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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.14799 of 2013
Date of decision: 09.03.2015

M/s Delton Cables Ltd. ….Petitioner

Vs.

State of Haryana and others ….Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE GURMEET SINGH SANDHAWALIA

Present: Mr. Rajiv Agnihotri, Advocate for the petitioner
Ms. Mamta Singla Talwar, Assistant Advocate General, Haryana for the respondents.

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G.S.SANDHAWALIA, J.

Challenge in the present Civil Writ Petition filed under Article 226/227 of the Constitution of India is for the issuance of a writ in the nature of certiorari for quashing order dated 16.5.2012 (Annexure P/7) vide which respondent no.2 has demanded a sum of ₹ 81,60,578/-as interest on interest free loan in lieu of sales tax deferment. Challenge has also been laid to the subsequent notice under the Haryana Public Money (Recovery of Dues) Act, 1979 dated 7.8.2012 (Annexure P/8) wherein an amount of ₹ 86,55,512/- is sought to be recovered as arrears of land revenue by respondent no.3.

The contention of the counsel for the petitioner for waiver of the amount sought to be recovered is on the ground that a contract had been entered into with Mahanagar Telephone Nigam Ltd. (MTNL) and the declaration Forms 'D'/'C' were not issued to the tune of ₹ 90.06 lacs. The petitioner-company had not received the said amount from MTNL and the Sales Tax Department, Rewari had framed assessment for the relevant period and charged at full rate of tax @ 10% and as per arbitration clause matter had been referred to the Arbitrator. An award had been passed against the petitioner-company on 14.2.2007 which was subject matter of challenge before the Delhi High Court. In the meantime, the amount was sought to be recovered from the petitioner-company by the State on the deferment amount of ₹ 288.07 lacs. Accordingly, the plea taken was that the amount should not be recovered till the matter was resolved interse the petitioner-company and the MTNL.

In the written statement filed by respondents no.2 and 3, the plea taken was that an agreement had been entered into with the Department of Industries and in case of default in the recovery of loan, the company will have to pay simple interest on the amount due at the rate of 1% per month from the date of commencing with the date following the last date for the submission of the return. It was averred that a sum of ₹ 3,00,84,000/- had not been recovered as per schedule from the unit. But since the amount had not been paid on due dates, the petitioner-company was liable to pay interest. The dispute between the petitioner-company and the MTNL was not binding upon the answering respondents and was a matter interse between themselves and the respondents did not have any concern with the same.

Counsel for the State on the strength of written statement argued that neither the MTNL was a party herein nor the dispute was interse connected, therefore, recovery cannot be deferred.

The said argument of the counsel for the State is well justified since nothing has been shown that there was tripartite agreement between the three parties and neither the MTNL has been arrayed as respondent. The independent contract interse the petitioner-company and the MTNL

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would not debar the State from recovering the interest amount as per the agreement between the petitioner. The State on account of loan of ₹ 3,00,84,000/- which provided that there was an interest element in case of default in the payment of loan which it was entitled to recover fact was not denied as such by the counsel for the petitioner. Thus, the argument for deferring recovery cannot be accepted and accordingly the same is rejected.

However, one issue which has been pointed out by the counsel for the petitioner and which arises is that as per the agreement dated 16.12.1992(Annexure P/1) whereby the benefit of interest free loan was given provided that an appeal lies against the decision of the General Manager, District Industries Centre under clause 9 regarding sanctioning of the loan or recovery to the Director of Industries, Haryana. The impugned order dated 16.5.2012 (Annexure P/7) refers to a hearing afforded by the Director of Industries on 5.6.2011 to the petitioner-company but no such order has been placed on record by the State vide which the speaking order was passed quantifying the amount of the interest. How a huge amount of ₹ 86,55,512/-has been calculated which is sought to be recovered as interest without any specific break up showing the details of how the interest has been calculated from which date and on what basis is thus missing.

In such circumstances, we are of the opinion that before any recovery is effected against the petitioner vide impugned order dated 16.5.2012, respondent no.2 shall pass a specific order quantifying the amount and giving the details as to how the amount has been calculated which admittedly is due and to which the petitioner-company can have no objection as such. The needful thus be done within a period of four weeks

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from the date of receipt of a certified copy of this order. The recovery shall not be effected further for a period of four weeks from the date of supply of said order.

With the aforesaid observations, the present Civil Writ Petition is disposed of accordingly.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

09.03.2015
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