

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: 10th August, 2017

1. Civil Writ Petition No.9859 of 2010 (O&M)

M/s Challen International (India) Pvt. Ltd.Petitioner

versus

State of Haryana and othersRespondents

2. Civil Writ Petition No. 11097 of 2014

Siddharth Grease & Lubes Pvt. Ltd.Petitioner

versus

State of Haryana and othersRespondents

3. Civil Writ Petition No. 14325 of 2014

Geeken Seating Collection Pvt. Ltd.Petitioner

versus

State of Haryana and othersRespondents

4. Civil Writ Petition No. 14326 of 2014

A.V.EngineersPetitioner

versus

State of Haryana and othersRespondents

5. Civil Writ Petition No. 14380 of 2014

M/s T.R.Engineers Pvt. Ltd.Petitioner

versus

State of Haryana and othersRespondents

6. Civil Writ Petition No. 14527 of 2014

Munjia Showa Ltd. through Ramesh Kumar Arora

.....Petitioner

versus

Haryana State Industrial and Infrastructure Development Corporation Ltd.

.....Respondent

7. Civil Writ Petition No. 14529 of 2014

Kumar Printers Private Limited

.....Petitioner

versus

Haryana State Industrial and Infrastructure Development Corporation Ltd.

.....Respondent

8. Civil Writ Petition No. 14883 of 2014

Meso Metalwares Private Limited

.....Petitioner

versus

Haryana State Industrial and Infrastructure Development Corporation Ltd. and others

.....Respondents

9. Civil Writ Petition No. 23910 of 2014

M/s Eeshan Automotives

.....Petitioner

versus

State of Haryana and others

.....Respondents

10. Civil Writ Petition No. 826 of 2015

Elite Equipment India Pvt. Ltd.

.....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU, JUDGE.

Present : Mr. H.L.Tikku, Senior Advocate with
Mr. Sumeet Goel, Advocate,
Ms. Manju Goel, Advocate,
for the petitioners in CWP Nos. 14527 and 14529 of 2014.

Mr. Keshav Gupta, Advocate
for the petitioner in CWP No. 9859 of 2014.

Mr. Tushar Sharma, Advocate,
for the petitioners in CWP Nos.11097, 14325, 14326, 14380 and 23910 of
2014 and CWP No. 826 of 2015.

Mr. Sandeep Jasuja, Advocate,
for the petitioner in CWP No. 14883 of 2014.

Mr. Deepak Balyan, Advocate for HSIIDC.

Mr. RKS Brar, Additional Advocate General, Haryana,
for the respondent-State of Haryana.

S.J.VAZIFDAR, CHIEF JUSTICE

The two main parties in all the petitions are the State of Haryana and the Haryana State Industrial & Infrastructure Development Corporation Limited (HSIIDC). The other respondents are the office bearers of these respondents.

2. The petitioners have challenged the rejection of their claim for rebate payable under a notification dated 11.11.1999 issued by the Industries Department of the State of Haryana which in turn was in accordance with the State of Haryana's Industrial Policy-1999. The applications were rejected on various grounds in respect of each of the petitioners. The issue, however, remains the same. The petitions are, therefore disposed of by this common order and judgment.

3. The preamble, objectives and the relevant part of the Industrial Policy-1999 read as under:-

“PREAMBLE

The Indian Government's liberalization and economic reforms programme aims at rapid and substantial economic growth and a harmonized integration with the global economy. The changing global and domestic environment requires reorientation of the

development vision in recognition of the new paradigms that put the industrial policy initiatives in the context of an overarching economic development policy.

The industrial policy statement of 1992 had focused on providing incentives for attracting investment in the industrial sector at a time when the delicensing and reduction in controls had unleashed growth momentum in the national economy. The Industrial Policy of 1997 adopted infrastructure led growth. **This industrial policy initiative seeks to consolidate the past progress and lay the foundation of a vibrant economy that focuses on improving the quality of life of its residents.** It aims at promoting industrial growth in the context of overall economic development of the State by creating an investor friendly enabling environment that facilitates the industry to move strongly to the front ranks of global competition. The policy further seeks to promote integration of private initiative in the developmental process of the State.

