

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

Judgment reserved on: 14.05.2015
% Judgment delivered on: 03.07.2015

+ **WP(C) No. 3625/2013**

INDOSOLAR LTD.

..... Petitioner

Versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Dr. Ashwani Kumar, Sr. Advocate with Mr Ashish Kumar, Advocate.

For the Respondents: Mr Jasmeet Singh, CGSC with Mr Srivats Kaushal, Ms Kritika Mehra & Ms Astha Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1 The petitioner, is essentially aggrieved by the non-denial of subsidy to it by the respondents, under a scheme which is titled as : “Special Incentive Package Scheme” (in short the Scheme).

1.1 This scheme was notified by respondent no.1, to encourage, investments for setting up semi-conductor fabrication, and other micro and nano technology manufacturing industries, in India.

1.2 Since, the industry is supposedly capital intensive, and is required to frequently adapt to technological changes, the Government of India (GOI) thought it fit to create a conducive manufacturing environment by offering incentive packages, which were comparable, with what other countries had to offer.

1.3 It appears that the purpose was to attract global investments in the manufacturing sector as also to bridge the viability gap created, due to lack of adequate infrastructure and eco-system.

2. Consequently, the aforementioned scheme was framed and notified by respondent no.1 vide a gazette notification dated 21.03.2007 (in short the 2007 notification).

3. The 2007 notification, under clause 2.3, fixed two different thresholds of Net Present Value (in short the NPV) for investments to qualify for subsidy under the scheme. For semi-conductor manufacturing (fabrication units), the threshold NPV of investments, to be achieved, was fixed at Rs. 2500 crores and above.

3.1 In so far as threshold NPV of investments qua the manufacture of other eco-system products was concerned, the same was fixed at Rs. 1000 crores and above. The said clause provided that threshold value would be taken as the NPV of investments made during the first ten (10) years of the project life, and in arriving at the said value, a discount rate of 9% would be adopted.

4. The petitioner, which fell in the category of manufacturers of “other eco-system products”, claims that it had crossed the threshold NPV of investments, pegged at Rs. 1000 crores. It is the petitioner’s claim that it had achieved the threshold NPV by making investments valued at Rs. 1012.87 crores.

4.1 On the other hand, the respondents claim that the petitioner having achieved a threshold NPV of a value of Rs. 923.28 crores, (which is less than the minimum of Rs. 1000 crores fixed under the 2007 notification) – was not entitled to the claimed subsidy of 25%.

5. This, in substance, is the cause for grievance, which has propelled the

institution of the present petition.

5.1 Pertinently, the difference in the valuation of the NPV arises on account of one singular aspect, which is, the period over which the investments made by the petitioner are to be discounted.

5.2 The petitioner has discounted the investments made over the period spanning 2009-2010 to 31.12.2012.

5.3 The respondents, on the other hand, have discounted the investments spanned over 2008-2009 to 2012-2013.

6. As would be evident from the above, the respondents have included the investments made in the year 2008-2009. The petitioner, on the other hand, while discounting, has excluded the investments made in the year 2008-2009. Both are agreed though, that 2008-2009 is the base year. The petitioner has taken the stand that in calculating the NPV of the investments made, the base year is to be excluded, while the respondents argue to the contrary. This, in nutshell, is the core controversy arising between the parties.

7. The background in which the aforementioned controversy has arisen, is briefly as follows: Post, the issuance of the 2007 notification, respondent no.1 formulated guidelines for operation of the scheme, by the Appraisal Committee (in short the Committee), constituted in terms of clause 7.1 of the aforementioned notification.

7.1 These guidelines were formulated on 14.09.2007. It appears that the petitioner, which had set up a unit for manufacture and sale of solar cells and modules, filed an application for grant of capital subsidy, amounting to Rs. 300 crores (which was, according to it, equivalent to 25% of the project cost of Rs. 1200 crores).

7.2 As indicated above, the petitioner's unit fell under the category of

other eco-system. The application, which was filed though, by the earlier avatar of the petitioner i.e. Pheonix Solar India Ltd., is dated, 30.03.2008.

7.3 This application was accompanied by a pay order in the sum of Rs. 25 lacs, which was payable on 09.04.2008. The application, amongst others, carried an enclosure which detailed out the petitioner's proposal with regard to its project qua which, subsidy was sought.

