**In The Hon'ble High Court Of Himachal Pradesh At Shimla**

C. W. P. No.:\_\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

List of Events

Dates\_\_\_\_\_\_\_

Events \_\_\_\_\_\_\_

Shimla                                                                          Petitioner

\_\_\_\_\_\_\_                                                                      Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

C. W. P. No:\_\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

CIVIL WRIT PETITION UNDER ARTICLE 226/227  OF THE CONSTITUTION OF INDIA FOR  APPROPRIATE WRIT, ORDER OR DIRECTIONS TO THE RESPONDENTS

Shimla                                                                                      Petitioner

\_\_\_\_\_\_\_                                                                                  Through, Advocate

Respectfully Sheweth;

1. That your Lordship's humble petitioner is a \_\_\_\_\_\_ citizen of India and on the grounds hereinafter mentioned is entitled to file and maintain the present writ petition before this Hon'ble Court.

2. That the petitioner is aggrieved by the impugned order dated \_\_\_\_\_\_ (Annexure P-1) passed by the Appellate Authority for Industrial and Financial Reconstruction, Delhi (AAIFR) whereby it has re-affirmed the impugned order dated \_\_\_\_\_ (Annexure P-\_\_\_\_\_ ) passed by the Board for Industrial and Financial Reconstruction, which impugned orders have been passed in clear violation of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and the principles of natural justice as well as in utter violation of the Article 14 of the Constitution of India.

3. That the \_\_\_\_\_

GROUNDS

4. That the petitioner is invoking the extra-ordinary jurisdiction of this Hon'ble court and seeking indulgence on the following grounds amongst other each one of which is without prejudice to and independent of other :-

(a)    \_\_\_\_\_\_\_

(b)    That the Sick Industrial Companies (Special Provisions) Act, 1985 has been made in public interest, with special provisions with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts for the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto.  These objectives of the Act have also been re-stated by the Hon'ble Apex court in Rishabh Agro Industries Ltd Vs PNB Capital Services Ltd.

(c)   That the following provisions of the Act have not been complied with:-

**"15.  Reference to Board. -**

(1)  When an industrial company has become a sick industrial company, the Board of directors of the company, shall, within sixty days from the date of finalisation of the duly audited accounts of the company for the financial year as at the end of which the company has become a sick industrial, company, make a reference to the Board for determination of the measures which shall be adopted with respect to the company:

    Provided that if the Board of Directors had sufficient reasons even before such finalisation to form the opinion that the company had become a sick industrial company the Board of Directors shall, within sixty days after it has formed such opinion, make a reference to the Board for the determination of the measures which shall be adopted with respect to the company.

(2)   Without prejudice to the provisions of sub-section (1), the Central government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Board for determination of the measures which may be adopted with respect to such company:

    Provided that a reference shall not be made under this sub-section in respect of any industrial company by-

(a) The Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State,

(b)   A public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance, or obligation rendered by it, or undertaken by it, with respect to, such company, an interest in such company.

**16.   Inquiry into working go of sick industrial companies. -**

(1)  The Board may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company-

(a)   Upon receipt of a reference with respect to such company under section 15 or

(b)   Upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.

(2)  The Board may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into and make a report with respect to such matters as may be specified in the order.

(3)  The Board or, as the case may be, the operating agency shall complete its inquiry as expeditiously as possible and endeavor shall be made to complete the inquiry within sixty days from the commencement of the inquiry.

**1**[Explanation. - For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Board of any reference or information or upon its own knowledge reduced to writing by the Board.)

(4)   Where the Board deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), **2**[it may appoint] one or more persons to be a special director or special directors of the company for safeguarding the financial and other interests of the company [or in the public interest].

**1**[(4A) The Board may issue such directions to a special director appointed under sub-section (4) as it may deem necessary or expedient for proper discharge of his duties.]

(5)  The appointment of a special director referred to in sub-section (4) shall be valid and effective notwithstanding anything to the contrary, contained in the Companies Act, 1956, or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any director appointed by the Board.