OBJECTIVES

The Industrial policy has the following objectives:

- To increase the share of industry in the Net/Gross State Domestic Product by attracting new investments and growth of existing industry.
- To increase the employment in Industrial and Allied sector by 20% in the next five years.
- To attain sustainable economic development through catalysis of investments in all sectors of the economy.
- To achieve larger value addition within the State thereby contributing to a higher quality of life.

SIMPLIFICATION OF ESTATE MANAGEMENT PROCEDURES

“Suitable rebate on land cost shall be given to those entrepreneurs who start commercial production in their units within 3 years of offer of possession of industrial plots.....” (emphasis supplied)

4. The Industrial Policy-1999 was followed by a notification dated 11.11.1999 issued by the Industries Department of the State of Haryana which specified the rebate. The relevant part thereof reads as under:-

“INDUSTRIES DEPARTMENT NOTIFICATION 11th November, 1999

No.2/I/22-IIB-II-99- With a view to streamlining the procedure of allotment, transfer/leasing/renting of industrial plots and sheds developed by Haryana State Industrial

Development Corporation, Haryana Urban Development Authority, Haryana State Electronics Development Corporation and Directorate of Industries and to ensure better utilization of infrastructure and speedy industrialization, the Governor of Haryana is pleased to order following Estate Management Procedures.

PAYMENT TERMS

- (i) 10% with application
- (ii) 15% within 30 days of issuance of allotment letter.
- (iii) Remaining 75% in 5 equal 6 monthly installments starting from the date of offer of possession.
- (iv) Interest 18% shall be charged on the balance outstanding only after offer of possession is made.

Rebate equivalent to 20% of the land cost shall be given if the industrial unit starts commercial production within 3 years of offer of possession of industrial plot.

Note, In case of NRIs, the funds towards the Price of the plot should come from his/her NRI account.

The application form duly filled in will be received by the developing agency alongwith the following documents:-

-An undertaking to the effect that the applicant shall employ at least 75% of his unskilled work force and give preference for other categories to candidates from among the Haryana Domiciles.

-Copy of the project report with details of implementation schedule.

PERIOD ALLOWED FOR CONSTRUCTION OF PLOTS AND PERIOD FOR GOING INTO PRODUCTION:

The allottee will be, required to start construction of building within one year of offer of possession and will be required to start commercial production within a period of 3 years from the date of offer of possession. However, in case the allottee is not able to start construction within one year, extension can be granted by the allotting agency for a maximum period of 6 months, if he is able to satisfy the agency that he could not start construction for reasons beyond his control. Similarly, the period for

commencement of production can be extended by the allotting agency for maximum period of one year subject to the allottee satisfying the agency that he could not go into production within 3 years of the date of offer of possession for reasons beyond his control and he took effective steps for implementation of the project. Extension in period for commencement of commercial production beyond three years shall be granted only if 10% of the permissible area has been constructed and effective steps have been taken by the allottee for completion of the project. In such cases extension fees at following rates shall be charged:-

Sr. No.	Category	Plots (Rs.per sq. mt.)	Sheds (Rs.per sq. ft. of covered area)
	Category-A	100	20
	Category-B	50	10
	Category-C	20	4

COMPLETION PROJECTS

The allottee will be deemed to have completed the project if he constructs minimum 25% of the permissible covered area and starts commercial production within specified period as mentioned above, after installation of the plant and machinery as per the projects report submitted by him. In case, there is any deviation in respect of installation of plant and machinery, the allotting agency will be competent to decide whether the plant and machinery which has not been installed has any material bearing on the project. A certificate of completion of project shall be issued by the allotting agency on an application by the allottee.”

SAVING

Any other issue, which has not been specifically covered under this procedure or requires any clarification or relaxation shall be referred to the Government for decision/clarification and the decision of the Government thereon shall form part of the procedure.” *(emphasis supplied).*

5. HSIIDC issued a Letter of Allotment (LoA) to each of the petitioners which stipulated the terms and conditions on which the plots were allotted. The parties stated that the LoA issued to each of the petitioners is the same. Mr. Balyan, the learned counsel appearing on behalf of HSIIDC, referred to the following clauses of the Letter of Allotment:-

“**13.** The use of land and of the building shall be governed as per provisions of the zoning plan of the Estate. The permissible covered area shall be governed as per rules & regulations of the Department of Town & Country Planning, Haryana, as amended from time to time. Zoning violations and deviations from the approved building plans at any stage shall cause a notice to rectify the breach. In the event of non-compliance, the plot shall be liable to be resumed and the allottee will be required to remove the plant & machinery within a period of two months of the resumption order at their own cost.