7.4 The application, admittedly, was received by the respondents on 09.04.2008.

7.5 Evidently, on 22.12.2008, the petitioner, submitted a revised investment plan to the respondents. It was, inter alia, communicated to the respondents that it now proposed to invest a sum of Rs. 1545 crores, as against Rs.1200 crores indicated earlier. This increase in investment was, broadly, attributed to the enhancement in the cost of plant and machinery on account of technology up-gradation and Euro-appreciation.

7.6 On 01.06.2009, the respondents communicated to the petitioner that its application for assistance under the scheme had been considered, and that, the Technical Evaluation Committee (in short the TEC), had found, prima facie, that the project met the basic technical qualification criteria as laid down in the 2007 notification. However, in so far as grant of financial incentive qua the project was concerned, the petitioner was informed by the TEC that it would be considered subject to conditions laid down therein, including the condition that its final recommendation is accepted by GOI, after taking into account the ceiling on the number of the eligible projects as laid down in the scheme. The petitioner was also, inter-alia, informed that the actual disbursement of incentives under the scheme would be governed by clause 5.2 and 5.3, read with, other relevant clauses of the 2007 notification.

7.7 It appears that the petitioner vide a communication dated 27.12.2012, informed the respondents with regard to a downward revision in the capital expenditure made qua the project. This time around, the petitioner had scaled down the capital expenditure to Rs. 1233.95 crores.

7.8 Respondent no.1 vide letter dated 27.02.2013, in response to the petitioner's aforementioned letter dated 27.12.2012, informed that the NPV of the eligible capital expenditure, based on the details given in the schedule to the aforementioned letter, worked out to Rs. 923 crores; a figure which was below the threshold limit of Rs. 1000 crores.

7.9 The petitioner claims to have responded by a return letter of even date i.e., 27.02.2013 with its own calculation of NPV. The petitioner, evidently, informed respondent no.1 that according to it, the NPV of the capital expenditure incurred worked out to Rs. 1183 crores, a figure, which was above the threshold limit. The basis on which the said calculation was arrived at, was enclosed with the said communication.

8. Respondent no.1 thereafter vide letter dated 01.03.2013 sent its response to petitioner's letter dated 27.02.2013. In this letter, respondent no.1 took the stand that there was an error in petitioner's calculation of the NPV, as it had taken the base year as 2010 (more specifically the date, 31.12.2010). The stand taken was that as per clause 2.7(c) of the guidelines, the base year for the calculation of the threshold limit in NPV terms, would be the financial year (in short FY), in which, the application was made by an applicant, and therefore, since petitioner's application was received only on 09.04.2008, the base year for calculation of NPV would be FY 2008-2009. It was further communicated to the petitioner that after discounting the investments "to this base year", the NPV, would work out to Rs. 923.28 crores.

8.1 By a return letter dated 07.03.2013, the petitioner, requested for provision of details, based on which, the NPV was pegged at Rs. 923.28 crores.

9. Respondent no.1, accordingly, obliged and, in that behalf, dispatched a letter dated 18.03.2013, wherein it set out the details of its calculations with regard to NPV.

9.1 The petitioner contested the conclusion reached by respondent no.1 and, in this regard, sent a letter dated 26.03.2013. In this communication, in sum, the petitioner sought to highlight the provisions of clause 2.4 of the guidelines which set out the formulae for calculating the NPV. It was the petitioner's stand that the definition of the symbol 'i' in the formulae clearly contemplated that the discounted value of capital expenditure incurred shall be taken into account from the year succeeding the base year. In other words, the value of investments made in the base year would be taken as it is, that is, without being discounted. According to the petitioner, since the base year was the FY in which the application is made, it would end, in the present case, on 31.03.2009. Therefore, the investments made till that date could not be discounted.

9.2 It appears that the representative of the petitioner and the respondents held meetings, as well. These meetings are said to have been held on 22.03.2013, that is, prior to the aforementioned communication dated 26.03.2013, and thereafter, on 17.04.2013. As a matter of fact, after the meeting of 17.04.2013, the petitioner sent an e-mail dated 18.04.2013, to which it attached a summary. The summary submitted reflected position held by the petitioner qua the issue of calculation of NPV.

9.3. Since nothing came about, the petitioner, filed the present writ petition, in which, notice was issued on 28.05.2013. Consequent thereto,

pleadings in the matter stood completed. As a matter of fact, the written submissions were filed on behalf of the petitioner; though no such step has been taken by the respondents, despite, an opportunity being given vide order dated 05.03.2014.

10. Submissions, on behalf of the petitioner were advanced by Dr. Ashwani Kumar, Sr. Advocate, while those on behalf of respondents were advanced by Mr Jasmeet Singh, advocate.

