

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CWP No.5213 of 2015 (O&M)

Date of Decision: 16.12.2016

M/s Sukhm Infrastructures Pvt. Ltd.

. . . . Petitioner

VS.

State of Punjab & Ors.

. . . . Respondents

(2) CWP No.5620 of 2015 (O&M)

M/s Sukhm Infrastructures Pvt. Ltd.

. . . . Petitioner

VS.

State of Punjab & Ors.

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR. JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment? yes

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest? yes

Present: Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Arjun Partap Atma Ram, Advocate
Mr. Anand Chhibber, Senior Advocate with
Ms. Harpriya Kanekha, Advocate and
for the petitioner(s)

Ms. Rajesh Bhardwaj, Addl. AG Punjab

Mr. RS Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate for GMADA

SURYA KANT, J.

(1) This order shall dispose of two Civil Writ Petitions No.5213 & 5620 of 2015 as the issues raised by the petitioner-Company in both the cases are interrelated or are incidental to the core issue regarding the scope and extent of exemptions claimed to have been granted to it under the Industrial Policy, 2003.

(2) In the first petition, the petitioner-Company has laid challenge to the demand notice dated 13.12.2011 (P14), the show cause notice dated 29.09.2014 (P15) and the letter dated 10.03.2015 (P17) raising the demand for payment of External Development Charges (EDC) and has further sought refund of ₹ 11,82,47,000/- paid by it in lieu of EDC and cess thereon, besides refund of ₹ 7,09,23,000/- paid towards licence fee. Both the reliefs have been sought on the premise that the petitioner has been exempted from such levies under the Industrial Policy, 2003. In the second writ petition, there is a challenge to the letters dated 14.10.2013 (P11) and 15.11.2013 (P12) requiring the petitioner-Company to obtain 'No Dues Certificate' from Greater Mohali Area Development Authority (GMADA) upon payment of External Development Charges and licence fee as a pre-condition for processing the Change of Land Use (CLU) despite exemption of Change of Land Use charges as well as other levies under the Industrial Policy, 2003. The petitioner has also assailed the letter dated 22.11.2012 (P13), asking it to obtain NDC from GMADA as a pre-condition for allowing concessions under the Punjab Apartment and Property Regulation Act, 1995 (in short, 'the PAPRA, 1995'). Similar challenge is laid to yet another letter dated 28.08.2012 (P18) requiring the petitioner to obtain NDC from GMADA as a pre-condition for approval of Layout and Zoning Plans submitted by it. A further direction to grant extension of time towards completion of the project on account of delays having been caused by the respondents, has also been prayed for.

Facts of the case:

(3) The petitioner is a Private Limited Company duly incorporated on 25.11.2005 under the Companies Act, 1956. The main objectives of the

petitioner-Company as enumerated in its Memorandum of Association are to carry on the business of real estate and properties including purchase of real estate and development of land/premises/building, creation of plots for the purpose of sale, lease & to carry on the business of colonisers & developers, construction of commercial/residential buildings and the sale and purchase of properties on commission basis.

(4) The State of Punjab introduced its Industrial Policy, 2003 which was brought into existence to meet the requirements of changing times. The followings were the main objectives of the Policy:-

“• To create a conducive investment climate through infrastructure creation, reduced regulations and general facilitation.

• To rejuvenate and make competitive existing industry, particularly in the small scale sector through improved technology, product quality and marketing.

• To create a special thrust in the areas where Punjab has an edge in terms of cost and competitiveness.”

(5) Chapter-10 of the Industrial Policy, 2003 deals with Industrial Infrastructure Development which envisaged to make a serious endeavour to attract private investment and participation for creation of adequate infrastructure and for upgradation of existing infrastructure. Paragraph 10.4 of the Policy has a direct bearing on the controversy and its different clauses are to the following effect:-

“10.4 Following measures will be taken to encourage private sector investment in development of Industrial parks / Estates / Agro parks / IT parks:-

10.4.1 External Development Charges for Private Industrial Estate Developers

In order to facilitate and encourage private participation in Industrial Parks / Estates / Information Technology Parks/ Agro Parks / Special Economic Zones in the private or joint sector shall be exempted from the Punjab Apartment and Property Regulation Act (PAPRA) 1995, in accordance with the powers vested with the State Government under Section-44 (2) of the Act. To be entitled to avail of these benefits, the eligibility of each such park / estate / zone will be assessed and determined by the Empowered Committee for Industrial Approvals. Upon approval of the Committee, the Department of Industries will issue an eligibility certificate.

10.4.2 Change of land use

Change of land use will not be required anywhere in the State except in the areas falling within the municipal limits, Chandigarh Capital periphery or planning or controlled areas and along the notified schedule roads and bye passes (as and when notified by Department of Housing & Urban Development). However, in the case of Industries being set up in the areas other than specified above, intimation by the Industries Department about the location of the proposed unit shall be sent to Chief Town Planner, Punjab, Department of Housing & Urban Development, so as to keep the data bank regarding land use updated.

10.4.3 Sale / Transfer of developed infrastructure

There shall be no stamp duty on first sale/transfer of developed infrastructure by the developer in industrial parks / complexes as approved by the Department of Industries during the setting up of such areas and subsequently for a period of three years. Thereafter, the normal stamp duty would be chargeable on such transactions.”

(6) The petitioner-Company on 18.01.2006 applied under the Industrial Policy, 2003 to grant it a special package of incentives for setting up of Information Technology/Industrial Park in an area measuring 125 acres of land with an investment of ₹ 952 crore at SAS Nagar Mohali. The Secretary, Industries and Commerce, Govt. of Punjab vide memo dated 05.05.2006 (P3) informed the petitioner that the Empowered Committee under the Chairmanship of Chief Minister, Punjab had considered the petitioner’s proposal in its meeting held on 29.03.2006 and decided to grant following concessions to the Industrial Park:-

- i) *“As per the Industrial Policy 2003 exemption will be granted on 100% stamp duty and registration fee on sale/transfer of built up space of the units or land inside the project area. Such exemption shall extend to the project area upto first sale of developed area/plot/built up space to any party by them or to any of its affiliate. There shall be no stamp duty on lease instrument of units located in the project area. Such exemption shall remain operative till the completion of the entire project as per the agreement.*

- ii) *State Government shall acquire land as per provision of the Land Acquisition Act to the extent of 10% of the total area of the project, if requested by the company.*
- iii) *The land use change in the area falling under the control of the Punjab Periphery Control Act shall be allowed without any charges levied by the Housing and Urban Development Department in accordance with the draft master layout plan of the periphery and periphery policy of the Government of Punjab. However, if any or whole part of land of the project area is not covered in any master plan or planning zone under PUDA Act, the land use thereof shall not be changed or amended later on and shall be incorporated as such and included in any future master plan or zoning which shall be prepared under the PUDA Act. The project shall not be advertised/launched and no money will be collected from general public for allotment of land/plot/flat any space till such time the layout/zoning plans are cleared from the competent authority.*
- iv) *Permission under Punjab State Tubewell Act, 1954 to dig Tubewell in project area for requirement of the project was allowed.*
- v) *Permission under the provisions of Punjab Mines & Mineral Act shall be allowed within the project area for works relating to development of the project. However, due charges will be payable.*