15. The allottee shall apply for an **Occupation Certificate in field office of HSIIDC** and obtain the same from the DTP of HSIDC before occupying the building. The allottee, shall, hereafter, inform the Estate Manager (local HSIDC office) that the building has been completed, machinery installed, the unit is ready for commercial production and apply for the **Project Completion Certificate**. The Estate Manager or his representative (of HSIDC) will inspect the site within a week of the above communication. After satisfaction upon such inspection, HSIDC will issue a Project Completion Certificate.”

17. HSIDC allots this plot for setting up and running an industry and thereby contributing to the overall economic activity in the State. In case the allottee does not continue to remain in production and the production gets held up, HSIDC shall issue a notice to the allottee to resume production within a period of three months. In case the allottee fails to resume production activity within the given time, the plot/shed shall be liable to be resumed.

20. The HSIDC reserves to itself all mines and minerals whatsoever including sub-soil water in or under the said site with all such rights and powers as may be necessary or expedient for the purpose of searching, working, obtaining, removing and enjoying the same at all such times and in such manner as HSIDC may deem fit, with power to carry out any survey of all or any part of the said plot and to sink pits, erect building, construct lines and generally appropriate and use surface of the said plot for the purpose of doing the full enjoyment of the exceptions and reservations here in contained. Provided that the allottee shall be entitled to receive from HSIDC such payment for the occupation by HSIDC of the surface and for the damage done to the surface or building on the said land by such works or workings or letting down as may be agreed upon between the authority and the allottee or failing such agreement shall be ascertained by reference to arbitration.

29. The policy changes and guidelines issued by the State Government or the Corporation from time to time regarding extension in time, transfer & leasing, charges for various activities or any other issue pertaining to the allotment of industrial plot/shed shall be binding on the allottee.”

6. The petitioners claim to be entitled to rebate on account of having set up the industries and commenced commercial production within the stipulated period namely within three years of the offer of possession of the industrial plots. The respondents, however, rejected the applications for rebate for different reasons in respect of each of the petitioners. Mr. Balyan, submitted a chart which inter-alia mentions the grounds on which the applications for rebate were rejected. The various grounds are as follows:-

- i) Zoning violations; constructing a guardroom in the extra area, covering the rear side and side set back areas with ACC sheets which are non-compoundable zoning violations;
- ii) Unit was not in production for a continuous period of one year;
- iii) Unauthorized construction of a borewell;
- iv) The value of the machinery installed was less than 50% of the approved cost of machines.
- v) 75% of the total unskilled force was not from the State of Haryana;
- vi) The Occupation Certificate was obtained after the commencement of commercial production.
- vii) The Chartered Accountant certificate regarding the expenditure incurred, proof of production, sales etc. was not furnished.
- viii) The construction commenced more than one year after the possession was taken.
- ix) The fourth Installment was not paid in time.

7. The respondents by their letters to each of the petitioners rejected the claim for rebate for one or more the above reasons. It is these letters that are impugned in each of the writ petitions. The petitioners have sought the consequential relief of a writ of mandamus directing the respondents to pay the rebate together with interest.

8. Mr. Balyan's contentions on behalf of HSIIDC are as follow:-

(A) The mere commencement of commercial production within the stipulated time does not entitle a party to the rebate in terms of the notification dated 11.11.1999. The entitlement to rebate must be considered inter-alia in the light of the terms and conditions of the LoA.

The terms and conditions of the LoA must be read into the notification with

respect of the grant of rebate. The commencement of commercial production and all the activities in respect of the plot must be in accordance with law and in accordance with the terms and conditions of the LoA. If there is any breach of the terms and conditions of the LoA or of any provision of law, a party would not be entitled to the rebate under the notification.

(B) Mr. Balyan relied upon clause-13 of the LoA in respect of the zoning violations; clause 15 regarding the Occupation Certificate having been obtained after the commencement of the commercial production; clause 17 regarding the unit being in continuous production for one year and clause 20 regarding the unauthorized borewell.

9. The submission on behalf of the petitioners on the other hand is that the notification does not refer to the LoA. The notification does not state that only upon the terms and conditions of the LoA being fulfilled the rebate would be available.