11. Mr Kumar, in line with the pleadings and correspondence exchanged with the respondents, broadly, made the following submissions.

(i) In the calculation of NPV the respondents are required to discount only those completed years, which follow the base year. Support for the submission was sought to be derived by placing reliance on the definition of symbol 'i' set out in clause 2.4, which incorporated the NPV formulae, and on clause 2.7 (b) of the guidelines. Emphasis was laid on the inclusion of the word 'from' in the definition of symbol 'i', in the formulae, which pertained to number of completed years from the base year. Similarly, attention was sought to be drawn to the fact that sub-clause (b) of clause 2.7, wherein, inter alia, the threshold limit for investments was indicated, the word '*following*' preceded the expression '*base year*'.

(ii) The contention was that the use of the word '*from*' was clearly indicative of the fact that the base year had to be excluded, while discounting the eligible capital expenditure made by the petitioner. In support of this submission reference was made to Section 9 of the General Clauses Act, 1897 and extracts from the 37th Edition of Halsbury Laws of England, Volume III, page 92. Furthermore, reliance was placed on the following judgements: *Tarun Prasad Chatterjee vs Dina Nath Sharma, (2000) 8 SCC 649; Econ Antri Ltd. vs Rom Industries Ltd. & Anr., AIR*

2013 SC 3283 and *B.P. Thakur vs State*, AIR 1959 All. 787

(iii) It was also contended that beneficial schemes, such as the instant scheme, should be liberally constructed and words and expressions used, in such, schemes should further the purpose and objective, for which, they are formulated. In this regard, reliance was placed on the following judgements: ***Commissioner of Customs (Import) vs Konkan Synthetic Fibres*, (2012) 6 SCC 339; *Commissioner of Customs (Preventive) vs M. Ambalal & Co.*, (2011) 2 SCC 74 and *CCE vs North Eastern Tobacco Co. Ltd.*, (2003) 1 SCC 161.**

(iv) This apart, it was also sought to be argued that the petitioner had made the investments based on a legitimate expectation that it would be entitled to the subsidy which was available under the 2007 notification to eligible manufacturing units. This submission was sought to be supported by relying upon the following judgements of the Supreme Court : ***M.P. Oil Extraction vs State of M.P.*, (1997) 7 SCC 592 and *Nav Jyoti CGHS Ltd. & Ors. vs Union of India & Ors.*, (1992) 4 SCC 477.**

(v) Concurrently, reliance was also placed on the doctrine of promissory estoppel. In this behalf, the judgements of the Supreme Court in the case of : ***Motilal Padampat Sugar Mills Co. Ltd. vs State of Uttar Pradesh & Ors.*, (1979) 2 SCC 409 and *Union of India & Ors. vs Godfrey Philips India Ltd.*, AIR 1986 SC 806,** were relied upon.

(vi) It was next contended that in so far as the respondents were concerned, they were bound by the guidelines, as they had been framed by them. Reliance in this behalf was placed on the following judgements: ***K. P. Verghese vs Income Tax Officer, Ernakulam and Anr.*, (1981) 4 SCC 173 and *Deshbandhu Gupta and Co. Vs. Delhi Stock Exchange Association Ltd.*, 1979 (4) SCC 565.**

12. On the other hand, Mr Jasmeet Singh made the following submissions in rebuttal:

(i) The petitioner was seeking to re-interpret the terms of the policy as reflected in the 2007 notification. It was contended that the threshold NPV of the investments made ‘during the first 10 years of the project life’ had to be discounted at the rate of 9%. It was contended that the period of first 10 years would commence from ‘the start of the project’ and not from the start of any subsequent phase of project. The submission made was based on the phraseology obtaining in clause 2.2 and 3.2 of the 2007 notification. Reliance in this behalf was also placed on clause 5.3 of the very same notification.

(ii) It was thus submitted that since, the policy, as reflected in the 2007 notification, was clear and unambiguous, no external aids could be brought into play. This submission was made in the context of the reliance placed by the petitioner, on clause 2.4 and 2.7 of the guidelines. The submission was that the provisions of the guidelines could, if at all, only supplement the conditions stipulated in the 2007 notification and not supplant the same. In this behalf, reliance was placed on the following judgements: ***Dr. S.K. Kacker vs AIIMS, (1996) 10 SCC734*** and ***Heera Midha & Anr. vs Indian Tourism Development Corporation, 151 (2008) DLT 479.***