- vi) *High-rise buildings upto 45 mtrs. shall be allowed subject to Air Safety Regulations, Traffic Circulation and Fire Safety Norms.*
- vii) *Work contract tax on construction material required for the project shall be charged at minimum floor rate.*
- viii) *FAR or 2 shall be allowed for industrial and commercial purpose. However, the relevant Building Bye-laws/regulations shall be applicable to the area. The guidelines issued by the Department of Industries & Commerce for Industrial Parks shall also be applicable.*
- ix) *The State Government will try to ensure that connectivity to power, roads, accessibility, communication, civic and other infrastructure upto project is provided within 240 days from the date the same is applied for to the concerned department/agency/authority/local body on fulfillment of various terms and conditions required in this regard at such rates/fee etc. which shall not be less favourable to them compared to similarly placed projects/customers.*
- x) **The project of industrial park shall be exempted from PAPR Act.**
- xi) *50% exemption from electricity duty at current rate for 5 years shall be allowed from the date of release of connection by PSEB. This concession shall, however, be admissible only to such Industrial units which are set up within the area earmarked for industry and start production within 5 years from the date of approval of Industrial Park i.e. 12.1.2006.*

- xii) *State Government shall allow the company to connect the project area to the State Transport Network. The State Government shall also allow them to operate their own public transport system within the project area and also for connecting the project area to the main urban centre nearest to the project area subject to the fulfillment of required terms and conditions in this regard.*
- xiii) *The State Government shall not allow hazardous industry as defined under Factories Act within 500 metres of the project area and industrial plots within the industrial park shall also not have any hazardous industry.*
- xiv) *Pollution Control Board shall grant NOC and consent to operate to the Green Category Industry to be located in the Industrial Park in 30 days on fulfillment of all the required terms and conditions.*
- xv) *No State Agency shall erect any barrier or create hindrance in various connectivities which shall be allowed to the project except on the ground of major law and order problem or National Security considerations.*
- xvi) *The Department of Industries shall be the single Nodal Agency for facilitating the project and getting clearance etc. required for the unit for the project and the project area and will also get resolved various issues which will relate to the Government Departments or Punjab Government Public Sector Undertakings/Authority/Local Body.*

xvii) **Proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located, shall be borne by all the developers of Information Technology Park/Industrial Park proportionately.**”

(emphasis by us)

(7) Thereafter Agreement dated 11.10.2006 (P4) was executed between the petitioner and the State Government which firstly reiterated the State Government’s commitment to attract new investment in Punjab State under the Industrial Policy, 2003 and that the State Government agreed to grant special package of concession to enable the petitioner to implement its project for which the parties agreed to the terms and conditions as contained in Para-5 of the Agreement. Some of the agreed terms and conditions are as follows:-

(i) **The Company shall make an investment of Rs.952 crore including fixed capital investment of at least Rs.100 crore at one location, as defined by the Department of Industries under Industrial Policy, 2003, by setting up of Information Technology Parks projects in 125 acre of land at Mohali with an investment of about Rs.952 crore within a period of 3 years, effective from 29.03.2006.**

The said project shall have to be fully implemented and brought into commercial production within the said stipulated period.

(ii) xxxx xxxx

(iii) *The project of Information Technology Park shall be further subject to the provision of the guidelines notified by Department of Industries & Commerce. Some of the relevant provision shall be:-*

a. *A minimum of 60% of area will have to be developed as an industrial Pocket, a maximum of 30% of area may be developed as residential pocket and 10% of area can be developed as commercial pocket Government in the Department of Industries may however, reduce the permissible limits for non-industrial use in particular cases.*

b. *xxxx xxxx*

c. *xxxx xxxx*

d. *xxxx xxxx*

e. *Infrastructure development would include roads (including approach roads) water supply and sewerage facilities, common effluent treatment facilities, telecom networks, generation and distribution of power, parking facilities, parks, street lights and such other facilities as are of the common use for industrial activities which are identifiable and are to be commonly used.*

f. *xxxx xxxx*

g. *xxxx xxxx*

h. *xxxx xxxx*

i. *Benefits to industrial parks under industrial policy, if provided by the Government shall be withdrawn by State Government in case the park is*

not put up/developed in accordance with the sanctioned plan within the prescribed time period.

(iv) The Government of Punjab has agreed to provide following reliefs and concessions to the company for implementation of aforesaid project:-

a) As per the Industrial Policy 2003 exemption will be granted on 100% stamp duty and registration fee on sale/transfer of built up space of the units or land inside the project area. Such exemption shall extend to the project area upto first sale of developed area/plot/built up space to any party by them or to any of its affiliate. There shall be no stamp duty on lease instrument of units located in the project area. Such exemption shall remain operative till the completion of the entire project as per the agreement.

b) xxxx xxxx

c) The land use change in the area failing under the control of the Punjab Periphery Control Act shall be allowed without any charges levied by the Housing and Urban Development Department in accordance with the draft master layout plan of the periphery and periphery policy of the Government of Punjab. However, if any or whole part of land of the project area is not covered in any master plan or planning zone under PUDA Act, the land

use thereof shall not be changed or amended later on and shall be incorporated as such and included in any future master plan or zoning which shall be prepared under the PUDA Act. The project shall not be advertised/launched and no money will be collected from general public for allotment of land/plot/flat/any space till such time the layout/zoning plans are cleared from the competent authority.

- d) xxxx xxxx*
- e) xxxx xxxx*
- f) xxxx xxxx*
- g) xxxx xxxx*
- h) xxxx xxxx*

i) The State Government will try to ensure that connectivity to power, roads, accessibility, communication, civic and other infrastructure upto project is provided within 240 days from the date the same is applied for to the concerned department/agency/authority/local body on fulfillment of various terms and conditions required in this regard at such rates/fee etc. which shall not be less favourable to them compared to similarly placed projects/customers.

*j) **The project of industrial park shall be exempted from PAPR Act.***

- k) xxxx xxxx*
- l) xxxx xxxx*
- m) xxxx xxxx*
- n) xxxx xxxx*

- o) xxxx xxxx
p) xxxx xxxx

q) **Proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located shall be borne by all the developers of Information Technology Park/Industrial Park proportionately.**”

(emphasis applied)

(8) Para-6 of the Agreement further says that :-

“In case the above company fails to comply with provisions of para-5(i), 5(ii) & 5(iii) above, within the stipulated period mentioned therein, the concession enumerated in para-5(iv) above shall stand automatically withdrawn and the company shall have no claim or liability whatsoever on the State Government in this regard. The Government of Punjab shall be entitled to recover the cost of the aforesaid relief/concession availed by the Company (as dues recoverable by the Government as arrears of land revenue) under Para 5(iv) above in the event of failure on the part of the Company to fulfill its obligations under Para 5(i), 5(ii) & 5(iii) above.”

