

15.18 hrs.

Title: Combined discussion on the Disapproval of Companies (Amendment) Ordinance, 2001 and the Companies (Third Amendment) Bill, 2001. (Not Concluded)

MR. CHAIRMAN : The House shall now take up item numbers 10 and 11 together.

SHRI AJOY CHAKRABORTY (BASIRHAT): I beg to move:

"That this House disapproves of the Companies (Amendment) Ordinance, 2001 (No. 7 of 2001) promulgated by the President on 23 October, 2001. "

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI ARUN JAITLEY): I beg to move:

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

SHRI AJOY CHAKRABORTY : This Companies (Amendment) Bill, 2001 is aimed at liberalising the process of the buy-back of the shares. It is also aimed at reviving the poor state of stock market which worsened in the wake of unfortunate incident of terrorist attack on USA on September 11.

Sir, a company is now permitted to buy-back its share up to 10 per cent of its paid up share capital. They are also permitted to keep a free reserve with the approval of the Board of Directors. Earlier it could be done only by a special resolution of the shareholders. This will prove to be detrimental to the interest of the independent and small shareholders as also to the concept of the shareholders democracy.

Sir, it is a fact that the buy-back is a legitimate way for the company to reward shareholders by pushing up the prices. But given the uncertain condition of the Indian stock market, it is quite unlikely that after the buy-back, the prices of the shares would move up. This would result in loss to the shareholders.

So many financial institutions like ICICI, UTI, etc. are just non-existent and non-functioning as they have non-performing assets worth Rs.1,00,000 crore.

So, I urge upon the Minister to bring a comprehensive Bill and take steps to recover the arrears for the interest of the small shareholder. The stock market is already weak in our country due to a number of stock scams. There was already slow down in the economy before the Black Tuesday. The terrorist attack on US on September 11, has only aggravated it. So, I do not think this measure will be able to improve the market. I consider that there was no urgency to bring the legislation by way of Ordinance. That is why, I moved the Statutory Resolution and I oppose the Bill.

SHRI ARUN JAITLEY: Sir, the intention of the Companies (Third Amendment) Bill, 2001 which was initially promulgated as an Ordinance is really to improve the stock market and also directly help the investors who have invested their hard earned money in the stock market itself. It is a well known fact that for the past several months since the beginning of this year the market sentiment has been somewhat poor and particularly, after the middle of March, the stock market started declining.

After the 11th of September, world over the stock markets were adversely affected. So, the stock markets were already adversely affected as far as India was concerned and there was a further dip in the stock market. The effect of all this has been that investors who have purchased shares at a particular value, even though the book values of certain shares are higher, the market value of the share is somewhat lower. If the investors go and sell their shares today, they get a much lessor price and the market comes down further. To tackle this situation various steps are required. Some steps have been taken by the Government and this amendment is also one step in that direction.

In the year 1999 by way of the then amendment of the Companies Act, the provision of Section 77 of the Companies Act were amended and Section 77A was added. The initial concept under the Companies Act was that shareholders can buy shares of the company but a company was not entitled to buy its own shares. This was the original concept. The concept of corporate governance and the management of the company itself has altered all over the world. It has grown, it has evolved and the 1999 amendment to the Companies Act permitted company to buy back up to 25 per cent of its shares. The effect of buy back is that here you have the companies which have a very large reserves because they have profits and some of the profits get added to the reserves every year, the reserves are lying with the companies but the market value of the shares is much lower than what the book values

are going to be.

The companies use these reserves to buy their own shares, add liquidity to the market, the share value goes up and the small investors start getting higher prices once the value goes up. They would otherwise get a much lesser amount for their shares if they were to sell them. As far as those shareholders are concerned who can continue to hold on to the shares of the company, whose holding capacity is much more than that of a small investor, because the shareholding base also contracts when the buy-back takes place, their value per unit also increases. So, buy-back of shares is being permitted the world over. In India, with the 1999 amendment to the Companies Act, we permitted buy-back up to 25 per cent of the share capital of the company. But the procedure which we had laid down under the buy-back was that you require a special resolution under the Companies Act to approve the buy-back. The special resolution is required to be passed by a majority of three quarters, that is, 75 per cent of the shareholders present at the AGM of a company.