(iii) It was sought to be emphasised that the plain language of the 2007 notification had to be given a meaning as understood in common parlance. Reliance in this behalf was placed on the judgement of the Division Bench of this court in ***UOI vs Rajeev Bhargava, 173 (2010) DLT 620 (DB)*** and ***Ojas Industries Pvt. Ltd. vs UOI, 2006 (86) DRJ 593 (DB).***

(iv) It was further submitted that the court while examining the validity of an executive decision relating to economic matters should grant a certain

measure of freedom or “play in the joints” to the executive. It was contended that each error of the government ought not to be subjected to judicial review. For this proposition reliance was sought to be placed on the decision of the Supreme Court in the case of : ***BALCO Employees’ Union (Regd.) vs Union of India & Ors., (2002) 2 SCC 333.***

REASONS

13. I have heard the learned counsels for the parties and perused the record. As indicated right at the outset, the controversy in this case centres on the issue : as to whether the petitioner’s calculation of the NPV is correct, and therefore, making it amenable for grant of subsidy under the scheme formulated by respondent no.1. In this context, what is required to be examined is the method of calculation of NPV as provided under the 2007 notification.

14. There is no dispute as between the parties before me, that the base year in the instant case, is the FY 2008-2009. The dispute really is, as to whether or not the capital expenditure incurred by the petitioner in the base year is to be discounted or not. Therefore, the examination of the relevant provisions of the 2007 notification becomes relevant. For this purpose, I propose to rely the following clauses of the 2007 notification, which according to me, are important for the purposes of adjudicating the issue raised in the present petition. These being : Clauses 2.3¹, 3.1², 3.2³. 3.3⁴, 4⁵,

¹ 2.3 In the case of semi-conductor manufacturing (Fab units) products, the threshold Net Present Value (NPV) of investment will be Rs. 2500 crore and above. The threshold NPV of investment in manufacture of other eco-system products will be Rs. 1000 crore and above. This threshold value shall be taken as the Net Present Value (NPV) of investments made during the first 10 years of the project life and the discount rate will be @ 9%.

² 3.1 The Central Government or any of its agencies shall provide incentive of 20% of the capital expenditure (as defined in sub-paragraph 3.3) during the first 10 years for the units in SEZ and 25% of the capital expenditure for non-SEZ units. Non-SEZ units shall be exempt from CVD. The incentives, if any, offered by the State Government or, any of its agencies or local bodies shall be over and above this amount.

³ 3.2 The period of 10 years shall be the first 10 years of the project life from the start of the project and not with regard to the start of any subsequent phase of the project.

5.2⁶, 5.3⁷, 6⁸, 7.1⁹ & 7.2¹⁰.

15. A perusal of the aforesaid clauses would show that the petitioner would be eligible to the claimed subsidy only if the threshold value of the NPV, during the first ten years of the project life, is equal to or crosses Rs.1000 crores. This is because, as indicated above, the petitioner falls in the category of manufacturers of other eco-system products.

15.1 The petitioner being a Non-SEZ unit, would be, inter alia, entitled to subsidy equivalent to 25% of the capital investments made in its solar cell manufacturing unit. The application of the petitioner dated 30.03.2008, which was received by respondent no.1 on 09.04.2008, is indicative of the fact that it seeks a capital subsidy equivalent to 25% of the total project costs, calculated in terms of the 2007 notification.

15.2 Pertinently, the eligible capital expenditure, which can be taken into account, would include expenditure on land, building, plant & machinery and technology, including R&D. The caveat added in arriving at the calculation qua expenditure on land, is that, the cost of land exceeding 2% of

⁴ 3.3 The capital expenditure will be the total of capital expenditure in land, building, plant and machinery and technology including R & D. The cost of land exceeding 2% of the capital expenditure shall not be considered for calculation in this regard.

⁵ 4. Any unit may claim incentives in the form of capital subsidy or equity participation in any combination of the following:

(i) equity in the project, not exceeding 26%.

(ii) capital subsidy in the form of investment grant and interest subsidy.

The entire equity contribution will be taken towards the value of incentive package. There shall be an exit option, to be exercised by the Government, at a suitable point of time in the future, after the project goes on stream.

⁶ 5.2 All other incentives shall be released after the end of the financial year in which the NPV of the total investment exceeds the threshold value.

⁷ 5.3 Thereafter, the incentives shall be provided on an annual basis on the value of investments made during the year and be restricted to the first 10 years of the project life.

⁸ 6. There shall be a ceiling on number of units – 2 to 3 ‘fab’ units and 10 eco-system units. The Special Incentive Package shall be available only upto 31-3-2010.