(9) The Agreement dated 11.10.2006 culminated into the notification dated 29.10.2009 (R13) vide which the State Government in exercise of its powers under Section 44(2), exempted the petitioner’s project

(10) The petitioner is said to have invested more than ₹ 150 crores till 31.03.2014 for the development of its Information Technology/Industrial Park known as “Yellowstone Landmark Infocity”, Sector 66-B, Mohali. It has also obtained the following NOCs from the (i) Punjab State Pollution Control Board on 20.08.2007 (P5 colly), (ii) Ministry of Defence HQ on 20/21.09.2012 (P7 colly), (iii) Fire Station Office, SAS Nagar on 08.01.2013 (P8) and Environment clearance from the Ministry of Environment and Forests on 05.03.2013 (P9).

(11) The petitioner has alleged that regardless of the Agreement dated 11.10.2006, the Department of Housing and Urban Development wanted to levy CLU charges on the petitioner against which it represented to the nodal Department, namely, Department of Industry and Commerce, who then vide letter dated 07.09.2007 advised the Department of Housing and Urban Development to take further action as per decision of the Empowered Committee and the Agreement signed by the petitioner.

(12) Thereafter GMADA vide memo dated 30.09.2009 (P13) asked the petitioner to deposit EDC, licence fee and Urban Development Fund for an area measuring 45 acres which was the first phase of the petitioner's project and the total amount demanded under these heads was ₹ 675 lacs out of which a sum of ₹ 168.75 lacs stood paid by it. Petitioner was accordingly asked to pay the remaining outstanding amount of ₹ 506.25 lacs in six equated biannual instalments along with 10% compound interest. The petitioner-Company deposited certain amounts from time to time which were adjusted against the payment of External Development Charges as was depicted in the revised demand notice dated 13.12.2011 (P14) according to

which the outstanding dues were to the tune of ₹ 1917.41 lacs, which was payable in nine equated biannual instalments by 27.04.2016.

(13) The petitioner is said to have made some more payments towards External Development Charges and in this manner a sum of ₹ 965.25 lacs remained outstanding as on 29.09.2014, due to non-payment whereof, show cause notice dated 29.09.2014 (P15) was served on it. The petitioner replied to the show-cause notice pointing out that as per the amicable settlement between the parties, a sum of ₹ 200 lacs was paid by it so that GMADA could clear the pending revised Layout Plan/Zoning Plans/Building Plans. The GMADA, however, did not accede to the petitioner's request and served it with the impugned memo dated 10.03.2015 (P17) informing that as per the Punjab Government policy, it was decided to recover the due amount along with interest etc. as per the revised schedule of payment mentioned therein, asking the petitioner to clear the outstanding dues in instalments by 09.10.2016.

(14) While assailing the afore-mentioned demand orders, the petitioner's precise case is that the payments made by it have been wrongly appropriated by the respondents towards EDC as no such charges are leviable since the same were actually exempt under the Industrial Policy, 2003. The petitioner is said to have been caught unaware by levying EDC and licence fee contrary to the terms and conditions of the agreement dated 11.10.2006 (P4) executed between the petitioner and the State. The petitioner thus seeks refund of the payments made by it which are said to have been illegally appropriated towards EDC, cess as well as licence fee.

(15) The petitioner has further claimed parity with M/s Janta Land Promoters, who was also granted exemptions under the Industrial Policy,

2003 but EDC and licence fee etc. having been imposed, the said company successfully challenged the same before this Court in **CWP No.11744 of 2008 (Janta Land Promoters Ltd. vs. State of Punjab & Ors.)** and **CWP No.18518 of 2008 (M/s Janta Estate and Housing Development Ltd. vs. State of Punjab & Ors.)** which were allowed by this Court on 26.11.2010. The petitioner also relies upon another decision dated 09.09.2013 of this Court in **CWP No.5536 of 2013 (M/s Chandigarh Overseas Pvt.Ltd. vs. State of Punjab & Ors.)**, in which the previous decision in **M/s Janta Land Promoter's** case was followed.

CWP No.5620 of 2015

(16) In continuation of the first petition, the second writ petition has laid challenge to various communications asking the petitioner-company to seek No Due Certificate from GMADA regarding payment of EDC and licence fee etc. as a pre-condition for (i) processing the case of Change of Land Use; (ii) allowing concessions under the Punjab Apartment and Property Regulation Act, 1985 and (iii) granting approval to Lay Out and Zoning Plans submitted by the petitioner-company. A further direction has been sought to grant extension of time towards completion of project after granting all requisite approvals, referred to above, as the delay has been caused for want of these necessary approvals. The aforementioned reliefs have also been sought on the principal premise that the petitioner-company has been exempted from the levy of EDC and licence fee etc. under the Industrial Policy, 2003 hence it cannot be compelled to pay these charges as a pre-condition for grant of CLU or for sanctioning of Lay Out and Zoning Plans. Rest of the facts are identical to those averred in the first petition.

THE RESPONDENTS' CASE

(17) State of Punjab through the Department of Industries and Commerce has filed a short affidavit-cum-reply, admitting the fact that all the Mega Information Technology Parks Projects including that of the petitioner-Company were approved by the Empowered Committee in its meeting held on 29.03.2006 followed by the Agreement with the State Government on 11.10.2006. It is interestingly averred that in view of the amendment made in the Allocation of Business Rules on 16.03.2012, the cases/files of all such Projects approved by the Empowered Committee stood transferred to the Department of Information Technology vide letter dated 04.04.2013 and as such the detailed reply, if any, is to be filed by the Department of Information and Technology.

(18) The Director-cum-Secretary, Department of Information Technology (respondent No.4) has filed a separate reply dated 08.04.2015, which again does not deal with any factual issue except pointing out that GMADA has raised a demand towards EDC and licence fee and the petitioner in its reply dated 10.11.2014 sent to the Department of Information Technology “has not taken the stand” that EDC or other fees having been exempted, are not payable by the petitioner. The only other reference made is to a letter dated 27.05.2014 asking the petitioner to explain its position for non-payment of outstanding dues.

(19) Respondent No.3 – GMADA in its written statement has averred that the special package of incentives granted on 05.05.2006 for setting up Information Technology/Industrial Park in an area of 125 acres of land and with an investment of ₹ 952 crores, was valid only for a period of three years and the petitioner did not take any step to implement the project within the stipulated period. Meanwhile, the Industrial Policy, 2003 came to

an end on 06.10.2009 and it was superseded by the Industrial Policy, 2009. The petitioner applied for extension of period for the implementation of the Project for a period of one year, which was granted. The Project was thus to be implemented by 28.03.2010 but the petitioner still took no steps to implement the Project except getting a Layout Plan of only 45 acres approved on 30.09.2009. The petitioner also deposited a sum of ₹ 168.75 lacs as part-instalment of EDC on 29.09.2009 and further sought extension of two years which was also granted so as to complete the Project by 28.03.2012.

