IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.3038 of 2014 (O&M)
Date of Decision: 28.9.2015

M/s 22nd Century Technologies Inc.
& another --Petitioners

Versus

Chandigarh Administration & others --Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR.
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashwani Talwar, Advocate for the petitioners.

Mr. Vivek Chauhan, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J.

The instant petition is directed against the order dated 11.11.2013, passed by the fourth respondent i.e. the Estate Officer, U.T., Chandigarh whereby the claim for issuance of a regular Letter of Allotment in favour of petitioner no.2, which is a 100% subsidiary company of petitioner no.1, has been declined.

2. Brief facts that would require notice are that the Chandigarh Administration invited applications for allotment of "Build to Suit Sites" at the Rajiv Gandhi Chandigarh Technology Park (SEZ Area) on lease-hold basis. Petitioner no.1, which is a company incorporated in the United States of America, applied for allotment and in pursuance to a draw of lots conducted of the eligible applicants, a Letter of Intent dated 8.5.2008 pertaining to Site No.25-C measuring 0.67 acres on lease-hold basis at a tentative premium of Rs.1,00,55,555/- was issued in favour of petitioner no.1. The Letter of Intent stipulated that the allotment was to be governed by the provisions of the Chandigarh Estate Rules, 2007 and the allotment was subject to obtaining Letter of Approval from the competent authority

under the Special Economic Zone. 25% of the tentative premium was liable to be deposited within 30 days from the date of issue of Letter of Approval by the competent authority under the Special Economic Zone. It so transpires that the Director, Information Technology, Chandigarh Administration vide letter dated 28.7.2008 addressed to the Finance Secretary, U.T., Chandigarh pointed out that in all six companies had been allotted sites and out of which four allottees including petitioner no.1 are registered abroad and in order to avail the STPI/SEZ (Software Technology Part India/Special Economic Zone) benefits under the R.B.I guidelines, they would have to incorporate Special Purpose Vehicle (S.P.V.) in the form of 100% wholly owned Indian Subsidiary Companies registered in India. In pursuance to the letter dated 28.7.2008 and in order to carry out its Indian operations, petitioner no.1 got incorporated a company by the name and style of 22nd Century Software Solutions (India) Private Limited i.e. petitioner no.2. The certificate of incorporation dated 19.8.2008 issued by the Registrar of Companies stands appended as Annexure P-5.

3. Petitioner no.2, thereafter, obtained Letter of Approval from the office of the Development Commissioner, S.E.Z on 18.9.2009. On 15.10.2009 25% of the premium amount i.e. Rs.25,13,889/- was deposited and a request was made for issuance of a regular Letter of Allotment in favour of petitioner no.2. The matter remained under active consideration thereafter. Vide letter dated 4.8.2011 issued by the Director, Information Technology, Chandigarh Administration, respondent no.3 and addressed to the Superintendent, Finance-I, Finance Department, Chandigarh Administration (Annexure P-15), a recommendation to issue the Letter of Allotment in favour of petitioner no.2 at the earliest was made.

4. On behalf of the petitioner two instances have been cited, whereby the initial Letter of Intent had been issued in favour of the parent foreign based company but thereafter the regular Letter of Allotment having been issued to the subsidiary company incorporated in India. The names of the principal companies to whom the Letters of Intent had initially been issued were M/s Damco Solutions U.K., Ltd. and M/s Silicon Valley Systech Inc. The names of the respective Indian subsidiaries to whom the regular Letters of Allotment have been issued are M/s Damco Soft Pvt. Ltd. and M/s S.V. Systech Pvt. Ltd.