⁹ 7.1 An Appraisal Committee shall be set up by the Department of Information Technology and headed by the Additional Secretary, Department of Information Technology. The Appraisal Committee will receive expressions of interest from investors and submit its recommendations to the Government. The Government shall consider such recommendations and grant approvals.

¹⁰ 7.2 For the effective functioning of the Appraisal Committee (A.C.), a set of guidelines shall be drawn up by the DIT and issued separately.

the capital expenditure is not to be considered for the purposes of calculation of eligible expenditure. (See : clause 3.3 of the 2007 notification). These are provisions of the notification.

15.3 There is, in fact, a provision in the guidelines, which is clause 3.8¹¹, which prescribes that any investment made before the date of receipt of the application, and investment in land, more than six (6) months before the date of the application, will not be considered for calculation of capital expenditure under the scheme.

15.4 In that sense, therefore, the guidelines do not just direct the operability of the provisions of the scheme, but also add to the conditions stipulated in the said scheme as reflected in the 2007 notification.

15.5 Furthermore, the first ten (10) years of the project life are to commence from the start of the project, and not, get related to the start of any subsequent phase of the project. (See : clause 3.2 of the 2007 notification)

16. As is seen upon a perusal of the clauses of the 2007 notification, there are various incentives available to the applicant, in this case the petitioner, depending on the category in which its unit falls.

16.1 What is important though, is that, under clause 7.1, the Department of Information Technology (DIT), is empowered to set up an Appraisal Committee, headed by an Additional Secretary. The Appraisal Committee was required to receive Expressions Of Interest (EOI) from investors, which would then submit its recommendations to the Government. The Government after considering the recommendations was required to grant

¹¹ Guidelines for the operation of the Scheme, 2007

3.8 Investments made before the date of the receipt of application, and investment in land made more than six months before the date of receipt of application shall not be considered for calculation of capital expenditure under the SIPS.

approvals.

16.2 For the effective functioning of the Appraisal Committee, the DIT was required to draw up guidelines to which reference has been made above. Therefore, what is pertinent, and therefore, requires to be noticed, is that, the operability of the scheme was dependent on the formulation of the necessary guidelines by the DIT. The 2007 notification, by itself, had neither set out the definitions nor the formulae for calculation of the NPV. As indicated in paragraph 15.3 above, the guidelines in fact added conditions to the 2007 notification.

16.3 The formulae for calculation of NPV is provided in clause 2.4, while the definition of the threshold limit is provided in clause 2.7 of the guidelines. For the sake of convenience, the same are extracted hereinbelow:

“....2.4 **Net Present Value (NPV)**

The Net Present Value (NPV) shall be calculated in the following manner:

$$NPV = \sum_{i=1}^{10} \frac{C}{(1+r)^i}$$

C= Net Cash Flow

i= Number of completed years from base year

r= Discount rate (9% in this case)

The discount rate as per SIPS will be @ 9%

2.7 **Threshold limit**

(a) the threshold limit shall be the minimum amount of the investment calculated in NPV terms for eligibility of the benefits under the SIPS;

(b) the minimum amount of such investment shall be Rs. 2,500 crores in case of Fab units, and Rs. 1000 crores in case of eco-system units, made during the period of first ten years of the project following the base year;

(c) the base year for the calculation of the threshold limit will be the financial year (FY) in which application is made. For this purpose, the FY will be the year beginning on the 1st April and ending on the 31st March of the succeeding year....”

(emphasis is mine)

16.4 A plain reading of the definition of the symbol ‘i’ in the formulae, provided in clause 2.4, along with clause 2.7(a), (b) & (c) of the guidelines, would establish the following: First, the *base year* is that FY, in which application is made. Second, the threshold limit is the minimum amount of investments calculated in NPV terms for claiming benefits under the scheme. Third, for “*eco-system units*”, the minimum amount of threshold limit, which an applicant had to achieve, was Rs. 1000 crores, which was to be made “during the period of first 10 years of the project following the *base year*”.

16.5 Consequently, the base year in the instant case would necessarily be the FY 2008-2009, as the application for the purposes of grant of subsidy was made only on 09.04.2008. Therefore, in calculating the NPV, of the investments/ eligible capital expenditure, made during the first ten (10) years of the project, would commence from the date following the base year.

16.6 The purpose it appears is that the base year is fixed as per clause 2.7 (c) of the guidelines, which in turn is dependent on the FY, in which, the application is made. The FY commences from 1st April and ends on 31st March of the succeeding year. The object appears to be, to exclude, for the purposes of discounting, every eligible capital expenditure which is made in the base year.