(20) It is further averred that the petitioner neither made any efforts to implement the Project within the extended period nor it appeared to have the capacity to honour its commitment to invest ₹ 952 crores as its balance-sheet for the year ending 31.03.2014 depicts a total investment of ₹ 154.58 crores on the entire Project. The Project was to be set up in 125 acres whereas the petitioner had not implemented even 10% of the Project.

(21) GMADA has referred to Clause-5(iv)(q) of the Agreement dated 11.10.2006, which according to it, clearly specifies that EDC would have to be deposited by the petitioner-Company as a proportionate cost of infrastructure development. The petitioner understood this Clause correctly and started paying EDC w.e.f. 29.09.2009 and continued to make intermittent payments till 05.12.2014. When the petitioner became a defaulter, it itself applied on 25.07.2014 and 27.11.2014 (R1 & R2) for re-scheduling the payment of EDC etc. The revised schedule of payment was also not adhered to by the petitioner.

(22) In the meantime, the State Government having regard to the difficulties being faced by the developer companies, took a fresh policy

decision dated 06.02.2015 (R3) to give yet another opportunity to the developers to implement the Projects in public-interest. The Policy contemplates re-scheduling the payment of outstanding dues provided that 10% of the defaulted/due amount was paid. It was in terms of the afore-stated policy that a revised demand notice dated 10.03.2015 (P17) was served on the petitioner according to which an amount of ₹ 2.26 crores was required to be deposited till 09.04.2015. The petitioner, instead of depositing the said amount, challenged the said demand notice, may be to thwart the payment of outstanding dues. It is also alleged that various complaints, oral and written, have been received against the petitioner-company from the general public/allottees for not honoring the commitments made to such allottees while selling the plots.

(23) It has been reiterated that instead of investing ₹ 952 crores within a period of three years or within the extended period till September, 2012, the petitioner has admittedly invested only ₹ 154 crores till 31.03.2014 and is thus guilty of violating the Agreement as well as the basic objective of the Industrial Policy, 2003 which was aimed at providing cascading benefit to the people of the State and not to an individual company who has taken the State for a ride. By way of an additional affidavit, GMADA has also placed on record copies of the Agreements entered into by the State of Punjab with (a) M/s Janta Land Promoters (R6); (b) M/s Chandigarh Overseas Pvt.Ltd. (R7); and (c) M/s Hansa Tubes Pvt. Ltd. (R8) for a comparative analysis of the terms and conditions whereby the parties bound themselves down.

(24) GMADA has further averred that the petitioner cannot draw any mileage out of the judgements of this Court in (i) M/s Janta Land

Promoters and (ii) M/s Chandigarh Overseas Pvt.Ltd. cases, rather the later decision of this Court dated 29.09.2014 rendered in **CWP No.23053 of 2010 (Hansa Tubes Pvt.Ltd. vs. State of Punjab & Ors.)** and **CWP No.16689 of 2010 (M/s PVP Entertainment Ltd. vs. State of Punjab & Ors.)** squarely rejects the petitioner's claim.

(25) Petitioner has filed a composite Replication to all the written statements, asserting that while respondent No.1 has suppressed the relevant facts, respondent No.2 has chosen not to file any written statement. The written statement filed on behalf of respondent No.4 has been objected to for want of correct verification. The averments made by GMADA (respondent No.3) in its written statement have been controverted. The later judgment of this Court in **Hansa Tube Pvt. Ltd.** case (supra) has been distinguished on the strength of Clause-5(iv) of the respective Agreements as also on the premise that the said judgment has been rendered without taking notice of the decision of the Apex Court in **State of Bihar vs. Kalyanpur Cement Ltd. (2010) 3 SCC 274**, Clause-10.4.1 of the Industrial Policy, 2003 has again been reproduced to lay emphasis on the fact that EDC for private industrial estate developers is one component which has been expressly exempted in exercise of powers vested in the State Government under Section 44(2) of the PAPRA, 1995.

(26) We have heard Sarvshri Rajiv Atma Ram and Anand Chhibber, Senior Advocates on behalf of the petitioner(s) and Shri RS Khosla, Senior Advocate for GMADA as well as Shri Rajesh Bhardwaj, Addl. AG, Punjab at a considerable length and have gone through the relevant record with their assistance.

(27) Learned counsel for the petitioners urged that:-

- (i) the respondents are bound by the principles of 'legitimate expectation' and 'promissory estoppel', for the petitioner entered into the Agreement dated 11.10.2006 on the basis of the incentives and concessions provided for under the Industrial Policy, 2003 and which were further re-affirmed by the Letter of Intent dated 05.05.2006 (P3). The respondents are said to have made an unequivocal promise to give special package of incentives through the written agreement between the parties. The petitioner allegedly altered its position on account of the assurances given by the respondents and has already made a huge investment of ₹ 150 crores, therefore, the respondents cannot arbitrarily revoke or rescind the incentives and concessions in derogation of the promise given or to the disadvantage of the petitioner. Reliance was placed on two decisions of the Supreme Court in (i) **Kasinka Trading & Anr. vs. Union of India & Anr. (1995) 1 SCC 274**; (ii) **State of Bihar vs. Kalyanpur Cement Ltd.** case (supra);
- (ii) the only motivation for the petitioner-Company for entering into agreement with the respondents was the incentives to be given under the Industrial Policy, 2003 which expressly include exemption of payment of EDC, licence fee and CLU charges etc. The petitioner went ahead with the Project without making arrangements for any payment towards these multiple charges, was caught unaware and the demands were raised at a stage when the petitioner had already made investments and reached at point of no return;

- (iii) petitioner-Company has complied with the requisite conditions enumerated in Clause-5 of the Agreement dated 11.10.2006 but the respondents at their end, have been raising one obstructions or the other due to which the completion of Projects has been inordinately delayed. Even Lay Out and Zoning Plan which are altogether unconditional, have not been approved for want of No Dues Certificate *re:* payment of EDC, licence fee and Urban Development Charges etc.
- (iv) the petitioner is not liable to pay CLU charges in view of Clause 10.4.2 of the Industrial Policy, 2003 read with Clause-(iii) of the Letter of Intent dated 05.05.2006 as well as Clause-5(iv)(c) of the Agreement dated 11.10.2006 and Clause-6 of the Agreement expressly provides such an exemption. However, the authorities have in total disregard to the binding policy and the Agreement, have raised an illegal demand to pay charges for Change of Land Use;
- (v) similarly, in view of Clause 10.4.1 read with Clause (x) of Letter of Intent dated 05.05.2006 and Clause 5(iv)(j) of the Agreement dated 11.10.2006, the petitioner has been unequivocally exempted from the provisions of PAPRA, 1995, namely, the only Act whereunder EDC can be imposed [Section 5]. Therefore also, the respondents cannot levy EDC on the petitioner;
- (vi) the expression “Development Charges” is defined in Section 2(m) which means the cost of ‘External’ and ‘Internal’ development works. As per Section 2(b), “External