10. We are unable to accept either of these extreme propositions. It would be too drastic to hold that the rebate must be granted irrespective of the nature, manner and mode of commencement of commercial production. If that view is accepted, a party would be entitled to the rebate merely by virtue of commencing commercial production to any extent and by committing gross violations of the law and of the agreement between the parties. In our view, the entitlement to rebate is not based merely upon the commencement of the commercial production simplicitor. Such a view would entitle a party to merely manufacture minuscule quantities of products for only a short duration and avail the benefit of the rebate. The

policy and the notification must be read in a reasonable manner according to them the commercial efficacy and furthering the social goals for which they granted the rebate. This would necessitate an examination of the policy and of the notification.

11. The Industrial Policy-1999 states the objectives and the purpose. It was to ensure rapid and substantial economic growth. It was aimed inter-alia at promoting industrial growth by creating an investor friendly and enabling environment that facilitates the industry to move strongly to the front ranks of global competition. It seeks to promote integration of private initiative in the development process of the State of Haryana and to increase the share of industry in the Net/Gross State Domestic Product by attracting new investments and growth of existing industry. One of the most important objectives was also to increase the employment in the industrial and allied sector by 20% in the next five years and to attain sustainable economic development.

12. The objective was not to increase employment in the industrial sector by 20% at any given point of time in the ensuing five years. In other words the objective was not to increase employment only for a short span of time during these five years. It is also important to note that the objective was to attain sustainable economic development and not development for a short period of time. Thus if it is found that the unit was not intended to or cannot for any reason continue commercial production of the nature envisaged, the very purpose and object of extending the rebate would be defeated. If that is the case, another important objective

of the incentive namely to provide employment in the State of Haryana would also be defeated.

13. If the violations of law or breaches of the provisions of the LoA are such that they would not enable an industrial unit to engage in sustained and continued commercial production, the party would not be entitled to the rebate for the purpose for which the rebate is granted would not be achieved and would be defeated. The basis on which the plot is allotted including the application/project report submitted by the allottees would undoubtedly be a relevant factor. The allotments are made inter-alia on the basis of the representations of the allottees regarding the activities to be carried out on the plots. If it is found subsequently that the representations cannot be made good for any reason to a significant extent it would entitle the respondents to deny the rebate.

14. In the result, the mere commencement of commercial production would not by itself entitle a party to the rebate. The respondents must satisfy themselves that the enterprise functions in the manner that subserves the policy, the notification and the purpose and the objective of granting the rebate.

15. Nor do we agree with the respondents' contention that the rebate must be denied if there is any violation of law or a breach of the provisions of the LoA. Mr. H.L.Tikku, Mr. Keshav Gupta and Mr.Tushar Sharma, the learned counsel appearing on behalf of different petitioners rightly submitted that the extreme proposition that the violation of any law or of any of the terms and conditions of the LoA would necessarily result in a denial of the rebate is not well founded. The LoA does not find any place

in the notification. Indeed it cannot for the notification preceded the Letter of Allotment. The terms and conditions of the LoA in any event cannot be said to be incorporated into the notification. The LoA must be read in conjunction with the notification for the allotments have been made keeping in mind the Industrial Policy-1999 and the notification. As we discussed earlier, the entitlement of rebate inter-alia would depend upon whether or not the industrial unit set up on the land allotted under the LoA meets the requirement of the conditions of the rebate, namely, the commencement of commercial production of the nature envisaged within the stipulated time.

16. Take for instance a case where there is a default in the payment of the installments. The balance amount is payable either in lump-sum or in five equal monthly installments. If the failure leads to a resumption of the property, it is obvious that the commercial production would not commence. Such a party would not be entitled, therefore, to rebate and the rebate, if granted, would be liable to be refunded depending upon the facts and circumstances of the case.

17. At the cost of repetition, the condition precedent for the grant of rebate is inter-alia that the party commences commercial production within the time stipulated in the notification dated 11.11.1999, namely, within three years of the offer of possession of the industrial plot. We have already elaborated on the nature of commercial production that must be attained. If that is attained a party would be entitled to the rebate. Violations of other laws or a breach of the terms and conditions of the LoA would not necessarily result in the denial of the rebate. The violations or

breaches may result in the denial of the rebate only if the same results in the party concerned being unable to achieve commercial production in the manner described by us. A view to the contrary would result in injustice to the party/allottee despite the fact that the purpose and objective of the industrial policy and the notification are achieved.