(6)  Any special director appointed under sub-section (4) shall-

(a)  Hold office during the pleasure of the Board and may be removed or substituted by any person by order in writing by the Board;

(b)  Not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c)  Not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement;

**1**[(d)  Not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.]

**1.    Ins. by Act 12 of 1994, sec. 5.**

**2.    Subs. by Act 12 of 1994, sec. 5, for "it shall appoint."**

**17.  Powers of Board to make suitable order on the completion of inquiry. -**

(1)  If after making an inquiry under section 16, the Board is satisfied that a company has become a sick, industrial company, the Board shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be by order in writing, whether it is practicable for the company to **1**[make its net worth exceed the accumulated losses] within a reasonable time.

(2)  If the Board decides under sub-section (1) that it is practicable for a sick industrial company to **1**[make its net worth exceed the accumulated losses] within a reasonable time, the Board, shall, by order in writing and subject to such restriction or conditions as may be specified in the order, give such company as it may deem fit to [make its net worth exceed the accumulated losses.]

(3)  If the Board decides under sub-section (1) that it is not practicable for a sick industrial company to **1**[make its net worth exceed the accumulated losses] within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 18 in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

(4)  The Board may, -

(a)  If any of the restrictions or conditions specified in an order made under subsection (2) are not complied with by the company concerned, **2**[or if the company fails to revive in pursuance of the said order], review such order on a reference in that behalf from any agency referred to in sub-section (2) of section 15 or on its own motion and pass a fresh order in respect of such company under sub-section (3);

(b)   If the operating agency specified in an order made under sub-section (3) makes submission in that behalf, review such order and modify the order in such manner, as it may deem appropriate.

**1.    Subs. by Act 12 of 1994, sec. 6, for "make its net worth positive".**

**2.    Subs. by Act 12 of 1994, sec. 7.**

**18.  Preparation and sanction of Schemes. -**

(1)  Where an order is made under sub-section (3) of section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely: -

**1**[(a)      The financial reconstruction of the sick industrial company]

(b)  The proper management of the sick industrial company by change in, or take over of, management of the sick industrial company;

**1**[(c)      The amalgamation of-

(i)       The sick industrial company with any other company, or

(ii)      Any other company with the sick industrial company, (hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), the sick industrial company, referred to as "transferee company");]

(d)  The sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

**2**[(da)  The rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;]

(e)  Such other preventive, ameliorative and remedial measures as may be appropriate;

(f)  Such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (e).

(2)  The scheme referred to in sub-section (1) may provide for any one or more of the following, namely: -

(a)  The constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations for the Sick industrial company or, as the case may be, of the **3**[transferee company];

(b)  The transfer to the **3**[transferee company] of the business, properties, assets and liabilities of the sick industrial company on terms and conditions as may be specified in the scheme;

(c)  Any change in the Board of Directors, or the appointment of a new Board of Directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made;

(d)  The alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the **3**[transferee company] for the purpose of altering the capital structure there of or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e)   The continuation by, or against, the sick industrial company or as the case may be, the **3**[transferee company] of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section. (3) of section 17;

(f) The reduction of the interest or rights, which the shareholders have in the sick industrial company to such extent as the Board, considers necessary in the interests of the reconstruction, revival or rehabilitation of the sick industrial company or for the maintenance of the business of the sick industrial company;

(g)  The allotment to the shareholders of the sick industrial company of shares in the sick industrial company or, as the case may be, in the 3[transferee company] and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder the payment of cash to those shareholders in full satisfaction of their claims-

(i) In respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation; or

(ii) Where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(h)  Any other terms and conditions for the reconstruction or amalgamation of the sick industrial company;

(i)  Sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a cooperative society formed by the employees of such undertaking and fixing of reserve price for such sale; lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such undertaking;

(k)  Method of sale of the assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor;

(l)  Transfer or issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of the sick industrial company-,

(m)  Such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3)  (a)  The Scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification, if any, made by the Board shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Board shall publish or cause to be published the draft scheme in brief in such daily newspapers as the Board may consider necessary, for suggestions and objections, if any, within such period as the Board may specify.]