Development Works” includes roads and road-systems, water-supply, sewerage and drainage systems, electric supply or any other work which may have to be executed in the periphery of, or outside, a colony for its benefit. Thus, no cost incurred by the State or its agencies towards the above-mentioned External Development Works can be appropriated from the petitioner in view of express exemptions granted to it from the levy of EDC;

(vii) as regard to the petitioner’s liability to pay “proportionate cost of infrastructure development which will be carried out by the State Government in the area where project is located...”, the cost of infrastructure is neither statutory in character nor has it been defined in PAPRA, 1995. Further, unless the expressions “in the area” is defined and demarcated, the amount of proportionate cost to be apportioned by the petitioner cannot be determined. Furthermore, the liability towards proportionate cost of infrastructure-development in the area where the petitioner’s project is located would be determined at an appropriate stage only after:-

- (a) the area where infrastructure has been developed is defined in metes and bounds;
- (b) the nature of infrastructure developed in such area is explained;
- (c) the cost incurred on each component of the infrastructure is quantified;
- (d) a fair and transparent criteria is evolved for proportionate distribution of such costs on all the

beneficiaries, be that they be Industrial Parks Developers, commercial sites or allottees of residential plots within that defined area;

No such exercise has been undertaken as may be seen from the impugned notices and the petitioner has not been apprised at all as to what is the criteria of proportionality;

- (viii) the respondents, especially GMADA have misdirected themselves by treating 'Infrastructure Development Costs' and 'External Development Charges' as one and the same thing. The components of infrastructure development are given in Clause-5(iv)(e) of the Agreement dated 11.10.2006, which are not similar to what is included in 'External Development Works' under Section 2(p) of PAPRA, 1995;
- (ix) other project developers like Janta Land Promoters Ltd. who are also located in Sector 61 along with the petitioner, stand exempted from payment of any EDC or infrastructure development costs. The respondents have nowhere explained as to whether the proportionate liability of such exemptees has also been fastened on the non-exemptees like the petitioner;
- (x) there is no rhyme or reason to withhold the approval of Lay Out and Zoning Plans with the pre-condition to obtain No Dues Certificate from GMADA. Clause-5(iii)(c) of the Agreement unconditionally provides that "Zoning and Layout Plan will be cleared by a competent authority declared by Director of Industries and Commerce, Punjab", *inasmuch* as, Clause-6 of

the Agreement imposes condition to comply with provisions of Clause-5(i), 5(ii), 5(iii) only within the stipulated period failing which the concession enumerated in Clause-5(iv) could be automatically withdrawn;

- (xi) similarly, the time period prescribed for completion of the project deserves to be reckoned w.e.f. the date the authorities will grant all necessary approvals, in the absence whereof, the petitioner has not been able to take effective steps for the completion of project. As per the Agreement dated 11.10.2006, the petitioner's project was due to be completed by March, 2012 but owing to various obstacles and roadblocks created by the respondents, delay has been caused in carrying out the development works. No such work could be commenced for want of Environment Clearance Report which was finally released in the year 2013 only (P9). Still further, Layout and Zoning Plans are not being arbitrarily approved and have been erroneously linked with payment of EDC and licence fee etc. The process of Change of Land Use has also been held up for the same untenable reason. The respondents themselves are thus responsible for the inordinate delay caused in the development of the project, therefore, the time period is liable to be extended and counted from the date all the requisite permissions and approvals are accorded;
- (xii) assuming that the petitioner is liable to pay EDC, CLU charges or licence fee (though denied), the revised schedule of payments sent by the respondents itself permits to pay the same

till 09.10.2016 which was yet to expire. The respondents have therefore, illegally and arbitrarily withheld the necessary approvals and permissions on the basis of an objection, which as per their own action, is premature;

(xiii) the Agreement dated 11.10.2006 was entered into with the State Government through the Secretary, Department of Industries and Commerce, Punjab. The State Government has not rescinded the Agreement. GMADA which is a subservient statutory authority of the State, to whom the development works might have been entrusted, has no authority in law to proceed against the petitioner on the premise that the Agreement stands abrogated. GMADA being a developer like the petitioner, is indeed a competitor and cannot be allowed to sit over the Government decisions and to unilaterally determine the petitioner's liability.

(28) Shri R.S. Khosla, learned senior counsel for GMADA and Shri Rajesh Bhardwaj, learned Addl. AG Punjab strenuously opposed the petitioner's claim, as according to them, the writ petitions are liable to be dismissed for the reasons that:-

(i) Time is the Essence of the Contract and Clause-5(i) of the Agreement provides in specific that *"the Company shall make an investment of Rs.952 crore including fixed capital investment of at least Rs.1 crore at one location,...by setting up of Information Technology Parks Projects in 125 acres of land at Mohali with an investment of Rs.952 crores within a period of three years effective from 29.03.2006."* Clause-6 of the Agreement categorically states

that *“in case the above Company fails to comply with the provisions of para-5(i),..... within the stipulated period mentioned therein, the concession enumerated in para-5(iv) above shall stand automatically withdrawn and the Company shall have no claim or liability whatsoever on the State Government in this regard”*. The petitioner has admittedly failed to complete the project or make investment of Rs.952 crores by March, 2009 or within the extended period till March, 2012. Not only this, the petitioner has rather chosen not to avail the benefit of THE latest policy dated 06.02.2015 whereunder the payment of outstanding dues has been re-scheduled subject to payment of 10% of the defaulted/due amount. As a result of repeated failure of the petitioner to honour the agreed terms and conditions of the binding contract, Clause-6 thereof became operative and all the concessions and incentives which were agreed to be granted to the petitioner stood automatically withdrawn;

- (ii) the principle of ‘promissory estoppel’ applies against the petitioner and not the respondents. The petitioner agreed with open eyes to share the proportionate burden of the cost of ‘infrastructure development’ and deposited the initial instalment without any murmuring. The petitioner subsequently took a somersault to gain unlimited time as due to its depleted financial condition, the petitioner is unable to pay the agreed costs;
- (iii) all the components of ‘External Development Charges’ as defined in Section 2(p) of PAPRA, 1995 are included in Clause-5(iii)(e) of the Agreement (P4) which defines ‘infrastructure development’

and is not an exhaustive clause. As the petitioner agreed to pay the proportionate cost incurred towards infrastructure development of the area where its project is located, the petitioner cannot blow hot and cold and seek implementation of the Agreement but not the Clause imposing above-stated liability on it;