18. Every violation of law or breach of the terms and conditions of the LoA does not affect the commercial production of the nature mentioned by us. There may be instances even of a significant construction/development which does not comply with the building or development rules and regulations. The consequence of the same may result only in the demolition thereof without affecting the commercial production of the enterprise in any manner whatsoever. The action cannot be condoned. The law must take its course against it. The denial of the rebate, however, would not be justified for the policy and the notification do not deal with and are not concerned with every violation of law and every breach of the provisions of the LoA. In such a case it is for the authorities concerned to take action against the offending structure/construction/development. The purpose and objective of the policy and the notification are not affected in any manner whatsoever. The commercial production would continue as would the employees of the enterprise. The test, therefore, is to see whether the grounds upon which the rebate has been rejected would result in the commercial production being stopped and/or substantially or significantly hampered such that it cannot be said that the purpose and object of the Industrial Policy-1999 and the purpose of extending the benefit of the rebate is defeated.

19. We will now apply this test to the objections raised by the respondents for denying the petitioners' rebate.

20. Firstly, it must be noticed that it is not the respondents' case that any of the violations or breaches on the basis whereof the rebate was rejected would stop or even hamper commercial production at any time. It is obvious that they did not go into this issue at all. The rejections were based merely on account of the violations and breaches. We intend setting aside the impugned decisions in each of the petitions rejecting the rebate and directing the respondents to decide the applications afresh. Upon remand, the respondents would obviously decide the applications keeping in mind inter-alia this judgment. It is sufficient for us at this stage to render only prima-facie findings in respect of the alleged violations and breaches.

21. The zoning violation by constructing a guardroom in all probability would only result in a party having to demolish the guard room. The zoning violations of covering the rear side set back with ACC sheets even if non-compoundable would have the same consequence as would the zoning violation of covering the side set back.

22. The alleged illegal production being carried on in the basement of the building would in all probability result in the party having to stop the same. There is nothing as yet on record to indicate that it is the only area from where the production is being carried on.

23. An unauthorized borewell cannot possibly stop the entire production by an enterprise. It would at the highest result in the party having to close the same.

24. The finding that the unit of the petitioner in Civil Writ Petition No. 11097 of 2014 was not in production for a continuous period of one year would require to be tested. The petitioner must have an opportunity of meeting this allegation. Moreover, the facts and circumstances of a case would have to be considered before arriving at a finding that the same would disentitle the petitioner altogether from the rebate. There may be cases where commercial production is stopped for a year for genuine reasons which does not in the ultimate analysis defeat the purpose for which the rebate is granted. If for instance commercial production is stopped for upgrading the unit to enhance production and employment and during this period existing employment is not affected, the party may still be entitled to the rebate.

25. One of the reasons for rejecting the rebate was that the value of the machinery installed was less than 50% of the approved costs. The notification does not compel any particular percentage of machines to be installed. It would indeed have been desirable to have specific requirements in such cases. There are unfortunately none. Here again it would be necessary to consider various facts such as whether non-installation of machinery to a given extent affects the commercial production such that it defeats the purpose of the rebate. There are several aspects in this regard which would require consideration after giving the petitioner an opportunity of dealing with the same.

26. It was also alleged that 75% of the total unskilled force was not from the State of Haryana in certain cases. Firstly, if this is so, the remedy is to compel the party to do so. The party at least must be given an

opportunity of remedying the situation. At a given point of time for a variety of genuine reasons this percentage may drop for a while. In any event the submission infact is not well founded.

The provision in this regard in the notification dated 11.11.1999 reads as follows:-

“An undertaking to the effect that the applicant shall employ at least 75% of his unskilled work force and give preference for other categories to candidates from among the Haryana Domiciles.”

The provision does not require 75% unskilled work force to be from among the Haryana domiciles. The clause requires the applicant to employ at least 75% of the unskilled work force. Further while employing the persons in other categories i.e. other than unskilled workers, preference is to be given to the persons domiciled in Haryana. The requirement of employing at least 75% of the unskilled work force is not without any meaning. The intention probably was inter-alia to ensure that the employment is granted on regular basis to the unskilled work force and that the applicant ought not to resort to contract labour with respect to the unskilled work force.