(b) The Board may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee industrial company and **4**[any other company] concerned in the amalgamation and from any shareholder or any creditors or employees of **5**[such companies]:

          Provided that where the scheme relates to amalgamation **6**[\* \* \*] the said scheme shall be laid before **3**[the company other than the sick industrial company] in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of **3**[the company other than the sick industrial company].

(4)  The scheme shall thereafter be sanctioned, as soon as may be, by the Board (hereinafter referred to as the sanctioned scheme') and shall come into force on such date as the Board may specify in this behalf'

    Provided that different dates may be specified for different provisions of the scheme.

(5)  The Board may on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines as may be specified in the order, to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6)  When a fresh scheme is prepared under sub-section (5), the provisions of subsections, (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

**2**[(6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the, extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferee to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.]

(7)  The sanction accorded by the Board under sub-section (5) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise) be admitted as evidence.

**1**(8)  On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.]

(9)  If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Board may, on the recommendation of the operating agency **1**[or otherwise], by order do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing difficulty.

(10). The Board may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to such sick industrial company as may be specified in the order.

(11)  Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Board may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of the Companies Act, 1956 (1 of, 1956).

**2**[(12) The Board may monitor periodically the implementation of the sanctioned scheme.]

**1.    Subs. by Act 12 of 1994, sec. 7.**

**2.    Ins. by Act 12 of 1994, sec. 7.**

**3.    Subs. by Act 12 of 1994, sec. 7, for "transferee industrial company".**

**4.    Subs. by Act 12 of 1994, sec. 7, for "any other industrial company".**

**5.    Subs. by Act 12 of 1994, sec. 7, for "such industrial companies".**

**6.    The words "of the sick initial company" omitted by Act 12 of 1994, sec. 7.**

**19.  Rehabilitation by giving financial assistance. -**

(1)  Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to any sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.

(2)  Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation 1[or within such further period, not exceeding sixty days, as may be allowed by the Board, and if no consent is received within such period or further period, it shall be deemed that consent has been given.]

(3)  Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Board may, as soon as may be, sanction the scheme and on and from the date of such sanction the scheme shall be binding on all concerned.

**1**[(3A)  On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances of guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(3B)  The financial institution and the bank designated under sub-section (3 A) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfillment of the requirement in this regard.]

(4)  Where in respect of any scheme consent under sub-section (2) is not given by any person required by the scheme to provide financial assistance, the Board may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.

**1.    Ins. by Ad 12 of 1994, sec. 8.**

**1[19A.  Arrangement for continuing operations, etc., during inquiry: -**

(1)  At any time before completion of the inquiry under section 16, the sick industrial company or the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority Providing or intending to Provide any financial assistance by way of loans or advances or guarantees or reliefs or concessions to the sick industrial company may make an application to the Board-

(a)  Agreeing to an arrangement for continuing the operations of the sick industrial company; or

(b)  Suggesting a scheme for the financial reconstruction of the sick industrial company.

(2)  The Board may, within, sixty days of the receipt of the application under subsection (1), Pass such orders therein as it may deem fit.)

**1.    Ins. by Act 12 of 1994, sec. 9.**

**20.  Winding up of sick industrial company. -**

**1**[(1) Where the Board, after making inquiry under section 16 and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting an its financial obligations and that. the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record and forward its opinion to the concerned High Court.]

(2)  The High Court shall, on the basis of the opinion of the Board, order winding up of the sick industrial Company and may Proceed   with the winding up of the sick industrial company in accordance with the provisions of the Companies Act, 1956 (1 of 1956).

(3)  For the purpose of winding up of the sick industrial company the High Court may appoint any officer of the operating agency, if the operating agency gives its consent a the liquidator of the sick industrial company and the officer so appointed shall for the purposes of the winding up of sick industrial company be deemed to be, and have all the powers of, the official liquidator under the companies Act, 1956 (1 of 1956).