- (iv) the petitioner cannot take any advantage of the decisions of this Court in **Janta Land Promoter's** case or **Chandigarh Overseas Pvt.Ltd.** case (supra) for the reason that there was no clause in the Agreements entered into between them and the State Government, obligating those developers to pay EDC or proportionate cost of infrastructure development. On the other hand, such a condition was expressly agreed to by the developer in the case of **Hansa Tubes Pvt.Ltd.** (supra) as also by the petitioner vide Agreement dated 11.10.2006. In fact, such a condition was conveyed to the petitioner, in no uncertain terms, vide LOI dated 05.05.2006 also [Clause (xvii) of P3];
- (v) the exemption from PAPRA, 1995 was conditional and as the petitioner failed to perform the obligations agreed to by it, the exemption got automatically withdrawn;
- (vi) the petitioner was exempted from payment of licence fee in respect of the area of the project to be developed for industrial purposes and that exemption had never been withdrawn. There was no exemption from payment of licence fee qua the commercial or residential components and the demand raised against the petitioner pertains to the residential and commercial projects only;

- (vii) the petitioner itself is responsible for the delay in the commencement of its project. Soon after the Agreement between the parties executed on 11.10.2006, the State Pollution Control Board granted no objection on 20.08.2007 (P5 colly) and CLU in respect of 104.08 acres was also granted on 26.09.2007. The Pollution Control Board vide letter dated 17.05.2011 has pointed out that the petitioner did not apply for Environment Clearance and as soon it was applied, the clearance was granted without wastage of time on 05.03.2013 (P9);
- (viii) the petitioner in the first phase wanted to develop only 45 acres land out of the project area measuring 125 acres. The petitioner deposited EDC etc. for the first phase on 30.09.2009 and its layout plans for that area were immediately approved. There has thus never ever been any delay on the part of the authorities as alleged by the petitioner;
- (ix) the petitioner has failed to disclose the contents and import of the State Government notification dated 29.10.2009 (R13), issued in exercise of powers under Section 44(2) of the PAPRA, 1995, whereby the Government of Punjab exempted the petitioner's industrial project of 45 acres from the provisions of the above-mentioned Act "except Section 32" subject to the terms and conditions contained in the said notification including (a) the promoter shall strictly abide by the Agreement dated 11.10.2006; (b) the promoter shall deposit the entire amount towards Punjab Urban Development Fund created under Section 32 of the Act within 30 days of the sanctioning of layout plan; (c) the promoter

shall be responsible for obtaining the final NOC from Punjab Pollution Control Board; (d) the promoter shall obtain Environment Clearance before the commencement of the project. The petitioner, however, continued to delay compliance of most of the conditions contained in the above-stated notification and is thus responsible for the automatic withdrawal of the incentives and concessions.

Legislative Scheme of PAPRA, 1995

(29) The Statement of Objects and Reasons of PAPRA, 1995 unveils that the problem of controlling the activities of private colonizers engaged in the construction of apartments and sale of plots has been engaging the attention of State Government as some of such colonizers were operating solely with the motive of profits without any regard to the interest and rights of the individual buyers. The State Government, therefore, felt the need to formulate a law in order to check, control and regulate the activities of private colonizers and protect the interest of consumers. The Model Draft Bill circulated by Government of India on the same subject elucidated necessary guidance to the State Government to enact such a legislation.

(30) Section 2 of the Act contains the definition clause, the relevant parts whereof have already been reproduced. Section 5 mandates that any promoter, who desires to develop a land into a colony, shall have to apply in the prescribed format with a prescribed fee to the competent authority for grant of permission. Its sub-sections (1), (5), (6) & (7) are reproduced below:-

“(1) Any promoter, who desires to develop a land into a colony, shall make an application in the prescribed form

alongwith the prescribed information and with the prescribed fee to the competent authority for grant of permission for the same and separate permission will be necessary for each colony.

(2) xxxx xxxx

(3) xxxx xxxx

(4) xxxx xxxx

(5) The promoter shall enter into agreement undertaking to pay proportionate development charges for External Development Works to be carried out by the Government or a local authority.

(6) The competent authority shall determine the proportion in which, and the time within which, the estimated development charges referred to in sub-section (5) shall be paid to the State Government, or the local authority, as the case may be.

(7) The promoter shall carry out and complete the development of the land in accordance with the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976) and other laws for the time being in force.”

(31) Section 32(1) of the Act obligates a promoter to whom a licence has been granted under Section 5 or who has been exempted under Section 44, to deposit service charges at the rate of rupee one per square metre of the plotted area proposed to be developed by him. Sub-Section (3) provides that the amount of service charges deposited by the promoter under Section (1) or recovered from him under Sub-Section (2) shall constitute the “Punjab

Urban Development Fund”, which shall be utilized under Sub-Section (4) for development of the colonies, to promote research and development in town and country and urban affairs, and for such other similar purposes as may be prescribed.

(32) Section 44 of the Act deals with Exemption and it reads as follows:-

“(1) Subject to the provisions of section 32, nothing in this Act shall apply if the promoter is,-

(a) a local authority or statutory body constituted for the development of land or housing; or

(b) a company or a body created for development of land or housing or promotion of industry wholly owned and controlled by the State Government or the Central Government;

(2) If the State Government is of the opinion that, the operation of any of the provisions of this Act, causes undue hardship, or circumstances exist which render it expedient to do so, it may exempt, by a general or special order, any class of persons or arrears from all or any of the provisions of this Act, subject to such terms and conditions as it may impose.”

(33) From the submissions made by learned counsel for the parties read with their exhaustive pleadings, we find that the following points arise for consideration:-

- i) Whether the phrase ‘cost of infrastructure development’ as contained in para 5 (iv)(q) of the Agreement dated 11.10.2006

is synonymous to the expression 'External Development Works' as defined in Section 2(p) of PAPRA, 1995?

- ii) If so, whether the petitioner is exempted from payment of External Development Charges/Cost of Infrastructure Development in view of para 5(iv)(j) of the Agreement dated 11.10.2006 whereunder its project has been exempted from PAPRA, 1995?
- iii) What is the effect of para-6 of the Agreement dated 11.10.2006 on the petitioner's claim for exemption from payment of EDC and other charges?
- iv) Whether the time prescribed for completion of the project is the essence of contract, and if so, whether it would have any adverse effect on the petitioner's claims after the expiry of the extended period?
- v) Whether the respondents are bound by the principles of 'legitimate expectation' and 'promissory estoppel' and consequently are debarred from levying EDC on the petitioner?
- vi) Whether the action of the respondents in levying EDC/CLU/licence fee etc. is discriminatory, based upon arbitrary and irrational considerations?