27. That the Occupation Certificate was obtained after the commencement of the commercial production is no reason for denying the rebate. This issue is covered in favour of the petitioner by a judgment of the Division Bench of this Court dated 22.02.2013 in Civil Writ Petition No.508 of 2008 *Napino Auto & Electronics Ltd. and another v. Haryana State Industrial Development Corporation Ltd. and another*. The Division Bench dealt with the said industrial policy and the said notification of

11.11.1999. In that case the commercial production commenced within the stipulated period. The petitioners' claim for rebate was, however, rejected by the HSIIDC on three grounds two of which were not pressed at the hearing. The rejection was supported on the ground that the petitioner had obtained the Occupation Certificate on 22.8.2003 whereas the implementation period expired on 08.12.2002. This was despite the fact that the commercial production commenced on 15.12.2001 itself i.e. prior to the scheduled date for implementation namely 08.12.2002. The question before the Division Bench therefore was whether the petitioners could be denied the benefit of the rebate upon having commenced commercial production within the stipulated period merely on account of inaction on the part of the respondent corporation in having delayed the issuance of the Occupation Certificate. The application for issuance of the Occupation Certificate had been made on 15.03.2002 i.e. before the scheduled date for the implementation of the project. The Division Bench held:-

“Admittedly, an application for issuance of Occupation Certificate had been submitted by the petitioner-company on 15.3.2002 but the same remained under process for a period of one year and five months till the actual issuance of the Occupation Certificate on 28.8.2003 vide Annexure P-9. The delay in issuance of the Occupation Certificate cannot work to the detriment and prejudice of the petitioner-company. It cannot lie in the mouth of a State instrumentality like the respondent-Corporation, which is committed to promoting industrial development in the State to first hold out promises for potential entrepreneurs in the shape of incentives like rebates on the price of plots upon commencing commercial production within a stipulated time frame and thereafter deny the same very incentive in delaying the issuance of the requisite Occupation Certificate. We are of the considered view that objection no.2 in the impugned order dated 12.12.2006 (Annexure P-1) rejecting the application of the petitioner-company for grant of rebate on the land cost is wholly untenable.

At this stage learned counsel appearing for the respondent- Corporation would refer to clause 15 of the

regular letter of allotment dated 8.12.1999 (Annexure P-4) which reads in the following terms:-

15. The Allottee shall apply for an Occupation Certificate in filed office of HSIDC and obtain the same from the DTP of HSIDC before occupying the building. The allottee shall, thereafter, inform the Estate Manager (local HSIDC office) that the building has been completed, machinery installed, the unit is ready for commercial production and apply for the Project Completion Certificate. The Estate Manager or his representative (of HSIDC) will inspect the site within a week of the above communication. After satisfaction upon such inspection, HSIDC will issue a Project Completion Certificate."

Counsel would submit that the petitioner-company had commenced commercial production in the month of December, 2001 i.e. even prior to the issuance of the Occupation Certificate dated 28.8.2003 and accordingly, condition no.15 of the letter of allotment had stood violated. Counsel would argue that even on such count the rebate on land cost claimed by the petitioner-company was not admissible.

We find even such submission raised by learned counsel to be wholly misplaced and misconceived. In the light of the Industrial Policy at Annexure P-3, the petitioner-company was vested with a right to claim the rebate on the price of the plot upon fulfillment of the condition of having commenced commercial production within a period of three years from the date of possession of the plot in question. The fact regarding the petitioner company having done so is not disputed. The date of issuance of the Occupation Certificate is totally alien in so far as consideration of the claim of the rebate on the cost of the plot is concerned."

What is important to note is that the Division Bench rejected the contention that the petitioner was not entitled to the rebate on account of its having commenced commercial production prior to the issuance of the Occupation Certificate. Apart from being bound by the judgment we are in respectful agreement with it.

28. The objection that the construction started more than one year after the possession of the plot was handed over is not a valid ground to deny the rebate. The entitlement of rebate depends upon the commencement of commercial production within the period stipulated

namely three years of the offer of possession of the industrial plot. To deny the rebate despite the party achieving commercial production within the stipulated period on the ground that it had not produced certain documents and information without giving the party an opportunity of producing the same would be unfair. The party must be given an opportunity of remedying the same. The material would of course be necessary to ascertain whether the condition precedent for the benefit of the rebate exists or not.

29. Mr. Balyan referred to clause 29 of the LoA and the proposals made by HSIIDC in order to support the refusal to grant the rebate.