(4)  Notwithstanding anything contained in sub-section (2) or sub-section (3), the Board may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and forward the sale proceeds to the High court for the High Court for orders for distribution in accordance with the provision of section 529A, and other provision of the Companies Act, 1956 (1 of 1956)

**1.    Ins. by Act l2 of l994, sec 10.**

**2.    Subs. by Act 12 of 1994, sec.  11, for "in relation  to an inquiry or scheme".**

**21.  Operating agency to prepare complete Inventory, etc.**

Where, **1**[for the proper discharge of the functions of the Board under this Act] the circumstances so require, the Board may, through any operating agency, cause to be prepared-

(a)  With respect to **2**[a company], a complete inventory of-

(i)  All assets and liabilities of whatever nature;

(ii) All books of account, registers, maps, plans, records, documents of  title or ownership of property and all other documents of whatever nature relating thereto;

(b)  A list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and the unsecured creditors;

(c)  A valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio;

(d)   An estimate of reserve price, lease rent or share exchange ratio, and

(e)   Performa accounts, where no up-to-date audited accounts, are available.

**1.    Subs. by Act 12 of 1994, sec.  11, for "in relation  to an inquiry or scheme".**

**2.    Subs. by Act 12 of 1994, sec.  11, for "an industrial company."**

**22.  Suspension of legal proceedings, contracts, etc.-**

(1)  Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under sections 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof **1**[and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.

(2)  Where the management of the sick industrial company is taken over or changed **2**[in pursuance of any scheme sanctioned under section 18], notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law-

(a)  It shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b)  No resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3)  **3**[an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board:

       Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4)  Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly, -

(a)  Any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other authority shall remain stayed or be continued subject to such declaration; and

(b)   On the declaration ceasing to have effect-

(i)   Any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) Any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law, which may then be in force, from the stage, which had been reached when the proceedings became stayed.

(5)  In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

**1.    Ins. by Act 12 of 1994, sec. 12.**

**2.    Subs. by Act 12 of 1994, w.e.f. 12.**

**3.    Subs. by Act 12 of 1994, for "during the period".**

**1[22A.** Direction not to dispose Of assets "the Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing company not to dispose of direct the sick industrial except with the consent of the Board, any of its assets-

(a)  During the period, of Preparation or section 18; and consideration of the scheme under

(b)  During the period beginning with the recording of opinion by the Board for winding up of the company under sub-section  (1) of section 20 and up to commencement of the proceedings relating to winding up before the concerned High Court.]

(d)  That the Ld. Appellate Authority below has mis-appreciated the evidence on record and mis-applied the provisions of law.

(e)   That a breach of the rules of natural justice has occurred in connection with the making of the decision by the Ld. Appellate Authority below.

(f)   That procedures that were required to be observed in connection with the making  of the decision were not observed.

(g)  \_\_\_\_\_\_ That the Ld. Appellate Authority did not have jurisdiction to make the decision.

(h)    \_\_\_\_\_\_ That the decision was not a authorised by the enactment in pursuance of which it was purported to be made.

(i)   That the making of decision was on improper exercise of the powers conferred by the enactment in pursuance of which it was purported to be made.

(j)   That decision incurred an error of law whether or not the error appear on the record of decision.

(k)   \_\_\_\_\_\_ That the decision was induced or affected by fraud;

(l)    That there was no evidence or other material to justify the making of the decision.

(m)   That the decision was otherwise contrary to law.

(n)    Taking an irrelevant consideration into account in the exercise of power.

(o)   That the Ld. Appellate Authority below has Failed to take relevant consideration into account in the exercise of a power.

(p)    That \_\_\_\_\_ an exercise of powers for a  purpose other than a purpose for which the powers is conferred.

(q)   \_\_\_\_\_\_ an exercise of discretionary powers in bad faith.

(r)   \_\_\_\_\_\_ an exercise of a personal discretionary powers at the discretion or behest of another person.

(s)   \_\_\_\_\_\_ an exercise of a discretionary powers in accordance with a rule or policy without regard to the merits of the particulars case.

(t)      \_\_\_\_\_\_ An exercise of powers that is unreasonable that no reasonable person could have so exercised the powers.