Point Nos.(i) & (ii)

(34) For the correct appreciation of these issues, it is necessary to make reference firstly to Clause 10.4.1 of the Industrial Policy, 2003 which in so many words declared that in order to facilitate and encourage private participation in Industrial Parks/Estates/Information Technology Parks etc., the private or joint sectors shall be exempted from PAPRA, 1995. It was in

conformity with the said policy that the petitioner's project to set up information technology park was expressly exempted from PAPRA, 1995 vide Clause (x) of the memo dated 05.05.2006 (P3). No doubts were left in this regard when the petitioner and the State Government entered into an agreement dated 11.10.2006 and para 5(iv)(j) whereof also exempted the petitioner's project from PAPRA, 1995 except that while issuing the final notification under Section 44(2) of the Act, no exemption from the levy of "Punjab Urban Development Fund" was granted. There has thus been a loud commitment by the respondents to keep the project of the petitioner away from the effects of PAPRA, 1995 except to the extent explained above. On a plain reading of the documents and policy and on literal construction of their recitals, it can be safely inferred that the respondents by taking a conscious decision, willfully entered into an agreement thereby exempting the petitioner from PAPRA, 1995.

(35) The question, however, still remains as to what is the effect of Clause (vii) of the approval letter dated 05.05.2006 read with para 5(iv)(q) of the Agreement dated 11.10.2006? It may be seen that while according approval or while granting exemption from PAPRA, 1995, the State Government informed the petitioner in so many words that "*proportionate cost of infrastructure development which will be carried out by the State Government in the area where the project is located, shall be borne by all the developers of Information Technology Park/Industrial Park proportionately*". The petitioner not only accepted the above reproduced unilateral condition, it voluntarily entered into the Agreement dated 11.10.2006 and bound itself down under sub-clause (q) of para 5 to pay the

proportionate cost of infrastructure development to be carried out by the State Government in the area where the project is located.

(36) It would be apt at this stage to again notice the definition of ‘External Development Works’ which **“includes roads and road systems, water supply, sewerage and drainage systems, electricity supply or any other work which may have to be executed in the periphery, of or outside, a colony for its benefit”**. As against it, the phrase “Infrastructure Development” has been illustrated in para 5(iv)(e) of the Agreement, according to which, the ‘Infrastructure Development’ **“would include roads (including approach roads), water supply and sewerage facilities, common effluent treatment facilities, telecom networks, generation and distribution of power, parking facilities, parks, street lights and such other facilities as are of common use for industrial activities which are identifiable and are to be commonly used”**.

(37) From the comparative analysis of the above reproduced two expressions, there should remain no doubt that the ‘Infrastructure Development’ is a very expansive phrase which includes the ‘External Development Works’ as well. ‘Infrastructure Development Works’ are of wider configuration to include certain works which do not find mention amongst the ‘External Development Works’. The State Government who alone is the competent authority to grant exemption from the provisions of PAPRA, 1995, while granting special package of incentives including exemption from PAPRA, 1995, has by way of a special clause fastened the liability of paying proportionate cost of infrastructure development on the petitioner. Such a special clause obligating the petitioner to pay proportionate cost of infrastructure development has been expressly inserted

in the Agreement also. Not only this, the infrastructure development works have been illustratively defined in the Agreement itself to remove any room for doubt. Since the petitioner voluntarily agreed and accepted the terms and conditions of the Agreement, it cannot wriggle out of the consequences which are bound to fall upon it.

(38) The petitioner's contention that there is no statutory backup to levy the cost of infrastructure development, for there is no such provision in the PAPRA, 1995, is wholly misconceived. Once the petitioner's project is exempted from PAPRA, 1995, the affairs of the parties shall be governed by the terms and conditions of the Agreement dated 11.10.2006. Further, since the External Development Works stand included in the infrastructure development works, there can be no escape but to hold that the petitioner is liable to pay such charges as per the binding contract read with Section 5 of the PAPRA, 1995. It is clarified that since the exemption from PAPRA, 1995 granted to the petitioner was subject to its liability to pay proportionate cost towards infrastructure development works, hence, there was no exemption to it in legal parlance from the levy of 'external development charges' as defined in Section 2(p) read with Section 5 of PAPRA, 1995.

Point Nos.(iii) & (iv)

(39) It is undeniable that as per para (6) of the Agreement dated 11.10.2006 if the petitioner-company was unable to comply with provisions of para 5(i), 5(ii) and 5(iii) within the stipulated period of three years commencing from 29.03.2006 (which was later on extended upto 28.03.2012, with a further renewal offer under the new policy decision dated 06.02.2015), the concessions enumerated in para 5(iv) were liable to be automatically withdrawn. Since we have viewed that the petitioner is liable

to pay the proportionate costs towards infrastructure development works which include the 'External Development Works' within the meaning of Section 5 of PAPRA, 1995, it is not necessary to dwell upon the implications of petitioner's failure to make an investment of ₹ 952 crore within the initially agreed and/or subsequently extended period.

(40) We, however, hasten to add that the respondent-GMADA's plea that the time is the essence of the contract and the petitioner having failed to honour the prescribed time schedule is not entitled to any concessions/incentives, merits rejection. The time limit was prescribed by the State Government while it entered into agreement with the petitioner on 11.10.2006. The State Government thereafter at its own has extended the time limit repeatedly and its latest policy dated 06.02.2015 (R3) conclusively establishes its inclination towards the completion of projects by granting concession/relief in the agreed time schedules, for which an offer has been made even to the petitioner also. Since the respondents themselves are not keen to adhere to the time schedule, we hold that GMADA has no authority to assume the role of State Government or to invoke Para 6 of the Agreement to say that the petitioner has lost its right to claim concessions due to the 'expiry' of time period, within which the project was required to be completed.

Point No.(v)

(41) The petitioner's claim that the respondents are estopped by their act and conduct from levying EDC or that after exemption from PAPRA, 1995, it legitimately expected not to be burdened with EDC has to be held to be misconceived and misdirected in view of the findings returned on point Nos.(i) & (ii) above. The State Government while granting special package

of incentives on 05.05.2006, expressly informed the petitioner of its liability towards proportionate cost of infrastructure development and it was thereafter that both the parties knowing fully well the implications of such clause, entered into the Agreement dated 11.10.2006. The petitioner having agreed with open eyes to pay the proportionate cost of infrastructure development cannot turn around and invoke the principle of 'promissory estoppel' against the respondents as what the petitioner has been asked to pay is necessarily a component of the cost towards infrastructure development works only. So long as the respondents have not withdrawn the exemption from PAPRA, 1995 which might result into levy of other statutory charges on the petitioner, it cannot be said that the respondents have acted contrary to their promise. Similarly, the petitioner cannot be heard to say that it 'legitimately expected' not to pay the proportionate cost of infrastructure development works even after it agreed to share such liability while entering into agreement. We thus do not find any merit in this contention as well.