30. Clause 29 was set out earlier. It would, however, be convenient to refer to the same again at this stage.

29. The policy changes and guidelines issued by the State Government or the Corporation from time to time regarding extension in time, transfer & leasing, charges for various activities or any other issue pertaining to the allotment of industrial plot/shed shall be binding on the allottee.”

31. The proposals are undated but are presumably prior to 21.11.2000 for they were considered at a meeting of the Board of Directors of HSIIDC held on 21.11.2000. What is important is that they were made by HSIIDC and that they were made subject to the notification dated 11.11.1999. The proposals read as follow:-

“Sub: Rebate equivalent to 20% price of the plots/sheds by way of refund on implementation of the project and start of commercial production within 3 years of possession for allotments made after the policy dated 11th November, 1999.

The Industrial Infrastructure Development Policy (IIDP) dated 11.11.1999 provided for Estate Management Procedures according to which the rebate equivalent to 20%

price of the plots/sheds allotted after coming up of this policy, is permissible to the allottees who implement their projects within the stipulated period of three years from the date of offer of possession after the allotment. There are, however, no further guidelines given in the policy for release of such incentives after the allottees have started commercial production within the stipulated period. In the absence of proper guidelines, it may be difficult to consider the requests of the allottees who may approach the Corporation for such incentive to be eligible for the same. The very purpose of allowing the incentive in the policy was to ensure speedy industrialization of the State and, to restrict multiple transfers by the allottees without implementing their projects. In order to release incentives to the genuine entrepreneurs, the following guidelines are proposed:-

- i) The implementation of project should be considered:-
 - a) When the allottee has completed construction to the extent of at least 25% of PCA taking into consideration FAR of 125%;
 - b) At least 100% of the plant and machinery proposed in the project report, has been installed and put into operation;
 - c) Occupation Certificate has been obtained from the competent authority;
 - d) Permanent registration with GM/DIC of the concerned District (i.e. PMT should have been obtained) in addition to the other proofs of production such as sales tax registration, sales transactions made and purchase of raw materials etc.”

The proposals were, however, approved and adopted with the following modifications at a meeting of Board of Directors of HSIIDC held on

21.11.2000:-

“Extract of the Minutes of the 250th meeting of the Board of Directors of HSIDC held on 21st November, 2000 at 12.00 Noon in the Board Room of the Corporation at its Registered Office, C-13 & 14, Institutional Area, Sector 6, Panchkula.

Item No.4: Rebate equivalent to 20% price of the plots/sheds by way of refund on implementation of the project and start of commercial production within 3 years of possession for allotments made after the policy dated 11th November, 1999.

Resolved that the scheme/guidelines for considering rebate equivalent to 20% of the price of the plots/sheds as mentioned in the agenda notes, subject to the following modifications, be and is hereby approved and adopted.

“At page 1, Sr.No. I (b), the words at least 100% of the Plant and Machinery may be substituted by the words 50% of the Plant and Machinery.

Further, resolved that the Managing Director be and is hereby authorized to take further necessary steps for successful implementation of the above scheme.”

32. These were only proposals. They were not notified. The respondents did not contend that the State Government approved the same. There is no notification in any event that modified the 11.11.1999 notification. The notification dated 11.11.1999 was issued by the State of Haryana. That HSIIDC may have adopted and implemented the same is a different matter. Mr. H.L.Tikku, Mr.Keshav Gupta and Mr.Tushar Sharma rightly submitted that HSIIDC neither has the power nor is entitled to negate or even modify the notification dated 11.11.1999 issued by the State of Haryana. Nor can it amend the terms and conditions thereof without the approval of the State of Haryana. Our attention has not been invited to any material which indicates that the State of Haryana accepted the proposal made by HSIIDC. The same cannot, therefore, adversely affect the petitioners' right under the notification dated 11.11.1999.

33. In the circumstances, the impugned orders rejecting the rebate are set aside. The authorities concerned shall consider the case of each of the petitioners on-merits in accordance with law including the observations made in this judgment and pass fresh orders by 30.11.2017. The amounts, if any, found due on account of rebate, absent anything else, shall be paid within eight weeks thereafter. The issue of interest on such amounts shall also be dealt with by the respondents.

With these observations, all the petitions stand disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

10.08.2017
ravinder

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No