This amendment only makes the buy-back provision simpler. That is, the outer limit of 25 per cent continues to remain. The only effect of this amendment is that out of the 25 per cent which the companies have been allowed to buy-back, ten out of those twenty-five can be bought back without waiting for the resolution of the shareholders by a special resolution, but can be bought back by a resolution which is passed by the Board of Directors of a company. This is a procedure which is being made simpler.

We have added two more amendments to make the provisions simpler, the effect being if you have bought back your shares then you have to wait for 365 days, that is one full calendar year, before going in for the next batch of buy-back. The third part of this amendment is that you buy-back when you have the reserves. The condition in the original amendment was that for a period of two years you were not allowed to have a further issue of the capital of the company. We have altered that and said that you cannot have another issue to raise capital for the company for a period of six months. That is the amendment. The only purpose of this amendment is, within the parameters already permitted by the 1999 amendment we are making the procedure simpler for buy-back up to 10 per cent of the shares. The effect of this is going to be 10 per cent of the share capital can be bought back by a company by an easier process. This will push up the value of the shares; this will directly help the small investors who want to sell their shares; and this will also help the investors who have a holding capacity, who hold on to the shares, by pushing up the prices.

The direct effect of this has been seen along with certain other steps taken. The market which had come down to a sensex value of about 2600, since this Ordinance has come plus certain other measures which have been taken, has moved up some 700 points in the last one month. This is a positive indication and I would appeal to the hon. Members of the House that this is a simplification of the procedure and a step to help the market revival process which also helps the small investors and therefore this amendment requires to be supported.

MR. CHAIRMAN : Motions moved:

"That this House disapproves of the Companies (Amendment) Ordinance, 2001 (No. 7 of 2001) promulgated by the President on 23 October, 2001. "

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

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Mr. Chairman Sir, the hon. Minister has given a very rosy picture about this amendment. Actually we are very much afraid that this may be the last nail on the coffin of small investors. Small investors are not at all protected by the NDA Government from day one of their initiating this process of globalisation.

When Dr. Manmohan Singh was the Finance Minister, a lot of investments were made. I can even give the data. The amount of the capital raised through public issues during 1994-95 was Rs.13,300 crore. The entire amount was 100 per cent equity. In 2000-01 the amount has been reduced to Rs.6,600 crore which has a debt instruments cover of 63 per cent and the equity constitutes just 37 per cent. This is the position now. But the hon. Minister says that they have obliged the sentiments of the market and therefore they want to reduce it and make it open. For whom? That is the question the hon. Minister has to reply.

It is because the Government has come with an Ordinance. Article 123 of the Constitution expects that circumstances exist which render the necessity for immediately making it a law by promulgating an Ordinance. What is the necessity now? Who made the necessity and who has created a lobby for bringing an Ordinance which can be very well be placed as a Bill before the Parliament within two weeks or so? Why has the Government taken an initiative for bringing it under an Ordinance? That has to be answered because the nation feels that this Government is no more protecting the interests of the Indians, especially the small investors, the people who have invested their money on the big companies. It shows that if you invest the money in the companies, you will be flourishing. Therefore, we are reducing the bank interests and we are reducing the saving banks interest. All the people who are pensioners and monthly income earners have invested in shares. The real estate had bloomed five years before. The people sold their property and invested in shares. The money which was in the banks have been divested to the companies. But what happened?