(u)   \_\_\_\_\_\_ an exercise of a power in such a way that the result of the exercise of the powers is uncertain.

(v)   \_\_\_\_\_\_ any other exercise of a power in a way that \_\_\_\_\_ abuse of powers.

(w)   \_\_\_\_\_\_ the person who made the decision was required by law to reach that decision only if a particular matter was established and there was no evidence or other material [including facts of which  he was entitled to take notice] from which he could reasonably be satisfied that the matter was established or

(x)  \_\_\_\_\_ the person who made the decision based on the existence of particular fact and that fact did not exist.

(y)  That the order of the Ld. Appellate Authority below is against the well-settled principles of law laid down by the Hon'ble Apex court and this Hon'ble Court in catena of cases.

**1.    Ins.  by Act 12 of 1994, sec. 13.**

3.   That the petitioner has no other speedy and efficacious remedy available except to approach this Hon'ble court by way of the present writ petition.

4.   That the petitioner has not filed any other writ petition on same or similar grounds either before this Hon'ble court or before the Supreme Court of India.

5.   That the petitioner, therefore, prays that an appropriate writ, order or directions be issued for the following reliefs :-

(a)    Quash the impugned order \_\_  ;

(b)    Direct the respondents \_\_  ;

(c)  Call for the record from the Ld. Appellate Authority below for perusal by this Hon'ble court and setting aside the impugned order of the Ld. Appellate Authority below \_\_;

(d)  Direct the respondents to produce all the relevant records alongwith reply for perusal by this Hon'ble court;

(e)  Allow the cost of this writ petition to the petitioner, and;

(f)  Allow such other relief or pass such other orders as deemed fit and proper in the facts and circumstances of the case in favour of the petitioner and justice be done.

**AND FOR THIS ACT OF KINDNESS, THE HUMBLE PETITIONER AS IN DUTY BOUND, SHALL EVER PRAY.**

Shimla                                                                          Petitioner

\_\_\_\_\_\_\_                                                                      Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

C. W. P. No: \_\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

Affidavit in support of the Civil Writ Petition under Articles 226/227 of the Constitution of India.

I, \_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :

1.   That the accompanying writ petition has been prepared under my instructions.

2.   That the contents of paras 1 to \_\_\_\_\_ of the accompanying writ petition are correct and true to the best of my knowledge.

3.   That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

C. M. P. No.: \_\_\_\_\_\_\_ of 2004 in C. W. P. No:\_\_\_\_\_\_\_ of 2004

Petitioner/Applicants

Versus

Respondents/Non-Applicants

Application Under Rule 2 of the Writ Rules for dispensing with Seven days notice of motion

Respectfully Sheweth:

1.  That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2.  That on perusal of the allegations made in the writ petition and the documents attached therewith it is evident that the matter is of urgent nature and dispensing with of seven days notice is essential in the interest of justice.

3.   It is, therefore, prayed that this application may be allowed and seven days notice of motion dispensed with and writ petition be listed immediately.

Shimla                                                                          Petitioner/Applicant

\_\_\_\_\_\_\_                                                                      Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

C. M. P. No.:\_\_\_\_\_\_\_  of 2004 in C. W. P. No:\_\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application under Rule 2 of the Writ Rules.

I, \_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1. That the accompanying application has been prepared under my instructions.

2.  That the contents of paras 1 to 3 of the accompanying application are correct and true to the best of my knowledge.

3.  That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

C. M. P. No.: \_\_\_\_\_\_\_ of 2004 in  C. W. P. No:\_\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicant

Application Under Rule 4 for ad-interim order \_\_\_\_\_\_\_

Respectfully Sheweth:

1.   That the petitioner/applicant has filed the above mentioned writ petition in this Hon'ble court.

2.  That on perusal of the allegations made in the writ petition and the documents attached therewith it is evident that the petitioner/applicants have prima facie a very good case in their favour and the writ petition is likely to succeed.  The Balance of Convenience is in favour of the petitioners/applicants.