16.7 As a matter of fact, a perusal of clause 3.8 of the guidelines, to which I have made a reference, would show that there is intrinsic evidence available, which is demonstrative of the fact that, all investments made before the date of the application and investment in land more than six (6)

months prior to the date of the application are not to be considered as eligible expenditure under the scheme.

17. It appears to be, therefore, the intent of the scheme to, not to discount the eligible capital expenditure made in the base year. NPV is usually defined to represent the present value of stream of net cash flows resulting from a project which are discounted at a person's or entity's cost of capital minus the project's net investment. It is ordinarily used to evaluate, rank and select from various investments proposals available to a person or an entity. (See : Black's Law Dictionary, 6th Edition, p. 1041; Also see : Oxford Dictionary of Accounting, New Edition, p. 244).

17.1 In other words, the methodology of discounting enables a person or an entity to calculate the present value of costs or benefits, associated with a project, which are incurred or made available over multiple years. The rate of discount is generally the prevailing rate of interest or costs of capital prevailing at the point in time when the analysis is done. Therefore, the purpose of carrying out NPV calculation, is to accord a value to the money, where costs have to be incurred or benefits have to be received over a period of time. The value of money, or in other words costs or benefits, change over a period of time, and it is, therefore, necessary to discount the future value of money. The value of money changes on account of several factors, including inflation etc.

17.2 Thus, the argument advanced on behalf of the petitioner that the investments made in the base year can never be included in the eligible capital expenditure, to my mind, is not quite accurate. The investments, in the base year, which is a FY; in the instant case can be made any time between the 1st April and 31st March of the succeeding year. It is possible to calculate the NPV of an investment made, say on the 30th of March of the

succeeding year at a given discounted rate.

17.3 Having said so, the position, however, is not to be examined only from the point of view as to how NPV is ordinarily calculated, but is to be contextualized in the setting of the scheme. The scheme intends to exclude investments/ capital expenditure made in the base year, perhaps, on the assumption that its present value is not likely to be altered dramatically as against those which are made in the subsequent years. Besides, the scheme as configured, seeks to incentivise in various forms, capital investment, of the kind prescribed, which reaches or crosses a particular threshold limit. The scheme envisages that the threshold limit is to be quantified in present value terms, for which, a discount rate of 9% is fixed. However, in the calculation of the threshold limit, the scheme seeks to apply the discount rate to only those investments made in the years “*following*” the base year. If that be the intent, the approach adopted by the petitioner seems to accord with the provisions of the scheme.

18. Therefore, while one cannot quibble with the proposition advanced on behalf of the respondents that the guidelines cannot supplant the scheme, what cannot be lost sight of, is that, the guidelines make the scheme operable. The mechanics of the scheme are provided in the guidelines. For instance, the formulae for calculating the NPV and the manner in which the threshold limit is to be ascertained, is provided in the guidelines. The guidelines, to my mind, are thus an elaboration of what the scheme envisages.

19. One cannot also find fault with the proposition that the intention of the maker of the document is to be ascertained from the language used in the document, and if, the language is clear and unambiguous, no interpretative rules can be brought into play. If, as indicated above, the guidelines are

considered as an extension of the scheme, then the use of the expression '*from*' in the definition of the symbol 'i' and also the use of the word '*following*' in clause 2.7 (b), prior to the expression 'base year', would persuade me to conclude that the investments made in the base year are not to be discounted.

20. Therefore, while one cannot but agree with the principles enunciated in the judgements cited by the counsel for the respondents, the use of the ratio enunciated therein, to argue to the contrary, cannot be accepted.

21. Having regard to the above, I am inclined to accept the argument that the base year, which is FY 2008-2009, in the instant case, will have to be excluded in arriving at the threshold limit of NPV of the capital investment made by the petitioner as prescribed under clause 2.3 of the scheme. In other words, eligible capital expenditure incurred in the base year will not be discounted to arrive at the threshold limit.

22. Accordingly, the respondents no. 1 and 2 are directed to re-calculate the threshold limit, under the scheme, in terms of the findings returned above. The respondents will complete the said exercise within four weeks from today, and in case, the petitioner, were to meet the all other parameters, they would release the incentives, to which, it is eligible, under the scheme, in terms of the provisions set out therein.

23. The writ petition is disposed of in the aforesaid terms.

24. There shall, however, be no orders as to costs.

RAJIV SHAKDHER, J

JULY 03, 2015

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