The share prices have come down. There are plenty of scams before the Parliament itself. By having a probe by the Joint Committee, they are trying to find out the truth. This is the situation. In this situation, the Government has to clear themselves that they are *bona fide* in bringing forward this Bill. This is not a small amendment. It is an amendment which makes the MNCs purchase the entire shares of the subsidiary companies which they were holding with 40 per cent shares and lower than that. In 1970s, the MNCs had created the subsidiary companies but at that time, the Government had compelled that they should have the holding below 40 per cent and if they are not accepting it, they may go out. That was the feeling in 1970s. Here is the chance for them. The MNCs are not worried about the incident of 11th September. It is not at all connected with the aims and objectives. Even before that, the MNCs had come forward for buy back to get their subsidiary companies which were listed and which were having very low value in the share market. They started purchasing it. They started it even before the Ordinance by quoting their offer and by lesser amount, they got all the shares from the small investors.

I can give some data and one example. M/s. Fuller India is a foreign-owned company. This company was delisted on 21st April, 1998 but it could again come back and they want to purchase the shares to the tune of 93.2 per cent. Subsequently, they purchased the rest of the 8.6 per cent also from the small investors. Therefore, acquisition is now cheaper for them. They want to invest the entire money here. They can invest the entire money in a cheaper way by taking away the national capitalists also from the market. The national capitalists are also suffering. They are now compelled by the MNCs to go away from their own business and trade. That is why, I would submit here that this is not a simple amendment but it has got very big consequence.

I would like to draw the attention of the Government to the reason why they have to go for the buy-back. The Minister has already explained it. When the management think that their stock is under value, they may come. The other reason is to enable the promoters to hike their stake without spending any funds on their own. They want to spend their own savings, to invest it and make their own stock value increase. That may be the intention. But here, it is the other way round. What happens is, the promoters can also raise their stake by making an open offer to the shareholders. But at the same time, they are going to take away certain taxes from the hands of the Government. How? If they are actually giving it as a dividend, or if it is giving it as a bonus share, then they have to pay tax for the dividend. But here, even without taxation, they want to get away by purchasing the entire shares which is in the hands of the small investors who are small people.

I would like to suggest that reducing the days to 365 days is good in one way for certain companies which are genuinely interested in purchasing the shares in the market. I would like to request the Government to kindly protect the interests of the shareholders. Already on a scam, the SEBI has investigated and filed a 9000-page report against the irregularities of even the listed companies. Even before this Ordinance came, many companies have started purchasing the shares in different ways. The Britannia Company, Siemens, Bombay Dyeing, GE Shipping, Reliance Industries, Sterlite Optical, Kesoram industries, Lakhani and Exide industries have already quoted buy back of their shares. This will make the companies beyond the reach of shareholders as it becomes illiquidity investment. and they have made their own companies which can become the liquidity for the ordinary shareholders. I would like to suggest to the Government that when they are enacting laws, have an eye on the small shareholders who have no say in the company. Now, they are reduced to ashes. Now, you are giving six months, instead of the earlier twelve months, for coming forward with further issues. Even this September has passed away. Another September may not come. You may allow floating of shares after six months. Will the market buy them? The confidence has to be created by the Government by their enactments. This enactment, I feel, may be helping certain good companies. But at the same time, there are many bad companies who are on their way to dump the Indian companies. The MNCs and foreign investors want to come in the indirect way instead of the direct way. Is that the reason for bringing this Ordinance? I would like to have the clarification from the Government.

I would like to sum up my submission by saying that this enactment may be, at the face of it, helpful for certain companies but a majority of companies are going to suffer. And MNCs are going to flourish.

SHRI ANADI SAHU (BERHAMPUR, ORISSA): Mr. Chairman, I stand here to support the Companies (Third