3.  That the interest of justice demands that during the pendency of the writ petition \_\_\_\_

4.   It is, therefore, prayed that this application may be allowed and \_\_\_\_\_\_ in the interest of justice.  Such other orders may also be passed in favour of the petitioners as deemed fit and proper by this Hon'ble court in the facts and circumstances of the case.

Shimla                                                                                                  Petitioner/Applicant

\_\_\_\_\_\_                                                                                                Through, Advocate

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

C. M. P. No.:\_\_\_\_\_\_\_ of 2004 in C. W. P. No:\_\_\_\_\_\_\_ of 2004

Petitioner/Applicant

Versus

Respondents/Non-Applicants

Affidavit in support of the application under Section 151 of CPC.

I, \_\_\_\_\_\_\_, do hereby solemnly affirm and declare as under :-

1.  That the accompanying application has been prepared under my instructions.

2.   That the contents of paras 1 to 4 of the accompanying application are correct and true to the best of my knowledge.

3.  That I further solemnly affirm and declare that this affidavit of mine is correct and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_\_.

Deponent

**IN THE HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

C. W. P. No: \_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

INDEX

|  |  |  |  |
| --- | --- | --- | --- |
| Sl No | Annx | Particulars of Documents | Pages |
| 1. |   | Court Fees | [I] |
| 2. |   | List of Events | 1 |
| 3. |   | Memo of Parties | 2 |
| 4. |   | Civil Writ Petition | 3 |
| 5. |   | Affidavit |   |
| 6. |   | List of Documents |   |
| 7. | P-1  |   |   |
| 8. |   | Application under Rule 2 of the Writ Rules |   |
| 9. |   | Affidavit  |   |
| 10 |   | Application U/S 151 CPC  |   |
| 11 |   | Affidavit  |   |
| 12 |   | Power of Attorney |   |

Shimla                                                                          Petitioner

\_\_\_\_\_\_\_                                                                      Through, Advocate

**Annexure - A**

**High Court of Himachal Pradesh Shimla**

**Appellate Side**

Receipt showing Court Fees Paid :  CWP No :\_\_\_\_\_\_ of 2004

\_\_\_\_\_\_ Versus  \_\_\_\_\_\_

|  |  |
| --- | --- |
|  Particulars | Amount |
| Court Fees stamp on Memo | 50.00 |
| Petition |   |
| Enclosures |   |
| Vakalatnama | 2.65 |
| Process Fees |   |
| Others |   |
| Total |   |

Date :\_\_\_\_\_\_\_

Signature of Receiving Clerk

Before the Hon'ble High Court of HP at Shimla

C. W. P. No:\_\_\_\_\_\_\_ of 2004

Petitioner

Versus

Respondents

Court Fees Rs. 50/-

Shimla                                                                          Applicant

\_\_\_\_\_\_                                                                        Through, Advocate

**Under Order 7 Rule 13 [1] C.P.C.**

**List of Documents Filed By Plaintiff/Defendant**

**In The Court of :Hon'ble High Court of HP at Shimla**

\_\_\_\_\_\_\_ Versus \_\_\_\_\_\_\_

     Date of Hearing:\_\_\_\_\_\_\_ Suit For : CWP

     Date of Production :\_\_\_\_\_\_\_

**S.No Details, date     What is        If documents    If rejected**

**documents         intended       filed what is   then the**

**to be          the Exh marked  date of**

**proved from    on it           return of**

**document                       documents**

Date:\_\_\_\_\_\_\_

Counsel for Plaintiff/Defendant

In the High Court of Himachal Pradesh at Shimla

Mention Memo

1.         Number & Nature of case: \_\_\_\_\_\_\_

\_\_\_\_\_\_\_ Vs \_\_\_\_\_\_\_

2.        Party seeking posting:                Petitioner/Appellant

3.        Name of Advocate of    :           Advocate

          party seeking posting.

4.        Name of Advocate       :            \_\_\_\_\_\_\_

          appearing for the

          opposite party

5.        Mention for:                   Motion/Admission/Orders.

6.        Reason for the mention: \_\_\_\_\_\_\_

7.        Date on which posting is sought: \_\_

Shimla

\_\_\_\_\_\_

Advocate