी स्पष्ट करें और सदन को बताएं कि शेयरों के बाई-बैक में गड़बड़ी तो नहीं होगी। कानून मंत्री जी तो बड़ी-बड़ी वाणिज्यिक संस्थाओं की वकालत करते हैं और जो आर्डिनेंस आया है उसमें यही है कि बाई-बैक है और बाजार के कारोबार में इनके सारे मंत्री कान खोल कर बैठ गये हैं और मंत्रिमंडल को बाजार बना दिया गया है लेकिन जनता को कोई पूछने वाला नहीं है, गांव के किसान को कोई पूछने वाला नहीं है। जो किसान सबको खिलाता है, उत्पादन करता है उसका इसको कोई फायदा होने वाला नहीं है। बस घोटाले पर घोटाला और धनपशुओं का बोलबाला है। ये बड़ी-बड़ी वाणिज्यिक संस्थाओं के लिए अध्यादेश जल्दी लाए हैं। मेरा कहना यह है कि इससे भारी खतरा देश को होने वाला है, इसलिए मैंने जो प्रश्न उठाए हैं उनका मंत्री स्पष्ट करें।

**SHRI ARUN JAITLEY:** Sir, a large number of hon. Members of this House have participated in the debate on this Bill. As the hon. Member Dr. Nitish Sengupta has mentioned, originally under the Companies Law, the concept was that a company was always a distinct identity and a company was prohibited, by its very character, from buying its own shares. World-over this concept changed. In India also, in the year 1999, we amended our Companies Act as a part of the ongoing process of modernising Corporate Law in India. We created a provision that a company could, in a given year - at that time, the time period was two years - buy back 25 per cent of its shares. This provision already exists in the Companies Act. This has already got the approval of this august House.

The rationale behind the .buy-back or permitting companies to buy back the shares is that there are a large number of companies which have a fairly large amount of reserves. But those reserves do not translate into any benefit as far as the ordinary shareholder of the company is concerned. When the markets are low, particularly for the small investor, for the ordinary shareholder, for the man who has put his valuable money, the market value of the share, at times, is lesser than the book value of the share. In order to transfer some of the reserves to the markets, the first advantage is that you add liquidity to the market. Reserves can go into the activity of the market of buying and selling shares. The activity helps the market itself.

The second advantage is that when a company uses the reserves to buy- back its shares, the shares of the company are in demand. The shares are being purchased and the value of the share upon buy back starts increasing. The increase of the value helps both the categories of shareholders. It helps those shareholders who have bought for the purposes of investment who want to sell. Otherwise, they would have to sell at a very dismal price. But when the prices move up, the ordinary small shareholder, who is an investor now, gets a much better price and those who have a capacity to hold on, the value of their holding also increases. Indirectly, some of the reserves get transferred into the wealth of the ordinary shareholder. The companies, by this process, are sharing the wealth with their shareholders itself. Therefore, this provision benefits all categories of shareholders alike as far as the company is concerned. This also helps in creating and improving the investment environment. It improves the capital market and the stock value goes up as far as values are concerned.

Various questions have been raised. I must mention at this stage that in some parts of the world, they have also tried an alternate system where the shares, which are bought back are not destroyed. They are kept in Treasury. At an appropriate time, the company re-issues those shares when it so wants. We have not got a similar provision. But our provision is that after a given period of time, if a company needs further capital from the market, in order to also add activity to the market, a company can, after a specified time mentioned in this law, start buying its share itself.

Some questions are raised which I have already answered. How does an ordinary shareholder or small investor benefit from this? In all companies, in all cases where companies are going to go in for buy-back, the share comes up in demand, the value of the share on a normal-commercial-economic principle is going to move up, the shareholders are going to benefit. It moves the stock market up. The overall value of the stocks moves up. It benefits all categories of shareholders. A question was raised as to what happens. Will the multinational start benefiting? Let us not see the ghost of multinationals in this. This Bill only pertains to the domestic Indian companies. We are not regulating the share value of the companies which are registered somewhere outside India. We are not permitting them to go in for buy-back. They are to be regulated by the laws of the country where they are registered.

However, a question was raised what will happen if it has a subsidiary in India. Well, if it has a subsidiary in India, wherein it holds 51 per cent, then the company shares will be having a subsidiary with 51 per cent and it may have some small investors. Even if such a company also goes in for buy-back, already holding 51 per cent of the holding, the small investors are automatically going to be benefited from the buy-back exercise.