Amendment) Bill, 2001. As the hon. Minister has stated, weak market sentiments have prompted the issue of an Ordinance. Later on this Bill has come before the House. He has very correctly indicated about the Terrible Tuesday, that is the 11th September, when markets all over the world started crumbling down. Previous to that India has been facing difficulties in the share market. As the business environment is changing from time to time and very rapidly, the growing emphasis on returns on equity have engaged the attention of the Government and from time to time amendments have been proposed and brought by the hon. Minister. I must congratulate him again. We have passed a large number of Company Amendment provisions. In the year 1999, the first major amendment, as the Minister indicated, was Section 77(A) where provisions were made for buy back of shares. Buy back of shares are very good to ensure that the company does not suffer much and it is kept on a proper fold so that dissolution does not take place and the company can buy back shares. That is why this amendment has been brought. In that particular amendment, 77(A), a cap was fixed for 25 per cent. Now, up to ten per cent the procedures have been changed to ensure that up to ten per cent of buy back, the company need not go through elaborate procedures. It is a very good measure. I do not want to go into the details of this measure. I only would like to bring to the notice the three factors which have to be kept in mind at a later stage. First factor is, when the Board of Directors pass a Resolution, it should be proper to approve the buy back of ten per cent of shares on a provisional basis. This is the suggestion. I do not know whether it could be accepted or not because at a later date, there will be some adjustments here and there. Secondly, when the buy back is thought of, the value of the share has to be ensured. Otherwise, it may create problems. The market value has to be ensured. Thirdly, when the Resolution is passed for 25 per cent, the Minister said that certain number of members have to be there. We should also indicate whether quorum should be there or not. This is not a special type of Resolution and this is only an ordinary type of Resolution. For buy back of shares of the own company or of the subsidiary companies, it has to be indicated, maybe by rules prescribed by Government as per the Companies' Act, whether quorum is required or not. If these things are not taken into account, then there might be difficulties at later stage. The cross shareholding, of course, has to come. It is necessary to see that the market does not crash and that the share market is on a even keel, in spite of the difficulties being faced by the Indian companies.

With these words, I conclude my speech and I support this amending Bill.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I oppose the amendment. When the 1999 amendment was introduced in this House, I remember, there was a solemn pledge by the Government that the economic situation will improve and the share market will also get improved. That was what the Finance Minister assured in this House. We opposed it because in the 1956 Companies Act, there was no specific provision for buy back. Due to liberalisation, globalisation, and the so-called reform process, they were telling us that they would like to introduce buy back in the Company Law for the simple purpose of meeting the economic situation in the international sphere. For that purpose the Government also assured the House that it would be up to 25 per cent of paid up share capital. That was the assurance given. The Bill was passed. It became an Act. Now, they have come with another amendment. In that amendment, there was a provision that any buy back will have to be supported by a General Body Meeting of the shareholders. That was the position. So, the ordinary shareholder was given the voice in such a decision-making process. We were under the impression that since the ordinary shareholder is given a chance to know what exactly is taking place, that would act as a safeguard and precaution against the Company going from bad to worse.

The situation did not improve. Now, the hon. Law Minister has brought in a new amendment saying that he wants to take away the decision of the General Body Meeting which is not required for 10 per cent buy-back of shares. For 10 per cent buy-back of shares, the ordinary shareholders need not authorise the Board of Directors to take such a decision. They can easily take the decision and implement it. If the ordinary shareholders are put at the mercy of the Board of Directors, who will include the multinationals, very big industrialists, then, all these people will come into the Board as the Directors. Naturally, they will be governed or influenced by those interests and not the interests of the poor people. The shareholders are put to risk on account of taking such a decision by the Board. That provision has been changed. My argument is that we are in a vicious circle. Can we control or influence the share market? Is there any security? Is there any word anywhere in this statute saying that the value of the share will be secured? There is no such assurance given here. The company's shareholders are put at the mercy of the international market where we have no control at all. The ten per cent restriction is there now. But they will come forward with another Ordinance asking this House that the 25 per cent ceiling may be done away with even without the resolution passed by the ordinary shareholders. He will come again because we are in a vicious circle. There is no guarantee. There is no security that the value of the share will be maintained. Mr. Minister, can you do it? Can you give an assurance to the House that the security and the value of the share will be secured even after taking a decision like this without the decision of the General Body Meeting? Nobody can assure it. That is the present position. That is why, I have said at the outset that we are moving in a vicious circle. The vicious circle started in 1999 when the Companies (Amendment) Act was passed giving 25 per cent buy back facility. They started the dark days of our Indian Companies Law. Whenever there is some reserve or profit or earning in respect of a company, that could be, more or less, traded as in a lottery. Some people are investing money in lotteries. The reserves or

profits will be put in the open market in the name of buy-back. All that we have earned as earnings will be again put into the share market in the name of buy-back. Actually, it is not supported by any economic condition or economic stability. Nothing of that sort is there. It is only a gambling in the market. The Directors of a company are gambling in the market without some security either legal or economic. The loser will be the poor shareholders. The shareholders of the company will be the losers.