5. Faced with a situation of inaction, the present petitioners were constrained to file CWP No.18098 of 2013 raising a prayer for issuance of the regular Letter of Allotment in favour of the 100% wholly owned Indian subsidiary company i.e. M/s 22nd Century Software Solutions (India) Pvt. Ltd., petitioner no.2. In such writ petition it was brought to the notice of this Court that even a legal notice dated 4.4.2013 that had already been served upon the respondents had not been responded to. Accordingly, vide order dated 20.8.2013 a Division Bench disposed of the petition with a direction to the Estate Officer, U.T., Chandigarh to consider and decide the legal notice dated 4.4.2013 in accordance with law and by passing a speaking order.

6. It is in purported compliance of the directions issued by the Division Bench that the impugned order dated 11.11.2013 (Anenxure P-28) has been passed declining the claim for issuance of a regular Letter of Allotment in favour of petitioner no.2. Resultantly the instant writ petition.

7. Having heard learned counsel for the parties, we are of the considered view that it is a fit case for remand and for reconsideration at the

hands of the Estate Officer, U.T., Chandigarh, respondent no.4.

8. Perusal of the impugned order dated 11.11.2013 (Annexure P-28) shows that the basis for declining to issue a regular Letter of Allotment in favour of petitioner no.2 is that the Letter of Intent had been issued in favour of the parent company i.e. Petitioner no.1 on 8.5.2008 and the request for issuance of Letter of Allotment to the wholly owned subsidiary company incorporated in India (petitioner no.2) had been made after three months from the date of issuance of the Letter of Intent and as such, a view has been taken that petitioner no.2 was never eligible for allotment as per R.B.I guidelines at the time of issuance of initial Letter of Intent i.e. 8.5.2008. Still further, it has been reasoned in the impugned order that in so far as the other companies, which are similarly situated including M/s Damco Soft Pvt. Ltd., the decision of issuance of regular Letter of Allotment was being revisited.

9. A subsequent development is crucial. M/s Damco Soft Pvt. Ltd., a subsidiary company incorporated in India and which is similarly situated as petitioner no.2 herein and which had already been issued the regular Letter of Allotment was not being issued the Occupation Certificate in respect of site in question. Even in respect of such company the Letter of Intent had been issued originally to the foreign based parent company i.e. M/s Damco Solutions Ltd., U.K on 1.5.2008 and the Indian subsidiary company i.e. M/s Damco Soft Pvt. Ltd. had been incorporated subsequently on 9.9.2008. The Letter of Allotment had been issued to M/s Damco Soft Pvt. Ltd. on 16.3.2009. Occupation Certificate having been refused, CWP No.23491 of 2014 was filed in this Court. Vide judgement dated 22.12.2014, passed by a Division Bench, it has been held that allotment of

the plot in favour of the Indian subsidiary company i.e. M/s Damco Soft Pvt. Ltd. is not in violation of the Chandigarh Estate Rules, 2007 as it was only a Letter of Intent that had been issued to the parent company, whereas the Letter of Allotment had been issued to the Indian subsidiary company after granting approval for transfer. It has further been held that issuance of Letter of Allotment in favour of M/s Damco Soft Pvt. Ltd. by taking into consideration the eligibility of the parent company, is not in violation of the statutes, rules or instructions. Accordingly, the decision of the Chandigarh Administration to revisit the allotment qua M/s Damco Soft Pvt. Ltd. i.e. the Indian subsidiary company was held to be unjustified. Directions have been issued to issue the requisite Occupation Certificate.

10. In the light of the Division Bench judgement dated 22.12.2014 in the case of M/s Damco Soft Pvt. Ltd. the very basis for rejection of the claim of petitioner no.2 for issuance of a regular Letter of Allotment does not survive.

11. In view of the above, the impugned order dated 11.11.2013 at Annexure P-28 is set aside. The matter is remanded back to the Estate Officer, U.T., Chandigarh, respondent no.4 for passing of an order afresh. Let such exercise of reconsideration be completed within a period of 8 weeks from the date of receipt of a certified copy of this order.

12. Petition is disposed of in the aforesaid terms.

(S.J. Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

28.9.2015
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Whether to be referred to Reporter? Yes.