I have also read some comments, etc. Will the stock exchanges be informed? I read an article in the newspaper in this regard. Once you go in for buy-back, SEBI has very clear continuous disclosure norms. All such decisions of the Board or the management of the company which have an impact on the securities of the company or its valuations under the continuous disclosure norms are required to be informed to the stock exchanges. There are already guidelines as far as SEBI is concerned. The SEBI's regulations in this regard also normally fall in line with what Parliament decides and the need for an Ordinance at this stage was that we wanted the stock market to move up; we wanted activity in the stock market; we wanted liquidity being added to the stock market. This is one of the reasons in this whole process of revival. To add liquidity to the market, this is something which was urgently required. It has also shown and I am not saying that this is the only reason as to why it has happened. This is one of the several factors or steps taken by the industry, some of the corporate results have been good and some other steps were taken by the Government. This step itself in the last few weeks, therefore, led to some revival and upward movement in the stock market and that movement itself benefits both the economy and also benefits the shareholders.

रघुवंश बाबू ने यह प्रश्न किया कि जो बाकी कम्पनी लॉज अमेंडमेंट्स हैं, उनका क्या हुआ? हम इस वा कम्पनीज एक्ट का पहला संशोधन लाए थे। उसका संबंध इनसॉल्वेंसी कानून के साथ था। जो कम्पनियां इनसॉल्वेंट हो जाती हैं, जो दूसरे लोगों को पैसा देना है, उनका भुगतान नहीं करती, कुछ कम्पनियां बीआईएफआर में चली जाती हैं और बीआईएफआर उन कम्पनियों को रिवाइव नहीं कर पा रहा है, समय बहुत अधिक लग रहा है, वहां कर्मचारियों की भी दुर्दशा है इसलिए इनसॉल्वेंसी कानून के तहत कम्पनीज एक्ट में सबसे पहला संशोधन इंद्रोड्यूस किया था। उसके तहत इन कम्पनियों के रिवाइवल का जो प्रोसेस है, उसके अन्तर्गत उनका भविय शीघ्र तय हो पाए। वह इस सदन में इंद्रोड्यूस होने के बाद स्टैंडिंग कमेटी के पास है। उसकी जब रिपोर्ट आएगी तो सदन को कंसिडर करने का अवसर मिलेगा।

दूसरा जो कम्पनीज एक्ट में संशोधन लाए थे, उसमें एक नया चैप्टर प्रोड्यूसर कम्पनी के संबंध में जोड़ना चाहते थे कि कोआपरेटिव्स को कुछ ऑप्शन दी जाए कि जो प्रोड्यूसर कम्पनी बनाना चाहते हैं, जिन का आधार कोआपरेटिव रहेगा लेकिन जिन का ढांचा कम्पनी के मुताबिक होगा। कुछ कोआपरेटिव्स की यह मांग थी कि कुछ उनको वॉलंटरी ऑप्शन दी जाए। वह भी स्टैंडिंग कमेटी के सामने है। इसलिए यह तीसरा बिल है। इस बिल से छोटे निवेशकों को लाभ मिलने वाला है। मैं सदन के माननीय सदस्यों से अनुरोध करूंगा कि वह इस बिल का समर्थन करें।

MR. CHAIRMAN : Shri Ajoy Chakraborty, please be brief.

SHRI AJOY CHAKRABORTY (BASIRHAT): I only want to remind the Minister that this Government is creating a bad precedent. They are always ignoring and bypassing Parliament. This amendment Ordinance was promulgated on 23<sup>rd</sup> October, 2001. Parliament Session was scheduled to start on 19<sup>th</sup> November, 2001. Why so much hurry on the part of Government to promulgate the Ordinance? If you wait for a few days, there would have been no harm. You have promulgated the Ordinance bypassing and ignoring the Parliament. This tendency has grown up and increasing every day. You are always promulgating the Ordinance when the Parliament Session is approaching or near the corner. I would request the hon. Minister to please give up this procedure. Do not ignore Parliament, do not bypass Parliament. Anyhow, I am not insisting or pressing.

MR. CHAIRMAN : Are you withdrawing, Shri Ajoy Chakraborty?

SHRI AJOY CHAKRABORTY: Sir, I am not pressing.

I seek leave of the House to withdraw my Resolution.

*The Resolution was, by leave, withdrawn.*

MR. CHAIRMAN: The question is:

"That the Bill to amend the Companies Act, 1956, be taken into consideration."

*The motion was adopted.*

MR. CHAIRMAN: The House would now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 4 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 4 were added to the Bill.*

*Clause 1*

**Amendment made:**

Page 1, line 2,-

for "Companies (Third Amendment) Act, 2001",

substitute "Companies (Amendment) Act, 2001". (1)

(Shri Arun Jaitley)

MR. CHAIRMAN: The question is:

"That clause 1, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill*

*The Enacting Formula and the Long Title were added to the Bill.*

SHRI ARUN JAITLEY: Sir, I beg to move:

"That the Bill, as amended, be passed."

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be passed."

*The motion was adopted.*