This is the second time that they are coming forward with such a measure. When they appeared before this House with an amendment in 1999 amending Section 77A of the Companies Act, we were very much definite that such a situation would arise in the near future. The only reason that is advanced now is the attack on the World Trade Centre at New York. What is the relation between the attack on the World Trade Centre and the process of buy-back of Indian companies share? There is no direct relation at all. But under the guise of the attack on the World Trade Centre, they have come forward with an Ordinance by-passing this House and changing the entire Companies Law to suit their own convenience, the convenience of the multinationals who are controlling the Indian companies. They wanted such an amendment at the risk of the poor and the ordinary shareholders.

That is why I submit that this is a far-reaching amendment. The amendment made in 1999 was much more far-reaching which has given the authorisation to buy-back shares. That is why I have put it that this is gambling the entire reserves of the company in the open market. Now, they have come with another amendment. They want a Resolution without any restriction. Under this Resolution, directors of the company must be allowed to do it without any restriction. To suit their convenience, they have reduced the period also. According to the first amendment, the period is reduced to 365 days. They have brought another amendment which reduces the period from 12 months to one month. It is gambling, nothing else. It is gambling the Indian capital in the share market and throwing away the ordinary shareholders with the risk. It is an utter and colossal failure. That is what we are experiencing now. I am sure that this amendment would not help in any way in improving the share market or maintaining the share market value.

With these few words, I am constrained to oppose the Bill because it is highly damaging to the Companies Act and companies law. I am sure that they would again come with another amendment in the near future when there is another crisis. They would come with another amendment saying that that is the remedy but these are nothing but gambling in the share market. With these words, I oppose this amendment once again.

SHRI M.V.V.S. MURTHI (VISAKHAPATNAM): Mr. Chairman, Sir, the Companies (Amendment) Bill, 2001 was brought to replace the Companies (Amendment) Ordinance, 2000 (No.7 of 2001). The Ordinance was issued one month before the actual Session was about to start on the pretext that it helps to boost the share market. But, I am afraid as to whether such boost was given to the market or not with this Ordinance. But the market prices show that such boost has not occurred.

The other thing is that the market going up very slowly but not to the desired extent of what we expected out of this Ordinance. In other words, this is a backdoor method of liquidating the small shareholders' share because the company need not have to go to the shareholders for buying ten per cent of the shares. Mere resolution of the Board is enough to buy-back up to ten per cent out of its reserves and surpluses. That is what has been given - up to 25 per cent, the company can do it again after 365 days. Again they issue another ten per cent resolution, and again in the third year, may be for another five per cent. Thus, the company, without going to the shareholder, could purchase 25 per cent of the shareholding. This is one of the amendments that has been sought in this Act.

SHRI ARUN JAITLEY: It is only ten per cent.

SHRI M.V.V.S. MURTHI: No sir,

According to the other amendment, the company can issue such equity shares within such six months. But why should they buy immediately and issue within six months again? Again the company can issue or resort to issue of such equity shares which have been off-loaded into the market. I can understand buy-back of shares of ten per cent, either to boost the market or to give higher price to the remaining shareholders in the market or to improve the liquidity in the market. The Minister wishes to state that these are some of the reasons but this process of buy back should not affect the liquidity in the company.

For creating liquidity within six months, they are trying to issue shares again. This is a cyclical effect, will the hon. Minister agree with me or not? This also works against the bonus issue of shares because liquidity is affected in one way or the other. Higher dividends prospects are also affected. These are some of the issues. But the shareholders will become a mere spectator in the whole issue because with a bite of higher price, always the company can acquire the small shareholdings and the companies will ultimately be ruled by the large shareholders. That is one of the effects of this amendment.