Point No.(vi)

(42) As regard to the plea of discrimination, it was vehemently contended that the petitioner's project is similar to that of M/s Janta Land Promoters or M/s Chandigarh Overseas Pvt. Ltd. and since their projects have been fully exempted under the orders of this Court from payment of any EDC or the proportionate towards infrastructure development works, the respondents cannot be permitted to exempt one project 'completely' or the other 'partially'. On a minute consideration of the contention, it is apparent that the terms and conditions of the Agreements dated 24.06.2005 between State of Punjab and M/s Janta Land Promoters (R6), dated 03.04.2006

between State of Punjab and M/s Chandigarh Overseas Pvt. Ltd. on the one hand, and those of the agreement dated 11.10.2006 between the petitioner and the State of Punjab are distinctly different. There was no clause to levy proportionate cost of infrastructure development works or External Development Works in the agreements entered with M/s Janta Land Promoters and M/s Chandigarh Overseas. Later on, such a liability was sought to be fastened on them against which their respective writ petitions were allowed vide judgments dated 26.11.2010 and 09.09.2013 (P18 & P19). Contrarily, somewhat similar clause was inserted in the agreement dated 15.10.2007 between State of Punjab and M/s Hansa Tubes Pvt. Ltd. who challenged the levy of EDC and claimed parity with M/s Janta Land Promoters and Chandigarh Overseas. A Division Bench of this Court to which one of us (Surya Kant, J) was a member, turned down the plea of discrimination vide order dated 29.09.2014 passed in **CWP No.23053 of 2010 (Hansa Tubes Pvt. Ltd. Vs. State of Punjab & Ors.)** and held that :-

“Thus, whereas in the agreement in Janta Lands' case, there was no specific qualification to the condition of ensuring connectivity to power, roads etc., in the present case, it is clearly stipulated that the proportionate costs of any infrastructure upgradation would be borne by the Company.

Hence, as regards external development charges, both the cases run on their own facts, as per the agreements entered into by Government, with different companies.

Therefore, as already held by us, external development charges are very much payable by the petitioner in the present case, even though they were not payable by M/s Janta Land Promoters Ltd.”

(43) For the reasons assigned in **M/s Hansa Tubes Pvt. Ltd.**, the petitioner cannot claim parity with **M/s Janta Land Promoters** case. Needless to say that the terms and conditions of the Agreement levying liability towards cost of infrastructure development are not under challenge in these proceedings.

(44) The claim of the petitioner, nonetheless, in so far as its challenge to the levy of Change of Land Use (CLU) charges, merits acceptance in view of specific exemption granted to it from the levy of such charges under Para 5(iv)(c) of the Agreement dated 11.10.2006. It has already been held that the respondents themselves have been granting extension and are further inclined to grant further extension through the later policy dated 06.02.2015 and thus cannot invoke Para 6 of the Agreement dated 11.10.2006, hence the petitioner cannot be fastened with any liability towards CLU charges. The payment, if any, made by the petitioner towards CLU charges shall be adjusted against the proportionate cost of infrastructure development works.

(45) Similarly, the petitioner has a valid claim against the demand towards ‘Social Infrastructure Fund’. This Court has set aside an identical demand in **M/s Hansa Tubes Pvt. Ltd.** (supra) as it was found that such a charge was without any legal backing. For the reasons assigned in **M/s Hansa Tubes Pvt. Ltd.**, it is held that the petitioner is not liable to pay the social infrastructure fund and the amount, if any, already paid towards it, is

directed to be adjusted against the arrears of proportionate cost of infrastructure works.

(46) Adverting to the petitioner's challenge to the levy of Licence Fee, Sh. Khosla, learned senior counsel for GMADA has very fairly clarified that as per the terms and conditions of Agreement no Licence Fee is leviable on the "industrial component" which is 60% of the total licensed area. However, there is no exemption of 'licence fee' on the "residential and commercial components" of the project which constitute 40% of the total area. The clarification given on behalf of GMADA appears to be correct as the petitioner too has not questioned the same. The respondents shall thus work out the petitioner's liability towards licence fee accordingly and if anything is found to have been paid in excess, the same shall be adjusted towards other permissible liabilities.

(47) So far as the petitioner's liability towards 'Punjab Urban Development Fund' is concerned, it is totally inescapable for the reasons that firstly the petitioner has been expressly declined such exemption of Section 32 of PAPRA, 1995 by way of Notification dated 29.10.2009. Secondly, the said notification is not under challenge in petitioner's both the writ petitions. Thirdly, there is even otherwise no prayer made by petitioner to exempt it from such statutory charge. Fourthly, the demand has an express statutory back-up. Save where the Court finds wrong with a provision of the Statute, it ought to be given full effect.

(48) As a result of the above discussion and findings, it is reiterated that the petitioner is liable to pay proportionate cost towards infrastructure development works and all the 'External Development Works' as defined in PAPRA, 1995 are by implication included in the infrastructure development

works. The inescapable consequence would be that the impugned recovery notices served on the petitioner are fully justified.

(49) Having held so, we cannot be oblivious of the fact that the time schedule extended by the State Government under its new policy dated 06.02.2015 (R3), for giving one more opportunity to the project promoters to clear the outstanding amount of EDC/licence fee etc. has since expired. The respondents may be right to an extent in contending that the petitioner lacks the financial capability to fulfill the promise for which it entered into the Agreement or that it has consistently failed to honour the commitment towards payment of due charges. At the same time, it has to be kept in view that the petitioner has already invested more than ₹ 150 crores. If all the doors are closed for the petitioner on a hyper-technical plea that the time limit extended under the policy dated 06.02.2015 already stands expired, the drastic consequence would be that the petitioner's project would suffer hammer blow. It serves no one's purpose. While the State Government is deservingly entitled to the timely receipt of its outstanding dues, its merciful discretion in granting extension and more leverage to the petitioner to make one more attempt for survival would be equally in larger public interest. It goes without saying that if a prestigious project is brought back on the right track, it would not only be a perennial resource to generate revenue for the State but would also create employment, bring prosperity and be an integral feature of a developed city. Keeping all these factors in view, and taking notice of the fact that GMADA has acted a bit aggressively to stall the petitioner's project instead of promoting it, we direct the Principal Secretary to Government of Punjab, Department of Housing and Urban Development to consider/put up the petitioner's case for granting further extension for a

reasonable period of not less than two years and re-schedule the payment of instalments as a last ditch effort for the survival of its project. Such a decision shall be taken by the State Government within two months from the date of receipt of certified copy of this order and till then no adverse or coercive action of whatsoever nature shall be taken against the petitioner.

(50) The petitioner has also laid challenge to the acquisition of a small part of its land, by way of a miscellaneous application in the second case. Since such acquisition is a subsequent event, we do not express any views on its merits and dispose of the petitioner's application with liberty to initiate appropriate separate proceedings in that regard, if so advised.

(51) The writ petition stands disposed of in above terms.

(Surya Kant)
Judge

16.12.2016
vishal shonkar

(P.B. Bajanthri)
Judge