However, this is a part of the trading all over the world and also we are resorting to the same type of trading in our

country. It is all right, if it can boost the market by off-loading ten per cent of the shares with a Board Resolution, which could be restricted to 10%. But it should not be with Board Resolution, more than ten per cent. I would also like the hon. Minister to think whether it is necessary to reduce to six months instead of 24 months to issue such equity shares in the market.

With these words, I support the Bill.

श्री रामजीलाल सुमन (फिरोजाबाद) : सभापति महोदय, कम्पनी संशोधन अध्यादेश 23 अक्टूबर को आया जबकि संसद का सत्र 19 नवम्बर से शुरु होना था और 29 अक्टूबर को इसकी सूचना सांसदों को दे दी गई थी। पिछले सत्र के समय भी हमने इस प्रकार अध्यादेश जारी करने का विरोध किया था। सरकार का अधिकांश मामलों में अध्यादेश लाने का जो तौर-तरीका है, मैं ऐसा समझता हूँ कि यह संसद का अपमान है। संसद का सत्र शुरु होने वाला था तो निश्चित रूप से इसे संसद में ही लाना चाहिए था। आनन-फानन में यह अध्यादेश लाया गया। मुझे लगता है कि कुछ कम्पनियों को लाभ पहुंचाने के लिए ऐसा किया गया। जब मंत्री जी जवाब दें तो बताएं कि 23 अक्टूबर से 29 अक्टूबर के बीच शेयर बाजार में कितना उछाल आया और इन छः दिनों में कितना लाभ अर्जित हुआ? वह इसकी जानकारी अवश्य दें। आपने कहा कि प्रक्रिया को सरल बनाने के लिए, और निवेशकों को सहूलियत देने के लिए यह अध्यादेश लाया गया है और खास तौर पर 11 सितम्बर के बाद अमेरिका में जो आतंकवादी हरकत हुई, उससे शेयर बाजार में मंदी आई। शेयर बाजार में उछाल लाने का यह एक प्रयास था। मैं समझता हूँ कि 1998-99 में भी इस तरह का एक प्रयास हुआ था। सेबी का कहना है कि केवल 44 मामलों में बाई बैक हुआ और शेयर बाजार व्यापार पर कोई प्रभाव नहीं पड़ा। अरुण जेटली साहब शेयर बाजार में मंदी का कारण आतंकवाद नहीं है। उसका कारण वित्तीय संस्थाओं के प्रति अविश्वास की भावना है। आज आम निवेशकों का विश्वास इनसे उठ गया है। 236 कम्पनियां ऐसी हैं जो छोटे निवेशकों का पैसा लेकर भाग गईं। यह सरकार उनका पैसा दिला नहीं पाई। जब तक वित्तीय संस्थाओं के प्रति अविश्वास की भावना रहेगी तब तक शेयर बाजार की हालत सुधर नहीं सकती। आर्थिक घपलों को दुरुस्त करने का जब तक आप काम नहीं करेंगे तब तक कोई बड़ा लाभ इसमें होने वाला नहीं है।

16.00 hrs.

सभापति जी, मुझे शंका है कि सरकार द्वारा जिस तरह से यह अध्यादेश लाया गया है और वह जिस तरह से प्रयास कर रही है, उससे कोई अच्छे परिणाम आने वाले नहीं हैं।

अतः समाजवादी पार्टी इस विधेयक का विरोध करती है।

DR. NITISH SENGUPTA (CONTAI): Sir, I have given a notice.

MR. CHAIRMAN : You can speak tomorrow. Only one minute is left now for taking up the discussion under rule 193 and you will be able to speak for only one minute.

DR. VIJAY KUMAR MALHOTRA (SOUTH DELHI): Mr. Chairman, Sir, will the Constitutional Amendment Bill be taken up tomorrow? ...(*Interruptions*)

MR. CHAIRMAN: That will be decided by the Speaker.